



New South Wales

Retail Leases Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. *

Overview of Bill

The object of this Bill is to amend the *Retail Leases Act 1994* (the *Principal Act*):

- (a) to prohibit (with certain exceptions) lessors under retail shop leases from recovering lease preparation expenses from lessees, and
- (b) to remove the current requirement for lessors to make available to lessees six-monthly statements of actual expenditure on outgoings to which lessees contribute.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

* Amended in committee—see table at end of volume.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

The proposed amendments regarding lease preparation expenses are made by way of amendments to sections 14 and 45 of the Principal Act. Sections 14 and 45 make it an offence for a person, as lessor or on behalf of the lessor, to seek or accept the payment of key-money in connection with granting, renewing or extending a retail shop lease and also provide that any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money in connection with granting, renewing or extending a lease.

Schedule 1 [3] amends section 14 of the Principal Act to also make it an offence for a person, as lessor or on behalf of the lessor, to seek or accept the payment, in connection with the granting of a retail shop lease, of lease preparation expenses. The amendment also provides that any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of lease preparation expenses in connection with the granting of the lease. Lease preparation expenses are defined, by a definition inserted in section 3 of the Principal Act by **Schedule 1 [1]**, as legal or other expenses incurred by the lessor in connection with the preparation or entering into of a retail shop lease, except for registration fees under the *Real Property Act 1900*.

Schedule 1 [5] inserts proposed section 14 (4) and (5) into the Principal Act. Proposed section 14 (4) provides that section 14, as amended, does not preclude any right a person, as lessor or on behalf of the lessor, may have to recover a reasonable sum from the lessee in respect of expenses incurred by the lessor in connection with making amendments to the proposed lease requested by the lessee. Lessee-requested amendments in connection with which lease preparation expenses are allowed to be recovered do not include amendments in respect of certain particulars, amendments in respect of terms a lessor fails to include or omit as agreed and amendments requested before a lessee's disclosure statement is given. Proposed section 14 (5) requires a lessor to provide the prospective lessee or lessee with a copy of any account presented to the lessor in respect of lease preparation expenses that the lessee is liable to pay. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [7], [8] and [9] make amendments that correspond to the amendments proposed by **Schedule 1 [3], [4] and [5]** in respect of the renewal or extension of a retail shop lease.

Schedule 1 [2] omits section 13, which currently makes provision with respect to the payment by a lessee of a reasonable sum in respect of any legal or other expenses incurred in connection with the preparation of a retail shop lease.

Schedule 1 [6] omits section 27 (c) and (d) of the Principal Act. Those provisions currently impose a requirement on a lessor to make available for examination by a lessee a six-monthly written expenditure statement by the lessor on account of outgoings to which the lessee contributes.

Schedule 1 [10] authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [11] inserts a savings provision to the effect that each of sections 13, 14 and 45 of the Principal Act, as in force before the amendment of the section by the proposed Act, continues to apply to a grant, renewal or extension of a retail shop lease that took effect before that amendment.