

## **"Landlords must be proactive with your Lease"**

With the introduction of the Retail Leases Act in 1994 Landlords need to be aware of their obligations and responsibilities to their Lessees, particularly in relation to their intentions at the end of the lease and during negotiations for a new lease.

The Act requires Landlords to give not less than 6 months but not more than 12 months before the expiry of a lease, written notification to the Lessee either:

- a) Offering the Lessee a renewal or extension of the lease on the terms outlined in the notification (i.e. rent, term etc); or
- b) Informing the Lessee that they do not propose to offer the lessee a renewal or extension of the lease.

If the Landlord fails to give such notification, the term of the lease is then extended for 6 months after written notification is given to the lessee.

It is therefore very important for Landlords to be proactive in their role as Landlord and to ensure these strict requirements and timelines are met particularly when dealing with a potentially 'troublesome Lessee'.

The Act also outlines that a retail shop lease is considered to have been entered into when a person enters into possession of the retail shop as Lessee under the lease or begins to pay rent as Lessee under the lease (whichever happens first).

The operation of this section has been considered in recent cases<sup>1</sup> of the Administrative Decisions Tribunal. These cases indicate a willingness of the Tribunal to take into consideration other "extenuating" circumstances – particularly in the correspondence exchanged during lease negotiations between the parties in finding the existence of a lease.

If it can be shown that there has been sufficient 'consensus' as to the terms of the lease, the Lessee may be able to establish that a new lease is in existence. It is not necessary that the parties reach an agreement on all the terms or details of the lease, or there be any formal documentation, such as a signed lease.

Another issue to be aware of is that if your lease does not include a method of rent review which operates during a "holding over" period, then the rent cannot be increased during this period unless under a new lease.

With this view currently being held, which clearly favours the position of the Lessee; it is again important for Landlords to be proactive about giving notification of their intentions towards the end of the lease and to be clear about the terms and conditions of the new lease during negotiations.

Please feel free to contact Jeri McInnes or Stuart Garrett in our Byron Bay office to discuss any matters in relation to Retail and/or Commercial Leasing.

*The information contained in this article is of a general, non-specific nature and should not be relied in place of your own individual legal advice. This information may not be appropriate for your particular circumstances and you should contact a solicitor before acting on any information contained in this article.*

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<sup>1</sup> *Randi Wixs v Pokana Pty Ltd (No 2)* [2003] NSWADT 4; *Helou v Bong Bong Pty Ltd* [2006] NSWADT 128