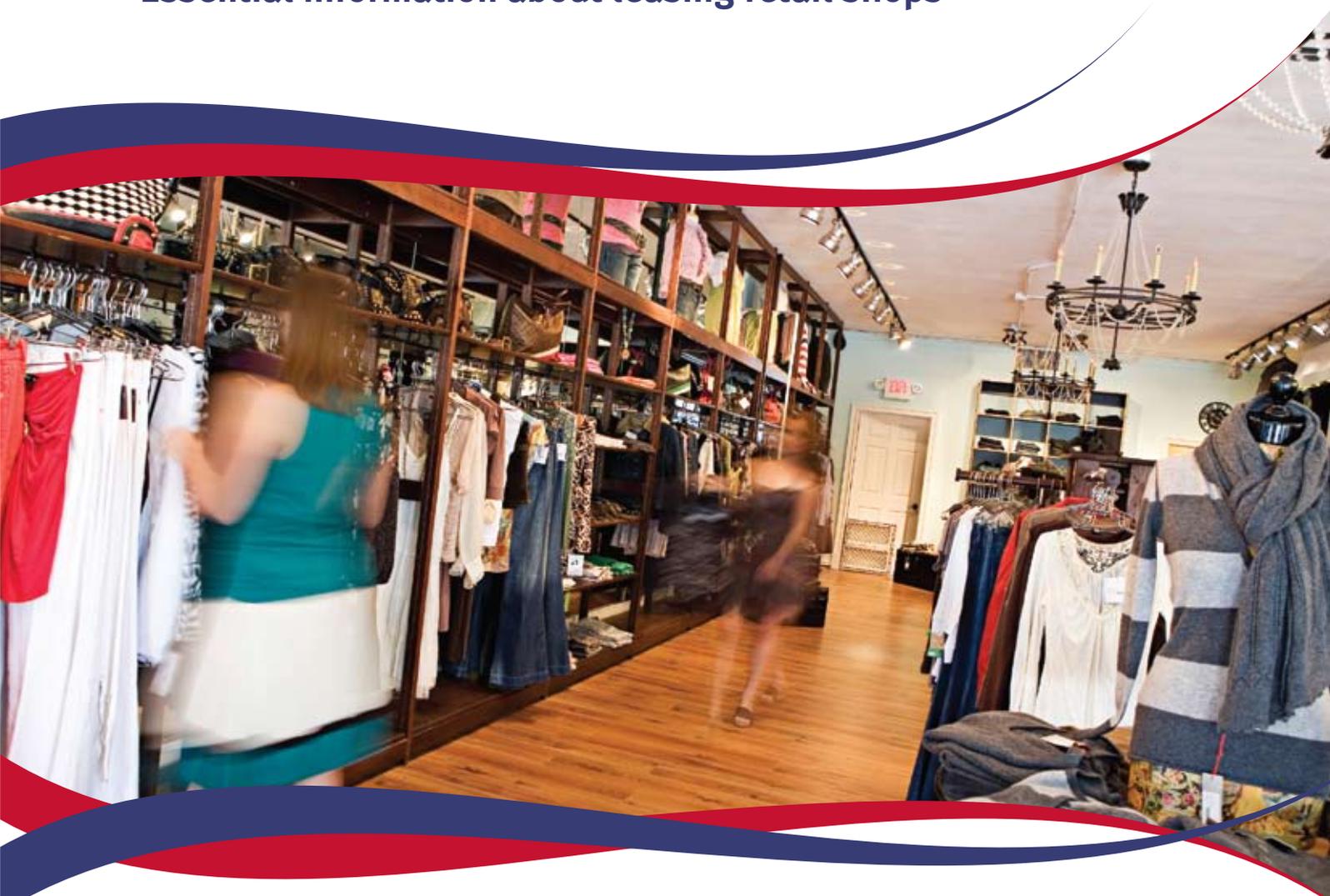


Retail Leasing Guidelines

Essential information about leasing retail shops





The *Retail Shop Leases Act 1994* (the Act) sets the mandatory minimum standards for retail shop leases in Queensland.

These guidelines provide information to help tenants, landlords, property managers and professional advisors understand the requirements of the Act.

The information will give you a basic understanding of your rights and responsibilities in regard to your retail shop lease. In addition, it is essential to get advice from qualified professionals about the terms and conditions of retail shop leases.

Disclaimer

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Contents

1.	Terms used in these guidelines.....	2
2.	Before you sign the lease.....	5
2.1	Getting the right advice	5
2.2	Legal and financial advice reports	5
2.3	Disclosure requirements	5
3.	Checklist.....	7
3.1	For tenants	7
3.2	For landlords	9
4.	Understanding your lease.....	10
4.1	Your retail shop lease	10
4.2	A letter of offer	10
4.3	An agreement for lease	10
4.4	The commencement date for the lease.....	10
4.5	The term of the lease.....	11
4.6	Common areas	11
4.7	Permitted use	11
4.8	Key money and goodwill.....	12
4.9	Trading hours	12
5.	Lease preparation	13
5.1	Lease preparation expenses.....	13
5.2	Bonds and rent in advance	13
5.3	Registering a lease	14
5.4	Stamp duty on a lease.....	14
5.5	Copy of the certified lease.....	14
6.	Rent	15
6.1	Turnover rent	15
6.2	Rent reviews.....	15
7.	Outgoings.....	17
7.1	Promotion and advertising	17
7.2	Sinking funds	18
7.3	Electricity	18
8.	Other terms and conditions	19
8.1	Additional payments that can be required.....	19
8.2	Options	19
8.3	Assignment of a lease	20
8.4	Relocation	20
8.5	Demolition.....	21
8.6	When the lease ends	21
9.	When compensation is payable	22
10.	Unconscionable conduct.....	23
11.	Dispute resolution process	24
12.	Additional sources of information.....	25

1. Terms used in these guidelines

Term	Explanation	Reference
The Act	<i>Retail Shop Leases Act 1994</i> provides mandatory minimum standards for retail shop leases and a dispute resolution process for retail tenancy disputes.	<i>Retail Shop Leases Act 1994</i> www.legislation.qld.gov.au
Advice reports – financial and legal	Financial and legal advice reports require potential tenants to meet with an accountant and lawyer to obtain a range of information and advice about the draft lease.	Section 22D <i>Retail Shop Leases Act 1994</i> Sections 7 and 8 <i>Retail Shop Leases Regulation 2006</i> www.legislation.qld.gov.au
Annual estimate of outgoings	The annual calculation of the landlord's expenses incurred in maintaining the leased premises and provided to the tenant.	Section 37 <i>Retail Shop Leases Act 1994</i>
Annual audited statement of outgoings	A statement of outgoings provided by the landlord to the tenant prepared by a registered auditor.	Section 37 <i>Retail Shop Leases Act 1994</i>
Assignee	The purchaser of an existing retail business.	Sections 5, 22B, 22C, 39, 43A, 50, 50A and 124. <i>Retail Shop Leases Act 1994</i>
Assignment	The sale of an existing retail business and the transfer of the lease to the new business owner.	Sections 5, 22B, 22C, 22D, 39, 43A, 50, 50A and 124. <i>Retail Shop Leases Act 1994</i>
Assignor	The seller of an existing retail business.	Sections 5, 22B, 22C, 39, 43A, 50, 50A and 124. <i>Retail Shop Leases Act 1994</i>
Disclosure statements	A statement in the approved form containing the particulars prescribed under a regulation.	Sections 22, 22A, 22B and 22C <i>Retail Shop Leases Act 1994</i> Sections 3, 4, 5, and 6 <i>Retail Shop Leases Regulation 2006</i>
Dispute resolution process	The process of mediating a retail tenancy dispute under part 8 of the Act which includes all steps taken in making arrangements for a mediation conference or in the follow-up of a mediation conference and the hearing, by QCAT, of a retail tenancy dispute under the <i>Queensland Civil and Administrative Tribunal Act 2009</i> .	Part 8 <i>Retail Shop Leases Act 1994</i> <i>Queensland Civil and Administrative Tribunal Act 2009</i>
Defective statement	A disclosure statement that is incomplete or contains information that is false or misleading in a particular material.	Sections 22 and 50A <i>Retail Shop Leases Act 1994</i>

Term	Explanation	Reference
Early determination of market rent	For a lease of not more than one year the period starting three months before and ending one month before the option expiry date. For a lease of more than one year the period starting six months before and ending three months before the option expiry date.	Section 27A <i>Retail Shop Leases Act 1994</i>
Fitout	The installation of fixtures and fittings to the leased premises to enable a retail business to be conducted.	
Invalid review of rent	A review of rent that is reviewed more than once in one year of the lease or is reviewed using more than one basis	Sections 27 and 27A <i>Retail Shop Leases Act 1994</i>
Lease	An agreement between a landlord and tenant for the occupation of the premises where the tenant conducts a business.	Part 6 <i>Retail Shop Leases Act 1994</i>
Lessee	Tenant/operator of the business.	Section 5 <i>Retail Shop Leases Act 1994</i>
Lessor	Landlord/owner of premises.	Section 5 <i>Retail Shop Leases Act 1994</i>
Major lessee	Tenant with five or more retail shops in Australia.	Sections 22, 22C, 22D, 27 and 27A <i>Retail Shop Leases Act 1994</i>
Market rent	The rent that would be reasonably expected to be paid if a shop were unoccupied and offered for leasing for a similar use.	Sections 27 to 36 and 125 <i>Retail Shop Leases Act 1994</i>
Outgoings	The landlord's expenses for the operation, maintenance or repair of the premises and includes charges, levies, premiums rates and taxes.	Section 7 <i>Retail Shop Leases Act 1994</i>
Permitted use	The landlord's permission to carry on a certain type of business from the premises.	
Registering a lease	Registering the lease with the Department of Environment and Resource Management against the title of the leased property.	Section 241 <i>Property Law Act 1974</i>
Rent review	When the rent paid under the lease is reviewed by the landlord pursuant to the basis set out in the lease.	Sections 27, 27A, 28 and 36 <i>Retail Shop Leases Act 1994</i>
Retail shop	Premises that are situated in a retail shopping centre or used wholly or predominantly for conducting a retail business.	<i>Retail Shop Leases Regulation 2006</i> for a list of retail businesses

Term	Explanation	Reference
Retail shopping centre	Five or more retail shops.	Sections 8, 24, 26, 37, 38, 40, 41, 43, 49, 52, 53, 83, 97, 103 and 127 <i>Retail Shop Leases Act 1994</i>
Sub lessee	A tenant who leases premises from a lessee.	
Sub lessor	A tenant of the head lessor who leases premises to a tenant.	
Short term retail shop lease	A lease for not more than six months.	Section 13(9) <i>Retail Shop Leases Act 1994</i>
Specialist retail valuer	A person whose name is recorded on the list of specialist retail valuers kept under the <i>Valuers Registration Act 1992</i> .	Sections 5, 14, 26 to 36, 83 and 125 <i>Retail Shop Leases Act 1994</i>
Trading hours	Allowable hours – generally Monday to Friday 8am to 9pm and Saturday 8am to 5pm. Core trading hours – the hours (within the allowable hours) that a retail shop in a shopping centre is required to be open for trading Permissible trading hours – Sunday and public holidays from 9am to 6pm for various locations approved by the Queensland Industrial Relations Commission.	Part 7 and Section 127 <i>Retail Shop Leases Act 1994</i> Trading hours are regulated by the <i>Trading (Allowable Hours) Act 1990</i> and decisions of the Queensland Industrial Relations Commission.
Turnover	The gross sales of a business less various adjustments such as discounts, losses, refunds, taxes and delivery charges.	Section 9 <i>Retail Shop Leases Act 1994</i>
Turnover rent	Rent calculated on a percentage of the turnover of the business.	Sections 25, 26 and 27 <i>Retail Shop Leases Act 1994</i>

2. Before you sign the lease

2.1 Getting the right advice

Leasing retail shops is a significant financial decision. In addition to the initial capital investment for either the landlord or the tenant, there are costs in operating a business of any kind.

It makes good financial sense for landlords and tenants to get advice from qualified professionals about the terms and conditions of a retail shop lease.

Tenants should seek advice about the retail business they intend to operate to ensure that the intended business is viable. Leasing is a substantial commitment, resulting in thousands of dollars in rent and other expenses.

Once a lease is signed, the tenant is responsible for meeting all the costs of the lease until the lease expires.

Tenants also need to undertake market research and preliminary business planning. Assistance with business planning and research can be obtained online at www.business.qld.gov.au.

Tenants are required by the Act to seek both legal and financial advice before they sign a retail shop lease.

2.2 Legal and financial advice reports

Tenants who lease less than five retail businesses in Australia must obtain a legal advice report and a financial advice report and provide these completed reports to the landlord before entering into a retail shop lease or an assignment of a lease.

The tenant must meet with a lawyer for advice about the legal meaning and effect of certain terms and conditions of the proposed lease.

The tenant must meet with a qualified accountant for advice about the financial rights and obligations of the tenant under the lease.

Copies of the financial advice report and legal advice report are available from the Strategic Policy Branch of the Department of Justice and Attorney-General on (07) 3239 3466 or from the Department of Justice and Attorney-General website www.justice.qld.gov.au.

2.3 Disclosure requirements

In any business dealing it is necessary to have sufficient information available to make a sound commercial decision. The disclosure statements required by the Act are designed to make this essential information easy to access.

2.3.1 Landlord disclosure

The lessor disclosure statement will provide summary information about the lease.

Failure by the landlord to provide a lessor disclosure statement or supplying a defective statement to the tenant may allow the tenant to terminate the lease within six months of entering the lease.

The landlord must provide the tenant, at least seven days before the agreement for lease or lease is entered into, with a copy of the agreement for lease or a copy of the draft lease and a lessor disclosure statement.

Full details of the information a landlord is required to provide are set out in the lessor disclosure statement, which is available from the Strategic Policy Branch of the Department of Justice and Attorney-General on (07) 3239 3466 or from the Department of Justice and Attorney-General website www.justice.qld.gov.au.

2.3.2 Tenant disclosure

Before entering into the lease the tenant is required to provide the landlord with a lessee disclosure statement.

The lessee disclosure statement provides an outline of the potential tenant's business background and experience. It allows the tenant to record the details of the representations made by the landlord or their agent.

If the tenant provides a false or misleading lessee disclosure statement to the landlord they may be liable to pay compensation for the resulting loss or damage suffered by the landlord.

Copies of the lessee disclosure statement are available from the Strategic Policy Branch of the Department of Justice and Attorney-General on (07) 3239 3466 or from the Department of Justice and Attorney-General website www.justice.qld.gov.au.

2.3.3 Disclosure requirements when a retail business is sold

If a tenant wishes to sell their business, the tenant will need to transfer (assign) the lease to the prospective purchaser (assignee), subject to the landlord's consent.

The prospective purchaser is required to provide an assignee disclosure statement to the landlord and the tenant (who becomes the assignor during an assignment of a lease) before the landlord is asked to consent to the assignment of the lease.

A prospective purchaser who currently leases less than five retail businesses in Australia is also required to complete a legal advice report and a financial advice report which are to be provided to the landlord.

A prospective purchaser is also entitled to certain information from both the tenant and the landlord. The tenant is required to give the prospective purchaser an assignor disclosure statement at least seven days before the assignment of the lease.

At the same time, the landlord is required to provide the prospective purchaser with a lessor disclosure statement and a copy of the lease.

Copies of the assignee disclosure statement and the assignor disclosure statement are available from the Strategic Policy Branch of the Department of Justice and Attorney-General on (07) 3239 3466 or from the Department of Justice and Attorney-General website www.justice.qld.gov.au.

3. Checklist

3.1 Tenant's checklist

Some important questions to consider before you sign a lease...

Have you...	Yes	No
... undertaken market research about the kind of business you want to run and where the market for that kind of business is?	<input type="radio"/>	<input type="radio"/>
... contacted SmartLicence at: www.business.qld.gov.au or on 1300 363 711 for information about registering a business name and the licences and permits you will require to operate your business?	<input type="radio"/>	<input type="radio"/>
... looked at a few retail premises for lease and compared the pros and cons of their locations?	<input type="radio"/>	<input type="radio"/>
... conducted a Council search to determine if your proposed retail business is a permitted use under the current town plan?	<input type="radio"/>	<input type="radio"/>
... conducted a search of the body corporate records if the premises are in a community titles scheme?	<input type="radio"/>	<input type="radio"/>
... spoken to an accountant or other business advisor about how much money you will need to start up your business?	<input type="radio"/>	<input type="radio"/>
... developed a business plan and worked out how much you can afford to spend on rent?	<input type="radio"/>	<input type="radio"/>
... read through the information contained in the Retail Leasing Guidelines so you are familiar with your rights and obligations?	<input type="radio"/>	<input type="radio"/>
... been given a copy of the draft lease and lessor disclosure statement by the landlord?	<input type="radio"/>	<input type="radio"/>
... read through the draft lease and understood the provisions of the lease particularly those provisions relating to: <ul style="list-style-type: none">• financial obligations including bond, rent, outgoings, advertising and promotion• the cost of the fitout and any contribution by the landlord• the permitted use• the term of the lease and any options to renew that apply• relocation• assignment• core trading hours or hours of operation?	<input type="radio"/>	<input type="radio"/>
... carefully considered the provisions of the draft lease to ensure that you will be able to do what you hope to do with your business?	<input type="radio"/>	<input type="radio"/>

Have you...

	Yes	No
... taken the draft lease and lessor disclosure statement to a lawyer for advice about the legal implications of signing the lease, and an explanation of any provisions of the lease that you did not understand?	<input type="radio"/>	<input type="radio"/>
...obtained a legal advice report from a lawyer (if you are a tenant who currently leases fewer than five retail shops in Australia)?	<input type="radio"/>	<input type="radio"/>
... taken the draft lease and lessor disclosure statement to a qualified accountant for advice about the financial implications of signing the lease?	<input type="radio"/>	<input type="radio"/>
... obtained a financial advice report from a qualified accountant (if you are a tenant who currently leases fewer than five retail shops in Australia)?	<input type="radio"/>	<input type="radio"/>
... completed and provided to the landlord a lessee disclosure statement or an assignee disclosure statement if you are purchasing a retail business?	<input type="radio"/>	<input type="radio"/>
... completed and provided to the landlord a lessee disclosure statement or an assignee disclosure statement if you are purchasing a retail business?	<input type="radio"/>	<input type="radio"/>
... given the landlord a legal advice report signed by a lawyer and a financial advice report signed by a qualified accountant if you are a tenant who currently leases fewer than five retail shops in Australia?	<input type="radio"/>	<input type="radio"/>

***If you answered 'No' to any of these questions, you need to reconsider whether you are ready to sign a retail shop lease.**

3.2 Landlord's checklist

Some important questions to consider before you sign a lease...

Have you...	Yes	No
...read through the information contained in the Retail Leasing Guidelines so you are familiar with your rights and obligations as a landlord?	<input type="radio"/>	<input type="radio"/>
... sought both legal and financial advice about the terms and conditions of the draft lease?	<input type="radio"/>	<input type="radio"/>
... considered whether you want to review the rent paid by the tenant during the lease and made provision for this?	<input type="radio"/>	<input type="radio"/>
...included in the draft lease details of payments the tenant may be required to make including: <ul style="list-style-type: none">• contributions to outgoings• damages for breach of a term of a lease• an indemnity given by the tenant for loss or damage you suffer as a result of the tenant's actions or omissions, and• interest on arrears of rent and outgoings?	<input type="radio"/>	<input type="radio"/>
... thought about whether you may need to relocate the tenant to different premises during the term of the lease and made provision for this?	<input type="radio"/>	<input type="radio"/>
... thought about whether you would be willing to allow the tenant to assign the lease and under what circumstances and, if necessary, included appropriate provisions in the lease?	<input type="radio"/>	<input type="radio"/>
... provided the prospective tenant with a lessor disclosure statement and a draft copy of the lease?	<input type="radio"/>	<input type="radio"/>
... been given a lessee disclosure statement or an assignee disclosure statement by the prospective tenant?	<input type="radio"/>	<input type="radio"/>
... satisfied yourself that the prospective tenant has understood the negotiations and representations you have made about the draft lease?	<input type="radio"/>	<input type="radio"/>
... been given a legal advice report and a financial advice report by the prospective tenant (if the tenant currently leases less than five retail shops in Australia)?	<input type="radio"/>	<input type="radio"/>

*** If you answered 'No' to any of these questions, you need to reconsider whether you are ready to sign a retail shop lease.**

4. Understanding your lease

4.1 Your retail shop lease

The lease is a legally enforceable contract between a landlord and a tenant. It sets out the terms and conditions for the occupancy of the retail premises and the rights and obligations of both parties to the lease.

The lease describes in detail and specifies:

- the location and size of the retail shop
- the formula for calculating the rent
- whether the rent will be reviewed during the course of the lease
- contributions to outgoings
- permitted use of the leased premises
- the term of the lease and any options for a further term.

If the retail shop is in a shopping centre, the lease should also contain a plan of the centre identifying the specific premises to be leased.

A lease for a period less than six months (i.e. short term lease) is not required to comply with the Act.

4.2 A letter of offer

A letter of offer is preliminary correspondence from the landlord to a prospective tenant that sets out the basic terms and conditions of a proposed lease. A letter of offer may not be provided in all instances, but when one is provided it is done before any draft lease documents are available.

4.3 An agreement for lease

This is a contract that binds the tenant and landlord to accept a lease at a later date in the form attached to the agreement.

An agreement for lease is commonly used when a new shopping centre is being built or when a centre is undergoing major redevelopment and the premises cannot be properly or fully described.

Because an agreement for lease is legally binding, it must be discussed with a lawyer and an accountant before being signed.

4.4 The commencement date for the lease

A lease comes into effect when:

- the lease is signed and becomes binding on both the landlord and the tenant, or
- when the tenant takes possession of the leased shop.

It is important for both the landlord and tenant to consult a lawyer before the lease commences.

4.5 The term of the lease

It is very important that both landlord and tenant ensure the term of the lease (i.e. the period of time the lease allows occupancy of the premises) is appropriate.

While there may be clear advantages in a long lease, such as a longer period of time to recover the investment in the business, there may also be disadvantages for some businesses.

When times are tough and the shop may not be trading well, the rent and other financial obligations will still need to be paid. In fact, these payments will still need to be made even if the shop stops trading altogether.

It is also important to realise that, unless there is an option to renew in the lease, there is no guarantee that the tenant will be able to continue to occupy the premises beyond the specified term of the lease.

This is an important consideration and the potential cost of either closing down the business or moving to different premises should be considered during business planning activities.

4.6 Common areas

The common areas of a retail shopping centre are areas in, or adjacent to, the centre. Common areas are used, or intended to be used, by the public or the tenants.

Common areas include:

- stairways, escalators, and elevators
- malls and walkways
- parking areas
- toilets and restrooms
- gardens and fountains
- information, entertainment, community, and leisure facilities.

Common areas do not include leased areas or adjacent vacant land not used for the centre.

4.7 Permitted use

The permitted use clause of a lease is very important as it determines the type of business that will be operated within the leased premises. The description should be broad enough to provide for the type of business the tenant intends to operate and the merchandise the tenant plans to sell.

A permitted use clause in a lease does not mean that the tenant has an exclusive right to operate a particular type of business in the shopping centre.

Exclusivity is a separate issue that needs to be discussed between the landlord and the tenant so there is a clear understanding of how many other shops in the centre may be operating the same kind of business.



4.8 Key money and goodwill

Key money is an amount to be paid or a benefit to be conferred to secure for the tenant the granting, renewing or assigning of a lease. The Act prohibits a landlord from seeking or accepting any payment of key money or for the goodwill of the tenant's business.

4.9 Trading hours

A lease for premises in a retail shopping centre will usually set out the core trading hours. Core trading hours are the hours that a retail shop in a shopping centre must be open for trading.

Core trading hours must be within the allowable hours under the *Trading (Allowable Hours) Act 1990*. Generally, allowable hours are Monday to Friday 8am to 9pm and Saturday 8am to 5pm.

In addition, decisions of the Queensland Industrial Relations Commission allow extended trading in various Queensland locations on Sundays and public holidays, usually from 9am to 6pm. You can access information on these locations and allowable trading hours at www.wageline.qld.gov.au.

In accordance with the *Trading (Allowable Hours) Act 1990* (section 31B(7)), retail shopping centre tenants in south east Queensland are not obliged to trade on Sundays and public holidays.

Under the *Retail Shop Leases Act 1994*, tenants may nominate a change to core trading hours through the conduct of a ballot.

5. Lease preparation

5.1 Lease preparation expenses

The landlord is responsible for the legal or other expenses in relation to:

- the preparation of the lease
- when a lease is being extended under an option
- when a lease is submitted for reassessment of stamp duty (where applicable).

However, the landlord may require the tenant to pay other expenses in relation to:

- registration fees
- survey fees
- reasonable expenses incurred in obtaining the consent of the landlord's mortgagee.

In addition, during the term of the lease, if the tenant requests a change to the lease (for instance a rent concession or the granting of a sub-lease) or the assignment of the lease, the landlord can pass those specific legal costs to the tenant.

5.2 Bonds and rent in advance

A lease may require a tenant to provide a personal guarantee or lodge a security bond or bank guarantee. This is similar to the bond a person would pay if renting a residential property. The amount of the bond payable by the tenant is a matter for negotiation between the landlord and the tenant.

Lawyers or real estate agents may hold the security bond in a trust account. Both the landlord and tenant should agree to who holds the money and how it is managed. It is important to ensure that the bond monies will be secure.

An alternative is to deposit the money in a bank account that requires both the landlord's and the tenant's signatures to withdraw the money.

A landlord may also require the tenant to make a payment of rent in advance. This payment must not be for more than the rent payable for one rental period under the lease.



5.3 Registering a lease

If the term of the lease is more than three years the *Property Law Act 1974* requires that the lease be registered. Although it is not compulsory, leases of less than three years may also be registered.

The Department of Natural Resources and Water (Titles Registration) is responsible for the registration of leases. You can access more information at www.nrw.qld.gov.au.

The registration process is designed to protect both landlords and tenants by creating an official record of the lease. If the leased premises are sold, the tenant would be afforded protection under a registered lease.

A landlord can require the tenant to contribute to the expenses associated with the registration of a lease, including survey fees.

5.4 Stamp duty on a lease

On 1 January 2006, the *Duties Act 2001* abolished duty on any new lease or renewal of a lease.

The Office of State Revenue can advise on the requirements for the payment of lease duty up to 1 January 2006. You can access more information at www.osr.qld.gov.au.

5.5 Copy of the certified lease

Within 30 days of a lease being signed, the landlord is required to provide the tenant with a certified signed copy of the lease.

6. Rent

The most substantial payment required under a lease is the rent. In addition to an initial rental figure, most leases will also provide for the rent to be periodically reviewed over the term of the lease.

The initial rent for the shop is a matter to be negotiated between landlord and tenant. Rental for retail shops can vary considerably and is dependant on location, the term of the lease, size of the shop and the type of business.

The rent for the premises and the basis and timing for the rent review must be specified in the lease.

6.1 Turnover rent

One method of determining the rent to be paid under a lease is as a percentage of the turnover of the tenant's business operated from the leased premises. If rent is to be determined as a percentage of the businesses turnover, the lease must specify the formula that will be used to calculate the rent. This formula may be used to determine the full amount of rent payable or only part of the rent payable.

If the tenant's rent, or a portion of the rent, is to be determined as a percentage of their turnover, the tenant is required to provide the landlord with a certificate specifying the turnover of the business at the end of each month or at other times agreed between the landlord and the tenant.

The tenant is also required to provide the landlord with a statement of the business's turnover, prepared by a registered auditor, at the end of each year, at the termination of the lease, and at other times agreed between the landlord and the tenant.

A tenant must also provide information about their business's turnover to the landlord if the lease specifically requires that it be provided.

Strict provisions govern how turnover information is to be used by landlords, including how and to whom the information is allowed to be provided.

6.2 Rent reviews

Most leases will state that the rent will be reviewed at certain intervals. If this is the case, the lease must specify when a rent review will be conducted and how it is to be done.

A lease must specify only one basis for each separate rent review undertaken during the term of the lease, or under an option to renew or extend the lease.

Methods of rent review:

- the current market rent for the shop
- an independently published index of prices, costs or wages
- a fixed percentage
- a fixed actual amount
- an average of the turnover plus base rent paid over a previous period.

Rent reviews may not be conducted more than once every 12 months after the first year of the lease.

Leases can contain a review method that combines two or more of the allowable methods of review, excluding current market rent, to form a new single basis of review, e.g. – CPI (Consumer Price Index) plus two per cent.



Leases must not contain provisions that allow the landlord to choose between two or more methods at a rent review. These are multiple rent review and ratchet rent provisions and they are prohibited by the Act.

Major lessees can opt out of the Act's rent review provisions but multiple rent review and ratchet rent clauses are still prohibited.

6.2.1 Market rent review

The current market rent is based on the rent that would reasonably be paid for a vacant shop on the open market, taking into consideration the permitted use and other lease conditions. The current market rent should reflect all the advantages and disadvantages of the premises, the proposed business and represent fair value.

If the landlord and tenant disagree about the current market rent of a shop and cannot agree on a specialist retail valuer to undertake a current market rent determination, a specialist retail valuer can be nominated by written application to the registrar of the Retail Shop Leases Registry.

The current market rent determined by the specialist retail valuer will be the new rent payable under the lease. The landlord and tenant will each pay one half of the specialist retail valuer's fee.

The specialist retail valuer may require the landlord to provide certain information to enable them to complete a thorough determination. Under the Act, the landlord is required to provide the information to the specialist retail valuer within 14 days.

Each party can also make submissions to the specialist retail valuer. The valuer will set the timeframes for the exchange and response to the submissions.

Prior to the date of expiry to exercise the option, a request for an early determination of the current market rent can be made by a tenant with less than five retail businesses in Australia or a major lessee who has not waived the rent review provisions of the Act.

6.2.2 Independently published index of prices, costs or wages

The CPI (Consumer Price Index) is a commonly used index for rent reviews. In this case, the rent is tied to a formula that is based on the movement in the CPI. This is generally stated as a percentage increase or decrease. You can access information on CPI at www.osr.qld.gov.au.

6.2.3 Fixed percentage of the base rent

The base rent in a retail shop lease can be varied by any percentage as negotiated between the parties and set out in the lease.

6.2.4 Fixed actual amount

The base rent in a retail shop lease can be varied by any fixed amount as negotiated between the parties and set out in the lease.

6.2.5 Averaging of rental paid

The new base rent is the average of the base plus turnover rental paid over a stated period. In these circumstances, the rent over the previous period is a combination of base rent plus turnover rent.

7. Outgoings

Outgoings are the operating costs of the landlord to which the tenant may be required to contribute. Outgoings include expenses that are reasonably incurred in, or directly attributed to, the operation, maintenance or repair of the retail shopping centre or building, and charges, levies, premiums, rates or taxes payable by the landlord because the landlord is the owner of the centre or building, or the land on which it is located.

Typical examples of outgoings include insurance, lighting, cleaning, air conditioning of common areas, centre management costs, and local authority rates.

If the lease requires the tenant to pay outgoings, in addition to rent, the lease must specify:

- what expenses are to be regarded as outgoings
- how they will be apportioned
- how the landlord will recover them.

The outgoings paid by each tenant must reflect the proportion of floor area that the shop occupies to the total lettable area of the centre or building.

If the lease requires a tenant to contribute to the landlord's outgoings, the landlord must provide an annual estimate of the outgoings at least one month before the start of the accounting period.

The landlord is also required to supply the tenant with an annual audited statement of outgoings within three months of the end of the accounting period. The audited statement must be prepared by a registered auditor.

Where possible, outgoings amounts should be broken down so that each item is less than five per cent of the total outgoings. You can access sample forms at www.justice.qld.gov.au.

A landlord is prohibited from including land tax charges in the outgoings.

7.1 Promotion and advertising

If promotion and advertising expenses are not included in the overall outgoings of a retail shopping centre, the landlord can require a tenant to contribute separately to promotion and advertising expenses if agreed to in the lease.

However, it is important to note that promotion amounts contributed by tenants of a retail shopping centre may only be used to promote that retail shopping centre, although the landlord can use the money for joint promotions and advertising with other retail shopping centres.

The auditing and accounting requirements for outgoings also apply to contributions for promotion and advertising.



7.2 Sinking funds

A landlord can require a tenant to contribute to a sinking fund for maintenance and repairs if a provision is made for this in the lease.

Money contributed to a sinking fund may only be used for major maintenance or repairs to the buildings, plant and equipment.

The landlord may only keep one sinking fund and must deposit all sinking fund contributions into an interest bearing account. The total payments made by all tenants for any one year should not be more than five per cent of the total outgoings for the centre and the total amount of money held in the account should not exceed \$100,000.

7.3 Electricity

On-selling arrangements in the Queensland electricity market impact on tenants and landlords as they apply to electricity used within individual tenancies and to common area electricity consumption.

As the *Electricity Act 1994* determines how electricity charges are passed on and the related auditing requirements, electricity is not considered to be an ‘outgoing’ under the *Retail Shop Leases Act 1994*.

Landlords should comply with requirements of the *Electricity Act 1994* in relation to on-selling electricity.

You can access more information about the *Electricity Act 1994* at www.energy.qld.gov.au.

8. Other terms and conditions

8.1 Additional payments that can be required

In addition to paying rent and outgoings, tenants can also be required to make payments for a number of other items. These payments can only be required if provision is made for the payment in the lease.

A lease can also require the tenant to pay:

- amounts spent by the landlord in fitting out the leased shop
- interest on arrears of rent and outgoings
- the landlord's legal expenses for a lease variation at the tenant's request
- the landlord's reasonable expenses in investigating a proposed purchaser or incidental to transferring the lease
- damages for breach of a term of a lease
- loss or damage that the landlord suffers as result of the tenant's actions or omissions.

8.2 Options

A lease that contains further terms is referred to as, e.g. a 3 x 3 x 3 lease. This means that the first lease term is for three years, with the tenant having the option to renew it for a second and third three year period, giving a total of nine years.

An option to renew a lease gives the tenant a right to remain in the premises for a further term after the previous lease term expires subject to the landlord's consent

Options provide longer periods of time over which a tenant can repay business establishment and close-down costs which in turn may add flexibility to the lease.

If the lease allows an option to renew, the tenant and the landlord should be aware of their obligations in relation to the precise terms of the option, particularly the timing and manner in which it is exercised.

Between two and six months prior to the option date, the landlord must write to the tenant giving a notice regarding the date by which the tenant must exercise the option for a further term.

If the lease requires a market rent review at the commencement of the option term, the tenant can request an early determination of the current market rent.

If at the end of a three year period the tenant no longer wishes to lease the premises and does not want to exercise the option for the next term, the lease ends.

8.3 Assignment of a lease

If a tenant wants to sell the business before the lease expires, the tenant will need the landlord's permission for an assignment or transfer of the lease. To assist in seeking the landlord's consent, the tenant should be aware of the landlord's basic requirements.

When the tenant requests the landlord's consent to the assignment, the tenant should provide the landlord with the supporting information that may be required.

The lease may impose conditions on an assignment. However, subject to any conditions imposed by the lease, the landlord may not unreasonably withhold consent to the assignment, provided the tenant has complied with the terms and conditions of the lease.

If agreeing to the assignment the landlord may not:

- impose a new obligation on the prospective purchaser
- withdraw from the prospective purchaser a right originally conferred on the tenant, or
- impose an unreasonable condition on the tenant as a condition for consenting to the assignment.

The landlord, the tenant and the purchaser must exchange disclosure statements. The exchange of disclosure statements will allow the tenant to be released from the ongoing liabilities under the lease.

Any costs in connection with the assignment, such as investigating the prospective purchaser and associated legal costs, are usually met by the tenant and/or the prospective purchaser.

8.4 Relocation

If the lease contains a relocation provision, the landlord can relocate the tenant to different premises.

If a landlord is planning on relocating the tenant to different premises, the landlord must give the tenant at least three months written notice of the relocation. The notice must include the details of the reasonably comparable alternative premises.

If the tenant wishes to terminate the lease, the tenant must provide the landlord with a written notice within one month of receiving the relocation notice.

If the tenant does not provide a notice, it is taken that the landlord's offer of alternative premises is accepted (on terms and conditions to be agreed between the landlord and the tenant).

The tenant is entitled to receive payment for the reasonable costs of relocation including:

- removing fixtures and fittings
- replacing fixtures and fittings
- legal costs.

If the landlord and the tenant cannot agree on the amount for relocation costs, it can be decided under the Act's dispute resolution process.

8.5 Demolition

If a lease provides for demolition, the landlord must give a written notice of termination to the tenant at least six months before the lease is terminated. The termination notice must include details of the proposed demolition.

If the tenant wishes to vacate earlier than the termination date, the tenant can give the landlord seven days notice.

The landlord is liable to pay reasonable compensation for loss or damage. If the landlord and the tenant cannot agree on the amount for compensation, it can be decided under the Act's dispute resolution process.

8.6 When the lease ends

If the lease has come to the end, the landlord is required to provide a written notice. The notice can offer a new lease (including information on the terms and conditions) or advise the tenant that the landlord does not intend to offer a renewal or extension of the lease.

The landlord's notice must be issued at least six months but no longer than one year prior to the end of the lease.

If an offer for a new lease is made by the landlord, the tenant must accept or reject the offer in writing within one month of receiving it. If the landlord fails to issue the notice, the tenant can give a written notice to the landlord requesting a six month extension.

Reduced timeframes apply for leases of less than one year.

9. When compensation is payable

In certain instances, a landlord can be required to pay a tenant reasonable compensation for loss or damage. A tenant in these circumstances includes:

- a tenant who is holding over under the lease
- sub-lessees
- franchisees entitled to occupy the retail shop.

For example, a tenant may be entitled to compensation if the landlord:

- substantially restricts access to the tenant's shop
- substantially restricts or alters customer access or the flow of potential customers past the tenant's shop
- significantly disrupts trading to the tenant's business or fails to take reasonable steps to prevent a disruption that is within the landlord's control
- does not rectify as soon as practicable any breakdown in plant and equipment under the landlord's care or certain types of defects in the building or common areas
- neglects cleaning, maintenance or repainting of the building or common areas which are the landlord's responsibility
- causes the tenant to leave the shop before the lease expires for the purpose of extending, refurbishing or demolishing the building
- causes the tenant to enter into a lease as a result of false or misleading statement or misrepresentation
- fails to make the shop available for trading on the nominated date.

A landlord can be entitled to compensation from the tenant where loss or damage is suffered as a result of a false or misleading statement or misrepresentation. If any of these circumstances arise, the parties should attempt to negotiate an agreement on an acceptable amount of compensation. If the parties are unable to agree on an amount, contact the Queensland Civil and Administrative Tribunal Registry for information about resolving retail tenancy disputes:

Phone – 1300 753 228

Website – www.qcat.qld.gov.au

10. Unconscionable conduct

The unconscionable conduct provisions in the Act prohibit both landlords and tenants from behaving in a way that is unconscionable.

Unconscionable conduct is where either a party's greater bargaining or market power is misused in a business transaction to achieve a result that is largely disadvantageous to the other party.

For example, unconscionable conduct may be where one party takes advantage of another who is then unable to make a voluntary or independent decision or who is unable to make a decision that is in their best interests.

When deciding if conduct is unconscionable the following factors need to be taken into consideration:

- the relative bargaining powers of the parties
- whether the other party was able to understand any of the documents relating to the lease
- the extent to which the party unreasonably failed to disclose to the other party any intended conduct that might affect the other party's interests
- whether any undue influence or pressure was exerted on, or any unfair tactics used against the other party
- the extent to which the party's conduct towards the other party was consistent with the party's conduct in similar transactions
- the extent to which the party was willing to negotiate the terms and conditions of the lease with the other party
- the extent to which the parties acted in good faith.

To assist you to understand unconscionable conduct you can access further information at www.accc.gov.au.

11. Dispute resolution process

The Act provides a dispute resolution process for retail tenancy disputes.

The Act defines a retail tenancy dispute as:

'any dispute under or about a retail shop lease, or about the use or occupation of a leased shop under a retail shop lease, regardless of when the lease was entered into'.

If there is a disagreement between a tenant and landlord in regard to the lease or the retail premises, you can contact the staff at the Queensland Civil and Administrative Tribunal Registry for information on the dispute resolution process.

If the landlord and tenant are unable to resolve the issues either party can lodge a Notice of Dispute with the Queensland Civil and Administrative Tribunal Registry.

Following the lodgement of a Notice of Dispute, the parties attend a mediation conference.

Here, a mediator may be able to help the parties reach an agreement, or if this fails, the matter could be heard by the Queensland Civil and Administrative Tribunal.

Refer to the publication *Resolving Retail Tenancy Disputes* for information on the dispute resolution process.

Contact details:

Queensland Civil and Administrative Tribunal
Level 9, 259 Queen Street
Brisbane Qld 4000

GPO Box 1639
Brisbane Qld 4001

Phone – 1300 753 228
Fax – 3221 9156

Website – www.qcat.qld.gov.au
Email – enquiries@qcat.qld.gov.au

12. Additional sources of information

Retail Shop Leases Act 1994
Retail Shop Leases Regulation 2006
Queensland Civil and Administrative Tribunal Act 2009
www.legislation.qld.gov.au

Australian Competition and Consumer Commission
www.accc.gov.au

Office of the Commissioner for Body Corporate and Community Management
www.justice.qld.gov.au

Electricity Act 1994
www.energy.qld.gov.au

National Retail Association (NRA)
www.nra.net.au

Property Council of Australia (Queensland)
www.propertyoz.com.au

Queensland Newsagents Federation Ltd
www.queenslandnewsagents.com.au

Queensland Retail Traders and Shopkeepers Association (QRTSA)
www.qrtsa.com.au

Real Estate Institute of Queensland
www.reiq.com.au

Restaurant and Catering Queensland
www.restaurantcater.asn.au

SmartLicence
www.business.qld.gov.au

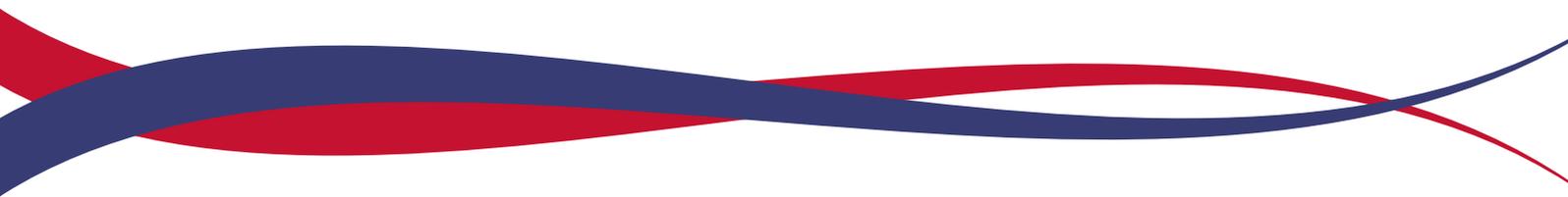
Trading (Allowable Hours) Act 1990
www.wageline.qld.gov.au

Valuers Registration Board
www.valuersboard.qld.gov.au

CPA Australia Accountants
www.cpaustralia.com.au

Institute of Chartered Accountants
www.icaa.org.au

Queensland Law Society
www.qls.com.au



Queensland Government

Department of Justice and Attorney-General