



Business On-Line... Easy



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A GUIDE FOR PROFESSIONALS

The Business Tenancies (Fair Dealings) Act



LOOK. LEARN. LEASE.



Northern Territory Government

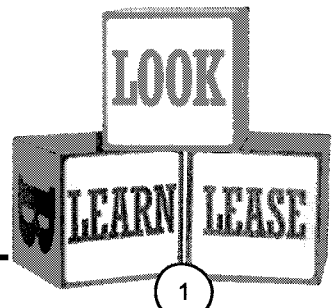


A Guide to Retail Leasing for Professionals

This guide aims to give professionals the information they need when advising tenants and landlords about the risks associated with retail leasing and the landlord's and tenant's rights and responsibilities under the *Business Tenancies (Fair Dealings) Act*.

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Information for lawyers

WRITTEN CERTIFICATION

The *Business Tenancies (Fair Dealings) Act* requires that the total term of a retail shop lease, including any further terms as an extension or renewal of the lease, must not be less than five years. This requirement can only be waived if a prospective tenant obtains the written certification of a legal practitioner that:

- the effect of these provisions of the Act has been explained to the prospective tenant and
- the giving of the certificate will result in these requirements not applying to the lease.

As a lawyer, you may only provide this certification if you are a solicitor or barrister admitted to practise in the Northern Territory.

The Commissioner of Business Tenancies encourages prospective landlords and tenants to obtain advice about the legal meaning and effect of certain terms and conditions of the proposed lease. Matters you could consider providing advice on include:

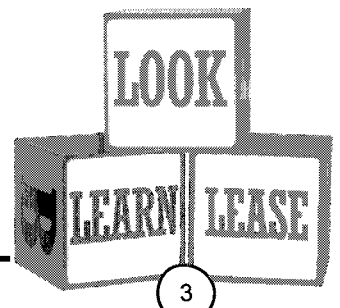
- how rent is to be calculated and reviewed under the lease
- liability to contribute to the landlord's outgoings and how outgoings are calculated
- any other payments required under the lease and how they are calculated
- term of the lease
- special or unusual terms or clauses
- repayable security deposit or guarantees required
- whether or not the lease contains an option to renew and the rights of the prospective tenant or prospective assignee if there is no option to renew
- obligations of the prospective tenant or prospective assignee at end of lease



- whether or not the lease contains a relocation clause and if it does, the way the clause operates
- permitted use and exclusivity of permitted use
- consequences of breaching lease conditions

The *Business Tenancies (Fair Dealings) Act* requires landlords to give prospective tenants a copy of the proposed retail shop lease as soon as they enter into negotiations concerning the lease. Landlords must also give prospective tenants a copy of the Landlord Disclosure Statement at least seven days before a lease is entered into.

Copies of the Landlord Disclosure Statement are available from www.business.nt.gov.au and follow the Retail Tenancies link, or call the Tenancy Unit on 8999 1999 or 1800 019 319 if calling from outside the Darwin metropolitan area.





Information for accountants

GENERAL FINANCIAL ADVICE

The Commissioner of Business Tenancies encourages prospective landlords and tenants to obtain advice about their financial rights and obligations under the lease and the effect of certain terms and conditions of the lease.

As an accountant, you may only provide such advice if you are a member of CPA Australia, the Institute of Chartered Accountants or the National Institute of Accountants, and you hold a current practising certificate. Matters you could consider providing advice on include:

- the rent, outgoings and other payments
- the potential financial impact of the rent review
- the fact that the operation of the business is restricted by the term of the lease
- other financial rights and obligations
- the tenant's business plan.

ANNUAL AUDITED STATEMENTS

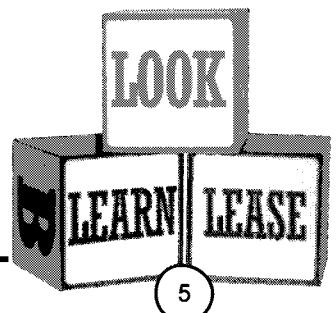
Landlords that require tenants to contribute to their outgoing expenses must give their tenants an estimate of outgoings for each accounting period at least one month before the start of the accounting period.

Landlords must also provide an annual audited statement of outgoings within three months after the end of the period to which the statement refers. These statements must be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards.



The annual audited statement of outgoings must also be accompanied by a report prepared by a person who holds a public practice certificate issued by an accountant's body.

Annual audited statements are also needed for tenants' contributions to promoting and advertising a shopping centre if these amounts are not treated as part of the landlord's outgoings.



Information for specialist retail valuers

CURRENT MARKET RENT DETERMINATIONS

If a rent review for a lease is to be on the basis of current market rent and the tenant and landlord are unable to agree on what the current market rent should be and cannot agree on a specialist retail valuer to undertake the current market rent determination, a specialist retail valuer may be appointed by the Commissioner of Business Tenancies to undertake the determination.

To be appointed to undertake a current market rent determination you must have at least five years experience in valuing retail shops.

A specialist retail valuer must take into account:

- the provisions of the lease
- the rent that would reasonably be expected to be paid for the shop if it were unoccupied and offered for renting for the same or substantially similar use to which the shop may be put under the lease
- the gross rent, less the landlord's outgoings payable by the tenant
- rent concessions and other benefits that are frequently or generally offered to prospective tenants of unoccupied retail shop.

The current market rent is not to take into account the value of the goodwill created by the tenant's occupation or the value of the tenant's fixtures and fittings on the retail shop premises.

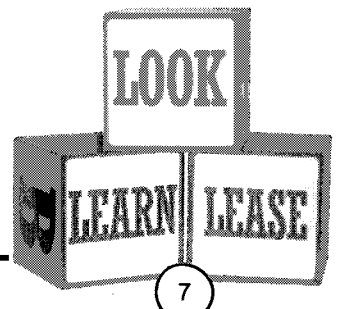
Under provisions in the *Business Tenancies (Fair Dealings) Act*, if you are a specialist retail valuer undertaking a current market rent determination, you may ask that the landlord give you information you consider necessary. If the landlord fails to provide this information within 14 days of your request, you may apply to the Commissioner of Business Tenancies for an order that the landlord comply.



Current market rent determinations must be completed within specific timeframes. Determinations must be provided to the tenant and landlord within one month of your appointment as a specialist retail valuer.

Any information provided to you by a landlord is confidential and may only be used by you to determine the current market rent for the leased shop. You may only disclose the information obtained to anyone else in any of the following circumstances:

- with the consent of the landlord and the tenant
- to a court or the Commissioner of Business Tenancies
- if the use, communication or disclosure occurs for the purpose of specifying the matters taken into consideration in making the current market rent determination and in a way that does not disclose information identifying a particular lease or tenant.





Information for all professional advisors

WHAT DO YOU NEED TO KNOW?

If you are providing advice or assistance to tenants, assignees or landlords it is crucial that you have a good understanding of the provisions of the *Business Tenancies (Fair Dealings) Act*. A good way to start to familiarise yourself with the rights and obligations of your clients is to read through the information provided in the guides written specifically for tenants and landlords. It is a good idea to read through the *Business Tenancies (Fair Dealings) Act* as the Act gives greater detail of the requirements placed on all parties to a lease and the processes that must be undertaken.

Copies of the *Business Tenancies (Fair Dealings) Act* and the *Business Tenancies (Fair Dealings) Act Regulations* are available from the Government Printer or at www.caba.nt.gov.au.



Northern Territory Government



For more information
contact the Tenancy Unit:

phone: 8999 1999
or 1800 019 319

email: businessstenancies@nt.gov.au

web: www.business.nt.gov.au