

Second print



New South Wales

# Retail Leases Amendment Bill 2004

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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments.*



New South Wales

## **Retail Leases Amendment Bill 2004**

Act No       , 2004

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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.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Retail Leases Amendment Act 2004*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3    Amendment of Retail Leases Act 1994 No 46**

The *Retail Leases Act 1994* is amended as set out in Schedule 1.

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**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

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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 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
<b>[6]</b>	<b>Section 27 Estimates of outgoings to be provided by lessor</b>	16
	Omit section 27 (c) and (d).	17
<b>[7]</b>	<b>Section 45 Key-money and lease preparation expenses for renewal or extension prohibited</b>	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
<b>[8]</b>	<b>Section 45 (3) (a)</b>	28
	Omit the paragraph.	29

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

Insert after section 45 (3):

- (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:
- (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, 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
  - (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.
- (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.

**[10] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Retail Leases Amendment Act 2004*

<b>[11] Schedule 3, Part 5</b>	1
Insert after Part 4:	2
<b>Part 5 Retail Leases Amendment Act 2004</b>	3
<b>15 Key-money and lease preparation expenses</b>	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 that took effect before that amendment.	5 6 7 8