



New South Wales

Retail Leases Amendment Bill 2004

Explanatory note

[This explanatory note relates to this Bill as introduced into Parliament.](#)

Overview of Bill

The object of this Bill is to amend the *Retail Leases Act 1994* (the *Principal Act*):

- (a) to prohibit (with certain exceptions) lessors under retail shop leases from recovering lease preparation expenses from lessees, and
- (b) to remove the current requirement for lessors to make available to lessees six-monthly statements of actual expenditure on outgoings to which lessees contribute.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

The proposed amendments regarding lease preparation expenses are made by way of amendments to sections 14 and 45 of the Principal Act. Sections 14 and 45 make it an offence for a person, as lessor or on behalf of the lessor, to seek or accept the payment of key-money in connection with granting, renewing or extending a retail shop lease and also provide that any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money in connection with granting, renewing or extending a lease.

Schedule 1 [3] amends section 14 of the Principal Act to also make it an offence for a person, as lessor or on behalf of the lessor, to seek or accept the payment, in connection with the granting of a retail shop lease, of lease preparation expenses. The amendment also provides that any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of lease preparation expenses in connection with the granting of the lease. Lease preparation expenses are defined, by a definition inserted in section 3 of the Principal Act by **Schedule 1 [1]**, as legal or other expenses incurred by the lessor in connection with the preparation or entering into of a retail shop lease, except for registration fees under the *Real Property Act 1900*.

Schedule 1 [5] inserts proposed section 14 (4) and (5) into the Principal Act. Proposed section 14 (4) provides that section 14, as amended, does not preclude any right a person, as lessor or on behalf of the lessor, may have to recover a reasonable sum from the lessee in respect of expenses incurred by the lessor in connection with making amendments to the proposed lease requested by the lessee. Lessee-requested amendments in connection with which lease preparation expenses are allowed to be recovered do not include amendments in respect of certain particulars, amendments in respect of terms a lessor fails to include or omit as agreed and amendments requested before a lessee's disclosure statement is given. Proposed section 14 (5) requires a lessor to provide the prospective lessee or lessee with a copy of any account presented to the lessor in respect of lease preparation expenses that the lessee is liable to pay. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [7], [8] and [9] make amendments that correspond to the amendments proposed by **Schedule 1 [3], [4] and [5]** in respect of the renewal or extension of a retail shop lease.

Schedule 1 [2] omits section 13, which currently makes provision with respect to the payment by a lessee of a reasonable sum in respect of any legal or other expenses incurred in connection with the preparation of a retail shop lease.

Schedule 1 [6] omits section 27 (c) and (d) of the Principal Act. Those provisions currently impose a requirement on a lessor to make available for examination by a lessee a six-monthly written expenditure statement by the lessor on account of outgoings to which the lessee contributes.

Schedule 1 [10] authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [11] inserts a savings provision to the effect that each of sections 13, 14 and 45 of the Principal Act, as in force before the amendment of the section by the proposed Act, continues to apply to a grant, renewal or extension of a retail shop lease that took effect before that amendment.

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Retail Leases Amendment Bill 2004

No. , 2004

A Bill for

An Act to amend the *Retail Leases Act 1994* with respect to lease preparation expenses and statements of expenditure on outgoings; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Retail Leases Amendment Act 2004</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Retail Leases Act 1994 No 46	7
The <i>Retail Leases Act 1994</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

lease preparation expenses means legal or other expenses incurred by the lessor in connection with the preparation or entering into of a retail shop lease, except for registration fees under the *Real Property Act 1900*.

[2] Section 13 Lease preparation costs

Omit the section.

[3] Section 14 Key-money and lease preparation expenses prohibited

Omit section 14 (1). Insert instead:

- (1) A person must not, as lessor or on behalf of the lessor, seek or accept the payment of key-money or lease preparation expenses in connection with the granting of a retail shop lease and any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money or lease preparation expenses in connection with the granting of the lease.

[4] Section 14 (3) (a)

Omit the paragraph.

[5] Section 14 (4) and (5)

Insert after section 14 (3):

- (4) This section does not prevent a person, as lessor or on behalf of the lessor, from requiring payment by a prospective lessee or the lessee of a reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment to a proposed lease that was requested by or on behalf of the prospective lessee or the lessee, other than:
- (a) an amendment to insert or vary the particulars of the lessee, the rent or the term, or

(b)	an amendment to remedy a failure by or on behalf of the lessor to include or omit a term of the proposed lease that was, at the time of the failure to include or omit, agreed between the lessor and the proposed lessee or lessee to be included in or omitted from the proposed lease, or	1 2 3 4 5 6
(c)	an amendment requested before the lessor is given a lessee's disclosure statement under section 11A.	7 8
(5)	If a prospective lessee or the lessee is liable to pay a reasonable sum referred to in subsection (4), the lessor must provide the prospective lessee or lessee with a copy of any account presented to the lessor in respect of those expenses. The prospective lessee or lessee is not required to make any such payment until the lessor has complied with this requirement.	9 10 11 12 13 14 15
[6]	Section 27 Estimates of outgoings to be provided by lessor	16
	Omit section 27 (c) and (d).	17
[7]	Section 45 Key-money and lease preparation expenses for renewal or extension prohibited	18 19
	Omit section 45 (1). Insert instead:	20
(1)	A person must not, as lessor or on behalf of the lessor, seek or accept the payment of key-money or lease preparation expenses in connection with the renewal or extension of a retail shop lease and any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money or lease preparation expenses in connection with the renewal or extension of the lease.	21 22 23 24 25 26 27
[8]	Section 45 (3) (a)	28
	Omit the paragraph.	29

[9] Section 45 (4) and (5)

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Insert after section 45 (3):

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(4) This section does not prevent a person, as lessor or on behalf of the lessor, from requiring payment by the prospective lessee or the lessee of a reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment to a proposed lease, or to a lease as is proposed to be extended, that was requested by or on behalf of the prospective lessee or the lessee, other than:

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(a) an amendment to insert or vary the particulars of the lessee, the rent or the term, or

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(b) an amendment to remedy a failure by or on behalf of the lessor to include or omit a term of the proposed lease, or the lease as proposed to be extended, that was, at the time of the failure to include or omit, agreed between the lessor and the proposed lessee or lessee to be included in or omitted from the proposed lease, or the lease as proposed to be extended, or

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(c) if the amendment is in connection with the renewal of a retail shop lease, an amendment requested before the lessor is given a lessee's disclosure update under section 11A.

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(5) If a prospective lessee or the lessee is liable to pay a reasonable sum referred to in subsection (4), the lessor must provide the prospective lessee or lessee with a copy of any account presented to the lessor in respect of those expenses. The prospective lessee or lessee is not required to make any such payment until the lessor has complied with this requirement.

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[10] Schedule 3 Savings and transitional provisions

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Insert at the end of clause 1 (1):

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[11] Schedule 3, Part 5	1
Insert after Part 4:	2
Part 5 Retail Leases Amendment Act 2004	3
15 Key-money and lease preparation expenses	4
Each of sections 13, 14 and 45, as in force before the amendment of the section by the <i>Retail Leases Amendment Act 2004</i> , continues to apply to a grant, renewal or extension of a retail shop lease that took effect before that amendment.	5 6 7 8