

[Act 2002 No 106]



New South Wales

Retail Leases Amendment Bill 2002

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 Act**) as follows:

- (a) the Bill inserts a new Part 9A in the Act applying only to passenger terminals of Sydney (Kingsford-Smith) Airport and providing for the following:
 - (i) certain definitions are inserted, including ***airside premises*** (meaning that part of the international passenger terminal to which access is limited to persons (other than authorised persons) who hold a boarding pass),
 - (ii) non-retail premises are exempted from the provisions of the Act,
 - (iii) certain master concessions with a gross lettable area of 1,000 square metres or more are exempted from the operation of the Act,
 - (iv) an exemption from the protection granted to lessees under section 34 of the Act is given in respect of actions regarding airport and airline safety, security and compliance with regulatory requirements,
 - (v) an exemption from the confidentiality of turnover information provided by section 50,
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- (vi) that a proposed assignee of a retail shop lease of airside premises having inferior skills for competing in the international airport retail market is grounds for the withholding of consent to the assignment of the relevant lease,
- (b) the Bill provides for an extended meaning of *mediation* and *mediator*, for consistency with the use of alternative dispute resolution processes,
- (c) the Bill amends the Act to make it clear that where a lessor is recovering GST as an outgoing from a lessee pursuant to a valid GST recovery clause in a lease, the outgoing is not a non-specific outgoing,
- (d) the Bill amends the Act to remove the requirement that an agreement providing for the payment by or the recovery from a lessee of the amount of any GST payable must comply with the ACCC price exploitation guidelines and also to remove an associated definition.

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 giving effect to the amendments to the *Retail Leases Act 1994* set out in Schedule 1.

Schedule 1 Amendment of Retail Leases Act 1994

Schedule 1 [2] omits references to the ACCC price exploitation guidelines from section 22A.

Schedule 1 [3] provides that an outgoing on account of GST payable by the lessor in respect of rent payable under a lease is not a non-specific outgoing of the lessor for the purposes of section 30.

Schedule 1 [6] amends the definition of *mediation* to include other forms of alternative dispute resolution and provides that a reference to a *mediator* includes a reference to a person carrying out the activities within the definition of *mediation*.

Schedule 1 [7] inserts proposed Part 9A, which makes special provision for premises at a passenger terminal at Sydney (Kingsford-Smith) Airport.

Proposed section 80A provides for the application of Part 9A and includes certain definitions.

Proposed section 80B exempts certain premises at an Airport passenger terminal from the operation of the Act with certain exceptions.

Proposed section 80C exempts certain master concessions from the operation of the Act if certain conditions are satisfied.

Proposed section 80D provides relief from the operation of section 34, which provides for a lessee to be compensated for certain disturbances to the lessee's occupation, for anything done for certain purposes concerning safety, security and compliance with regulatory requirements.

Proposed section 80E provides, for the purposes of section 39, an additional entitlement to withholding consent to the assignment of a lease where the proposed assignee has inferior skills for competing in the international airport retail market.

Proposed section 80F provides that section 50, which provides for confidentiality of turnover information, does not apply in respect of a lease of airside premises.

Schedule 1 [1] inserts a note to section 6, which provides for certain exemptions from the Act, referring to proposed Part 9A regarding Sydney (Kingsford-Smith) Airport, which also contains exemptions from the Act.

Schedule 1 [4] makes a consequential amendment to section 39 as a consequence of the insertion of proposed section 80E.

Schedule 1 [5] makes a consequential amendment to section 65 (1) (a) and (a1) as a consequence of the proposed amendment to section 67.

Schedule 1 [8] and [9] make consequential savings and transitional amendments.