

Retail Lease laws – State by State comparison - September 2016

	QLD <i>Retail Shop Leases Act 1994 as amended by the Retail Shop Leases Amendment Act 2016</i>	NSW <i>Retail Leases Act 1994</i>	VIC <i>Retail Leases Act 2003</i>	WA <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i>	SA <i>Retail and Commercial Leases Act 1995</i>	TAS <i>Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998</i>	ACT <i>Leases (Commercial and Retail) Act 2001</i>	NT <i>Business Tenancies (Fair Dealings) Act 2003</i>
Does the retail lease legislation apply to shops with a “lettable area” >1000m²?	✗ *s5A (2)(a).	✗ *s5 (a)	✓	✗ As per definition of “retail shop lease” *s3	✓	✗ *s2(1)(a)	✗ Tenant must be publically listed company or subsidiary *s12(1)	✗ *s6
Tenant can waive the strict timeframes for receiving a disclosure statement	✓ NB: Must still be provided prior to entering into lease *21B (2).	✗	✗	✗	✗	✗	✓ *s30(5)	✓ *s19(6)
Landlord must provide a disclosure statement (or updated version) to a tenant exercising an option	✓ ≤ 7 days after option exercised *s21E (2).	✓ ≥ 7 days before option lease entered into *s11(4)	✓ ≥ 21 days before the end of the initial term *s26(1)	✗	✓ Before the lease is renewed *s12	✓ ≥ 7 days before option lease entered into *s7	✓ ≤ 14 days after a tenant’s request *s30	✗ ≥ 7 days before option lease entered into *s19
Tenant can withdraw exercise of option after receiving lessor disclosure statement	✓ Within first 14 days for any reason *s21E (4)	✗	✗	✗	✗	✗	✗	✗
Tenant can terminate option lease if disclosure statement defective or not provided by landlord as required	✓ Within first 6 months of option lease * s21F	✓ Within first 6 months of option lease * s11(2)	✓ Tenant must give req. notice before termination right will arise * s26(c)	✗	✓ Tenant must obtain court order *s12(5)	✓ Within first 3 months of option lease *s7	✓ Within first 3 months of option lease *s117	✓ Within first 6 months of option lease *s20
Landlords can pass on mortgagee consent costs to tenants	✗ *s48 (1)(b)	✗ See definition of ‘lease preparation expenses’ *s14 & s3.	✗ *s51	✗ *s14B(b)	✓ Only half can be passed on *s14	✓ *s8(4)	✗ *s23	✓

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Ratchet/'higher of 2 methods' clauses allowed in leases	✓ Only for "major" tenants" if that tenant gives prescribed notice *s36A ss2A	✗ *s18 (3)- (4)	✗ *s35	✗ *s11(1)-(2).	✗ *s22(3)	✗ *s12	✗ *s46	✗ *s28
Make good clauses could be void if too vague	✓ Must give general details of nature, extent & timing of req. refit *s50B	✓ Must give necessary details to indicate nature, extent and timing of req. refit *s38	✓ Must give necessary details to indicate nature, extent and timing of req. refit *s58	✓ Must give necessary details to indicate nature, extent and timing of req. refit *s14C	✓ Must be contained in DS & enable tenant to est. cost of compliance *s13	✓ Must state 'general form and timing' of req. refit *s27	✓ Must give necessary details to indicate nature, extent and timing of req. refit *s74	✗ Must give necessary details to indicate nature, extent and timing of req. refit *s51
Landlord must have marketing plan if tenant required to contribute toward promotions, advertising	✓ *s40A	✓ *s53	✓ *s70	✗	✓ *s54/55	✓ *s34	✓ *s131/132	✓ *s68

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