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Retail leases in NSW

What the Retail Leases Act gives you, and what it quietly takes off the table

Current at October 2026. This guide states the NSW law in force at October 2026. A reform bill, the Retail Leases Amendment (Review) Bill 2026, was still before Parliament on 22 October 2026 and is not yet law. As the bill stands, its changes won't apply to a lease entered into before they start. A renewal entered into after a change starts may be caught, because the Act treats a renewal as entering into a lease.

Start here: is your lease actually a retail lease?

This matters more than anything else in this guide. The Act does not cover every shop, and the tests are not the ones people expect.

The Act covers premises used wholly or mainly for one of the retail businesses listed in the regulations, and any business in a retail shopping centre. Then come the exclusions. A shop with a lettable area of **1,000 square metres or more** is outside the Act. So is a lease with a term of **25 years or more**, counting every option to renew, and a lease of **under 6 months** with no right to extend, although a run of short leases adding up to more than a year brings the Act back in. There are other exclusions, including a list of uses set out in a schedule to the Act, and premises used mainly to run a business on the landlord's behalf.

- There is **no rent threshold** in NSW. You may have read that leases under a certain rent are excluded. That is not the law here.
- Get this wrong and everything below is wrong too. If you are near the line on floor area, have someone measure it against the lease plan before you rely on any of this.

Before you sign

The landlord's disclosure statement, at least 7 days before

The landlord has to give you a disclosure statement in the prescribed form, and it has to arrive at least 7 days before the lease is entered into. That document is where the outgoings, the fit-out position and the centre information are meant to be spelled out.

If you never got one, got it less than 7 days before the lease was entered into, or it was incomplete or materially false or misleading when given, you can terminate the lease by written notice **within 6 months** of entering into it, and claim compensation for what it cost you to get in, including fit-out spend.

There is a limit. If the statement was given but was incomplete or misleading, the landlord can stop you terminating only by showing three things: that it acted honestly and reasonably, that it ought reasonably to be excused, and that you're in substantially as good a position as you would have been. That defence doesn't help a landlord who gave no statement at all. Six months is not long. If something in your disclosure statement turned out to be wrong, raise it early rather than living with it.

You have to give one back

Within 7 days of receiving the landlord's statement, unless the landlord agrees a longer period, the tenant must give the landlord a completed lessee's disclosure statement in the prescribed form. It carries a penalty. It gets forgotten constantly, usually because everyone is focused on the lease itself.

Undisclosed contributions are void

If the lease makes you pay for finishes, fixtures, fittings, equipment or services and that liability was not disclosed to you in the disclosure statement, the clause is void. Not reduced. Void.

There is no cooling off period

NSW retail leases have none. The word does not appear in the Act. If someone tells you that you have a week to change your mind after signing, that isn't NSW law. Once it is signed, you are in it, unless one of the Act's own exits applies, such as the disclosure statement rule above.

Money: what can and cannot be passed to you

The Act does not set your rent. What it does is knock out particular ways of charging you.

The charge	Where you stand
Capital costs of the building	Void. You cannot be made to pay them
Depreciation	Void
Interest and charges on the landlord's own borrowings	Void
Key money, and the landlord's lease preparation costs	Prohibited, and recoverable if paid. The one exception: once your disclosure statement is in, the landlord can charge a reasonable amount for changes you ask for, other than changes to your details, the rent or the term, and it has to show you the bill first
Land tax	Recoverable, but capped. Your share is limited to what the tax would have been if that land were the only land the landlord owned, held outside a special trust and not by a non concessional company
Any outgoing at all	Only if it was disclosed in the landlord's disclosure statement, and the lease says what it is, how it is worked out and shared, and how it is collected. If the estimate had no reasonable basis, your share is capped at the estimate, and you can get back anything you paid that you did not owe. Advertising and promotion costs are not outgoings for this purpose, so these rules don't cover them. A lease can still make you contribute to the landlord's advertising and promotion costs, and if it does, the Act has its own rules for that contribution, including a marketing plan at least a month before each accounting period and an audited yearly statement of what was spent.

The land tax line is the one people get wrong in both directions. It is not banned in NSW. It is limited, and the single holding basis usually produces a much smaller number than the landlord's actual assessment.

You are also entitled to a written estimate of the outgoings you contribute to, itemised the same way the disclosure form itemises them.

Rent reviews

The 12 month rule

The lease cannot change your base rent within 12 months of the lease being entered into, or within 12 months of the last change. "Entered into" has a set meaning. It's the earliest of you taking possession, you starting to pay rent, or both sides signing, so it may not be the start date printed on the lease. Increases by a fixed dollar amount or a fixed percentage are not caught, and a lease can raise the rent that way as often as it likes. Market reviews and CPI reviews are.

Two methods, landlord's choice: void

A clause that lets one party pick which of two or more review methods applies on a given occasion is void, as is a clause that picks whichever method produces the higher rent. So the "greater of CPI or market" formula that turns up in commercial leases does not survive in a retail one.

Ratchets are void here

Ratchet clauses are void in NSW retail leases. Where a review could send the rent down, such as a review to current market rent, a clause that stops the rent falling, or limits how far it can fall, has no effect.

What current market rent means

Where the lease reviews to current market rent, the Act reads in a definition: the rent a willing landlord and a willing tenant would reasonably agree at arm's length, both acting knowledgeably and prudently. It's worked out on an effective basis. Incentives commonly offered to new tenants count, and the value of your own goodwill and your fixtures and fittings is ignored. If you can't agree, a retail valuer appointed by agreement or by the Registrar decides, and the two of you split the valuer's cost equally.

Three things landlords should have on their list

- Registration. If the lease runs for more than 3 years once any option periods are added in, or the parties agreed to register it, the landlord must lodge it for registration within 3 months of getting it back signed by the tenant. A 3 year lease with a 3 year option counts. There is a penalty for missing it, and the clock can extend for delays outside your control, such as waiting on a mortgagee's consent.
- Fit-out contributions. If the tenant is to pay towards work you carry out to enable their fit-out, the maximum amount or the formula has to be agreed in writing before the lease is entered into. Agree it late and you may not recover it.

- Disturbance. The Act gives the tenant a right to compensation if the landlord substantially blocks access, unreasonably disrupts trade or leaves plant it looks after broken down, and then doesn't fix the problem as soon as reasonably practicable after a written request. Planning works? You can limit that claim with a lease clause, backed by a specific written statement given to the tenant before the lease is entered into that describes the disruption, how likely it is, and its timing, duration and effect. A general warning that works may happen is not enough.

If it goes wrong

A retail lease dispute can't go straight to the Tribunal or a court. Before you can bring a claim, the dispute has to go to mediation through the Registrar of Retail Tenancy Disputes, unless what you need is an injunction. Proceedings can only start once the Registrar certifies that mediation has failed, or the Tribunal or court is satisfied it is unlikely to resolve things. Claims up to $750,000 go to the NSW Civil and Administrative Tribunal. They generally have to be lodged within 3 years, and after that only with the Tribunal's leave, up to 6 years.

That's often good news. Mediation costs a fraction of a hearing, and when it works, it works early enough for the commercial relationship to survive.

The short version

- Check the use, the floor area and the term first. If the Act does not apply, none of this does.
- Disclosure runs both ways, and both directions have deadlines measured in days.
- Several charges that look normal in a commercial lease are simply void in a retail one.
- No cooling off. Get the advice before you sign, not after.

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https://theleasinglawyer.com.au/#contact-form

General information only, current at the date below. It is not legal advice and no one should act on it without advice about their own lease.