



New South Wales

# Retail Leases Amendment Bill 2002

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Retail Leases Act 1994* (***the Act***) as follows:

- (a) the Bill inserts a new Part 9A in the Act applying only to passenger terminals of Sydney (Kingsford-Smith) Airport and providing for the following:
  - (i) certain definitions are inserted, including ***airside premises*** (meaning that part of the international passenger terminal to which access is limited to persons (other than authorised persons) who hold a boarding pass),
  - (ii) non-retail premises are exempted from the provisions of the Act,
  - (iii) certain master concessions with a gross lettable area of 1,000 square metres or more are exempted from the operation of the Act,
  - (iv) an exemption from the protection granted to lessees under section 34 of the Act is given in respect of actions regarding airport and airline safety, security and compliance with regulatory requirements,
  - (v) an exemption from the confidentiality of turnover information provided by section 50,

- (vi) that a proposed assignee of a retail shop lease of airside premises having inferior skills for competing in the international airport retail market is grounds for the withholding of consent to the assignment of the relevant lease,
- (b) the Bill provides for an extended meaning of *mediation* and *mediator*, for consistency with the use of alternative dispute resolution processes,
- (c) the Bill amends the Act to make it clear that where a lessor is recovering GST as an outgoing from a lessee pursuant to a valid GST recovery clause in a lease, the outgoing is not a non-specific outgoing,
- (d) the Bill amends the Act to remove the requirement that an agreement providing for the payment by or the recovery from a lessee of the amount of any GST payable must comply with the ACCC price exploitation guidelines and also to remove an associated definition.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Retail Leases Act 1994* set out in Schedule 1.

## Schedule 1 Amendment of Retail Leases Act 1994

**Schedule 1 [2]** omits references to the ACCC price exploitation guidelines from section 22A.

**Schedule 1 [3]** provides that an outgoing on account of GST payable by the lessor in respect of rent payable under a lease is not a non-specific outgoing of the lessor for the purposes of section 30.

**Schedule 1 [6]** amends the definition of *mediation* to include other forms of alternative dispute resolution and provides that a reference to a *mediator* includes a reference to a person carrying out the activities within the definition of *mediation*.

**Schedule 1 [7]** inserts proposed Part 9A, which makes special provision for premises at a passenger terminal at Sydney (Kingsford-Smith) Airport.

Proposed section 80A provides for the application of Part 9A and includes certain definitions.

Proposed section 80B exempts certain premises at an Airport passenger terminal from the operation of the Act with certain exceptions.

Proposed section 80C exempts certain master concessions from the operation of the Act if certain conditions are satisfied.

Proposed section 80D provides relief from the operation of section 34, which provides for a lessee to be compensated for certain disturbances to the lessee's occupation, for anything done for certain purposes concerning safety, security and compliance with regulatory requirements.

Proposed section 80E provides, for the purposes of section 39, an additional entitlement to withholding consent to the assignment of a lease where the proposed assignee has inferior skills for competing in the international airport retail market.

Proposed section 80F provides that section 50, which provides for confidentiality of turnover information, does not apply in respect of a lease of airside premises.

**Schedule 1 [1]** inserts a note to section 6, which provides for certain exemptions from the Act, referring to proposed Part 9A regarding Sydney (Kingsford-Smith) Airport, which also contains exemptions from the Act.

**Schedule 1 [4]** makes a consequential amendment to section 39 as a consequence of the insertion of proposed section 80E.

**Schedule 1 [5]** makes a consequential amendment to section 65 (1) (a) and (a1) as a consequence of the proposed amendment to section 67.

**Schedule 1 [8] and [9]** make consequential savings and transitional amendments.



New South Wales

# Retail Leases Amendment Bill 2002

## Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Retail Leases Act 1994 No 46	2
Schedule 1 Amendment of Retail Leases Act 1994	3



New South Wales

# Retail Leases Amendment Bill 2002

No , 2002

---

## A Bill for

An Act to amend the *Retail Leases Act 1994* to make further provision for premises at Sydney (Kingsford-Smith) Airport, mediation and payment of GST; and for other purposes.

---

---

<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Retail Leases Amendment Act 2002</i> .	3
<b>2    Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3    Amendment of Retail Leases Act 1994 No 46</b>	7
The <i>Retail Leases Act 1994</i> is amended as set out in Schedule 1.	8

<b>Schedule 1</b>	<b>Amendment of Retail Leases Act 1994</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 6 Leases to which Act does not apply</b>	3
	Insert at the end of section 6:	4
	<b>Note.</b> Part 9A provides for certain exemptions regarding Sydney (Kingsford-Smith) Airport.	5 6
<b>[2]</b>	<b>Section 22A</b>	7
	Omit the section. Insert instead:	8
	<b>22A Recovery by lessor of GST</b>	9
	(1) An agreement that was made between a lessor and a lessee before the date of commencement of this section (whether or not the agreement is contained in a lease), to the extent to which it provides for the payment by or recovery from the lessee of the amount of any GST payable in respect of the lease, is valid and is taken at all relevant times to have been validly made.	10 11 12 13 14 15 16
	(2) This section has effect despite any other provision of this Act.	17
<b>[3]</b>	<b>Section 30 Non-specific outgoings contribution limited by ratio of lettable area</b>	18 19
	Insert after section 30 (2):	20
	(3) An outgoing on account of GST payable by the lessor in respect of rent payable under a lease is not a non-specific outgoing of the lessor for the purposes of this section.	21 22 23
<b>[4]</b>	<b>Section 39 Grounds on which consent to assignment can be withheld</b>	24
	Insert after section 39 (1) (c):	25
	(d) the circumstances set out in section 80E.	26

<b>[5] Section 65 Functions of Registrar</b>	1
Omit “, or by some other appropriate form of alternative dispute resolution,” wherever occurring from section 65 (1) (a) and (a1).	2 3
<b>[6] Section 67</b>	4
Omit the section. Insert instead:	5
<b>67 The nature of mediation</b>	6
(1) In this Division:	7
<i>mediation</i> is not limited to formal mediation procedures and includes the following:	8 9
(a) preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute,	10 11 12 13 14
(b) other appropriate forms of alternative dispute resolution.	15
(2) A reference in this Division to a <i>mediator</i> includes a reference to a person who provides the assistance or alternative dispute resolution referred to in subsection (1).	16 17 18
<b>Note.</b> The first step in any dispute is to ensure that the parties have read their lease and have spoken to one another about their concerns in an effort to resolve the dispute.	19 20 21
<b>[7] Part 9A</b>	22
Insert after Part 9:	23
<b>Part 9A Sydney (Kingsford-Smith) Airport</b>	24
<b>80A Application</b>	25
(1) This Part applies only in respect of premises at a passenger terminal at Sydney (Kingsford-Smith) Airport as described in the <i>Airports Regulations 1997</i> under the <i>Airports Act 1996</i> of the Commonwealth.	26 27 28 29



- 
- (2) In this Part: 1
- Airport*** means Sydney (Kingsford-Smith) Airport as described 2  
in the *Airports Regulations 1997* under the *Airports Act 1996* 3  
of the Commonwealth. 4
- Airport passenger terminal*** means a passenger terminal at the 5  
Airport. 6
- airside premises*** means premises wholly within the part of the 7  
international passenger terminal of the Airport to which access 8  
is limited to the following persons: 9
- (a) a person who holds a valid security identification card 10  
or a valid visitor identification card (within the meaning 11  
of Division 7 of Part 7 of the *Air Navigation* 12  
*Regulations 1947* of the Commonwealth), 13
- (b) a person under the supervision of a person who holds 14  
such a valid security identification card or valid visitor 15  
identification card, 16
- (c) a person who is authorised by law to have access to 17  
restricted areas at the Airport, 18
- (d) a person who holds a boarding pass. 19
- 80B Non-retail premises exempted** 20
- (1) Premises at an Airport passenger terminal used wholly or 21  
predominantly for the carrying on of a business are exempt 22  
from the operation of this Act except for premises used wholly 23  
or predominantly for the carrying on of any of the following 24  
businesses: 25
- (a) a business specified in Schedule 1, 26
- (b) a business that is a bank, a provider of financial services 27  
or a medical centre in each case located within a retail 28  
precinct (being an area of an Airport passenger terminal 29  
that has been designated by the operator of the terminal 30  
for use primarily for retail purposes). 31
- (2) Premises at an Airport passenger terminal that are used wholly 32  
or predominantly for, or that are a site for, business centres and 33  
lounges, booths and counters for purposes associated with duty 34  
free docket plucking, commercial offices, check-in counters, 35  
airline lounges, currency exchange outlets, tax refund booths, 36  
information booths, free internet facilities, storage facilities 37
-

	including duty free storage, government offices (such as for customs and quarantine or police), advertising, telephone booths, luggage lockers, baggage trolley operations, airline sales desks, mobile cart operations, electronic accommodation booking units, vending units, creches and children's play areas are, for the purposes of subsection (1), taken to be premises used wholly or predominantly for the carrying on of a business.	1 2 3 4 5 6 7
<b>80C</b>	<b>Leases in master concessions over 1,000 square metres exempted</b>	8 9
(1)	This Act does not apply to a lease of premises at an Airport passenger terminal if:	10 11
(a)	the premises form part of a master concession that has an aggregate lettable area of 1,000 square metres or more, and	12 13 14
(b)	the lease is a head lease under the master concession, and	15 16
(c)	the premises are used wholly or predominantly for carrying on the business of the supply of food and beverages or the supply of products that are duty free or tax free.	17 18 19 20
(2)	Premises at an Airport passenger terminal that are all leased to the same lessee comprise a <i>master concession</i> and the leases to that lessee are the <i>head leases</i> under that master concession.	21 22 23
(3)	The <i>aggregate lettable area</i> of a master concession is the aggregate of the lettable areas of the premises that comprise the master concession.	24 25 26
<b>80D</b>	<b>Further entitlement to withhold consent to assignment</b>	27
	For the purposes of section 34, a lessor of premises at an Airport passenger terminal is taken not to have engaged in any of the activities described in section 34 (1) (a)–(f) because of anything done or omitted to be done by the lessor wholly or predominantly for any one or more of the following purposes:	28 29 30 31 32
(a)	airport safety,	33
(b)	airline safety,	34
(c)	airport security,	35
(d)	airline security,	36

---

(e)	satisfying regulatory requirements.	1
<b>80E</b>	<b>Exemption from section 39</b>	2
	For the purposes of section 39, the lessor under a retail shop lease of airside premises is entitled to withhold consent to the assignment of the lease if the proposed assignee of the lease has inferior skills for competing in the international airport retail market.	3 4 5 6 7
<b>80F</b>	<b>Exemption from section 50</b>	8
	Section 50 does not apply in respect of a lease of airside premises.	9 10
<b>[8]</b>	<b>Schedule 3 Savings and transitional provisions</b>	11
	Insert at the end of clause 1 (1):	12
	<i>Retail Leases Amendment Act 2002</i>	13
<b>[9]</b>	<b>Schedule 3, Part 4</b>	14
	Insert after Part 3:	15
	<b>Part 4 Retail Leases Amendment Act 2002</b>	16
<b>13</b>	<b>Recovery by lessor of GST</b>	17
	The substitution of section 22A by the <i>Retail Leases Amendment Act 2002</i> does not affect the previous operation of that section (as originally enacted) in relation to the payment by or recovery from a lessee of the amount of any GST payable in respect of the lease before the substitution of that section.	18 19 20 21 22
<b>14</b>	<b>Non-specific outgoings</b>	23
	Section 30 (3) does not apply in respect of a liability to contribute towards an outgoing of a lessor that arose before the commencement of that subsection.	24 25 26

---