

Consistency In RSL Legislation

Although there are some what consistent Minimum Standards in each of the State and Territories respective Retail Tenancies Legislation there are significant areas that need to be addressed which in doing so lend themselves to a National Retail Shop Leases Legislative process.

End of Lease

The end of tenure is the most significant period where the inequities of the relevant legislations are clear. There should be an adoption of the ACT end of lease clauses with the market rental review processes of the Eastern State Legislations.

Further a review of minimum terms needs to be reviewed where there is the expectation that a return on investment and subsequent write down (amortization) of shop fittings cannot be realized.

Fair Market Rental Reviews

Whether this process is at Option, End of Lease or Mid Term the process should mimic the QLD, NSW and VIC acts with the reference to the CURRENT permitted usage also being adopted into all legislations.

Legal Fees

All States to be consistent, with each party to be responsible for their respective Legal Costs, put simply Lesson's to pay for the preparation of Lease Documentation. This should also be said for Lessor's Mortgage Consent Fees and where applicable initial Survey Costs.

Land Tax

Each State where not already to remove Land Tax as a recoverable expense.

Management Fees

All States where not already to remove Management Fees from recoverable outgoings.

Transparency in Sales Data Usage

It is common knowledge and often in lease negotiations opening disclosed, that Lessor's use the collection and collation of sales figures to their advantage this leverage is grossly disadvantages Lessee's.

Retail Shop Leases Registry

Each State if they have not already make available to the public copies, on request and at cost, of registered retail leases. This although not necessarily a convenient method for research by a Lessee should go some way to ensuring a transparency in available leverage given the collation of such data already to hand for Lessor's by the very nature of their business.

Fit Out Provisions

The practice of Lessor's onerously driving design and standards of shop fitting inconsistent with the Lessee's recognized merchandising and presentation. Through the insistence of use of superior products and finishes as well as design intended to add value to the Lessor's property aesthetics with little or no regard to the Lessee's return on such capital investment and the amortised time line of such fittings and their future use.

Churning

As in other industries this is the practice of manipulating change not for market driven purposes but to affect a financial gain over and above what the market would deem fair. In other words moving or changing operators, uses etc at end of lease purely to drive superior rents, terms and onerous fitout designs.

Lessor as Lessee

Where a lease ends and negotiations break down there needs to be a transparent and noticeable division between a new Lessee operating the same premises for the same permitted use and the Lessor. Here there is many cases where the Lessor has no intention to renew the lease and then either operates the same use or conspires with other parties to operate the same use from the same premises to receive a gain that would not otherwise been possible had the lease been renewed.