

FACT SHEET

RETAIL LEASES BILL 2022

The Retail Leases Bill 2022 (the Bill) will provide contemporary regulation of retail leases in Tasmania. The Bill will facilitate the certainty and fairness of retail premises leasing arrangements between landlords and tenants.

The Bill will replace the existing Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 (the “Code”), which are due to be repealed on 1 January 2023. Retail and property management stakeholders have criticised the existing Code as outdated and not having kept pace with modern business or leasing practices. Additionally, Tasmania is the only Australian jurisdiction not to have enacted primary legislation to regulate retail leases. For this reason, the Government commenced a review of the regulation of retail leases in Tasmania in 2019. The outcome of this review is the introduction of this Bill.

The Bill will overhaul the regulation of the leasing of certain retail premises in Tasmania by:

- Updating the requirements regarding the exchange of key information between landlords and prospective tenants about lease terms and arrangements.
- Outlining specific provisions relating to when rent is payable, the basis or formula used to calculate the rent and the timing and basis for rent reviews.
- Enabling parties to a lease to agree to renewal arrangements within the lease and specify that the landlord must give notice of between four to six months prior to expiry, of their intentions regarding their renewal or otherwise of the lease.
- Stipulating certain arrangements regarding outgoing costs and security bonds. If during negotiations the landlord's costs or charges are not disclosed or how they may be estimated, the tenant will not be required to pay for them.
- Providing the Director of Consumer Affairs and Fair Trading with specific powers and functions to ensure the legislation operates effectively.
- Setting out a mediation dispute resolution process after direct negotiation between parties fails.
- Ensuring that the interests of landlords and tenants of retail premises are equally protected from unfair terms and conditions of leases, or from unconscionable conduct by parties during the negotiations or during operation of a lease.

The Bill also includes specific provisions relating to retail premises within shopping centres.

Application

The Bill will apply to retail premises (which are generally defined to be premises that are to be used wholly or predominantly for the retail sale or hire of goods or the retail provision of services) with a floor area of 1000m² or less, akin to the existing Code.

However there will no longer be a minimum lease term of five years. Instead, the Bill will apply to a lease of six months or more. In circumstances where the lease is less than six months, the

Bill will also apply if the tenant has been in possession for six months because the retail lease was renewed or continued one or more times.

To ensure there are no unintended consequences of including business premises not engaged in retail trade, there is also scope for Regulations to be made to exclude certain types of premises from the application of the Bill.

Commencement

The Bill will commence upon a date to be proclaimed.

The Bill will apply to new leases entered, or existing leases that are renewed, after the Bill commences.

For existing leases, there will be a five-year transitional period. Existing leases entered before the Bill commences, will continue to be governed by the Code. However, five years after its commencement, the Bill will apply to all retail leases.