

SMALL BUSINESS DEVELOPMENT

SB301

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS ACT 1985

**COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS
AMENDMENT REGULATIONS 1992**

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Commercial Tenancy (Retail Shops) Agreements Amendment Regulations 1992*.

Principal regulations

2. In these regulations the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985** are referred to as the principal regulations.

[* *Published in the Gazette of 30 August 1985 at pp.3121-27.*
For amendments to 2 December 1992 see 1991 Index to Legislation of Western Australia p.278.]

Regulation 3A inserted

3. After regulation 3 of the principal regulations the following regulation is inserted —

“ **Specified businesses prescribed under section 3 (1)**

3A. Each of the following businesses is prescribed to be a “specified business” for the purpose of the definition of that expression in section 3 (1) of the Act —

- (a) drycleaning;
- (b) hairdressing;
- (c) beauty therapy;
- (d) shoe repair;
- (e) sale or rental of video tapes.

”.

Schedule amended

4. (1) Form 1 of the Schedule to the principal regulations is deleted and the following form is substituted —

“

FORM 1

**COMMERCIAL TENANCY (RETAIL SHOPS)
AGREEMENTS ACT 1985**

Section 6 (4)

[Reg 4]

DISCLOSURE STATEMENT

This Disclosure Statement is not complete unless it is accompanied by a copy of the form of the lease and a copy of the current year's itemized variable outgoings budget.

WARNING TO TENANT

Before signing any offer to lease, lease or associated document the Tenant should ensure that he or she fully understands this Disclosure Statement, the form of lease, and the outgoings budget and that the Tenant has negotiated any change he or she wishes to make.

Signing any of those documents will legally bind the tenant.

The Tenant should take independent legal and accounting advice before signing any document.

NOTE:

If there is insufficient space for full disclosure on any part of this form please attach additional sheets.

PART A**LANDLORD'S DISCLOSURE TO PROSPECTIVE TENANT****CENTRE/BUILDING DETAILS:**

Name of Centre/Building

Address of Centre/Building

.....

Current Number of Shops

- (a) Leased
 (i) occupied

(ii) unoccupied

- (b) Unleased
 (i) occupied

(ii) unoccupied

Current Total Gross Leasable Area of Centre/Building

Current Parking Facilities

(a) Approximate customer bays

(b) Approximate tenant bays

(c) Number of bays allocated
exclusively to tenantCentre/Building Facilities
and Services provided by
the Landlord available
for the Tenant's use.

(Delete if not applicable)
 Bin Rooms
 Common Area cleaning
 Common Area lighting
 Security
 Child minding centre
 Staff toilets
 Other:

NOTE: *The Tenant should ensure that the nature of those facilities and services are suitable to his or her requirements.*

Outstanding orders of Statutory or
Local Authorities affecting
the premises **YES NO**

Changes physically affecting the
Centre/Building of which Statutory
or Local Authorities have notified
the Landlord, or of which the Landlord
is aware **YES NO**

Alterations to the Centre/Building
submitted to or approved by
Statutory and Local Authorities and
proposed to be commenced within
the term of the Lease or any
statutory or contractual option **YES NO**

Redevelopment clause in Lease **YES NO**

Total or Partial Destruction clause
in Lease **YES NO**

The premises meet all current health, safety, building and fire regulations for the proposed use

YES NO NOT KNOWN

NOTE: *The Tenant should make his or her own enquiries with Statutory and Local Authorities relating to all regulations and proposed or approved alterations to the Centre/Building or the neighbourhood including changes of zonings, roads, other centres etc.*

Core trading hours of the Centre/Building

Mon	to
Tues	to
Wed	to
Thurs	to
Fri	to
Sat	to
Sun	to

NOTE: *Core hours may not exceed those permitted by legislation.*

After hours access to the Centre/Building and the premises at no cost to the Tenant

Mon	to
Tues	to
Wed	to
Thurs	to
Fri	to
Sat	to
Sun	to

Permitted use of the common areas for trading

YES NO

If permitted, on the following basis

Current tenant mix with retail classifications (*floor plan attached*)

Compulsory contributory membership of Merchants' Association

YES NO

Date on which contributions to Association commence

PROPOSED TENANCY DETAILS:

1. Premises

Address of premises/shop number

Gross leasable area for retail shops (method of measurement as set out in the lease or, if not provided in the lease, by the relevant *Building Owners and Managers Association Method of Measurement*)

New premises Approximately square metres (±5%)

Existing premises Certified at square metres

Permitted Use of Premises

2. Term

Term of Lease years/months
From to

Options years/months
From to

. years/months
From to

NOTE: *If the Tenant expects to extend his or her lease after the expiry of its Term and options, the Tenant must make enquiries of the Landlord before entering into the Lease.*

3. Occupation

Fixtures and fittings provided by the Landlord to the premises at the cost of the Landlord.

- (Delete if not applicable)*
 Air conditioning
 Electrical distribution board
 Lighting
 Painted walls
 Plastered walls
 Shop front
 Sink
 Sprinklers
 Suspended ceiling
 Telephone
 Water supply and waste
 Other:

Date on which the premises will be available for occupation or fit-out.

Landlord's requirements as to quality and standard of shop front and fit-out apply.

YES NO

(If yes, details are attached).

Landlord's contribution to shop front (if any)

YES NO

(If yes, details are attached).

4. Rent

Date on which rent payments commence

Frequency

Annual rent at commencement

Frequency of rent reviews

Formula or basis for reviews *(Delete if not applicable)*
 Consumer Price Index
 Fixed Percentage increase
 Market value
 Pre-set rent amounts
 Aggregate of previous rents
 Other:

Reduction of rent possible on review YES NO

Rent payable during a review dispute EXISTING RATE PROPOSED RATE OTHER

Rent payable by reference to turn-over YES NO

If yes, basis of calculation

NOTE: *If any part of the Tenant's rent is calculated on the turn-over of his or her business, the Tenant must elect in writing on the form entitled "Notice of Election that Rent be Determined by Reference to Turn-over" (Form 2) to make those payments. The Tenant should understand the full implication of this method of rent calculation which includes a requirement for the Tenant to disclose his or her trading figures to the Landlord.*

The Tenant is encouraged to seek independent legal and accounting advice.

Abatement of rent on destruction or damage YES NO

5. Variable Outgoings (Contributions to Landlord's expenses)

Variable outgoings payable by the Tenant YES NO

Date on which variable outgoings payments commence Frequency

Percentage of the total variable outgoings cost apportioned to the premises

Current annual contribution of the premises to the budget attached Approximately \$

Currency of variable outgoings year From to

NOTE: *For a list of the variable outgoings payable by the Tenant refer to the current budget attached and to Lease Clauses and and for the formula for apportionment of the variable outgoings refer to Lease Clauses and*

NOTE: *The proportion of the total cost of variable outgoings for the Centre/Building payable by the Tenant might vary periodically.*

6. Additional Charges payable by the Tenant

(Delete if not applicable)

- Costs following Tenant's default
- Grease trap cleaning
- Interest on outstanding money
- Legal fees for Landlord and for Tenant
- Pre-payment of rent or outgoings
- Security and air conditioning (for after hours operation)
- Stamp duty
- Wet waste removal
- Other:

7. Landlord's Interest

Landlord's interest in **FREEHOLD** **LEASEHOLD**
the Centre/Building

If leasehold, term of years remaining under Landlord's lease

Details of rights and obligations of the Landlord under that lease which affect the premises

NOTE: *If the Tenant is a sublessee he or she should seek independent legal advice on the security of his or her tenure.*

GENERAL

List of other agreements between —

the Prospective Tenant and the Landlord

or

representations made by the Landlord

PART B

PROSPECTIVE TENANT'S REQUIREMENTS DISCLOSED TO LANDLORD

You, the Tenant, have indicated to the Landlord special requirements in respect of the following: *(Details are attached).*

(Delete if not applicable)

- Air conditioning
- Air control
- Cool rooms/freezers
- Dedicated parking bays
- Delivery access
- Drainage
- External equipment
- Fire protection
- Floor loading
- Hot/cold water
- Power/lighting
- Security
- Shop fit-out
- Telephone/facsimile/radio
- Wall loading
- Wet/dry waste

Other:

You, the Tenant, have made representations to the Landlord which are relied on by the Landlord in respect of the following: *(Details are attached).*

DECLARATION BY LANDLORD AND PROSPECTIVE TENANT

We acknowledge that this Disclosure Statement contains or refers to all agreements and representations that influence us to contemplate entering into the proposed lease of the premises.

Name of Landlord:

Address of Landlord:

Signed by or on behalf of the Landlord:

Date:

Name of Prospective Tenant:

Address of Prospective Tenant:

Signed by or on behalf of the Prospective Tenant:

Date:

”

(2) Form 4 of the Schedule to the principal regulations is deleted and the following form is substituted —

“

FORM 4

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS ACT 1985

Section 19 (1)

[Reg 7]

**REFERENCE OF A QUESTION ARISING UNDER
A RETAIL SHOP LEASE**

**TO - THE COMMERCIAL REGISTRAR
OF THE COMMERCIAL TRIBUNAL
OF WESTERN AUSTRALIA**

The matter set out below is referred to the Commercial Registrar for mediation with a view to the Landlord/Lessor and the Tenant/Lessee attaining a solution to their dispute that is acceptable to them.

- 1. The Applicant is either
 - (1)* The Landlord/Lessor or
 - (2)* The Tenant/Lessee.

**Delete whichever is not applicable.*

- 2. State the full name/s, residential address/es and occupation/s of the Landlord/Lessor (if a natural person) or full name and address of Principal Office in Western Australia of the Landlord/Lessor (if a body corporate)

Name of contact person _____

Telephone No. of contact person _____

NOTE: *The Landlord/Lessor is usually not the managing agent. Do not insert under item 2 the name of the managing agent unless the managing agent is also the Landlord/Lessor. If you do not know who the Landlord/Lessor is, or are not sure, you should do a Title Search (ie. ownership search) of the property at the Titles Office in Perth. It is your responsibility to accurately advise the name and address of the Landlord/Lessor.*

- 3. State the full name/s, residential address/es and occupation/s of the Tenant/Lessee (if a natural person) or full name and address of Principal Office in Western Australia of the Tenant/Lessee (if a body corporate)

Name of contact person _____

Telephone No. of contact person _____

- 4. State the name and address of the retail shopping centre. (Answer this item only if the dispute relates to a tenancy in a retail shopping centre, otherwise state "Not Applicable")

- 5. If the dispute relates to a tenancy in a retail shopping centre, state

Shop number (if applicable) _____

Lettable floor area of Tenant's shop _____

Lettable floor area of retail shopping centre (if applicable) _____

- 6. If the retail shop tenancy is not in a retail shopping centre, state:

The address of the retail shop _____

The area of the retail shop (ie. the area leased) _____

- 7. State the questions that relate to the matter(s) in dispute and which you are now referring to the Commercial Registrar, together with all relevant facts and circumstances, and forward all relevant documents, including the lease, any agreement for lease, letters, consents and brochures (*photocopies are acceptable provided they are clearly legible*), assignment of lease, variations of lease, any relevant statement(s) by any third party who has knowledge of any matter material to resolving the matter(s) in dispute and, where relevant, a search of the relevant Certificate of Title and where the tenancy is in a retail shopping centre, a plan of the retail shopping centre, with the location of the retail shop coloured in. The nature of the matter(s) referred for mediation should be set forth in brief, but clear language, together with your advice as to how you believe the matter the subject of the mediation may be reasonably resolved to the satisfaction of both the Landlord/Lessor and the Tenant/Lessee — i.e. the results that you think will be reasonable to obtain.

* _____

8. I forward with this application the prescribed fee of \$_____

(Cheques are only to be made payable to the Commercial Tribunal).

Dated _____ 19 _____

.....
Signature of Applicant (or if the
Applicant is a body corporate, the
signature of a person duly
authorized by the body corporate
to sign this application).

***NOTE:** *If there is insufficient space, continue on A4 paper and cross reference to the relevant item number(s) stated on this form.*

INFORMATION FOR APPLICANT

The following definitions are extracted from the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. They are for your information and may assist you in completing your application to the Commercial Registrar —

“landlord”, in relation to a lease, means —

- (a) the person who, under the lease, grants or is to grant to the tenant the entitlement to occupy the premises the subject of the lease; or
 - (b) a person who obtains a reversionary interest in those premises,
- but does not include a person who assigns his interest as tenant under the lease;

“tenant”, in relation to a lease, means the person who, under the lease, is or would be entitled to occupy the premises the subject of the lease;

“lease” means any lease, licence, or agreement, whether in writing or not, that provides for the occupation of premises situated within the State whether for a term or by way of a periodic tenancy or a tenancy at will, and whether or not the lease, licence, or agreement is entered into outside the State or purports to be governed by any law other than the law of the State but does not include a licence or agreement relating to the common area of a retail shopping centre by reason only that it provides for a person to use a portion of the common area the continued use of which as a portion of the common area is not intended to be otherwise precluded;

“retail shop lease” means a lease that provides for the occupation of a retail shop other than where —

- (a) the retail shop has a floor area that exceeds 1 000 square metres; or
- (b) the lease is held by a corporation within the meaning of the Companies (Western Australia) Code² that would not be eligible to be incorporated in Western Australia as a proprietary company, or that is held by a subsidiary of such a corporation;

“retail shop” means —

- (a) any premises situated in a retail shopping centre that are used wholly or predominantly for the carrying on of a business; and
- (b) any premises not situated in a retail shopping centre that are used wholly or predominantly for the carrying on of —
 - (i) a business involving the sale of goods by retail; or
 - (ii) a specified business,

but does not include premises used wholly or partly for the carrying on of a business involving the retail sale of petroleum products as defined in section 47G of the *Transport Act 1968*¹ for use in road vehicles as so defined, other than premises used for that purpose by a tenant under a lease from a Landlord who is not a party to a franchise agreement within the meaning of that expression in the *Petroleum Retail Marketing Franchise Act 1980* of the Parliament of the Commonwealth;

"retail shopping centre" means a collection of premises —

- (a) five or more of which are used wholly or predominantly for the carrying on of —
 - (i) a business involving the sale of goods by retail; or
 - (ii) a specified business; and
- (b) all of which have, or upon being leased would have, a common head lessor but does not include a multi-level building except in relation to each floor of the building on which is situated a collection of premises in respect of which paragraphs (a) and (b) apply;

"specified business" means a business of a kind prescribed by the regulations to be a specified business. *(as at December 1992, these were drycleaning, hairdressing, beauty therapy, shoe repair, and sale or rental of video tapes)*

Your attention is also drawn to section 3 (3) of the Act, relating to "a question arising under a retail shop lease". Section 3 (3) of the Act reads as follows —

- " 3. (3) A reference in this Act to a question arising under a retail shop lease includes a reference to a question arising —
- (a) in relation to any communication, including a disclosure statement under section 6, between the parties to the lease, prior to the lease being entered into, which was material to the terms and conditions of the lease; or
 - (b) in relation to the lease under a provision of this Act. "
1. *Short title (as changed by section 5 of the Acts Amendment and Repeal (Transport Co-ordination) Act 1985) substituted under section 7 (3) (h) of the Reprints Act 1984.*
 2. *In respect of matters arising after 1 January 1991, the operation of the Companies (Western Australia) Code is subject to the provisions in Division 2 of Part 13 of the Corporations (Western Australia) Act 1990.* "

By His Excellency's Command,

D. G. BLIGHT, Clerk of the Council.