

# RETAIL LEASING – WHAT WILL CHANGE?

On 12 December 2019, the Retail and Commercial Leases (Miscellaneous) Amendment Bill 2019 (**Bill**), amending the Retail and Commercial Leases Act 1995 (**Act**), passed both houses and received royal assent on 19 December 2019.

The Bill will come into effect on a day to be fixed by proclamation (Effective Date), which is planned for early 2020.

The purpose of this article is to highlight some key changes to the current position under the Act.

## Prescribed rent threshold

1. The Bill clarifies that the prescribed rent threshold of \$400,000 is GST exclusive.
2. This prescribed rent threshold is to be reviewed by the Valuer-General within 2 years of the Effective Date and then every 5 years at which time the Valuer-General may recommend that the threshold be increased.
3. A lease can fall in and out of the application of the Act during the term if the rent payable under the lease exceeds or falls below the prescribed rent threshold regardless of whether the lease was entered into before or after the Effective Date. However, an exception to this is if:
  - a new lease is entered into after the Effective Date; and
  - the commencing annual rent exceeds the prescribed rent threshold; and
  - certain procedural and registration requirements are met.

Once such a lease is registered, the exception from the application of the Act will be 'locked in' for the term of the lease (including any extended term if certain procedural and registration requirements are also met), regardless of whether the rent payable under the lease exceeds or falls below the prescribed rent threshold during the term.

## Application of the Act

1. The Act will not apply to a lease entered into on or after the Effective Date if:
  - the lessor is the Crown or agency or instrumentality of the Crown in right of the State, a municipal or district council or other authority with powers and functions of local government; and
  - the lessee is of a class prescribed by regulations.
2. The Act will not apply to a lease entered into after the Effective Date if the lessee is a body corporate (or is a subsidiary of such body corporate) whose securities are listed on a foreign stock exchange.
3. The Act will apply to a lease entered into after the Effective Date if the lessee is a public charitable company (or is a subsidiary of a public charitable company).

## Documents to be provided to prospective lessee

The lessor or its agent who offers to enter into a lease, must provide the prospective lessee as soon as negotiations are entered into (and before the lease is entered into):

1. a written copy of the proposed lease; and
2. a copy of the information brochure published by the Small Business Commissioner.

Before the lease is entered into, the lessor or its agent must also serve on the lessee a signed disclosure statement. The lessee must sign and return an acknowledgement of receipt of the disclosure statement within 14 days of being served with the disclosure statement.

A copy of the lease, information brochure and disclosure statement are not required to be given on a renewal of a lease.

## Security Bond

The maximum amount for a security bond that a lessor may require has been increased from 4 weeks' rent to 3 months' rent (exclusive of GST).

## Return of Bank Guarantee

The lessor must return the original bank guarantee to the lessee within 2 months after the lessee completes performance of its obligations under the lease.

The lessor is liable to pay the lessee compensation for any loss or damage suffered by the lessee or any reasonable costs incurred by the lessee due to the lessor's failure to return the original bank guarantee.

This obligation will apply regardless of when the lease was entered into.

## Minimum 5 Year Term and Exclusionary Clause

1. Where a lessee holds over after the termination of an earlier lease for a period exceeding 6 months, this will not imply that a new 5 year term has been granted.
2. The Small Business Commissioner may now (as an alternative to lawyers) sign an exclusionary clause certificate.

## Applications for exemption from the Act

The Small Business Commissioner may now (as an alternative to the Minister and the Magistrates Court) grant an exemption from any or all of the provisions of the Act.