

## WHAT are retail premises?

The Act defines Retail Premises as premises that, under the terms of the lease, are used wholly or predominantly for the sale or hire of goods by retail, or the retail provision of services. This excludes any area intended for use as a residence.

Retail premises are not just 'shops', but cover a much broader range of business premises.

## The Retail Leases Act 2003

The Act is complex legislation. Professional advice should be sought in understanding rights and obligations. Some of the key provisions of the Act are, in summary:

### Entering into a lease

- A copy of the lease must be provided to the tenant at negotiation stage, together with a copy of the Information Brochure published by the VSBC.
- A disclosure statement must be given to the tenant at least seven days before entering into the lease.
- A lease must be in writing and signed by all the parties to it, and the landlord must provide the tenant a copy signed by both parties.
- The landlord cannot pass onto the tenant the cost of preparing the lease or disclosure statement.
- A lease term under the Act (including any options) must be at least five years, although a tenant may request a shorter term.
- However, the Act (other than the dispute resolution provision) does not apply to a lease with a term of less than one year and where the tenant has not been in continuous occupancy for more than one year.
- Money paid as a security deposit must be held by the landlord in an interest bearing account. Interest forms part of the security deposit.

## WHY should I use the services of the VSBC?

The VSBC has been helping businesses resolve disputes and avoid litigation since 2003, saving parties the cost, time, emotion and distraction of VCAT or Court proceedings.

- Around 30% of disputes are resolved through preliminary assistance from the VSBC, at no cost to the parties;
- Around 80% of matters that progress to mediation are settled.

The VSBC has received over 12,000 applications for assistance since 2003.

Almost all disputes arising under the Act must be brought to the VSBC before they can be accepted by VCAT.

## WHERE can I find out more about my rights and obligations under the Act?

For more information about the services of the VSBC, provisions of the Act or for assistance with a dispute, contact:

**vsbc.vic.gov.au**  
**13 VSBC (13 8722)**

Information sheets and guidelines on various aspects of the Act are also available online.

The VSBC is the place to go for assistance and guidance on business disputes.



## Know your rights and obligations – Commercial Leases

The Office of the Victorian Small Business Commissioner is the place to go for assistance and guidance on business disputes.



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Resolving business disputes

## WHAT is the Victorian Small Business Commissioner?

The Victorian Small Business Commissioner (VSBC) is an independent statutory role established by the State Government.

The VSBC provides information and assistance to tenants and landlords on their rights and obligations under the *Retail Leases Act 2003* (the Act).

The VSBC also provides a quick, effective, low cost dispute resolution service to landlords and tenants whether in retail premises or non-retail commercial premises.

Almost all disputes arising under the Act must be brought to the VSBC before they can be accepted by the Victorian Civil and Administrative Tribunal (VCAT).

Exceptions to this are disputes solely relating to rent payable or applications for injunctions.

The VSBC provides independent dispute resolution services and seeks to resolve disputes to avoid litigation.

Disputes between landlords and tenants in non-retail premises may also be brought to the VSBC for attempted dispute resolution, under the *Small Business Commissioner Act 2003*.

## HOW does the VSBC resolve disputes?

The VSBC resolves disputes either by

- Preliminary assistance, which involves assisting the parties over the telephone or by email to work out a solution to the issue; or
- Mediation, where the parties are brought together with an experienced mediator to confidentially discuss their issues with the aim of reaching a resolution acceptable to both parties.

## Retail Leases

### During a lease

- If the lease provides for a rent review, it must state when the review is to take place, and the basis on which the review will be made.
- A lease cannot prevent the reduction of the rent when rent is reviewed or adjusted.
- A tenant is only liable to pay outgoings specified in the estimate of outgoings and the lease.
- The landlord must provide estimates of outgoings and statements of outgoings during the course of the lease.
- Capital costs relating to the premises are not recoverable from the tenant.
- Land tax is not recoverable from the tenant.
- The landlord is responsible for maintaining in a condition consistent with the condition of the premises when the lease was entered into the structure and fixtures, plant and equipment; and appliances, fittings and fixtures relating to specified services.
- The tenant may arrange for urgent repairs, subject to complying with prescribed procedures.
- The landlord must notify the tenant in writing at least 60 days prior to any proposed alterations or refurbishments that may affect the tenant's business. The tenant may be entitled to compensation.
- A landlord may be liable to pay a tenant compensation for loss or damage resulting from the landlord's actions or inactions affecting the tenant's trading at the retail premises.

## Retail Leases

### Selling the business and assigning the lease

- A landlord is only entitled to withhold consent to the assignment of a lease in certain, limited circumstances.
- An assignment of a lease is taken as a continuation of that lease.
- A landlord can recover from the tenant reasonable legal and other expenses incurred in connection with an assignment (or sublease).

### At the end of a lease

- If no option exists, the landlord must notify the tenant in writing within 6–12 months of lease expiry whether the landlord will offer a lease renewal or not, and if so, the terms of any renewal.
- If an option exists, the landlord must notify the tenant of the last date the tenant can exercise the option, 6–12 months prior to that date.
- An option may not be exercisable by the tenant if the tenant has not remedied any notified lease default or has persistently defaulted throughout the lease term.
- If an option is exercised or the lease is to be renewed, the landlord must provide a disclosure statement at least 21 days prior to the end of the lease.
- The landlord must return the security deposit plus interest as soon as practicable after the lease ends provided the tenant has performed all of its obligations under the lease.

