

This Legal Update is now obsolete following amendments made to the Bill. Please refer to our May 2020 Legal Update.

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## **RETAIL AND COMMERCIAL LEASES (MISCELLANEOUS) AMENDMENT BILL (2019)**

**As passed by both Houses of State Parliament – 12 December 2019**

### **Changes relating to the Application of the Act**

1. The Act will apply to all new leases where the Tenant is a public company limited by guarantee and registered under the *Australian Charities and Not-for-profits Commission Act 2012*.
2. The Act will not apply to new leases where the Tenant is a company whose securities are listed on an overseas stock exchange, or is a subsidiary of such a company (that is, overseas "Global" listed companies that operate under a private company structure in Australia will no longer have the benefit of the Act).
3. The prescribed rent threshold (currently \$400,000.00) will clearly be expressed to be an "exclusive of GST" amount (reflecting industry practice).
4. The Valuer-General is to review the prescribed rent threshold within 2 years of the commencement of the amendments, and every 5 years after that.
5. The Act will expressly state the Act can commence or cease application due to changes in circumstance during the term of the Lease (e.g. change in the prescribed rent threshold, rent reviews, assignments of the lease, change in Tenant ownership or structure etc).
6. However, for new leases, if the rent is over the prescribed rent threshold at lease commencement and the lease is lodged for registration by the Landlord within 3 months of signing and the Landlord notifies the Tenant of such lodgement within 1 month of that lodgement, then the lease will remain outside of the Act for the term of the lease, despite future changes in the rent or changes in the rent threshold. This exemption will continue for any renewals of that lease that are lodged for registration by the Landlord within 2 months after the expiry of the then current term and the Landlord notifies the Tenant of such lodgement within 1 month of lodgement.

### **Changes to Landlord/Agent/Property Manager obligations during lease negotiation stage**

1. There will be a fine of up to \$8,000 if a Landlord/Agent/Property Manager fails to provide a draft lease to a prospective lessee as soon as lease negotiations commence.
2. A copy of the information brochure about retail leases published by the Small Business Commissioner must also be provided (Fine of up to \$800 for non-compliance).
3. The above will not apply to renewals of leases.

### **Changes to Disclosure Statements**

1. Great news - Disclosure Statements will no longer be required for renewals of leases.
2. However, there will be a fine of up to \$8,000 for failing to provide a Disclosure Statement when they are required, which Disclosure Statement must be signed by the Landlord or the Landlord's agent prior to service on the Tenant.
3. Disclosure Statements can be served by email (to an email provided by the Tenant for this purpose).
4. Tenants must provide the Landlord or the Landlord's agent with a signed acknowledgement of receipt of the Disclosure Statement within 14 days of being served.

### **Changes relating to return of Lease documents**

1. If a lease is not to be registered, then the Landlord must provide the Tenant with a fully signed copy of the Lease within 1 month of the Tenant signing.
2. If a lease is to be registered, then:
  - 2.1 the lease must be lodged for registration within 1 month of the Tenant signing; and
  - 2.2 the Landlord must give the Tenant an executed copy of the lease and confirmation of registration within one month of registration being effected.
3. For leases to be registered, the above timeframes will give little time for Landlord signing, mortgagee consent and preparation/registration of any filed plans, such that Landlords and their agents should consider arranging these steps upfront.

### **Changes to Security Bonds and Bank Guarantees**

1. The maximum amount of a security bond will be increased from 4 weeks' rent to 3 months' rent (exclusive of GST).
2. Bank guarantees must be returned to the Tenant within 2 months of the Tenant's performance of the Lease being completed (Note - there is a fine of up to \$8,000 for non-compliance).

### **Changes to Lawyer's Certificates / 5 year term provisions**

1. Certificates excluding the operation of the 5 year term will be able to be signed by the Small Business Commissioner, as an alternative to the Tenant engaging a solicitor.
2. The Act will be amended so that a new 5 year term will not be implied where the Tenant holds over for longer than 6 months after the expiry of an earlier lease. This resolves for new leases the problems arising from the recent Supreme Court decision which we advised you of in early March 2019.

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