



NSW RETAIL LEASES ACT 1994 REVIEW

The Office of Small Business Commissioner in New South Wales is proceeding with the review of the Act which lapsed due to the elections earlier this year. The review commenced in 2013 with a series of meetings help with various stakeholders. The discussion paper identified eight key areas of concern.

Those areas were:

- Information asymmetry
- Outgoings
- Fidelity of the bargain
- Streamlining/simplicity
- Fair dealings
- Coverage of the Act
- Reducing prescriptive regulation
- Technical issues

The NRA has participated in the review on your behalf, including with written and verbal submissions, and participation at eight meetings held by the Industry Advisory Group. While the process lapsed due to the election, we have now been advised that the OSBC has been requested to prepare recommendations for the minister to include in an amendment bill. We have also been briefed on what is proposed following the outcome of those stakeholders meetings.

Information asymmetry

It is being proposed that landlords will be required to publish effective rents and turnover at a centre level against an agreed criterion. If the landlord fails to publish the data, clauses in leases relating to turnover data will be voided.

Following the recent Queensland review, the NRA engaged in discussions with the Shopping Centre Council of Australia and other bodies to consider whether it was possible to develop a Code of Practice to guide shopping centre owners as to the publication of retail turnover in centres and the provision of that information to retailers and potential retailers looking at entering into a lease within the centre. The success of the Casual Mall Leasing Code is a model that such a code could work in the absence of statutory regulations. However agreement between all parties has not been reached at this stage.

In respect of the publication of “effective rents” there is a question as to how to define a “effective rent”. The experience with an effective rent for a current market rent review in Queensland has come up with a definition that only the best valuers would be able to comprehend.

Your views on the proposal and these issues would be appreciated.

Fidelity of the bargain

- All negotiations should be made in good faith.
- A landlord will be required to provide a copy of the lease within one month of the landlord receiving a signed copy of the lease form the tenant.



- Leases must be registered within 3 months of being signed
- Lessee's Disclosure Statement requirements will be repealed.

Financial Disclosures

- Section 12 of the Act relating to a tenant not being required to pay or contribute to any costs that have not been declared will be extended to include outgoings, fees and charges
- Inadequately disclosed outgoings will not be recoverable.
- Management fees will be limited similar to Victorian legislation.
- Land tax and mortgagee consent fees will not be able to be recovered.
- Advertising and promotional funds belong to the centre. They are considering a provision to report on the effectiveness of any advertising and promotional activity. This will be difficult as it is very subjective

Coverage of the Act

- Section 16 mandating a 5 year term will be repealed
- A 3 year option is being proposed for all shopping centre leases

Administrative changes

- Dispute claims with NCAT will be limited to under \$750,000
- Bank guarantees must be returned within two months of vacating the premises
- Owner's Corporation will be able to be joined in a dispute
- Section 34 and 35 relating to compensation for relocation and demolition to be aligned with Queensland
- Changes are proposed as to how specialist valuers are appointed.

Further consideration

The OSBC is seeking the views of mandating gross leases from retailers. Gross leases would mean there would be only one payment in a lease. There would be no outgoing and promotional fund charges, no budgets or reports to be provided and a large part of the disclosure statement removed. It would be the landlord's responsibility as to how the funds are allocated.

The Association would appreciate your views on any of the above proposals.