

## **ALERT: COMMERCIAL TENANCY (RETAIL SHOPS AGREEMENTS) ACT 1985**

### **Amendments to the Retail Shops Act**

The *Commercial Tenancy (Retail Shops) Agreements Amendments Bill 2011 (Act)* received Royal Assent on 11 July 2011 and is expected to be proclaimed in the near future. The Act makes substantive changes to West Australian retail legislation.

Misleading or deceptive conduct provisions are now incorporated into the *Commercial Tenancy (Retail Shops Agreements) Act 1985 (Retail Shops Act)* so that application may be made to the State Administrative Tribunal (**SAT**) under the Retail Shops Act rather than trade practices and fair trading legislation.

A landlord will be unable to pass its legal costs on to a tenant so that each party must pay their own costs. A landlord will be able to claim its reasonable legal and other expenses for an assignment of lease or a sublease, including the investigation of the proposed assignee or subtenant.

A prescribed relocation clause is included in the Act. Currently, a relocation or redevelopment clause in a retail lease is invalid unless it has been approved by SAT. This is because of the protection of the initial 5-year term given by the Retail Shops Act. After the first 5 years landlords considered themselves free to redevelop their property, subject only to the obligation not to engage in unconscionable conduct. The amendments will require relocation clauses in leases to be in a form to be prescribed by the regulations. If the landlord does not adopt the prescribed form of relocation clause, the clause it uses must be

approved by SAT and guidance on what the clause must include are set out in the Act. Where a landlord intends to redevelop after the initial 5 years term, the relocation clause must still comply with the requirements in the Act so that a relocation clause will always require approval throughout the term of the lease and not just for the first 5 years.

The Act details the costs that a landlord must pay to a tenant including; packaging and removal costs and the tenant's legal costs as well as the costs of dismantling fittings, equipment and services.

If a landlord does not offer the tenant a new lease of alternative premises, the landlord will be liable to pay compensation to the tenant, either as agreed between the parties or as determined by SAT.

Where there is an option to renew the term of a lease, a landlord will be obliged to give a tenant written notice of the date after which the option is no longer exercisable by the tenant. The notice must be between 12 and 6 months before the last date for the exercise of the option. If the landlord fails to give the tenant the notice within that period, then the last date for the exercise of the option is extended to the date 6 months after the landlord gives the notice to the tenant. If the lease has expired in the interim, the tenant is deemed to be holding over under the terms of the lease.

A tenant's right to terminate the lease within 60 days after the lease was entered into where a landlord's disclosure statement contained false or misleading information is extended to 6 months. The tenant's right will also apply if the disclosure statement is incomplete. However, a tenant cannot terminate the lease if the landlord acted honestly and reasonably and ought reasonably to be excused for the failure or if the tenant is in substantially as good a position

as the tenant would have been in if the statement had been complete or had not contained false or misleading information.

These are some of the amendments contained in the Act. For further assistance on the proposed changes to the Retail Shops Act, or assistance with any lease issues

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