

**Relocation clause prescribed for the purpose of section 14A(1)(a) of the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.**

**Extracted from Schedule 1 Item 2 *Commercial Tenancy (Retail Shops) Agreements Regulations 1985***

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**1.1. Terms used in this clause**

In this clause, unless the contrary intention appears —

**landlord** means the person who is the landlord, as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), in relation to this lease;

**new retail shop** means a redeveloped retail shop or alternative retail shop that is the subject of an offer under subclause 1.5.1 or a substitute lease;

**redevelopment**, of the retail shop, includes any substantial repair, renovation, reconstruction or demolition of the retail shop, or the building or the retail shopping centre within which the retail shop is located;

**retail shop** means the premises the subject of this lease;

**retail shopping centre**, in relation to a retail shop, means the retail shopping centre as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), within which the retail shop is located;

**substitute lease** means a lease of a new retail shop that a landlord offers or provides under subclause 1.5;

**tenant** means the person who is the tenant, as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), in relation to this lease;

**termination date**, in relation to the termination of this lease under this clause, means the date set out in a termination notice for the lease referred to in subclause 1.3.3(b).

**1.2. Landlord may terminate lease to redevelop**

The landlord may terminate this lease in accordance with this clause if the retail shop, or the building or the retail shopping centre within which the retail shop is located, is to be the subject of a redevelopment and —

- (a) the landlord reasonably requires vacant possession of the retail shop to enable the redevelopment to be carried out; or
- (b) the landlord cannot ensure safe access to the retail shop while the redevelopment is being carried out.

**1.3. Notice of termination for redevelopment**

1.3.1 The landlord must give the tenant written notice of termination of this lease (a **termination notice**) under this clause.

1.3.2 A termination notice must be given at least 6 months before the termination date.

1.3.3 A termination notice must contain the following —

- (a) the details of the proposed redevelopment;
- (b) the date on which this lease terminates (the **termination date**);
- (c) notice of the tenant's right to make a claim for compensation under subclause 1.7.

1.3.4 The termination date does not need to coincide with the end of a rental period.

#### **1.4. Termination of lease under this clause**

- 1.4.1 On the termination date this lease terminates.
- 1.4.2 On termination of this lease under this clause, the tenant is not under any obligation under this lease to make good the retail shop, despite any other clause in this lease to the contrary.

#### **1.5. Offer by the landlord to lease redeveloped retail shop or alternative retail shop**

- 1.5.1 At the time a termination notice is given to a tenant, the landlord must make an offer (the *offer*) to lease to the tenant —
  - (a) the redeveloped retail shop; or
  - (b) an alternative retail shop.
- 1.5.2 For the purposes of subclause 1.5.1(b), if the retail shop is situated in a retail shopping centre, the alternative retail shop is also to be situated in that retail shopping centre.
- 1.5.3 If the landlord does not offer the tenant a substitute lease then the landlord is liable to pay relocation costs and compensation in accordance with subclauses 1.6 and 1.7.
- 1.5.4 The offer must be in writing.
- 1.5.5 Unless otherwise agreed between the parties, the new retail shop that the landlord offers to lease to the tenant under subclause 1.5.1 must —
  - (a) be located in a position that has an estimated trading potential similar to that of the retail shop; and
  - (b) have a floor configuration similar to that of the retail shop; and
  - (c) have a lettable area similar to the lettable area of retail shop; and
  - (d) meet all requirements of current health, safety, building, fire and other relevant legislation for the use to which the retail shop is to be put by the tenant.
- 1.5.6 The offer for the lease of the new retail shop must contain the following —
  - (a) details of the new retail shop;
  - (b) the date by which the tenant must accept the landlord's offer (which must be at least 60 days after the date of the offer);
  - (c) that the tenant's acceptance of the offer must be in writing;
  - (d) the rent per annum for the new retail shop, which is to be no more than the rent under this lease for the retail shop;
  - (e) the terms and conditions of the lease, which are to be the same, or better, terms and conditions as this lease except that the term of the substitute lease is to be no shorter than the remainder of the term of this lease;
  - (f) the date, or estimated date, on which the lease is to commence;
  - (g) the date, or estimated date, on which the tenant can access the retail shop to fit it out;
  - (h) a statement that the tenant should seek independent legal and financial advice about the offer and the new retail shop.

- 1.5.7 Without limiting subclause 1.5.6(e), the proportion of operating expenses to be paid by the tenant under the substitute lease must not be greater than the proportion of operating expenses to be paid by the tenant under this lease.
- 1.5.8 If the tenant accepts the offer on or before the date specified under subclause 1.5.6(b) —
- (a) the landlord must provide the tenant with a substitute lease for the new retail shop not later than 21 days after the tenant accepts the offer; and
  - (b) the tenant is to execute the substitute lease and return it to the landlord not later than 60 days after being provided with the lease by the landlord.
- 1.5.9 The substitute lease must be on the same terms and conditions as this lease, except that —
- (a) the commencement date for the substitute lease will be —
    - (i) such date as is agreed between the parties; or
    - (ii) if a date is not agreed between the parties, 30 days after the new retail shop is made available for the tenant to fit it out;and
  - (b) if the term of the substitute lease extends beyond the term of this lease, the dates on which the rent is reviewed or adjusted during that term or additional term will occur in the same manner as are provided for under this lease; and
  - (c) the lease is to make provision to the following effect —
    - (i) if the landlord cannot provide the tenant with access to the new retail shop under the substitute lease due to the redevelopment or any other unforeseen circumstance, then the tenant may terminate the substitute lease at any time by giving the landlord written notice of the termination;
    - (ii) the landlord has no claim against a tenant for the termination of the lease in the circumstances set out in subparagraph (i);
  - (iii) the termination of the substitute lease in those circumstances is to be treated as a termination of this lease under this clause for the purposes of subclause 1.7.
- 1.5.10 The landlord is responsible for arranging the preparation of the substitute lease and the landlord is to bear the following costs —
- (a) the cost of, and associated with, the preparation, and execution, of the substitute lease and any deed of surrender of this lease;
  - (b) the cost of the tenant's reasonable legal costs in relation to the termination of this lease, advice on the offer and the substitute lease and the execution of the substitute lease.

## **1.6 Landlord to pay tenant's reasonable removal and relocation costs**

- 1.6.1 If this lease is terminated under this clause, the landlord is to pay the tenant's reasonable costs of removal from the retail shop and, if relevant, the relocation of the tenant's business to another place (whether provided under a substitute lease or not) including, but not limited to —
- (a) costs incurred by the tenant in dismantling fittings, equipment or services; and
  - (b) costs incurred by the tenant in replacing, re-installing or modifying finishes, fittings, equipment or services to the standard existing in the existing retail shop immediately before the relocation, but only to the extent that they are reasonably required in the other place; and
  - (c) packaging and removal costs incurred by the tenant.
- 1.6.2 The landlord is to pay to the tenant the reasonable costs of the removal and relocation in accordance with this subclause as soon as is reasonably practicable after the removal from the retail shop by the tenant but in any event not later than 30 days after a claim for costs under this clause has been given to the landlord by the tenant.

## **1.7. Tenant's right to compensation**

- 1.7.1 If this lease is terminated under this clause, or under a provision of an alternative lease referred to in subclause 1.5.9(c), the landlord is liable to pay the tenant reasonable compensation for loss and damage (including loss of goodwill) suffered by the tenant due to the termination of this lease, taking into account all relevant factors.
- 1.7.2 Despite subclause 1.7.1, the landlord is only liable to pay the written down value of the costs of fitting out the retail shop as at the termination date, calculated in accordance with the current method used by the Australian Taxation Office for the depreciation of assets.
- 1.7.3 The tenant must give the landlord written notice of the loss or damage as soon as reasonably practicable after it is suffered but a failure to do so does not affect any right of the tenant to compensation.
- 1.7.4 Subclause 1.7.1 applies whether or not —
- (a) the landlord offers the tenant a substitute lease; or
  - (b) the tenant accepts an offer of a substitute lease; or
  - (c) a substitute lease is entered into by the parties; or
  - (d) the terms of a substitute lease entered into are not complied with; or
  - (e) a substitute lease is terminated in accordance with a provision of that lease referred to in subclause 1.5.9(c).
- 1.7.5 The landlord is to pay to the tenant compensation in accordance with this subclause as soon as is reasonably practicable after the termination date, but in any event not later than 30 days after a claim for compensation under this clause has been given to the landlord by the tenant.

## **1.8. Abatement of rent**

- 1.8.1 The landlord must allow the tenant an abatement of rent, and other occupancy costs, for any period of time during which the tenant cannot reasonably carry on the tenant's business in the new retail shop after the termination date of this lease —

- (a) because the tenant needs to fit out the new retail shop and to relocate the tenant's fixtures, fittings, furnishings, plant and equipment and stock-in-trade from the retail shop to the new retail shop; or
- (b) because the landlord had not provided the tenant with access to the new retail shop; or
- (c) because of any other actions of the landlord.

1.8.2 Subclause 1.8.1(a) does not apply to any period of time where there is unreasonable delay in fitting out the new retail shop and installing the fixtures, fittings, furnishings, plant and equipment, and stock-in-trade in the new retail shop, unless the delay is outside of the control of the tenant.

## **1.9. Dispute resolution**

Any question between the landlord and the tenant arising under this lease may be referred to the State Administrative Tribunal, or made the subject of a request to the Small Business Commissioner, where relevant, in accordance with the *Commercial Tenancy (Retail Shops) Agreement Act 1985*.

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