

Article Information

Author: Adam Rinaldi

Service: Leasing, Property & Development, Property Development, Property Transactions

Sector: Infrastructure, Real Estate

Landlord Update: Essential changes to retail and commercial leasing legislation in South Australia

The Retail and Commercial Leases (Miscellaneous) Amendment Act 2019 has significantly amended the Retail and Commercial Leases Act 1995 (RCLA).

Many of the *amendments* (which came into force on 1 July 2020) will impact on the procedure and practices of leasing and property agents – in that regard, where the RCLA applies to the lease:

- A copy of the proposed lease must be provided by a landlord (or the landlord's agent) to the prospective tenant as soon as negotiations are entered into with the particulars of the tenant, the commencing rent and the term of lease not required (refer to section 11(1) of the RCLA) – in *essence*, property and leasing agents will need to ensure that the landlord's template lease is provided to the prospective tenant when negotiations commence but it should be made clear that the document is merely a template lease issued pursuant to section 11(1) of the RCLA and that the lease will be amended (as necessary) to accord with and properly encapsulate the agreed terms together with any special conditions.
- At the time when a copy of a proposed lease is provided to a prospective tenant, the landlord (or landlord's agent) must also provide the prospective tenant with a copy of the Small Business Commissioner's information brochure in [this form](#) (refer to section 11(2) of the RCLA).
- The landlord (or the landlord's agent) must give the tenant a signed disclosure statement before the lease is entered into (refer to section 12(1) of the RCLA) – the RCLA has been amended to remove the requirement for landlords to provide tenants with a disclosure statement on the renewal of a lease.

The other significant amendment to the RCLA is that a landlord will be entitled to preserve (and lock in) the status of an excluded lease not subject to the RCLA which has a commencing rent exceeding the prescribed threshold (presently \$400,000 GST exclusive) which is entered into on or after 1 July 2020 – in that regard, an excluded lease of this nature will not be subject to the RCLA if:

- rent exceeds the prescribed threshold at the time the lease is lodged for registration;
- the lease is lodged for registration within three months after it is signed; and
- the landlord has notified the tenant in writing of lodgement within one month of lodgement and the lease remains registered for the term.

For leases falling within the category above, there is a significant advantage to the landlord in registering the lease so it will be important for landlords and their agents to manage the registration process and for the lease to include protections and positive obligations imposed on tenants to facilitate the timely registration of the lease to accord with these time limitations.

Further commentary with respect to the amendments to the RCLA is addressed in insight: [Essential changes to retail and commercial leasing legislation in South Australia](#).

We are assisting landlords (and their agents) to navigate the RCLA changes and obligations. Our team members would welcome the opportunity to discuss your specific enquiry and provide assistance.