

# TCRC *Property Update*

## Amendments to the Retail Leases Act 2003 became effective on 23 November 2005.

Because of the importance of the changes this month's TCRC Property Update will solely focus on some of the new legislation. The information provided should be used as a guide only.

The REIV and Office of Small Business held an extremely well presented seminar for property industry professionals in December 2005. The REIV do intend to hold additional seminars. We will advise you when dates are announced.

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Licensed Estate Agent



### Landlords Liability for Repairs - "Good Repair" Provision Removed

Section 52(2) now only requires a Landlord to maintain the premises in a condition *consistent with the condition of the premises when the premises were originally entered into* instead of the words "in good repair".

Providing evidence of the original condition of the premises would assist in determining the condition when the premises were originally entered into.

### Tenants can arrange Urgent Repairs & be Reimbursed

Section 52(4) provides Tenant can arrange urgent repairs at the Landlords expense if the fault affects their business substantially and the Tenant has made reasonable efforts to have the Landlord repair the problem. The Tenant must provide the Landlord with a written notice of repairs and costs within 14 days of the repairs being carried out. The Landlord is liable to reimburse the Tenant for the reasonable cost of the repairs.

Urgent repairs must be specified in the lease as recoverable outgoings if you wish to pass on the costs to Tenants.

### Retail Premises with a Residential Component

The definition of a retail premises now specifically excludes any residential area. This amendment (Section 4 (1)) commenced on 1 May 2003.

*All Retail Leases entered into since 1 May 2003 including a residential component should be amended and serious consideration should be given to entering into a separate Residential Tenancy Agreement for the residential area.*

### Public Companies on Stock Exchanges Worldwide are Excluded from the Retail Leases Act

This provision has been back-dated to 1 May 2003 and excludes premises **where the tenant is a body corporate whose securities are listed on a Stock Exchange outside Australia and the external territories that is a member of the World Federation of Exchanges** [www.world-exchanges.org](http://www.world-exchanges.org) will be a helpful tool in determining foreign publicly listed companies.

### Security Deposits

A new amendment now requires that the Landlord **MUST** return the security deposit to the Tenant as soon as practicable after the lease ends, if the Tenant has performed all its obligations under the lease.

### Definition of when a Lease is Entered into or Assigned

The new provision provides

A lease is entered into or assigned when:

- When under the lease or assignment the Tenant enters into possession of the premises with the consent of the Landlord or
- Under the lease or assignment the Tenant commences paying rent or
- The lease or assignment has been signed by all parties  
*Whichever occurs first*

### Calculation of Occupancy Costs Revised

Occupancy costs are now calculated by adding

- Rent payable in respect to turnover
- Outgoings the Tenant is liable to pay under the lease
- Any other prescribed costs the Tenant is liable to pay under the lease (promotional, advertising etc)

Provision back-dated to 1 May 2003

### "Lease Renewal" Redefined

Now includes the renewal of a lease under an option granted for a further term or under an agreement to renew the lease for a further term on substantially the same terms and conditions (except rent). Provision back-dated to 1 May 2003

### Providing a Copy of the Lease prior to Negotiations for a Lease Renewal Removed

A new amendment has removed the obligation for the Landlord/Agent to provide a copy of the proposed lease prior to entering into negotiations for a Lease Renewal.

### Providing the Tenant with a signed Copy of the Lease

The time period of 28 days has been amended and Section 22(2) now provides the Landlord and Tenant can now agree in writing on a time frame other than 28 days. *Such an agreement can be included in the Offer to Lease documents or Application Form (if used)*. Provision back-dated to 1 May 2003

### Notification of Leases to the Small Business Commissioner (SBC)

The SBC must now be provided with details of Leases Renewals as well as original Leases and the SBC now require the date on which the lease was signed by all parties.

### Disclosure Statement - Renewing a Lease without an Option

Where the parties agree to renew a lease without an option, a disclosure statement must be provided to a Tenant within 14 days of entering into a new lease. Provision back-dated to 1 May 2003

### Capital Works - Tenants can now be asked to Contribute

Previously the Act provided that a provision in a retail lease which required the Tenant to undertake capital works at the Tenants cost was void. Section 41(2) now validates such a provision. Back-dated to 1 May 2003



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