



Look before you lease

**Avoiding the pitfalls
in retail leasing**



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Stop

Before you sign, do you understand that a retail lease could be the biggest financial commitment you will make in your life?

A lease is a legally binding contract and enforceable by law. You and your landlord have clearly defined rights and responsibilities under lease agreements. Never sign a lease unless you completely understand and agree with all the clauses. Make sure you get good financial and legal advice before signing anything.

The laws about leases vary between States and Territories. This booklet covers general issues but you will still need to contact your State/Territory business association or government department to get local information.

Every State and Territory has local information available from their retail leasing information units. Many States produce their own kits and booklets. The resource pages tell you how to find your State or Territory's information unit.

Legal background

Australian State and Territory governments are responsible for regulating retail tenancies. Each State or Territory has retail tenancy legislation or regulation. The Commonwealth government's powers are limited by the Constitution, so there is no federal retail tenancy law. The Commonwealth, however, adds additional protection against unfair trading through general business laws such as the Corporations Law and the *Trade Practices Act 1974*.



C contents

How this booklet works	5
Does this booklet apply to me?	6
Before signing my retail lease	8
Signing my retail lease	16
Being a tenant under the retail lease	17
When my retail lease ends	18
If I don't want my retail lease to end	19
Dealing with problems	20
Typical steps to resolving a dispute	23
Answers to often-asked questions	24
Australian Capital Territory	26
New South Wales	28
Northern Territory	30
Queensland	31
South Australia	33
Tasmania	35
Victoria	37
Western Australia	39
Dictionary of some common terms	41

H

ow this booklet works

Introduction

This booklet is designed for people thinking about signing a **new** lease for a business location. It can help you answer general questions about retail leasing all over Australia, but remember there are some specific differences among the States and Territories. The purpose of the booklet is to help you avoid mistakes that others have made. If you know what questions to ask before signing a lease, and where to look for more information, you might avoid expensive misunderstandings that could cost you your business. This booklet is a guide to help you ask the right questions. It cannot replace professional advice but it can help you focus on what advice you will need.

The booklet gives you warnings and checklists to help you decide how and when to ask for expert help. You should get advice from a solicitor, your local retail tenancy office, small or retail business association, or fair trading office before you sign anything.

The booklet has nine parts:

- Does this booklet apply to me?
- Before signing my retail lease
- Signing my retail lease
- Being a tenant under the retail lease
- When my retail lease ends
- If I don't want my retail lease to end
- Dealing with problems
- Answers to often-asked questions
- A brief dictionary of common terms.

Does this booklet apply to me?

This booklet applies to you if you:

- want to take a lease, and
- that lease is a retail lease.

You need to know:

- what is a lease?
- will my lease be a **retail lease**?

Note

The most common difference between States and Territories is with ongoing, extending or renewing leases. If you are renewing a lease, you need to refer to your local legislation. Please contact your local government department or business association.

What is a lease?

A lease is a legally binding contract between you and a landlord. It allows you to occupy a shop or premises. It's important for you to understand what it allows you to do and for how long. The lease usually tells you about:

- the space – by describing it (see a plan if possible)
- your rights
- your obligations and liabilities
- your landlord's rights
- your landlord's obligations and liabilities
- conditions which apply to your use of the space – things like the rent and how long you can stay
- what you can expect about the retail space.

Be careful! Sometimes you can enter into a legally binding agreement without signing a 'lease'. This could happen if, for example, a landlord offers in writing to rent space to you on quite clear terms and you accept that offer. Definitions of a lease vary in each State and Territory and you should make sure of the definition in your State.

Note

Don't sign anything!
Don't accept keys or pay bond money before you have professional advice.

A lease is a long-term relationship. It can encourage investment and initiative, but a bad lease can limit your business, cost you a lot of money and sometimes cost you your business. Whatever you say

or do before you sign the lease forms part of the 'relationship' with your landlord. Be careful – make no promises and always keep notes on your discussions.

This booklet will also help you if you are about to sign an agreement to lease retail space. This usually happens when the retail space is being built or refurbished. Strictly speaking, you haven't yet got a lease but you and your landlord have promised to have one in the future.

So if you intend to take a lease or have an agreement to lease, you next need to know whether it is a retail lease under current retail tenancy legislation. If you have taken up an option or extension of a lease you may also be protected by the legislation. Ask your local retail tenancy office, small or retail business association, or fair trading office.

Is the lease a retail lease?

Each State and Territory has passed laws to protect retail lease tenants. Remember, the laws vary from State to State and you may not have a lease that is covered by the legislation. There are some general rules of thumb that indicate whether you might have a retail lease. For example: Is it a shop front? Is it in a shopping centre? Is the place used predominantly for selling goods or services? You will need to check your local legislation or talk with your local retail tenancy office, small business association or fair trading office to make sure. Some of these contact details are listed in your State/Territory information page.

Retail lease legislation is there to protect you. In most States, neither you nor the landlord can enforce anything in a lease that is contrary to the legislation.

Even if you are not covered by the legislation, you and your landlord are still about to sign a contract. It is very important that you understand the terms and conditions of that contract.

Note If you are in doubt, ask for help. A solicitor, your local retail tenancy office, small or retail business association, or fair trading office will be able to advise you.

B Before signing my retail lease

What information must a landlord give me?

There are many things you need to think about before you sign a lease.

First, your landlord should provide a draft of the lease long before the time to sign it. This is so you can think about the rules and requirements described in the document and get advice. They might also provide a ‘disclosure statement’ that has details about the premises, what services the landlord pays for and what you might have to contribute. In some States, the landlord has to give you a copy of the legislation or guidelines. Check with your State/Territory information sources if you are unsure. In all cases, make sure you get a draft of the lease to take away and think about.

What other matters should I think about?

Each retail lease tenant will have his or her own concerns. To find the answers to your questions you need to:

- talk to the landlord or their agent
- carefully read the material the landlord or their agent gives you
- understand the proposed lease
- take into account your State/Territory retail lease legislation, and
- talk to your local retail tenancy office, small or retail business association or fair trading office, or get expert advice.

On the next pages is a list of the sorts of questions you may want to think about. Working through the list might help you remember some of the other things that might affect your business’s success. Also remember that some of the questions may not apply to your situation.

When you read the list use ‘ticks’ and ‘crosses’ to mark where you need more information. In the information column, **take a first guess** as to where to find what you need. There are some

Note What kind of special advice might be needed? Council regulations, car parking, opening hours, taxation advice (GST, depreciation), trade practices/fair trading, regulations (e.g. health, fire, occupational health and safety) – just to name a few!

suggestions listed but they are not exhaustive. This way you can group your information needs into lists so when you go to the information source (your solicitor, local council, government department), you have all the things you need to talk about with that person in one place. It saves you time and, in some cases, money.

Some of the issues behind the questions are covered by retail leasing legislation so, while the legislation may not answer the question, it can tell you what is not allowed. If you see **legislation** below the question, then the issue is probably covered by your Act. If the word 'legislation?' is boxed like this **legislation?**, that means it is covered by most State/Territory Acts but not all. You'll still need to check.

*Do I need
more info? Where do I find it?*

Business plan

Look at my business plan. What does it tell me about the right location? Do the premises meet my requirements, e.g. traffic, growth?

Licences

Do I need any licences to run my retail business?

Council? Health department?
Business association? Business
licensing information service?

The space

Does the space suit my business?

Can I use this space for my intended purpose?

Term

How long should my lease be for? In other words, how long do I need to be there to recover my costs and make a profit?

Business plan?
Financial adviser?

Legislation describes minimum terms

Does my landlord have to give me a minimum term?

Legislation?

Access

What hours of access do I need to open, to prepare for trading and to close up?
Is this going to be a problem?

Your workplan?

*Do I need
more info? Where do I find it?*

If I move into a retail centre can I be forced to stay open when I would want to close?

Council?

Legislation?

Can the hours be changed without my approval?

Legislation

Use

What uses are allowed by the lease?

The lease? Council regulations?

Is there any zoning or other requirement that could stop me using the space for that use?
Do I need to change things like pipes, wiring or surfaces to meet regulations?

Council? State planning authority?
Business association? Business licensing information service?

Will the permitted use or any limits such as opening hours be easily changeable if I want to change them?

Landlord? Solicitor?

Fitout

What fitout will I need and can afford?

Is the space right for any pre-designed fitout?

Do I have to get permission and approvals to do my fitout or change it?

Landlord? Council?
Body corporate?

Can I be forced to fitout by the landlord or manager?

Solicitor? Landlord?
Business association?

Who will:

Landlord? Solicitor?

- own the fitout (and therefore be able to depreciate it)?
 - pay for it? When?
 - maintain it? To what standard?
 - upgrade it? How often? Even if I don't want to?
-

Do I have to remove the fitout at the end of the lease?

*Do I need
more info? Where do I find it?*

Relocation

Can I be forced to relocate?

Is there anything about my business that is so different that it might need physical changes to be made to the space that a landlord may not have thought about?

Legislation

Rent

How much can I afford as my starting rent?

Business plan? Financial adviser?

Can I afford the annual increase?

How often do I pay rent?

Landlord?

Does that fit my expected cashflow?

Business plan? Financial adviser?

Is my rent based on my actual turnover?

Landlord?

If I pay turnover rent, what is 'counted' in my turnover?

Legislation

What can landlords do with the confidential information about my turnover that I give them?

Legislation

Do I know what is meant by CPI and market rent reviews?

Legislation

What is the usual way rent is reviewed?

Business association?
Other tenants?

Legislation

When is the first review and how often can it be reviewed?

Legislation

*Do I need
more info? Where do I find it?*

Other expenses

Who pays for preparing the lease? What else do I have to pay for and am I paying my fair share? (For example, signs, permissions, changing the lease, stamp duty, legal costs, management fees, landlord's outgoings, promotion or advertising levies, electricity, gas, cleaning, etc.)

Business association? Landlord?

Legislation

Can I be sure about the level of those extra expenses? Can they increase?

Legislation

What information must the landlord give me about extra expenses?

Legislation

Do I have the right to review outgoings? (See Dictionary)

Landlord? Solicitor?

Do I have to pay for repairs and maintenance or a share of them?

Legislation

Is that reasonable as to type and level?

Business association?

Who pays for fair wear and tear? Will my landlord fix that?

Landlord? Business association?

Do I have to pay GST on the rent or anything else? If so, how much? Can I claim a GST credit?

Accountant? Tax Office?

Security for the retail lease

Can my lease be registered?

Legislation

Do I have to pay a security bond or security deposit? If yes, how much, to whom, is it safe? How can I lose it? How do I get it back at the end of my lease?

Legislation?

*Do I need
more info? Where do I find it?*

What is a guarantee, why is it used and will I have to give one? Will someone I sell to or let use part of the space have to give one and why?

Solicitor? Business association?

If I sell my business will the guarantee end?

Legislation?

Insurance

Will I have to take out any insurance? What type – public liability, building, glass, for my fittings, workers compensation? How much will it cost?

Solicitor? Business association?

Does a landlord insure anything? If yes, will I pay only my fair share of that insurance?

Solicitor? Business association?

Legislation?

Will I have to get consent from a landlord about things that might affect their insurance? Can it cost me more?

Landlord?

Should I take out insurance even if the lease doesn't force me to?

Solicitor? Business association?
Insurance adviser?

Security of the space and stock

Who pays for security for my space and stock?

Landlord? Business association?

Interruption of my use

Does the landlord promise me that

- I will have 'quiet enjoyment'?

Landlord

- I will be the only retailer of my type?
What happens if I'm not?

Landlord

What happens if the space becomes unusable or my use is disrupted? Do I have to keep on paying rent? Can I get out of the lease? Can my landlord end my lease?

Legislation

*Do I need
more info? Where do I find it?*

Physical condition of the space

Are there any checks I should make about the premises to be sure they are safe for me and my employees, e.g. if they are 'very old' or dilapidated. What about asbestos?
Have I written a condition report?

Occupational health and safety offices?

What promises will my landlord make? Do they promise that the space will have proper access and electricity, water, gas etc. supplied?
Get it in writing.

Landlord?

Landlords' rights

Does a landlord have any special rights which will affect my use of the property?

Solicitor? Business association?

When can a landlord bring a lease to an end without my agreement? What will it cost me if they do?

Option to renew

Should I try to negotiate an option to renew?
How long for and what are the drawbacks for me? How would I take up my option?

Legislation

Option to buy

Should I try to negotiate an option to buy the space or a first right of refusal?
What's the difference?

Business plan?

Choices at the end of the lease

What do I have to do when the lease ends – either at the end of the agreed term or because my landlord or I have ended the lease?

Landlord

What if we agree that I can stay at the end of the term – is there a new lease?
How long for and at what rent?

Legislation

*Do I need
more info? Where do I find it?*

Resolving problems

If we disagree during the lease is there a relatively quick, fair and cheap method for sorting out the problems? Do we have to follow that method? Is that process absolutely final?

Legislation

Preconditions

Is there anything on the landlord's part that prevents the lease from starting as soon as I sign it, e.g. mortgagee's consent?

Solicitor? Business association?

Centre rules

Are there any general rules that apply to me and other tenants in a retail centre? Are they reasonable? Do they apply fairly to all? How can they be changed?

Legislation?

Restrictions on trading

Can my landlord try to limit the way I can trade during this lease or afterwards (restraints of trade)?

Legislation

Once more before you sign the lease

- Make sure the promises that have been made appear in the document.
- Inspect the property and take notes and photographs. You don't want to argue about the condition five years from now.
- Talk to other tenants – see how they get along with the landlord.
- Ask for audited statements about outgoings such as gardening, maintenance and advertising.
- Make sure you know who is going to keep the bond and where. You might ask who gets the interest. Get it in writing.

Note Remember! A 5% annual rent increase means you'll be paying over 20% more rent in 5 years' time. Is this in your business plan?

S Signing my retail lease

How do I do it and what does it mean?

Before you sign, read right through the lease and disclosure statement and make sure there are no surprises. You need to make sure that every important promise has been written down in the document. Once you have both signed the lease, it is usually binding on both you and your landlord.

Most State/Territory retail tenancy legislation has special procedures that the landlord has to follow before the lease is signed. Check your retail tenancy legislation.

Note Talk to a professional or an association before you sign the lease.

Your State/Territory retail lease legislation is concerned about how you and your landlord behave, especially before the lease is signed. Your retail lease legislation lists the kind of behaviour that is illegal. For example, you are both expected to be honest, not use threats and provide information that is up to date. Most States/Territories have fair trading legislation which is designed to protect consumers from unfair conduct. The Trade Practices Act can also offer some protection to tenants.

A lease is the beginning of a relationship. If it is difficult to negotiate with the landlord at the start of discussions, listen to your alarm bells. It is a clue as to how

Note Once you are in a lease, it is hard to get out of it and it could cost you a lot of money.

difficult it is going to be to negotiate with them any time during the lease. If you are concerned about the landlord's conduct during negotiations, talk to your local retail tenancy office, small or retail business association, fair trading office or your solicitor, before you sign the lease.

Don't forget to talk to other tenants.

B Being a tenant under the retail lease

What are the important things I need to remember?

Both the landlord and tenant have to abide by the lease. Your lease will tell you things you have to do while you are a retail lease tenant. Here are some of the usual things:

- pay rent and outgoings on time
- have your rent reviewed. The date and method of review are important – make a note of them.
- keep insurance current
- tell your landlord about certain things, for example, if you change the people who control the business.

Don't forget to also:

- make a note of your other obligations such as protecting the property or giving turnover figures to your landlord
- work on maintaining a good relationship with the landlord but remember to keep notes
- don't let problems build up and then go in with a 'boots and all' list of demands. This will not improve your relationship
- never be late with anything – your landlord doesn't have to remind you but when it comes to negotiating changes or a lease renewal, they can hold your mistakes against you.

There are also some things your landlord must do. For example, your lease may require your landlord to repair and maintain, or provide estimates of outgoings (see Dictionary).

When my retail lease ends

What do I need to do?

Your lease will tell you what you need to do when it ends. You may need to simply leave the space empty, clean, tidy and secure. You may have to remove fittings and fixtures and make good the damage you make on removal. These are important obligations and landlords are usually concerned to see that tenants leave the property in an agreed condition.

Sometimes a landlord will accept a cash payment instead of requiring you to 'make good', that is, return the space to the condition it was in before you rented it. (You can see why taking notes and photographs before you sign a lease is important.) Even though the landlord may want your fittings, they can still make you pay to make good if it is in the lease. That is why it is important to sort this out before you sign. There are no hard and fast rules – this is a matter for you to negotiate and write into the lease.

Until you do all you have to do, your landlord can continue to charge you rent. Your landlord may be able to take items you leave in the retail space at the end of the term. The landlord may have to store these – usually at your cost – or may be able to claim them as their own. (See 'make good' in Dictionary.)

I f I don't want my retail lease to end

What can I do?

Your lease or the retail lease legislation may give you some options.

You can never start renewal negotiations too soon. Leave it to the last minute and you'll find a desperate person is in a poor bargaining position.

You must follow the procedures and timeframes very carefully or you will lose rights given to you by your lease and retail lease legislation.

If your lease contains an option to renew for a further term, you must follow the procedures and timeframes in the option clause very carefully or you will lose your option. If you have broken your lease you may not be able to renew it. Check the wording of your option clause carefully. If you have any doubts, check with your solicitor.

Note You have no automatic right of renewal unless your lease or legislation gives it to you.

D Dealing with problems

Where do I start?

It is important to remember that signing a lease is the start of a relationship with your landlord. Both you and your landlord share a common interest – to trade successfully and profitably.

You can both build on this common interest and create a spirit of cooperation. Many day-to-day problems can be overcome if you read your lease and talk to your landlord or centre manager about your concerns. This often works, and saves time and money.

What if there is still a problem?

Unfortunately it does not always work, so each State/Territory (other than the Northern Territory) has a special procedure to help to resolve retail tenancy disputes.

The *Resolving Small Business Disputes* kit is available from the federal Department of Employment, Workplace Relations and Small Business, and some State governments. The details are in the State/Territory resource lists.

Dispute resolution is intended to save you the expense of going to court and to help you resolve a dispute reasonably quickly. The systems vary slightly among States and Territories but it works along the same general principles. In some places, you cannot go to court unless you have tried alternative ways of resolving the problem. In other places, while mediation or dispute resolution is encouraged, it does not stop you from going to court at any time.

You will need to check your State/Territory resource lists for contact details for where to find out more about your local procedures.

Your State/Territory dispute resolution system may include mediation so here is a little more information about how it works.

What is mediation?

It is a private discussion between you and your landlord where a trained mediator manages the process. It is not open to the public and the proceedings are confidential.

Mediation is quite an informal process. The mediator will welcome you and invite you to outline your problem. Your landlord will then be asked to respond. If the landlord has asked for the mediation, the landlord will put their views first. If you or your landlord wish to put forward a proposal to resolve the dispute, you can do so at any time during the mediation.

The mediator is not a judge. The mediator's role is to help you and your landlord reach an agreement. You can ask for an adjournment to think about matters raised in the mediation.

If you reach an agreement during a mediated session, you may have to sign a mediation agreement or a form of contract. The landlord will also sign it. The agreement or contract you sign as a result of the mediation will be binding on both of you.

You usually start the mediation process by lodging a special form. In some States or Territories you may have to pay a fee. Sometimes there is a preliminary conference. Your local retail tenancy office, small or retail business association, or fair trading office staff will help you and tell you about the procedures and fees. You may want to get professional advice before the mediation. You may also want to take a representative with you. Your local retail tenancy office, small or retail business association, or fair trading office staff will tell you if this is allowed.

How do I get ready for mediation?

Here is a helpful checklist.

- Read your lease again!
- Consider your rights under your retail lease legislation – your local retail tenancy office, small or retail business association, or fair trading office can help.
- Consider asking for expert help.
- Write down carefully the exact nature of your dispute. The sorts of things that may be important are:
 - the date your lease was signed
 - the date you moved into the retail shop
 - the length of the term of your lease
 - whether your lease contains an option to take a lease for a further term
 - the nature of the business you run in the retail shop.
- Put together copies of your lease, disclosure statement and any other documents relating to the dispute such as letters, notices, extracts from your diary and accounts.

What happens if mediation does not work?

Your State/Territory advisers can tell you what happens next. Depending on where you live and your wishes, you might be able to take it to a tribunal (if your State/Territory has one) or to court, depending on the size and issues under dispute.

Most of the tribunals were created as specialist bodies that deal only with retail lease disputes. They were designed to give a cheaper and quicker result than traditional courts.

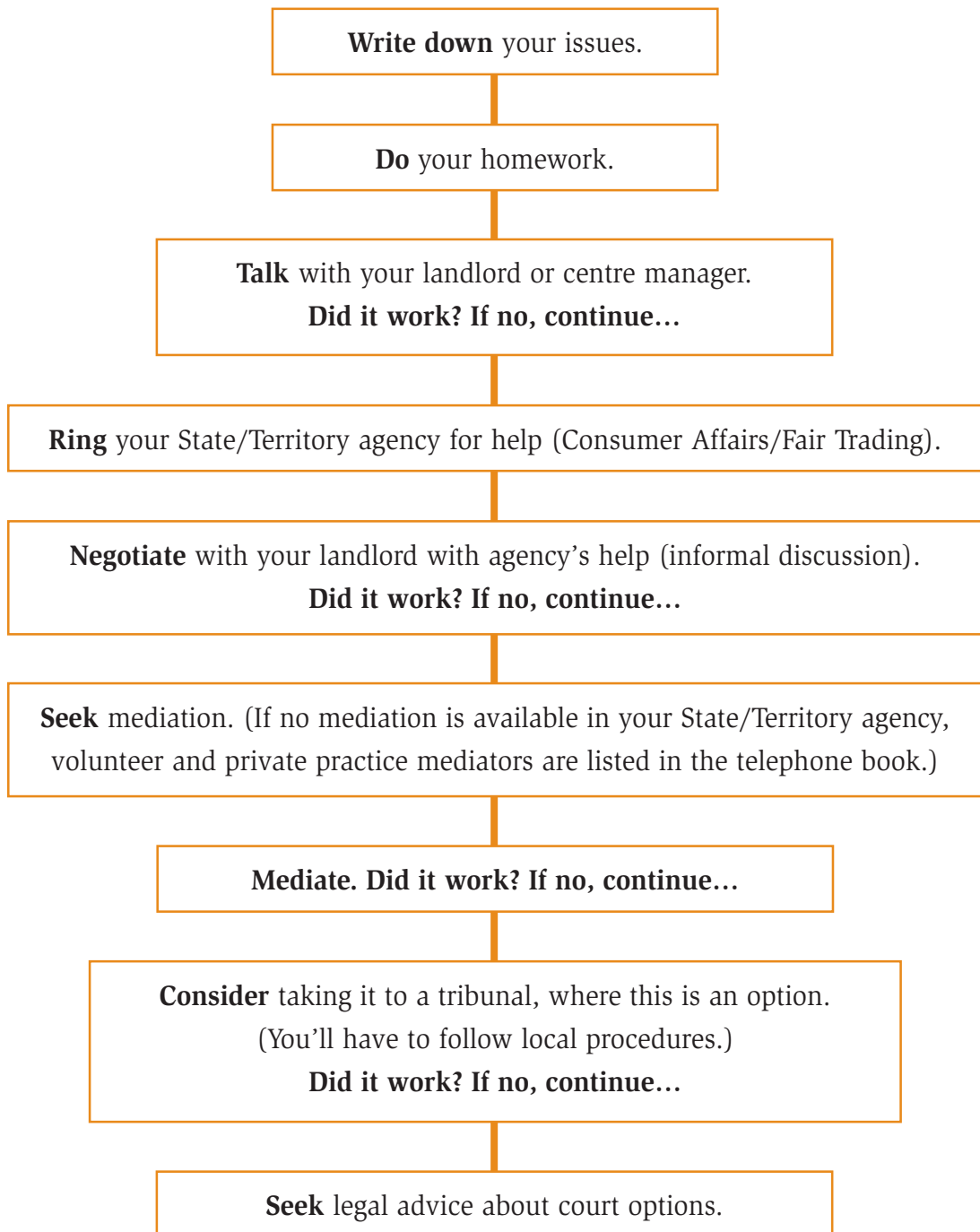
The tribunal is much more formal than mediation. Its directions and orders are binding.

Can I go straight to court?

The special procedures to resolve retail tenancy disputes are designed to keep most retail tenancy disputes out of court but that does not always mean it is not an option. Check your retail lease legislation, ask your local retail tenancy office, small or retail business association or fair trading office, or get expert advice on what is available in your State or Territory.

Typical steps to resolving a dispute

Remember, this varies a little among the States and Territories.



ACT

NSW

NT

Qld

SA

Tas

Vic

WA

A

Answers to often-asked questions

What if the building is sold?

If the building is sold your obligations and rights generally transfer automatically to the new owner. There are a few personal rights that may need to be transferred (like security bonds) but this is usually dealt with in your lease.

By buying the building **with notice** of your lease the new owners generally become bound to you as though they were the original landlord. In some cases the landlord is bound in the same way even if they don't have notice of your lease. Of course, it is always better if the new owner knows about the conditions in your lease. Most States and Territories allow leases to be registered by the Land Titles Office. This is one sure way of a new owner having notice of your lease. If your landlord won't register the lease, in some States and Territories you can do it yourself. It is the most effective way to protect your interests.

What if the tenancy mix changes?

In most States your landlord is not required to protect you from competition or tell you about proposed tenancy mix changes unless you have a special clause written into your lease. This is why it is important to walk around and have a look at kiosks and tenancy mix **before** you sign the lease. You may want to ask your landlord about 'permitted use' clauses.

What if the landlord disrupts my business?

Usually retail landlords promise their tenants that they will have quiet possession of the retail space. Under your retail lease legislation you may be given additional rights if your landlord interrupts your business, for example, by creating disruption during refurbishment, putting up special displays on common property, or placing new or temporary kiosks. Check your retail lease legislation.

Can I mortgage my lease?

In some States/Territories you can mortgage your lease unless your lease says you cannot. Leases usually say you have to ask your landlord for permission. Your retail lease legislation may set out the steps you and the landlord have to follow when you want to mortgage, and what conditions the landlord can impose.

What if I want to sell my business or let some one else use part of my retail space?

This is often called ‘assignment’ or ‘subleasing’.

Leases usually say you have to ask your landlord for permission. Your lease and the retail lease legislation may set out the steps you and the landlord have to follow, what conditions the landlord can impose and whether or not you are released from future obligations under the lease from the sale of the business. If your retail lease legislation does not mention release then you are not released from your future obligations under the lease unless the landlord agrees to release you. Your guarantors may also stay liable unless you and they are fully released by agreement with your landlord. It is very important that you get expert advice on this.

What happens if I default under my retail lease?

Each lease can be quite different.

Your lease will tell you something about what happens in your situation. The law is complex so not many leases spell out in full either what is default or all of the consequences of default. It is very important that you get expert advice on this. Even a single default can cost you years later. This is particularly true when you are negotiating a lease renewal.

Resources

Legislation

Tenancy Tribunal Act 1994 and the Commercial and Retail Leases Code of Practice, consolidated 1 December 1998.

The Code explains the rights and obligations of tenants and landlords and has guidelines and definitions on a wide variety of topics. Among the many topics covered are rent settings, rent reviews, outgoings, damaged premises, disturbance, subleases, lease termination and lease renewal. The book contains explanatory notes that give more information on specific parts of the Act and the Code.

Copies of the *Tenancy Tribunal Act 1994* and the *Commercial and Retail Leases Code of Practice and Explanatory Notes* are for sale at the ACT Government Shopfront, London Circuit, Canberra, ACT 2600.

The *Tenancy Tribunal Act 1994* and the *Commercial and Retail Leases Code of Practice and Explanatory Notes* are available on the ACT Courts' home page www.courts.act.gov.au. The Code and Explanatory Notes are also available on the Office of Fair Trading of the Australian Capital Territory home page www.fairtrading.act.gov.au.

Business licensing information services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed. Telephone 1800 244 650.

Information kit

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- ACT and Region Chamber of Commerce & Industry, PO Box 192, Deakin West, ACT 2600*
Telephone: 02 6283 5200
Facsimile: 02 6282 5045
Email: chamber@actchamber.com.au
Web site: www.actchamber.com.au
- The Australian Retailers Association in the ACT is represented by the ACT Chamber of Commerce & Industry.
- The Small Business Association of Australia in the ACT is represented by the NSW office:
Small Business Association of Australia, Birkenhead Point Shopping Complex, Drummoyne, NSW 2047
Telephone: 02 9819 7208
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry associations such as bakers, beauticians, butchers etc.

* Chamber of Commerce & Industry address from the web site www.thechamber.com.au.

Resources

Legislation

Retail Leases Act 1994

Contact the NSW Government Information Service, Goodsell Building, Hunter Street, Sydney and 130 George Street, Parramatta, or telephone 02 9743 7200.

Business licensing information services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed. Telephone 1800 463 976.

Mediation and dispute information and help

The Retail Tenancy Dispute Resolution kit is available from the Retail Tenancy Unit, PO Box N818, Grosvenor Place, Sydney, NSW 1220, or telephone 02 9223 0466, fax 02 9223 0817. If you are outside Sydney, telephone 1800 063 333.

Information kits

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Australian Retailers Association – NSW, 20 York Street, Sydney, NSW 2000
Telephone: 02 9290 3766
Facsimile: 02 9262 1464
Web site: www.ara.com.au
- Small Business Association of Australia, Birkenhead Point Shopping Complex, Drummoyne, NSW 2047
Telephone: 02 9819 7208

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- State Chamber of Commerce (NSW), 12/83 Clarence Street, Sydney, NSW 2000*
Telephone: 02 9350 8100
Facsimile: 02 9350 8199
Email: enquiries@thechamber.com.au
Web site: www.thechamber.com.au
 - Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry association such as bakers, beauticians, butchers etc.

* Chamber of Commerce address from the web site www.thechamber.com.au.

Resources

Legislation

Commercial Tenancies Act

Contact the Office of Consumer Affairs on 08 8999 1999.

Business licensing information services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed. There is no listing for this service.

Licensing and other information about setting up a business is available from the Territory Business Centres. For further information phone toll free 1800 193 111.

Information kit

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Northern Territory Chamber of Commerce & Industry, GPO Box 1825, Darwin, NT 0801*
Telephone: 08 8936 3100
Facsimile: 08 8981 1405
Email: darwin@ntcci.com.au
Web site: www.ntcci.com.au
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry association such as bakers, beauticians, butchers etc.

* Chamber of Commerce & Industry address from the web site www.thechamber.com.au.

Resources

Legislation

Retail Shop Leases Act 1994

Copies of the Retail Shop Leases Act are available from 371 Vulture Street, Woolloongabba, telephone 07 3246 3399 and online at www.legislation.qld.gov.au.

Business licensing information services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to contact SmartLicence to find out whether licence rules have changed. Telephone 1800 061 631.

Information, booklet and kit

Retail Shop Leases Registry

Information on dispute resolution and other retail leasing issues is available from the Retail Shop Leases Registry, PO Box 168, Brisbane Albert Street, QLD 4002, telephone 07 3234 0391. If you are outside the Brisbane area, telephone 1800 807 051.

Retail Leasing Guidelines (www.statedevelopment.qld.gov.au/start/planning/rsl/Guidelines/default.asp)

Lessee Quick Guide (www.statedevelopment.qld.gov.au/start/planning/rsl/rsl_Lessee12p.pdf)

Lessor Quick Guide (www.statedevelopment.qld.gov.au/start/planning/rsl/rsl_Lessor12p.pdf)

These booklets are available from the Retail Shop Leases Registry or from the Department of State Development's State Development Centres on 13 26 50. They are also available on the Department's web site at www.statedevelopment.qld.gov.au.

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Queensland Chamber of Commerce & Industry Ltd, Industry House, 375 Wickham Terrace, Brisbane, QLD 4000*
Telephone: 07 3842 2244
Facsimile: 07 3832 3195
Email: qcci@qcci.com.au
Web site: www.qcci.com.au
- Australian Retailers Association – Qld, PO Box 91, Fortitude Valley, QLD 4006
Telephone: 07 3251 3200
Facsimile: 07 3229 9897
Web site: www.ara.com.au
- Retail Traders and Shopkeepers Association of Queensland, 321 Kelvin Grove Road, Kelvin Grove, QLD 4059
Telephone: 07 3352 6088
Web site: www.qrtsa.com.au
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry association such as bakers, beauticians, butchers etc.

* Chamber of Commerce & Industry address from the web site www.thechamber.com.au.

Resources

Legislation

Retail and Commercial Leases Act 1995

To get copies of retail legislation, contact Information SA, Australis Centre, 77 Grenfell Street, Adelaide, SA 5000. Telephone the bookshop on 08 8204 1900, or 1800 182 234 (free call) if outside the metropolitan area.

For advice on legislation, telephone the Tenancies Branch, Office of Consumer and Business Affairs, Level 1, 91–97 Grenfell Street, Adelaide, SA 5000 on 08 8204 9533.

Business licensing information services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed.

Licensing and other information about setting up a business is available from the Business Centre, 145 South Terrace, Adelaide, SA 5000. For advice telephone 08 8463 3800 or 1800 188 018 (free call) if outside the metropolitan area.

Mediation

For advice on accessing the independent mediation service, telephone the Tenancies Branch, Office of Consumer and Business Affairs, Level 1, 91–97 Grenfell Street, Adelaide, SA 5000 on 08 8204 9533.

Information kits

Resolving Small Business Disputes – six steps to successful dispute resolution.

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Australian Small Business Association, First Avenue, Technology Park, Mawson Lakes, SA 5095
Freecall: 1800 808 463
Facsimile: 08 8260 8119
Email: asba@essential.com.au
- Business SA, 136 Greenhill Road, Unley, SA 5061*
Telephone: 08 8300 0000
Facsimile: 08 8300 0001
Industry associations, telephone: 08 8300 0010
- Australian Retailers Association – SA, Level 3, 132 Grenfell Street, Adelaide, SA 5000
Telephone: 08 8419 2222
Facsimile: 08 8223 6619
Web site: www.ara.com.au
- State Retailers Association of South Australia Inc., 321 Port Road, Hindmarsh, SA 5007
Telephone: 08 8340 1722
Facsimile: 08 8340 1007
Email: srassoc@senet.com.au
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry association such as bakers, beauticians, butchers etc.

* Business SA address from the web site www.thechamber.com.au.

Resources

Legislation

Fair Trading (Code of Practice for Retail Tenancies) Amendment Regulations 1999 and *Fair Trading (Code of Practice for Retail Tenancy) Regulations 1998*

The Regulations are available from the Tasmanian Legislation Database, available from www.thelaw.tas.gov.au.

Printed copies are available from Tasmania Bookshop, 2 Salamanca Place, Hobart, TAS 7000.

Code of Practice for retail tenancies is on Consumer Affairs and Fair Trading home page www.justice.tas.gov.au/ca/retail_tenancies/info1.htm.

Business Licensing Information Services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed. Telephone 1800 005 262 (free call).

Information and kit

Consumer Affairs

Contact Consumer Affairs by telephone on 1300 654 499, fax 03 6233 4882 or email consumer.affairs@justice.tas.gov.au.

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Tasmanian Chamber of Commerce & Industry Ltd, GPO Box 793H, Hobart, TAS 7001*
Telephone: 03 6234 5933
Facsimile: 03 6231 1278
Email: admin@tcci.com.au
Web site: www.tcci.com.au
- Retail Traders Association of Tasmania, 18 Elizabeth Street, Hobart, TAS 7000
Telephone: 03 6223 7586
Facsimile: 03 6223 7461
Web site: www.awa.com.au
- Australian Retailers Association – Tas, 147 Davey Street, Hobart, TAS 7000
Telephone: 03 6234 2800
Facsimile: 03 6223 6003
Web site: www.ara.com.au
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry association such as bakers, beauticians, butchers etc.

* Chamber of Commerce & Industry address from the web site www.thechamber.com.au.

Resources

Legislation

Retail Tenancies Reform Act 1998

Copies of the Act are available from Information Victoria, 356 Collins Street, Melbourne, VIC 3000, telephone 1300 366 356.

Business Licensing Information Services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed. Contact the Business Licence Information Service of Small Business Victoria, telephone 13 22 15 or, if outside Melbourne, telephone 1800 136 034 (free call), web site www.business.channel.vic.gov.au.

Information kits

Detail in Retail

Copies of this booklet can be downloaded from the Business Channel Website www.business.channel.vic.gov.au. The booklet is also available through Information Victoria. Information for landlords and tenants is available from Small Business Victoria, 5th Floor, 55 Collins Street, Melbourne, telephone 13 22 15 or, if outside Melbourne, telephone 1800 136 034 (free call). The web site is www.sbv.vic.gov.au.

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Victorian Employers' Chamber of Commerce & Industry, GPO Box 4352QQ, Melbourne, VIC 3001*
Telephone: 03 8662 5333
Facsimile: 03 8662 5462
Email: admin@vecci.org.au
Web site: www.vecci.org.au
- Australian Retailers Association – Vic, 2nd Floor, 104 Franklin Street, Melbourne, VIC 3000
Telephone: 03 9326 5022
Facsimile: 03 9329 7814
Web site: www.ara.com.au
- Retail Confectionery & Mixed Business Association
- National Independent Retail Associations Inc.
Contact for both associations: Unit 9, 14–26 Audsley Street, Clayton South, VIC 3169
Telephone: 03 9562 6677
Facsimile: 03 9562 6611
Email: camba@one.net.au
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry association such as bakers, beauticians, butchers etc.

* Chamber of Commerce & Industry address from the web site www.thechamber.com.au.

Resources

Legislation

Commercial Tenancy (Retail Shops) Agreements Act 1985

The *Commercial Tenancy (Retail Shops) Agreements Act 1985*, its 1998 amendment Act and supporting regulations can be obtained from the State Law Publisher, telephone 08 9321 7688.

The WA Department of Consumer Affairs' web site, www.fairtrading.wa.gov.au, contains a summary of the legal changes. It also has electronic versions of the *Disclosure Statement* and *Tenant Guide* as well as other forms used under the Act and a Retail Shop Leases booklet. Telephone the Department of Consumer Affairs on 08 9282 0911.

Business Licensing Information Services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed. Contact the Small Business Development Corporation, telephone 08 9220 0222. The Corporation also provides business guidance and advice for current and prospective small retail tenants and property owners.

Mediation service

The Registrar and the Commercial Tribunal are responsible for providing a mediation service and determining disputes in relation to retail shop lease matters. Telephone 08 9425 2773.

Information kit

Resolving Small Business Disputes – six steps to successful dispute resolution

This kit explains six steps to resolve disputes and gives case studies. Available from the web site of the Commonwealth Department of Employment, Workplace Relations and Small Business at www.dewrsb.gov.au.

Business associations

- Chamber of Commerce & Industry of Western Australia (Inc.), PO Box 6209, East Perth, WA 6892*
Telephone: 08 9365 7555
Facsimile: 08 9365 7550
Email: info@cciwa.com
Web site: www.cciwa.asn.au
- Independent Retailers Organisation, PO Box 167, Thornlie, WA 6108
Telephone: 08 9417 8864
Facsimile: 08 9414 7447
- Retail Traders Association of WA (Inc.), 180 Hay Street, East Perth, WA 6004
Telephone: 08 9345 7695
Web site: www.ara.com.au
- Also check your local Yellow Pages® or the OnLine web site at www.yellowpages.com.au for specific industry associations such as bakers, beauticians, butchers etc.

* Chamber of Commerce & Industry address from the web site www.thechamber.com.au.

D

ictionary of some common terms

Disclosure statement	A 'disclosure statement' is a statement required by some retail tenancy legislation. It is usually given by the landlord to the tenant. It contains important details about the premises, the estimated outgoings payable by the landlord and how the tenant has to contribute to these as at the date it is signed. These details may change. In some States you must also provide a disclosure statement to the landlord.
Fitout	'Fitout' is not a precise term. What is part of the fitout will vary. They usually contain fixtures and fittings. They may include equipment or services. A fitout usually includes counters, shelves, display areas, painting and decorating.
Fittings	'Fittings' is not a precise term. Fittings usually include fixtures, partitions and equipment fixed to the premises in such a way as to become a part of the premises.
Goodwill	'Goodwill' is usually used to refer to the benefit and advantage of the good name and reputation of a business. The time left to run before the lease expires is sometimes considered to be part of the goodwill 'value'.
Key money	This generally means a payment or benefit given to a landlord for considering a new lease, its renewal, extension or assignment. Your retail lease legislation may have a special definition. Taking key money is not allowed in some States and Territories.
Lease assignment	'Lease assignment' means the transfer of the rights and obligations of the tenant in the lease to a new tenant who accepts them.
Lessee	The word 'lessee' means the same as 'tenant'.
Lessor	The word 'lessor' means the same as 'landlord' or 'property owner'.
Make good	To 'make good' is to return the property to the condition it was in before it was leased to you. For example, remove shop fittings, false walls and signs, repair flooring, wiring, painting, cleaning etc. Make sure you know what is required before you sign the lease.

Outgoings	<p>‘Outgoings’ are the landlord’s expenses relating to the retail lease space. Here are some examples:</p> <ul style="list-style-type: none"> rates and land taxes levies and charges under strata, community unit title or similar laws insurance cleaning indoor and outdoor gardening and landscaping caretaking security regulating traffic management, administration and marketing supplying, maintaining, repairing and replacing services building maintenance. <p>Your retail tenancy legislation may have a special definition and also special rules about outgoings. In some States, land taxes are not included in outgoings.</p>
Ratchet clause	<p>If a lease has a ‘ratchet clause’, when a rent review happens the rent can not decrease. Note that ratchet clauses are illegal in some States and Territories.</p>
Relocation	<p>‘Relocation’ means moving from one retail space to another during the term of the lease. Your retail tenancy legislation may have special rules about when the tenant can be asked to move and what happens when they do.</p>
Security bond/ Security deposit	<p>A lease might require a tenant to pay a sum of money or provide a bond as security against default. If you have carried out all your obligations under your lease this will be returned to you. Your retail tenancy legislation may fix a maximum amount for the bond or deposit. It might also tell you how and when the landlord can have access to that money.</p>
Sinking fund	<p>A tenant may be required to pay into a fund which the landlord uses for major repairs and maintenance. Your retail lease legislation may apply strict rules to these funds.</p>