

Passed by both Houses



New South Wales

Retail Leases Amendment Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Retail Leases Amendment Bill 2002

Act No , 2002

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retail Leases Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Retail Leases Act 1994 No 46

The *Retail Leases Act 1994* is amended as set out in Schedule 1.

Schedule 1 Amendment of Retail Leases Act 1994

(Section 3)

[1] Section 6 Leases to which Act does not apply

Insert at the end of section 6:

Note. Part 9A provides for certain exemptions regarding Sydney (Kingsford-Smith) Airport.

[2] Section 22A

Omit the section. Insert instead:

22A Recovery by lessor of GST

- (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.
- (2) This section has effect despite any other provision of this Act.

[3] Section 30 Non-specific outgoings contribution limited by ratio of lettable area

Insert after section 30 (2):

- (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.

[4] Section 39 Grounds on which consent to assignment can be withheld

Insert after section 39 (1) (c):

- (d) the circumstances set out in section 80E.

[5] Section 65 Functions of Registrar

Omit “, or by some other appropriate form of alternative dispute resolution,” wherever occurring from section 65 (1) (a) and (a1).

[6] Section 67

Omit the section. Insert instead:

67 The nature of mediation

(1) In this Division:

mediation is not limited to formal mediation procedures and includes the following:

- (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,
- (b) other appropriate forms of alternative dispute resolution.

(2) A reference in this Division to a *mediator* includes a reference to a person who provides the assistance or alternative dispute resolution referred to in subsection (1).

Note. 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.

[7] Part 9A

Insert after Part 9:

Part 9A Sydney (Kingsford-Smith) Airport

80A Application

- (1) This Part applies only in respect of premises at a passenger terminal at Sydney (Kingsford-Smith) Airport as described in the *Airports Regulations 1997* under the *Airports Act 1996* of the Commonwealth.

(2) In this Part:

Airport means Sydney (Kingsford-Smith) Airport as described in the *Airports Regulations 1997* under the *Airports Act 1996* of the Commonwealth.

Airport passenger terminal means a passenger terminal at the Airport.

airside premises means premises wholly within the part of the international passenger terminal of the Airport to which access is limited to the following persons:

- (a) a person who holds a valid security identification card or a valid visitor identification card (within the meaning of Division 7 of Part 7 of the *Air Navigation Regulations 1947* of the Commonwealth),
- (b) a person under the supervision of a person who holds such a valid security identification card or valid visitor identification card,
- (c) a person who is authorised by law to have access to restricted areas at the Airport,
- (d) a person who holds a boarding pass.

80B Non-retail premises exempted

- (1) Premises at an Airport passenger terminal used wholly or predominantly for the carrying on of a business are exempt from the operation of this Act except for premises used wholly or predominantly for the carrying on of any of the following businesses:
 - (a) a business specified in Schedule 1,
 - (b) a business that is a bank, a provider of financial services or a medical centre in each case located within a retail precinct (being an area of an Airport passenger terminal that has been designated by the operator of the terminal for use primarily for retail purposes).
- (2) Premises at an Airport passenger terminal that are used wholly or predominantly for, or that are a site for, business centres and lounges, booths and counters for purposes associated with duty free docket plucking, commercial offices, check-in counters, airline lounges, currency exchange outlets, tax refund booths, information booths, free internet facilities, storage facilities

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.

80C Leases in master concessions over 1,000 square metres exempted

- (1) This Act does not apply to a lease of premises at an Airport passenger terminal if:
 - (a) the premises form part of a master concession that has an aggregate lettable area of 1,000 square metres or more, and
 - (b) the lease is a head lease under the master concession, and
 - (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.
- (2) Premises at an Airport passenger terminal that are all leased to the same lessee comprise a *master concession* and the leases to that lessee are the *head leases* under that master concession.
- (3) The *aggregate lettable area* of a master concession is the aggregate of the lettable areas of the premises that comprise the master concession.

80D Further entitlement to withhold consent to assignment

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:

- (a) airport safety,
- (b) airline safety,
- (c) airport security,
- (d) airline security,

-
- (e) satisfying regulatory requirements.

80E Exemption from section 39

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.

80F Exemption from section 50

Section 50 does not apply in respect of a lease of airside premises.

[8] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Retail Leases Amendment Act 2002

[9] Schedule 3, Part 4

Insert after Part 3:

Part 4 Retail Leases Amendment Act 2002

13 Recovery by lessor of GST

The substitution of section 22A by the *Retail Leases Amendment Act 2002* 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.

14 Non-specific outgoings

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.