

[Act 1997 No 52]



New South Wales

Retail Leases Amendment Bill 1997

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* as follows:

- (a) to change the requirements for reporting by lessors of outgoing expenditure to which lessees are required to contribute to increase the information required to be included and to ensure that the requirements accord with accounting and auditing practices,
- (b) to change the timing of the required adjustment of lessees' contributions to outgoing so that the adjustment will be required within 1 month after the lessor gives the lessee the statement of outgoing expenditure concerned,
- (c) to change the requirements for reporting by lessors of advertising and promotions expenditure to which lessees are required to contribute so as to ensure that the requirements accord with accounting and auditing practices,

* Amended in committee—see table at end of volume.

- (d) to amend the provision that entitles a lessee to alternative premises when the lessee is relocated during the term of the lease so that the alternative premises need not be offered at the same rent as the lessee's current premises,
- (e) to provide that the costs of mediation under the Act are to be paid by the parties to the dispute rather than solely by the party applying for the mediation as at present,
- (f) to give the Commercial Tribunal power to award interest on an order for the payment of money for the period from when the cause of action arose to the time of the order for payment,
- (g) to make it clear that premises in an office tower that is part of a shopping centre are not to be regarded as retail shops in the shopping centre,
- (h) to make minor amendments to clarify the operation of some provisions,
- (i) to make consequential amendments including the enactment of savings and transitional provisions.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Retail Leases Act 1994*.

Schedule 1 Amendments

Schedule 1 [1] and **[2]** make minor amendments to the definition of *retail shopping centre* in the Act to make it clear that the list of attributes of a retail shopping centre in the definition all have to be present to constitute a retail shopping centre.

Schedule 1 [3] provides that premises in an office tower that forms part of a retail shopping centre are not retail shops for the purposes of the Act.

Schedule 1 [4] replaces the provision dealing with the obligation of a lessor to report to a lessee on outgoings expenditure by the lessor to which the lessee is required to contribute. The lessor will be required to provide a

statement (rather than a report) of Outgoings expenditure. The statement is to be prepared in accordance with relevant accounting principles and disclosure requirements (instead of being prepared by an auditor in accordance with *Corporations Law* accounting standards) and is to be accompanied by an auditor's report certifying that the statement is a correct statement of outgoings expenditure (rather than a statement as to whether the outgoings are properly payable by the lessee). The amendment brings the provision into line with current accounting and auditing practices.

Schedule 1 [5] changes the timing of the required adjustment between the lessor and the lessee to take account of any underpayment or overpayment by the lessee in respect of outgoings so that it will be required within 1 month after the lessor gives the lessee the outgoings statement referred to in item [4] with an upper limit of 4 months after the end of the relevant accounting period.

Schedule 1 [6] replaces the provision dealing with the obligation of a lessor to report to a lessee on advertising and promotions expenditure to which the lessee is required to contribute. The amendment will bring the provision into line with the provision referred to in item [4] concerning reports to lessees on outgoings expenditure.

Schedule 1 [7] changes the provision that deals with a lessee's entitlement to be offered alternative premises when relocated within a shopping centre. Currently the provision requires the lease for the alternative premises to be on the same terms (including as to rent) as the lease for the current premises. The amendment will exclude rent from this requirement to allow the rent to change to reflect differences in the alternative premises.

Schedule 1 [8] requires the parties to a mediation of a dispute under the Act to share the costs of mediation. At present the party applying for mediation is required to pay those costs.

Schedule 1 [9] gives the Commercial Tribunal power when determining a retail tenancy claim to award interest for the period between the date the cause of action arose and the date of the Tribunal's order on the claim. The provision is modelled on the parallel provision applying to the District Court.

Schedule 1 [10] is a minor amendment to make references in retail leases to *the Act* mean the *Retail Leases Act 1994*.

Schedule 1 [11] and **[13]** inserts savings and transitional provisions.

Schedule 1 [12] makes a minor amendment to the Disclosure Statement at the end of the Act for consistent usage of the expression "gross lettable