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**RETAIL LEASES AMENDMENT (REVIEW) ACT 2017 NO 2**

On 1 March 2017, the *Retail Leases Amendment (Review) Act 2017 No 2* ("the Amendment") was passed. The Amendment, which will commence on 1 July 2017, makes significant changes to the *Retail Leases Act 1994* ("The Act") outlined below:

1. The Amendment will require a Lessor to provide full disclosure of any outgoings in the Lessor's Disclosure Statement. A Lessee cannot be held liable for outgoings not disclosed.
2. The Lessor's Disclosure Statement will be in a new prescribed form, and provide a Lessor with a right to compensation if the Retail Lease is terminated by the Lessee within the first six months of the term.
3. It is already a requirement that the Lessor's Disclosure Statement be provided at least seven days before the Retail Lease is entered into. This obligation will now extend to any Agreement for Lease. The Lessee will also be required to provide the Lessor with their Disclosure Statement within seven days of receiving the Lessor's Disclosure Statement.
4. A Retail Lease will no longer require a minimum term of five years. Effectively, this means that a section 16(3) certificate will no longer be necessary for a Retail Lease term less than five years.

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**DISCLAIMER**

**The above is a summary only. It is not intended to take the place of legal advice.**

5. A Retail Lease for a term of three years or more will require registration within three months of the Lessee's return of the executed Retail Lease to the Lessor (or its solicitor). This may be extended where the consent of a mortgagee or head lessor must be obtained. The Lessee cannot be held liable for any fees involved in obtaining a mortgagee's consent.
6. A Lessor will be required to return an executed Retail Lease to the Lessee within three months after it is returned to the Lessor (or its solicitor).
7. A Lessor will not be able to include revenue from online transactions when calculating turnover rent.
8. Any Bank Guarantee must be returned to the Lessee within two months after the Lessee completes all its obligations under the Retail Lease.
9. In the event of assignment, the Lessee will be required to prepare an updated Lessor's Disclosure Statement if the Lessor does not provide the same within 14 days of a written request from the current Lessee. A Lessor will be entitled to withhold consent to assignment where the Retail Lease has been awarded by public tender and the proposed Assignee does not meet the tender requirements.
10. If the Retail Lease includes a demolition clause applicable to any part or all of the premises, a Lessor must prove that the demolition cannot occur without vacant possession.
11. Finally, the Amendment changes the definition of a "Retail Shop". Markets within a permanent building structure and shops in an office tower that form part of a shopping centre now fall under the Act while storage of goods for use or sale in a Retail Shop (not including storage on premises from which the goods are sold) will be excluded. Further exclusions include car parking (not provided as part of a car park business), ATMS, vending machines, public telephones, internet booths and childrens' rides.

**For more information, please contact Rebecca Darr or Diarna Cuda.**

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