

Authorised Version No. 003
Retail Leases Regulations 2003

S.R. No. 30/2003

Authorised Version incorporating amendments as at
1 January 2011

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S.R. No. 30/2003

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1 Objectives

The main objectives of these Regulations are—

- (a) to make provision with respect to the amount of occupancy costs for the purpose of excluding certain retail premises; and
- (b) to make provision with respect to the amount of outgoings payable by a tenant; and
- (c) to prescribe the form of the landlord's disclosure statement.

2 Authorising provisions

These Regulations are made under sections 4(2)(a), 25(d), 39(2), 40(2), 47(5)(b)(i), 72 and 99 of the **Retail Leases Act 2003**.

3 Commencement

These Regulations come into operation on 1 May 2003.

4 Revocation

- (1) The Retail Tenancies Reform Regulations 1998¹ are **revoked**.
- (2) Despite subregulation (1), the Retail Tenancies Reform Regulations 1998 continue to have effect for the purposes of the continued application of the **Retail Tenancies Reform Act 1998** as provided by section 119 of the **Retail Leases Act 2003** to a retail premises lease to which the **Retail Tenancies Reform Act 1998** applied immediately before its repeal.

r. 5

5 Definitions

In these Regulations—

Act means the **Retail Leases Act 2003**;

relevant fraction means the fraction calculated using this formula—

$$\frac{A}{B}$$

where—

A is the lettable area of the retail premises; and

B is the total of lettable areas of all the retail premises which receives the benefit of the outgoing.

6 Excluded retail premises

For the purposes of section 4(2)(a) of the Act, the prescribed amount is \$1 000 000 per annum.

7 Occupancy costs

Reg. 7
(Heading)
substituted by
S.R. No.
91/2010
reg. 4(1).

* * * * *

Reg. 7(1)
revoked by
S.R. No.
91/2010
reg. 4(2).

(2) For the purposes of section 4(3)(c) of the Act, advertising and promotional services, including marketing fund contributions, is prescribed as an other kind of cost.

8 Disclosure statement

The form of disclosure statement prescribed for the purposes of sections 17(1)(a), 26(1), 61(5) and 61(5A) of the Act is in Schedule 1.

Reg. 8
amended by
S.R. No.
91/2010 reg. 5.

9 Small Business Commissioner to be notified of lease

For the purposes of section 25(d) of the Act, the following other matters are prescribed—

- (a) the lease expiry date; and
- (b) the date on which or the period within which an option may be exercised, if any; and
- (c) the landlord's e.mail address, if any; and
- (d) the tenant's e.mail address, if any.

10 Determination and apportionment of outgoing

For the purposes of section 39(2) of the Act, the amount of an outgoing may be determined and apportioned to a tenant by multiplying the total amount of the outgoing by the relevant fraction.

11 Maximum outgoing

For the purposes of section 40(2) of the Act, a tenant is not liable to contribute towards an outgoing of the landlord in excess of an amount calculated by multiplying the total amount of the outgoing by the relevant fraction.

12 Statement of outgoings

For the purposes of section 47(5)(b)(i) of the Act, the prescribed percentage is 10 percent.

13 Advertising or promotion adjustment

For the purposes of section 72(3) of the Act, the adjustment is to be made on a pro rata basis, only taking into account expenditure during the term of that lease.

Sch. 1

Sch. 1
substituted by
S.R. No
91/2010 reg. 6.

SCHEDULE 1
DISCLOSURE STATEMENT
by the landlord under the
Retail Leases Act 2003

NOTE

This statement is to be completed by the Landlord and should be provided to the Tenant along with the Information Brochure about retail leases published by the Small Business Commissioner and a copy of the lease at least 7 days before the signing of a new lease. The Information Brochure is also available at the Office of the Small Business Commissioner.

If the Tenant has exercised or is entitled to exercise an option to renew a retail premises lease, the Landlord is required to provide this statement to the Tenant at least 21 days before the end of the current term.

In the situation where all of the parties to a retail premises lease enter into an agreement to renew the lease, the Landlord is required to provide this statement to the Tenant at least 14 days after the entering into of the agreement.

The layout of this statement does not need to be the same as the prescribed disclosure statement in the Retail Leases Regulations 2003.

It is prudent for a Tenant to obtain independent legal and financial advice before entering into a retail premises lease.

The Tenant has remedies including termination of a lease under the **Retail Leases Act 2003** if information in this statement is misleading, false or materially incomplete.

Information contained in this statement is correct as at the date of this statement but may change after the date of this statement and during the term of the lease.

DISCLOSURE STATEMENT
by the landlord

Landlord:	
Tenant:	
Premises:	

CONTENTS

Key disclosure items

- Part 1 Premises
- Part 2 Term of lease and options to renew lease
- Part 3 Works, fit out and refurbishment
- Part 4 Rent
- Part 5 Outgoings
- Part 6 Other costs
- Part 7 Alteration works (including renovations, extensions, redevelopment, demolition)
- Part 8 Trading hours
- Part 9 Retail shopping centre details
- Part 10 Other disclosures
- Part 11 Landlord acknowledgements and signature
- Part 12 Tenant acknowledgements and signature
- Part 13 Attachments

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KEY DISCLOSURE ITEMS

1	Annual base rent under the lease (see item 10.1)	\$	p.a.
		Including/Excluding GST	
2	Is a rent based on turnover payable by the tenant in year 1? (see item 12)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3	Total estimated outgoings and promotion and marketing costs for the tenant in year 1 (see Part 5 and Part 6)	\$	Including/Excluding GST
4	Term of the lease (see item 5)	years	months
5	Estimated commencement date of the lease (see item 5.1)	/	/20
6	Estimated handover date of the premises (see item 7.1)	/	/20
7	Does the tenant have an option to renew for a further period (exercised in writing and given to the landlord on or before the last day stated in the option clause)? (see item 6)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8	Does the lease provide the tenant with exclusivity in relation to the permitted use of the premises? (see item 2.2)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

PART 1 PREMISES

1 Premises details

1.1 Street address of premises

[insert street address of premises and, as applicable, shop number, name of the building/centre in which the premises is located, street address of the building/centre]

1.2 Plan of premises (if available)

[insert description of premises by reference to a prepared plan. Attach the plan to this disclosure statement as per item 33.1]

1.3 Lettable area of premises m²

Actual/Estimate

Will a survey be conducted? Yes

No

1.4 Existing structures, fixtures, plant and equipment in the premises, provided by the landlord (excluding any works, fit out and refurbishment described in Part 3)

[Select as appropriate]

- | | |
|--|---|
| <input type="checkbox"/> air conditioning | <input type="checkbox"/> plastered walls |
| <input type="checkbox"/> cool room | <input type="checkbox"/> shop front |
| <input type="checkbox"/> floor coverage | <input type="checkbox"/> sink |
| <input type="checkbox"/> grease tap | <input type="checkbox"/> sprinklers |
| <input type="checkbox"/> hot water service | <input type="checkbox"/> suspended ceilings |
| <input type="checkbox"/> lighting | <input type="checkbox"/> telephone |
| <input type="checkbox"/> mechanical exhaust | <input type="checkbox"/> water supply |
| <input type="checkbox"/> painted walls | <input type="checkbox"/> waste |
| <input type="checkbox"/> electrical distribution load (3 phase) | |
| <input type="checkbox"/> electrical distribution load (single phase) | |
| <input type="checkbox"/> separate utility meter—gas | |
| <input type="checkbox"/> separate utility meter—water | |
| <input type="checkbox"/> separate utility meter—electricity | |
| <input type="checkbox"/> other | |
-

1.5 Services and facilities provided by the landlord for the benefit of the premises (for example, security services, cleaning)

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2 Permitted use

2.1 Description of permitted use

[note: the tenant should investigate if the proposed use of the premises is permitted under planning laws]

2.2 Is the permitted use described in item 2.1 exclusive to the tenant? Yes
 No

3 Number of car parking spaces

3.1 Approximate total spaces spaces

3.2 Available spaces for customers of the building/centre spaces

3.3 Reserved spaces for use of the tenant only spaces

4 Head lease

4.1 Is the premises under a head lease or Crown lease? Yes
 No

4.2 Has the landlord provided a copy of the head lease or Crown lease to the tenant? Yes—attached as per item 33.2
 No
 Not applicable

4.3 Current term under the head lease or Crown lease and option/s to renew

- Not applicable
- Details of head lease as follows:

Current term:

years

/ /20 to / /20

Options to renew:

years

/ /20 to / /20

[list any options for further terms held by the landlord under the head lease.]

4.4 Is the head landlord's consent to the lease required? Yes
 No

PART 2 TERM OF LEASE AND OPTION/S TO RENEW LEASE

5 Term of lease

5.1 Date lease commences / /20
(see also date of handover at item 7) Actual/Estimate

5.2 Length of term years months

5.3 Date lease expires / /20
(based on the date indicated at item 5.1 as the date the lease commences)

6 Option/s to renew lease

6.1 Option/s details
(note: an option to renew a lease must be exercised in writing and given to the landlord on or before the last day stated in the option clause of the lease)

No options to renew lease

Options as follows:

Length of option	Period of option	Exercise date
years	/ /20 to	/ /20 to
Actual/Estimate	/ /20	/ /20
years	/ /20 to	/ /20 to
Actual/Estimate	/ /20	/ /20

[List all options to renew lease]

PART 3 WORKS, FIT OUT AND REFURBISHMENT

7 Date of handover

7.1 Date of handover / /20
(if different to the date the lease commences indicated at item 5.1) Actual/Estimate

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8 Landlord's works

8.1 Description of works to be carried out by the landlord before the date the lease commences

[exclude any works that form part of the tenant's fit out at item 9]

8.2 Estimate of expected contribution \$
by the tenant towards the cost of the
landlord's works

[see also outgoings (item 14) in relation to any maintenance and repair outgoings]

9 Tenant's fit out works

9.1 Fit out works to be carried out by the tenant
(excluding the landlord's works at item 8)

9.2 Is the landlord providing any contribution towards the cost of the tenant's fit out?

Yes

[insert details of landlord's contribution]

No

9.3 Does the landlord have requirements as to the quality and standard of shop front and fit out?

Yes

[insert details or provide fit out guide]

No

PART 4 RENT

10 Annual base rent

10.1 Starting annual base rent \$
(i.e. when the lease commences) Including/Excluding GST

10.2 Rent free period

[describe any rent free period]

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10.3	Date of rent commencement	/ /20
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10.4	How rent payments are to be made? <i>[insert description of how rent is paid—e.g. by equal monthly instalments in advance on the first day of each month, other than the first and last payments which are calculated on a pro-rata basis]</i>
------	---

11 Rent adjustment (rent review)

11.1	Rent adjustment date(s) and adjustment method <i>[insert a list of all rent adjustment dates and adjustment methods—e.g. fixed increase by X%, fixed increase by \$X, current market rent, indexed to CPI]</i>
------	---

12 Rent based on turnover

12.1	Is a rent based on turnover payable by the tenant? (Note, the lease must specify the method by which a rent based on turnover is to be determined) <input type="checkbox"/> Yes <i>[insert method of calculating the turnover rent]</i> <input type="checkbox"/> No
------	---

12.2	If a rent based on turnover is not required to be paid, does the landlord require the tenant to provide details of turnover?	<input type="checkbox"/> Yes <input type="checkbox"/> No
------	--	---

PART 5 OUTGOINGS

13 Contribution by tenant towards landlord's outgoings

- | | | |
|------|--|---|
| 13.1 | Is the tenant required to pay or contribute towards the landlords outgoings? | <input type="checkbox"/> Yes
<input type="checkbox"/> No |
|------|--|---|
-
- | | |
|------|--|
| 13.2 | Describe any period during which the tenant is not required to pay outgoings |
|------|--|
-

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13.3	Date on which payment of outgoings is to commence	/ /20
13.4	Formulae for apportioning outgoings	
	<i>[insert formulae on how outgoings payable by tenant is to be apportioned]</i>	
14	Outgoings estimates (annual) for the 12 month period	
	<i>/ /20 to / /20</i>	
	<i>[State which of the following are payable by the tenant. The landlord may be prevented by the Retail Leases Act 2003 from claiming certain costs.]</i>	
		Estimate (including GST) per annum for the building/centre
14.1	Administration	
	Administration costs (excluding management fees and wages)	\$
	Audit fees	\$
	Management fees	\$
14.2	Air conditioning/temperature control	
	air conditioning maintenance	\$
	air conditioning operating costs	\$
14.3	Building/centre management	
	Body corporate/strata levies	\$
	Building intelligence services	\$
	Customer traffic flow services	\$
	Energy management services	\$
	Gardening and landscaping	\$
	Insurance	\$
	Pest control	\$
	Ventilation	\$

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14.4	Building/centre security	
	Caretaking	\$
	Emergency systems	\$
	Fire levy	\$
	Fire protection	\$
	Security services	\$
14.5	Cleaning	
	Cleaning consumables	\$
	Cleaning costs (excluding consumables)	\$
14.6	Communications	
	Post boxes	\$
	Public telephones	\$
14.7	Customer facilities	
	Car parking	\$
	Child minding	\$
	Escalators	\$
	Lifts	\$
	Uniforms	\$
14.8	Customer information services	
	Information directories	\$
	Public address/music	\$
	Signage	\$
14.9	Government rates and charges	
	Local government rates and charges	\$
	Water, sewerage and drainage rates and charges	\$
	(Note: under section 50 of the Retail Leases Act 2003 , the landlord may not claim land tax as an outgoing)	

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14.10	Repairs	
	Repairs and maintenance	\$
	Sinking fund for repairs and maintenance	\$
	(Note: under section 41 of the Retail Leases Act 2003 , the landlord may not claim the capital costs of the building/centre in which the premises are located)	
14.11	Utility services	
	Electricity	\$
	Gas	\$
	Oil	\$
	Water	\$
14.12	Waste management	
	Sewerage disposal	\$
	Waste collection and disposal	\$
14.13	List any other outgoings	\$
		\$
		\$
14.14	Total outgoings for the building/centre	\$
14.15	Formula for determining tenant's share of the total outgoings for the building/centre	
14.16	Estimated tenant contribution to outgoings	\$

PART 6 OTHER COSTS

15 Advertising and promotional costs

- 15.1 Is the tenant required to contribute towards advertising and promotional costs (including marketing fund contributions) for the building/centre? Yes No
-

-
- 15.2 Tenant's contribution to advertising and promotional costs per annum
- Not applicable
 - Yes—contribution per annum is \$ Actual/Estimate
 - Yes—contribution per annum is % of the rent (excluding GST) payable from time to time
 - Yes [*insert details of tenant's contribution per annum and how this is determined*]
-

16 Other monetary obligations and charges

- 16.1 Outline any costs arising under the lease including up-front costs or other costs not part of the outgoings and not referred to elsewhere in this disclosure statement
- [*e.g. interest and legal costs*]
-

PART 7 ALTERATION WORKS (INCLUDING RENOVATIONS, EXTENSIONS, REDEVELOPMENT, DEMOLITION)

17 Alteration works

- 17.1 Are there any alteration works, planned or known to the landlord at this point in time, to the premises or building/centre, including surrounding roads, during the term or any further term or terms?
- Yes
- [*insert details of the proposed works*]
- No
-

18 Clauses in lease dealing with relocation and demolition works

- 18.1 Clause(s) in lease providing for relocation of tenant
- Clause(s) of the lease
 - Not applicable
-
- 18.2 Clause(s) in lease providing for demolition of the premises or building/centre
- Clause(s) of the lease
 - Not applicable
-

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PART 8 TRADING HOURS

19 Core trading hours relevant to the tenant

Monday	am to	pm
Tuesday	am to	pm
Wednesday	am to	pm
Thursday	am to	pm
Friday	am to	pm
Saturday	am to	pm
Sunday	am to	pm
Public holidays	am to	pm

20 Tenant access to premises outside core trading hours

20.1 Is the tenant permitted to access the premises and building/centre outside core trading hours?

Yes

[provide details including cost of access]

No

PART 9 RETAIL SHOPPING CENTRE DETAILS

[note: this Part must only be completed if the premises are in a retail shopping centre as defined in section 3 of the *Retail Leases Act 2003*]

21 Retail shopping centre details

21.1	Total number of shops	shops
21.2	Gross lettable area of the centre	m ² Actual/Estimate

22 Annual turnover of the shopping centre

22.1	Annual estimated turnover (where collected)	\$ Including GST/ Excluding GST
------	---	---------------------------------------

22.2	Annual estimated turnover by specialty shops per m ² (where collected)	
	Food	\$ per m ² Including GST/ Excluding GST
	Non food	\$ per m ² Including GST/ Excluding GST
	Services	\$ per m ² Including GST/ Excluding GST

23 Major/anchor tenants

23.1 Major/anchor tenants and lease expiry dates

[list all major and anchor tenants (e.g. department stores, discount department stores, supermarkets) and the dates on which leases held by those tenants expire]

24 Floor plan and tenancy mix

24.1 Floor plan showing tenancy mix, common areas, common area trading, kiosks and major tenants Attached as per item 34.1

24.2 Does the landlord assure the tenant that the current tenant mix will not be altered by the introduction of a competitor? Yes
 No

25 Customer traffic flow information

25.1 Does the landlord collect customer traffic flow information? Yes—attached as per item 34.2
 No

26 Casual mall licensing for common areas

26.1 Do you adhere to the Shopping Centre Council of Australia's Casual Mall Licensing Code of Practice? Yes—casual mall licensing policy attached as per item 34.3
 No

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PART 10 OTHER DISCLOSURES

27 Other disclosures

27.1 Are there any current legal proceedings in relation to the lawful use of the premises or building/centre?

Yes

[provide details]

No

28 Representations by landlord

28.1 Any other representations by the landlord or the landlord's agent

[landlord to insert details of any other oral or written representations made by the landlord or the landlord's agent]

PART 11 LANDLORD ACKNOWLEDGEMENTS AND SIGNATURE

29 Acknowledgements by landlord

By signing this disclosure statement, the landlord confirms and acknowledges that:

- this disclosure statement contains all representations in relation to the proposed lease by the landlord and the landlord's agents as at the date of this disclosure statement;
 - this disclosure statement reflects all agreements that have been made by the parties;
 - the landlord has not knowingly withheld information which is likely to have an impact on the tenant's proposed business.
-

Warnings to landlord when completing this disclosure statement:

- The tenant may have remedies including termination of lease if the information in this statement is misleading, false or materially incomplete.
-

30 Landlord's signature

30.1 Name of landlord

[insert name of landlord]

30.2 Signed by the landlord or the landlord's agent for and on behalf of the landlord

x.....

30.3 Name of the landlord's authorised representative or landlord's agent

[insert name of person signing with the authority of the landlord]

30.4 Date / /20

PART 12 TENANT ACKNOWLEDGEMENTS AND SIGNATURE

31 Acknowledgements by the tenant

By signing this disclosure statement, the tenant confirms and acknowledges that the tenant received this disclosure statement

Before entering into a lease, tenants should consider these key questions:

- Does the planning authority allow your proposed use for the premises under planning law?
 - Is the security of your occupancy affected by:
 - mortgages, charges or encumbrances granted by the landlord?
 - rights and obligations under a head lease?
 - Does the premises comply with building and safety regulations? Is the premises affected by outstanding notices by any authority?
 - Could your trading be affected by disturbances or changes to the building/centre?
 - Does the landlord require you to refurbish the premises regularly or at the end of the lease?
 - Can the landlord end the lease early even if you comply with the lease?
 - Are all the existing structures, fixtures and plant and equipment in good working order?
 - Are you required to make good the premises at the end of the lease?
 - Is the tenancy mix of the shopping centre (if applicable) likely to change during the term of the lease? (see item 24.2)
-

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32 Tenant's signature

It is important that a tenant seek independent legal and financial advice before entering into a lease.

32.1 Name of tenant

[insert name of tenant]

32.2 Signed by the tenant or for and on behalf of the tenant

x.....

32.3 Name of the tenant's authorised representative

[insert name of person signing with the authority of the tenant]

32.4 Date / /20

PART 13 ATTACHMENTS

33 List of attachments

		Attached?
33.1	Plan of premises (see item 1.2)	<input type="checkbox"/> Yes <input type="checkbox"/> Not applicable
33.2	Head lease or Crown lease (see item 4.2)	<input type="checkbox"/> Yes <input type="checkbox"/> Not applicable
33.3	Additional attachments	
	<i>[list of any additional attachments]</i>	

34 List of attachments—retail shopping centre

*[this item must be completed only if the premises are in a retail shopping centre as defined in section 3 of the **Retail Leases Act 2003**]*

		Attached?
34.1	Floor plan (see item 24.1)	<input type="checkbox"/> Yes <input type="checkbox"/> Not applicable
34.2	Customer traffic flow statistics (see item 25.1)	<input type="checkbox"/> Yes <input type="checkbox"/> Not applicable

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34.3 Casual mall licensing policy Yes
(see item 26.1) Not applicable

34.4 Additional attachments relating to the retail shopping centre

[list of any additional attachments]

ENDNOTES

1. General Information

The Retail Leases Regulations 2003, S.R. No. 30/2003 were made on 23 April 2003 by the Governor in Council under sections 4(2)(a), 25(d), 39(2), 40(2), 47(5)(b)(i), 72 and 99 of the **Retail Leases Act 2003**, No. 4/2003 and came into operation on 1 May 2003: regulation 3.

The Retail Leases Regulations 2003 will sunset 10 years after the day of making on 23 April 2013 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Retail Leases Regulations 2003 by statutory rules, subordinate instruments and Acts.

Retail Leases Amendment Regulations 2010, S.R. No. 91/2010

Date of Making: 14.9.10

Date of Commencement: 1.1.11: reg. 3

Endnotes

3. Explanatory Details

¹ Reg. 4(1): S.R. No. 82/1998.