



NSW Legislative Council Hansard (Proof)

Retail Leases Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 15 November 2005 (Proof).

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.00 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

It gives me great pleasure to present to the House the *Retail Leases Amendment Bill 2005*.

This Bill has been developed by the Government in partnership with the retail leasing industry. It contains a major package of amendments to update the *Retail Leases Act 1994*.

This Bill is about making it easier for retailers and landlords of retail shops to do business in New South Wales.

It delivers again on the Government's strong commitment to the retail industry.

It is about supporting small business and jobs growth in this vibrant sector of the State's economy.

In terms of the bigger economic picture, the reforms contained in this Bill are part of the Government's longstanding commitment to promote business stability in the retail leasing market.

With 490,000 employees across the State, retailing is our largest employing industry. It plays a vital role in creating jobs—often first jobs for our young people—and in ensuring that people of New South Wales, whether they be in metropolitan or regional areas, enjoy access to the highest quality goods and services our economy has on offer.

New South Wales currently has the largest retail sector in Australia, accounting for 32 per cent of the national market.

This vibrant small business sector is vital to the NSW economy. Retail trade has accounted for an estimated \$12.9 billion to the NSW economy.

We've developed these reforms to:

- 1) Ensure that NSW retail tenancy legislation continues to provide a competitive environment for retail lease dealings—one that cuts red tape, provides greater certainty and reduces the need to engage in costly disputation.
- 2) Address contemporary issues that industry and the Government recognise as important – issues that have emerged since the last package of amendments to the Act in 2002.

The result is a comprehensive package of reforms to improve the operation of the Act for tenants and landlords at every stage of the retail leasing relationship.

From the pre-lease issues of lodging security bonds and providing up-front information about the costs of the lease, through to the determination of rent increases during the term of a lease, the transfer of a retail lease to a new tenant, and where necessary, the resolution of disputes.

The Bill is an important part of the Government's vision for continued growth in jobs and investment.

It affirms our belief in the importance of maintaining a thriving small business sector in an era where a small number of large players dominate many markets.

And through these reforms to the *Retail Leases Act*, we are continuing to give statutory recognition to the significant role that retailing plays as an employer and contributor to the NSW economy.

We've developed these reforms, so that landlords and small retailers can focus on day-to-day business, secure in the knowledge that the *Retail Leases Act* clearly sets out their legal rights and financial responsibilities as parties to a shop lease.

I would like to take this opportunity to thank the property, professional, and retail industry associations for the time, energy and goodwill they have put into working with us in the development of these reforms.

The amendments build on the success of the Act since its inception over ten years ago, in creating a smooth-running marketplace for retail lease dealings.

A better business environment for the retail leasing sector means more jobs and business opportunities for New South Wales - these amendments will further improve the capacity for participants in the retailing industry to grow business and the economy.

There are five important aspects of this Bill that I would like to bring to the attention of the House:

Firstly, I am pleased to announce that we're introducing legislative protection for the collection, management and refund of cash security bonds.

A new Part 2A will be inserted into the Act to give landlords and retail tenants more certainty that cash deposits held to ensure performance under a retail lease are simply and securely managed.

In a first for New South Wales, retail tenants will be given the same protection as residential tenants.

Now, when a cash deposit is lodged with a landlord, its capital value will be protected, and at the end of a lease, it will be promptly returned to the tenant - provided both parties agree to the bond's release.

And when it comes back, there won't be any bank fees deducted.

We are keeping retailers cash security deposits safe by making sure they are held with an independent body.

This is great news for businesses all across New South Wales.

The reforms will give retail tenants greater confidence that their bonds are accessible, well managed, and are not being eroded by account keeping fees. And we're cutting red tape for landlords who will save time and money by no longer having to manage cash bond accounts for their tenants.

But we're also preserving choice. Landlords and tenants will still be able to use bank guarantees as an alternative form of security.

However, I encourage all landlords and tenants to consider the Government's bond management scheme as a preferred method of securing performance under a lease, to take advantage of the significant benefits it offers in terms of reduced business costs and improved administration.

Secondly, we're giving retailers and landlords more certainty about their rights and obligations under a retail shop lease – before the lease starts.

An updated Disclosure Statement will make sure both parties know what they are getting into before signing a lease, including cash flow commitments arising from rent, outgoings, and advertising and promotions costs.

The new Disclosure Statement will help tenants to be better informed about their rights in the area of lease assignment. The Statement will also reinforce the message in the assignment provisions of the Act that a lease is a business asset and that tenants must involve their landlord in any decision to pass the business to another retailer.

The Government's reforms in this area will be supported by a new Retail Tenancy Guide. A simple, easy-to-read booklet will be available to all retail tenants and landlords, explaining in plain English their rights and obligations as parties to a lease.

We want to make sure the message about the advantages offered by the Act gets out to the industry, including the areas of the Act changed under these reforms.

Operation of retail leases will be more efficient because both landlords and retailers will be more aware of their rights and financial responsibilities.

Put simply it allows people to walk into negotiations with their eyes wide open, knowing what costs are involved in the lease and their obligations and rights under the Act.

For landlords, the risk of unplanned shop vacancies that occur when ill-considered investments made by new retailers lead to business closures will be reduced by raising the level of knowledge tenants have about their financial obligations before entering a lease.

For tenants, it's protection from the shock of the so called 'mystery' charges they have no right to renegotiate once they've signed the lease.

It is a win-win all round.

Thirdly, we're further cutting red tape and improving dispute resolution in a number of areas. Let me mention just one example - the process of determining current market rent.

An important new procedure will be established for setting market rent increases, where a landlord and tenant cannot agree. The effectiveness of the current process in the Act has been eroded by changes in the insurance industry, leading to unacceptably high fees for parties in dispute.

From the commencement of the amended Act valuers will participate in current market rent reviews through appointment by the Administrative Decisions Tribunal, which should lead to less costly rent valuations under the Act.

With the cooperation of the professional associations representing the valuation profession, the Government will ensure that high standards will be maintained in the determination of current market rents, through a regulation-making power relating to the qualification, appointment and functions of specialist retail valuers appointed under the Act.

By involving the Tribunal in this process, valuers, tenants, and landlords will be given access to a dispute resolution system that reduces the likelihood that problems will escalate to the courts... and all the expense and ill-will that can go with those processes.

In return, the Government looks forward to seeing a reduction in fees charged for valuations under the Retail Leases Act, and savings in business costs for landlords and tenants in the area of current market rent determination.

Fourthly, we're catching up with the market to bring new types of retailing within the Act and to recognise long-standing tenancies operating under short term leases.

Security for tenants on short term leases will be improved. We want to make sure that tenants will be able to access the protection of the Act, in circumstances where they are operating under multiple rolling leases of less than six months duration. When the tenant has been in continuous possession for more than one year, they will be entitled to protection under the Act. This will not prevent landlords and tenants agreeing to holding over arrangements.

We're also bringing more small businesses under the protection of the Act. New types of businesses such as Internet cafés, pet grooming salons, toy and game repair shops, water filter shops, and travel agencies outside shopping centres – to name just a few – will soon be able to access the provisions of the Retail Leases Act.

This new coverage will give small and medium sized retailers in these categories the fair go enjoyed by others in the retail sector already covered by the Act.

Last but not least, and very importantly, we're including misleading and deceptive conduct in the existing regime for dispute resolution, and updating the monetary limit of the retail leases division of the tribunal established to deal with retail leasing disputes:

At a time when competition is becoming tougher, with the temptation to engage in unfair practices increased, the Government has recognised that the Administrative Decisions Tribunal (the ADT) should have a wider role in dealing with misleading or deceptive conduct, than is currently available under the Act.

The ADT will be able to consider claims that a party to a lease has engaged in misleading or deceptive conduct, which will be treated as an additional type of retail tenancy claim.

This reform will not prevent matters more appropriately dealt with by the Supreme Court being transferred to that jurisdiction, through section 76A, to which a minor administrative improvement will be made.

Most importantly, it will ensure that New South Wales remains at the forefront of best administrative practice in resolving disputes that affect retail landlords' and tenants' rights. It will allow retail tenancy matters involving

claims of misleading or deceptive conduct to be dealt with more expeditiously, and will ensure consistency with the powers of other specialist tribunals, such as the Consumer Trader and Tenancy Tribunal, which may already hear claims relating to misleading or deceptive conduct.

The monetary jurisdiction of the ADT will be adjusted to take account of rising industry costs since 1998 when it was last set, and we will legislate for CPI – indexation every three years to ensure that the monetary limit keeps pace with rising costs.

Sydney is one of the world's most vibrant retail leasing markets.

Retail space in Sydney attracts high quality retailers, with retail rent in the 4th quarter of 2004 reportedly averaging US\$1,574 per square metre per annum.

In fact, Sydney's Pitt Street Mall has been ranked one of the most expensive shopping strips in the Asia Pacific - second only to Hong Kong's Causeway Bay.

In developing these proposals, the Government has responded to the views of the retail and property industry gathered over a lengthy period of consultation.

We've met with retailers and shop owners, and with their representative organisations, with lawyers, estate agents, and valuers... about how the Act is working for them... and what can be done to make it work better.

We want to make sure that a fair balance is maintained between the rights of landlords and the bargaining position of small retailers.

The Government's commitment to supporting the retail leasing sector is nothing new.

Over the last ten years, the Retail Leases Act 1994 has provided an excellent example of the sound working relationship that the New South Wales Government enjoys with the business community. It represents best practice in business regulation.

Administered with the consistent support of landlord and tenant groups, the Retail Leases Act continues to provide a practical approach to regulating the commercial relationship between landlords and small to medium sized retailers.

And we are now making further improvements.

By continuing to set a high standard for business dealings in the retailing sector, New South Wales will be well positioned to capitalise on its strong record in this important service industry in the years ahead.

Supporting the business community remains a high priority for this Government, and I would like to thank the retail leasing industry once again for being a part of this important reform process.

The reforms contained in this Bill will be great for business. Time saved in lease management will allow landlords and tenants to focus on expanding their business and improving their bottom line.

Finally I want to place on record my thanks to Janine Ricketts, Ken Carlsund, Perce Butterworth, Candace Barron, George Totidis, Georgia Reed, Tania Milavec and Rhett Gibson from the Department of State and Regional Development, along with Ryan Park and Ed Husic from my own office who have worked on this Bill.

I commend the Bill to the House.