CLAYTON UTZ

Retail Leases Comparative Analysis

Introduction

For a retail landlord or retail tenant, retail tenancy legislation can be a minefield, a trap for young players and a downright headache. The fact that each State has its own Act (each inconsistent with the other, and each inescapable), makes property managers long for a career move.

We have tried to make our job and yours easier by preparing a user-friendly analysis of retail tenancy legislation.

The analysis allows you to compare provisions of the legislation in one jurisdiction against legislation in other jurisdictions.

This update is current for all jurisdictions as at 1 January 2023, other than Victoria, which was updated on 15 April 2023 following the commencement of the Retail Leases Regulations 2023 (Vic).

Further changes are expected in the year ahead as follows:

- In Tasmania, the new Retail Leases Act 2022 (Tas), drafted to modernise Tasmania's regulation of retail leases and being the first substantive review since 1998, was assented to on 14 December 2022. Section 88 of the new Act is already in force, so that the current Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 (Tas) referred to in this analysis are still to be taken to be regulations under the Act until they are rescinded. The rest of the new Act, including provisions relating to disclosure requirements and the calculation and adjustment of rent, is due to commence on proclamation.
- The Western Australian Commercial Tenancy (Retail Shops) Agreements Act 1985 is currently the subject of a statutory review which commenced last year and is carried out every 5 years. The purpose of the statutory review is to seek feedback on the operation and effectiveness of the WA Act. The 2022 statutory review is currently at the public consultation and feedback stage, which formally closed on 31 August 2022. We expect to hear further throughout the course of 2023.

In some cases, State and Territory responses to COVID-19 may still have some historical relevance to retail leases, although any relevance would need to be considered on a case-by-case basis. Issues relating to COVID-19 rent relief claims are not included here.

Clayton Utz has extensive expertise in acting for landlords and tenants on retail tenancy matters and on shopping centre and commercial property acquisitions, joint ventures, sales and development matters generally.

If we can assist you in any aspect of your retail business, or any other business, please refer to the Contacts page for the lawyers in your State.

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Note on currency

Jurisdiction	Current as at
ACT	1 January 2023
NSW	1 January 2023
NT	1 January 2023
QLD	1 January 2023
SA	1 January 2023
Tas	1 January 2023
Vic	15 April 2023
WA	1 January 2023

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Contents

What's covered by the Act?

Definition of "retail shop" and exclusion of certain retail shops

ACT Leases (Commercial and Retail) Act 2001	See section 12. The Act applies to "retail premises" which are premises where: • the permitted use under the lease is for "retail business" (being business involving the sale or hire of goods or the supply of services by retail); or • if there is nothing in the lease about the use, a "retail business" may be carried on under the lease for land that includes the premises, other than "large excluded premises" (being premises of more than 1,000 sqm which are leased to a listed public company or a subsidiary of a listed public company). The Act also applies to: • premises located in the retail area of a shopping centre, other than "large excluded premises"; • "small commercial premises" (being commercial premises with a lettable area of no more than 300 sqm); and • other premises (specified in section 12) including child care centres, sports centres, art galleries, gardening supply centres, premises (other than residential premises) let to unincorporated charitable bodies or to incorporated associations and premises prescribed under the Regulations. See section 12. The Act does not apply to a lease if: • the premises are prescribed under the Regulations; • the lease is prescribed under the Regulations; or • the lease is for less than 6 months, unless it is a "continuous occupation lease"; or • the lease is a "land sublease" (being a sublease of land approved under section 308 of the Planning and Development Act 2007 (ACT) (power of crown lessee to sublet part of land) but does not include a building sublease (which is a sublease mentioned in section 307 of the Planning and Development Act 2007 (ACT) (power of lessee to sublet part of building). Under section 10, a continuous occupation lease is a lease for premises for a term of less than 6 months if: • the tenant was in occupation of premises with the owner's consent when the lease was entered into; and • the tenant has been in continuous occupation of the premises with the owner's consent for at least 6 months.
NSW Retail Leases Act 1994	See section 3. "Retail shop" means premises used, or proposed to be used: • wholly or predominantly for the carrying on of 1 or more businesses prescribed in section 4 and schedule 1 of the Retail Leases Regulation 2022 (NSW) (whether or not in an "RSC")[1]; or

[1] For definitions, please refer to the last page of this Analysis.

	• for the carrying on of any business in an RSC (whether or not a business is prescribed in the Act). See sections 5-6B. The Act does not apply to: • shops that have a "lettable area" of 1,000 sqm. or more: • shops used wholly, or predominantly, for the carrying on of a business on behalf of the landlord; • any shop within the premises where the principal business carried on is a cinema, bowling alley or skating rink and the shop is operated by the person who operates the cinema, bowling alley or skating rink; or • premises used only for any one or more purposes listed as "Excluded Uses" in Schedule 1A of the Act; • premises of a class or description prescribed as exempt from the Act; • short-term retail shop leases (less than 6 months); • leases of retail shops for a term of 25 years of more; or • a retail shop that is a stall in a market, unless the market is a permanent retail market.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 5. "Retail shop" means premises which are used wholly or predominantly for: • the sale or hire of goods by retail or the retail provision of services (whether or not in an RSC); • the carrying on of business in an RSC; or • the carrying on of business of a class or description that is prescribed by the Regulations. An RSC is a cluster of premises: • at least 5 of which are used wholly or predominantly for the sale or hire of goods by retail or the retail provision of services; • which are either owned by the same person or if leased would have the same landlord or head landlord, or which all comprise lots within a single units plan under the Unit Titles Act or within a single unit title scheme under the Unit Titles Schemes Act; • which are either in 1 building or 2 or more buildings that are either adjoining or separated only by common areas or other areas owned by the owner of the retail shops; and • which is promoted as or generally regarded as constituting a shopping centre, shopping court, shopping mall or shopping arcade. See sections 6, 7, 8. The Act does not apply to: • shops with a lettable area of 1,000 sqm or more; • shops used wholly or predominantly for the carrying on of a business by the tenant on behalf of the landlord; • shops within premises where the principal business is the operation of a cinema or bowling alley, and the shop is operated by the person who operates the cinema or bowling alley; or • shops leased to listed corporations, subsidiaries of listed corporations, a body corporate whose securities are listed on a financial market outside Australia and the external territories that is a member of the World Federation of Exchanges or subsidiaries of such a body corporate. Also, the Act does not apply to: • leases for terms of less than 6 months (where there is no right for the tenant to extend the lease and is not holding over for longer than 6 months) or more than 25 years (with the term of a lease taken to include any term for which the lease may be extended or renewed by the tenant); • leases entered into before the commencement of section 7 or under an option granted or agreement made before the commencement of section 7; or

	• leases mentioned in section 7 that are assigned to another person after the commencement of the section or a holding over by a tenant of a lease mentioned in section 7(1)(c). The Regulations may also exclude specific classes and description of leases. The Regulations may also exempt a specified person, retail shop lease or retail shop or specified class of person, retail shop lease or retail shop. Currently, the Regulations exclude airport retail shop leases, granted by Darwin International Airport Pty Ltd, Tennant Creek Airport Pty Ltd or Alice Springs Airport Pty Ltd in relation to specified property.
QUEENSLAND Retail Shop Leases Act 1994	See section 5B. "Retail shop" means premises that are situated in an RSC or used wholly or predominately for the carrying on of a retail business (specified in the Regulations). See section 5D. All shops in an RSC are retail shops except where there is a multi-level or multi-building RCS and the premises are not used for the carrying on of a retail business and less than 25% of the level/building is used for the carrying out of retail businesses. An RSC is a cluster of premises having all of the following attributes: • five or more premises carrying on retail businesses as specified; • all premises owned or leased by the same landlord or within one community titles scheme; • located in the same building, adjoining buildings or buildings separated only by common areas or a road; and • the cluster of premises is promoted or generally regarded as constituting a shopping centre, shopping mall, shopping court or shopping arcade. See section 5A. The Act does not apply to premises where the floor area is in excess of 1,000 sqm. The Act will not apply to retail shops within the South Bank corporation area if the lease is a perpetual lease or another lease for a term (including renewal options) of at least 100 years entered into or granted by the South Bank Corporation. Businesses run in a theme or amusement park or at a flea market including an arts and crafts market or a temporary retail store at an agricultural or trade show or a carnival, festival or cultural event or other type of premises prescribed by regulation are also excluded. The Act also excludes leases of areas used for information, entertainment, community or leisure facilities, telecommunications equipment, an automatic teller machine, a vending machine, displaying advertisements, storage or parking in what would otherwise be the common areas of the centre. See section 20C. The Act does not apply to service station franchises caught by the Competition and Consumer (Industry Codes – Oil Code) Regulation 2006 (Cth).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 3. A "retail shop" is business premises (being premises at which goods are sold to the public by retail or services supplied to the public or to which the public is invited to negotiate for the supply of services) or premises classified by regulation as premises to which the Act applies. See section 4. The Act does not apply where rent **at any time** exceeds the prescribed threshold of $400,000 (ex GST) per annum (as prescribed by regulation), the lease is for a term of 1 month or less or where the occupation rights arise under a sale or purchase of property, a mortgage, or a defined scheme. By virtue of the words "at any time" being introduced by the Retail and Commercial Leases (Miscellaneous) Amendment Act 2019 (SA)

	(**Amendment Act**) on 1 July 2020, the Act may apply or cease to apply during the term of the Lease depending upon the value of the rent or a change to the "prescribed threshold" under the Act. We note that the Valuer General is required to review the value of the "prescribed threshold" within two years of the Amendment Act commencing and every five years after that. In addition to the above, those leases entered into after 1 July 2020 will not be subject to the Act irrespective of any changes to the "prescribed threshold" or reduction of rent if the: • rent exceeds the "prescribed threshold" at the time the lease is lodged for registration; • lease is lodged for registration within three months after it is signed; • landlord notifies the tenant of lodgement within one month of the lodgement occurring; and • lease remains registered for the term. Tenants that are public companies (or subsidiaries of public companies), authorised deposit taking institutions, insurance companies, local councils and State or Commonwealth agencies or instrumentalities are excluded. The Regulations exclude some classes of retail shops from the Act's application. The Amendment Act also gives the Commissioner the ability to sign a certificate in relation to a certified exclusionary clause and also grant exemptions from all or any of the provisions of the Act. See section 20K.

TASMANIA
 	
Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998
	See section 2. "Retail premises" means premises that are used wholly or predominantly for 1 or more of the businesses listed in the Code (Appendix C) or for any business in an RSC.
	
	Note: The Code refers to "shopping centre", as opposed to "retail shopping centre", but the definition is essentially the same as "retail shopping centre" in the NSW Act.
	
	The Code applies to the following in relation to retail premises with a lettable area of not more than 1,000 square metres:
	• a lease of, or an agreement to lease, such premises entered into on or after the commencement of the Code, regardless of where the lease or agreement to lease was entered into and despite the fact that the lease or agreement to lease purports to be governed by the law of a jurisdiction other than Tasmania;
	• a lease of, or an agreement to lease, such premises that was entered into before the commencement of the Code, if:
	  • the lease or agreement to lease is varied after that commencement; and
	  • the variation was not provided for by the original lease or agreement to lease;
	• a new lease of such premises resulting from the exercise of an option contained in a lease that was entered into before the commencement of the Code, if:
	  • the number of times remaining for the option to be exercised is not specified in the lease or does not decrease when the option is exercised; or
	  • the new lease contains a variation that was not provided for by the original lease; and
	  • a sublease of such premises entered into on or after the commencement of the Code.
	
	See section 2. The Code does not apply to retail premises having a lettable area of more than 1,000 sqm. "Lettable area" is defined to mean an area

	measured in square metres and set out in a lease as the area for which a tenant pays rent.
	
	The Code also does not apply to retail premises:
	• used wholly or predominantly for a business carried out by a tenant on behalf of the landlord; or
	• within premises where the principal business carried on is that of a cinema, bowling alley, skating rink, indoor cricket centre, basketball stadium, or netball centre, and the business in the retail premises is carried on by the person who operates the principal business (section 2(4)).
	
	The Code also does not apply:
	• where the lease or agreement to lease was entered into before the commencement of the Code (section 2(3)(a)); or
	• where a lease was entered into on or after the commencement of the Code, in accordance with an agreement to lease, however the agreement to lease was entered into before the commencement of the Code (section 2(3)(c)); or
	• a new lease resulting from the exercise of an option contained in a lease entered into before the commencement of this Code, if:
	  • the number of times remaining for the option to be exercised is specified in the lease or decreases when the option is exercised; or
	  • the new lease contains no variation other than a variation that was provided for by the original lease (section 2(3)(d)).

VICTORIA Retail Leases Act 2003	See section 4. "Retail premises" means premises, not including any area intended for use as a residence, that under the terms of the lease are used, or are to be used, wholly or predominantly for the sale or hire of goods by retail or the retail provision of services. A number of recent cases have confirmed that premises typically not considered to be retail premises can fall within the scope of operation of the Act. See section 4. The Act does not apply to premises: • where occupancy costs are more than $1 million (exclusive of GST) per annum; • used wholly or predominately for the carrying on of a business by a tenant on behalf of the landlord as the landlord's employee or agent; • where the tenant is a listed corporation (as defined in section 9 of the Corporations Act 2001 (Cth)) or a subsidiary thereof; • where the tenant is a body corporate whose securities are listed on a stock exchange outside Australia, that is a member of the World Federation of Exchanges or a subsidiary thereof; • located above the first 3 storeys (excluding the basement) of a building (other than a retail shopping centre) where the tenant is providing retail services (not selling/hiring goods); • which are barristers chambers; • leased under a long-term lease (generally where the term is at least 15 years) where the tenant must carry out or pay for the cost of carrying out substantial work on the premises which it is not entitled to remove at or at any time after the end of the lease; • that are located entirely within the Melbourne Markets being "market land" as defined by the Melbourne Market Authority Act 1977; • where the lease is for a term of less than 1 year and the tenant is not in possession for 1 year or more (see section 12); • leased for a rent of not more than $10,000 p.a. for certain community or charitable purposes (in respect of leases entered into after 1 January 2015); • which are local Council premises that are leased for certain community purposes (in respect of leases entered into prior to 1 January 2015;

	• the tenant of which is a body corporate, company or corporation whose securities are listed on a stock exchange outside Australia (or a subsidiary of any such body corporate, company or corporation); or. • which are used for certain agricultural or farming purposes for commercial gain (in respect of leases entered into after 29 October 2019). The Supreme Court of Victoria (Richmond Football Club v Verraty [2019] VSC 597) has ruled that a lease that is a "retail premises lease" (within the meaning of section 11 of the Act) when it is entered into cannot cease to be such a lease during its term, upholding an appeal by a tenant from an earlier decision in VCAT which suggested that if any of the exceptions above do not apply at the time a lease is entered into, but subsequently apply, the lease can fall out of the operation of the Act during the term (and will fall out of the operation of the Act if occupancy costs exceed $1 million). The Court of Appeal has upheld this decision (Verraty v Richmond Football Club [2020] VSCA 267). Izett St Pty Ltd v Applgold Pty Ltd (Building and Property) [2021] VCAT 174 provides guidance when considering whether a head lease is governed by the Act. The Tribunal held that the fact of a sublease being a retail lease does not definitively determine whether or not the head lease is also a retail lease under the Act. In this case, the head tenant's main business was to sublease parts of the premises to retail tenants. It argued that the subtenants were the ultimate consumers of the subleased space so that as a result, the head tenant was engaging in a retail supply. VCAT found for the landlord. In particular, the Tribunal found that "*once the sublease is granted, the applicant is no longer able to 'use' the premises. It has given exclusive possession to a subtenant. Subletting premises is not the provision of a "service" in the sense required by section 4. If that were the case every sublet premises could be classified as a retail premises." It is important to note in this case however, that the head tenant was not integral to operation of the subleases once granted, so that the retail activities of the subtenant could not be taken to characterise the use of the premises by the head tenant under the head lease as retail.*

WESTERN AUSTRALIA
 	
Commercial Tenancy (Retail Shops) Agreements Act 1985
	See section 3. A "retail shop" means premises that are either:
	• situated in an RSC and are used wholly or predominantly for the carrying on of any business (whether or not retail); or
	• not situated in an RSC but are used wholly or predominately for the carrying on of a "retail business" (being a business that wholly or predominantly involves the sale of goods by retail or a business of a kind prescribed by the Regulations to be a "specified business").
	
	As at 1 July 2017, the following types of business are classified as "specified businesses":
	• dry-cleaning;
	• hairdressing;
	• beauty therapy and treatments;
	• shoe repair (which may include key cutting and engraving); and
	• sale or rental of video tapes, DVDs, electronic games and other similar amusements.
	
	An RSC means a cluster of premises:
	• five or more of which are used for the carrying on of a "retail business"; and
	• all of which
	  • have or upon being leased would have a common head lessor; or
	  • comprise lots on a single strata plan under the Strata Titles Act, 1985 (WA),
	
	but if the premises are in a building with 2 or more floor levels then the RSC includes only those levels of the building where a "retail business" is situated.

	Excluded from the operation of the Act are leases entered into before 1 January 2013 – being the date when the amending Act was proclaimed ("2013 Amending Act") – which would not have fallen under the Act but for the changes in definitions in the 2013 Amending Act. See section 3. The Act does not apply to a retail shop if either: • the lettable area of the retail shop is in excess of 1,000 sqm and is not of a kind prescribed by the Regulations (currently, no shops have been prescribed); or • the tenant is either a listed corporation within the meaning of the Corporations Act 2001 (Cth) that would not be eligible to be incorporated as a proprietary company or is the subsidiary of such a listed corporation; or • the tenant is a body corporate whose securities are listed on a stock exchange outside Australia and the external territories (including the New Zealand Stock Exchange Limited) that is not otherwise exempt under the Act; or • the lease or the tenant or the premises is a kind prescribed by the regulations as being exempt from the operation of the Act: or • a lease of premises for the purpose of the lessee operating only a vending machine or automatic teller machine on those premises. The answer to whether the application of the Act to a lease in WA can vary over time is currently unclear. For example, a tenant may be unlisted at commencement of the lease but become a subsidiary of a listed entity during the term. A future amendment of the Act or a judicial decision may be required to make the legal position clearer to parties. Section 4 also allows exemptions to the Act to be prescribed for in the Regulations. Due to the definition of "lease" in section 3 the Act continues not to apply to licences of part of the common area of an "RSC" as long as the continued use of the licensed area as part the common area is not thereby precluded.

Application of Act to short-term leases

ACT Leases (Commercial and Retail) Act 2001	See section 12(2)(c). The Act does not apply to leases where the term is less than 6 months unless the lease is a "continuous occupation lease".
NSW Retail Leases Act 1994	See section 6A. The Act (excluding sections 11-12A) applies to short-term leases where the tenant has been in possession or is entitled to be in possession of a retail shop without interruption for more than 1 year.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	No distinction made regarding short-term leases (except leases for a term of less than 6 months which are excluded from the Act).
QUEENSLAND Retail Shop Leases Act 1994	See section 20A. Only the interpretation (Parts 1-3) and trading hours provisions of the Act (Part 7) apply to leases where the total term is less than 6 months (including options but excluding holding over).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 20B -20C. The minimum 5 year term does not apply to a short-term lease (less than 6 months). Division 3 of the Act – which only applies to leases in a retail shopping centre – does not apply to short-term leases. The Amendment Act which took effect on 1 July 2020 has clarified that a period of holding over for longer than 6 months also does not imply a new 5-year term.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention of "short-term leases" in the Code. The Code applies to all "leases" as defined (in section 1) being: • any agreement for occupation of retail premises, whether for a term, periodically or at will; and • a licence/other agreement to use the common area of a shopping centre for more than 6 months. Note: The Code refers to "property owner" as opposed to "landlord" or "lessor". “Property owner” is defined as "a person who grants a right of occupancy of premises under a lease".
VICTORIA Retail Leases Act 2003	No distinction made regarding short-term leases (except leases for a term of less than 1 year and where the tenant is not in possession for 1 year or more are excluded from the Act).
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 3. The Act applies to all "retail shop leases" whether for a term or by way of periodic tenancy or a tenancy at will and whether or not in writing. As a result even a monthly lease attracts the Act and will continue to do so. While the Act applies in all other respects, the statutory option for a guaranteed 5 year term in section 13 does not apply to short-term leases where the same tenant has been continuously in possession of the same premises for an aggregate term of less than 6 months.

This Act overrides leases

ACT Leases (Commercial and Retail) Act 2001	See sections 19-20. A provision of a lease which is inconsistent with the Act is void to the extent of the inconsistency. Provisions required to be included in a lease are deemed to be included.
NSW Retail Leases Act 1994	See section 7. The Act operates despite the provisions of a lease. The terms of the Act cannot be avoided by agreement between the parties, whether the agreement is contained within the lease or any other arrangement.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 9. The Act operates despite the provisions of a retail shop lease. To the extent that the lease is inconsistent with the Act, the provisions of the lease are void. This extends to provisions of an agreement or arrangement between the parties of a retail shop lease to the extent that provision would have been void if it were in the lease.
QUEENSLAND Retail Shop Leases Act 1994	See sections 15-17. Any duty or entitlement conferred by the Act is included in the lease. Any provision in the lease purporting to exclude the application of the Act is void. The Act prevails over inconsistent provisions in leases.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 5. The Act overrides leases, and to the extent that the lease is inconsistent with the Act, the provision within the lease is void.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 2(6). The Code prevails over inconsistent provisions of a lease or an agreement for lease.
VICTORIA Retail Leases Act 2003	See section 94. The Act overrides leases.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 15 and section 3(2). It is not possible to contract out of the Act. The Act overrides the provisions in retail shop leases, and to the extent that the lease is inconsistent with the Act, the provision within the retail shop lease is void. This applies whether the agreement is contained within the lease itself or in any side agreement. The definition of "lease" in the Act is very wide and includes any verbal or written lease, licence or other agreement providing for occupation of premises in WA.

The Act binds the Crown

ACT Leases (Commercial and Retail) Act 2001	No mention in the Act.
NSW Retail Leases Act 1994	See section 83. The Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 4. The Act binds the Crown in the right of the Northern Territory, and, to the extent the power of the Legislative Assembly permits, the Crown in all its other capacities.
QUEENSLAND Retail Shop Leases Act 1994	See sections 10 and 12. The Act binds all persons including the Crown (Qld) and, so far as Parliament permits, the Commonwealth and the other States. The Act applies to all leases of retail shop premises in Queensland: • regardless of where the lease is entered into; and • even though the lease purports to be governed by a law other than Queensland law.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 4(2)(d). The Act does not apply if the lessee is: • an ADI; • a body corporate authorised by law to carry on the business of insurance; • the Crown or an agency or instrumentality of the Crown in right of the State, another State or Territory, or the Commonwealth; or • a municipal or district council or other authority with powers and functions of local government. The Act also does not apply to a lease entered into on or after the relevant date where the lessor is: • the Crown or an agency or instrumentality of the Crown in right of the State; or • a municipal or district council or other authority with powers and function of local government, and the lessee is of a class specified by the regulations for the purposes of section 4(2)(g) of the Act.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention in the Code.
VICTORIA Retail Leases Act 2003	See section 14. Similar to NSW.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 5. The Act binds the Crown in the right of WA and, insofar as the legislative power of Parliament permits, the Crown in all its other capacities.

Entering a lease

Deemed commencement date of lease

ACT Leases (Commercial and Retail) Act 2001	See section 5. The Lease is entered into on the earlier of: • execution of the lease by the parties; or • the tenant entering into possession of the premises.
NSW Retail Leases Act 1994	See section 8. A retail shop lease is entered into when a person enters into possession as the tenant or a person begins to pay rent as the tenant (whichever happens first). In the 2021 NSWSC decision of Ausko Cooperation v Junapa Pty Ltd, the court reiterated that section 8 is a temporal question, namely, when a retail shop lease is deemed to have commenced, rather than whether a retail shop lease actually exists. However, if the landlord and tenant execute the lease before the tenant enters into possession or begins paying rent then the lease is entered into as soon as both parties have signed the lease.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 10. A retail shop lease is entered into when: • both parties sign the lease instrument; • the tenant enters into possession; or • the tenant commences to pay rent, whichever occurs first.
QUEENSLAND Retail Shop Leases Act 1994	See section 11. The lease is entered into on the earlier of the date on which the lease is signed by all of the parties, or the date on which the tenant enters into possession or the date the tenant first pays rent under the lease (other than as a deposit to secure the premises for the lease).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 6. Similar to NSW.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 17. Rent and outgoings are to commence from the date of handing over possession with all finishes provided by the landlord in accordance with the lease, unless otherwise agreed.
VICTORIA	See section 7. A retail premises lease is entered into when either:

Retail Leases Act 2003	• under the lease, the tenant enters into possession of the premises with the consent of the landlord; or • the tenant begins to pay rent; or • the lease has been signed by all parties, whichever occurs first.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 3(4). A retail shop lease is entered into when: • under the retail shop lease the tenant enters into possession; or • the tenant commences paying rent; or • if the retail shop lease is in writing, both parties sign the lease, whichever occurs first. As noted above the definition of "lease" in the Act is very wide. This is relevant, for example, for ascertaining whether a DS has been duly given under section 6 before the lease was entered into (even if the commencement date is some time in the future).

Copy of lease/documents available at negotiation stage

ACT Leases (Commercial and Retail) Act 2001	See section 28. The landlord must give the tenant a copy of the proposed lease as early as practicable in negotiations for the lease. This obligation does not apply if the tenant has given (or indicated an intention to give) a copy of the proposed lease to the landlord.
NSW Retail Leases Act 1994	See section 9. A person, as landlord or on behalf of a landlord, must not offer to enter into a retail shop lease, invite an offer to do the same or advertise that a retail shop is for lease, unless the person holds a copy of the proposed retail shop lease in written form (but not necessarily including particulars of the tenant, the rent or the term of the lease), and if the Regulations provide, a copy of a retail tenancy guide prescribed by or identified in the Regulations for the purpose of making the lease available for inspection by a prospective tenant as soon as the person enters into negotiations. There is a penalty of up to 50 penalty units if a person breaches section 9 of the Act. The copy of the retail tenancy guide is to be either an officially printed guide or a version from a website of a government department or authority or from a website identified in the Regulations.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 17. The landlord (or anyone acting on behalf of the landlord) cannot offer to enter into a lease, invite an offer to enter into a lease from a tenant or advertise (written or broadcast) a retail shop is for lease, unless the person has in his or her possession a copy of the proposed retail lease form available for inspection by a prospective tenant and the person makes a copy of the proposed lease available to the prospective tenant as soon as the person enters into negotiations with the prospective tenant concerning the lease. Maximum penalty: 100 penalty units.
QUEENSLAND Retail Shop Leases Act 1994	See section 21B. A landlord is required to provide the tenant with a draft lease and disclosure statement at least 7 days before the tenant enters into a lease. However, if the tenant gives a waiver notice and a Legal Advice Report before the tenant enters into the lease, the landlord is able to provide the draft lease and disclosure statement at any time before the tenant enters into the lease (no requirement to be 7 days prior). If the tenant is a major lessee, a legal advice report is not required to accompany the waiver notice.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 11. Similar to NSW, but with the added obligation to provide an information brochure published by the Small Business Commissioner to the lessee.
TASMANIA Fair Trading (Code of Practice for Retail	See section 5(2). The landlord must provide the tenant with a copy of the proposed lease and Code as early as practicable in the negotiations.

Tenancies) Regulations 1998	
VICTORIA Retail Leases Act 2003	See section 15. Where a landlord offers to enter into a retail premises lease, or advertises by any means that retail premises are for lease, the landlord, a person acting on behalf of the landlord or a prospective landlord must as soon as he enters into negotiations give the proposed tenant a copy of the proposed lease in writing (but not necessarily including particulars of the tenant, the rent or the term of the lease) and a copy of the information brochure (if any) published by the Small Business Commission. Penalty: 50 penalty units. However, the above requirements do not apply to a renewal of lease. See section 17. A landlord will be required to give a tenant a copy of the proposed lease in writing, including particulars of the tenant, rent and term of the lease) at least 14 days before "entering into" the lease. If the proposed lease contains any changes from one previously provided, the differences must be noted, or the landlord will commit an offence and be liable for substantial financial penalties.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 6. The landlord must give the tenant (as part of the prescribed requirements for a DS as detailed in "Disclosure statement to be provided by landlord" below) a copy of the landlord's form of "lease" document at least 7 days before the "lease is entered into". As noted above the definition of "lease" in the Act is very broad and would include an offer to lease.

Compensation for pre-lease misrepresentations

ACT Leases (Commercial and Retail) Act 2001	See section 36. A party must not make representations to another party to the lease during negotiations which it knows or should reasonably know are false or misleading in a material particular. See section 37. If this happens and: • the lease is entered into because of the negotiations; and • the injured party suffers damage because of the representation, the representor is liable to pay reasonable compensation to the injured party.
NSW Retail Leases Act 1994	See section 10. An injured party may claim reasonable compensation for damage attributable to a false or misleading representation made by the other party with the knowledge that it was false or misleading. This includes a representation made by the landlord in its DS or a representation made by the tenant in its DS that the tenant has sought independent advice.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 18. Any party to a retail shop lease is liable to pay the other party reasonable compensation for damage suffered by them attributable to their entry into the lease as a consequence of a false or misleading statement or false or misleading representation, knowingly made by the party or a person acting under the party's authority. This includes a representation made by the landlord in its DS or a representation made by the tenant in its DS that the tenant has sought independent advice or as to statements or representations relied on by the prospective tenant in entering the lease.
QUEENSLAND Retail Shop Leases Act 1994	See section 43AA. Similar to NSW except: • there is no requirement that the misrepresentation (by or on behalf of the landlord) was made with the knowledge that it was false or misleading; and • compensation is also payable if the shop is not available for leasing on the date specified in the DS due to the default of the landlord or anyone acting under the landlord's authority. See section 43A. Compensation is also payable by a tenant, assignor or assignee for a false or misleading statement or representation in a DS. The compensation provisions do not apply to a periodic tenancy or a tenancy at will, except where the tenant is holding over under a prior lease or with the landlord's consent. See section 42.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 12. If a DS contains materially false or misleading information at the time it is given, the tenant may apply to the Magistrates Court for appropriate orders, including orders to void or vary the lease, requiring the payment of compensation and/or an order dealing with incidental or ancillary matters.
TASMANIA Fair Trading (Code of Practice for Retail	See section 5(1). A person must not make a representation to another party that the person knows is not accurate, truthful and without omission of any material matter at the time it is made.

Tenancies) Regulations 1998	
VICTORIA Retail Leases Act 2003	See section 17. See "Disclosure statement to be provided by landlord" below.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 6(1)(b). Where a DS either: • has not been given by the landlord in accordance with the Act; or • has been given but is incomplete or contains false or misleading information, the tenant may (in addition to any other rights it may have, including termination as referred to in "Disclosure statement to be provided by landlord" below) apply in writing to the WA SAT for an order that the landlord must pay compensation in respect of pecuniary loss attributable to failure to supply a DS or the supply of a DS with incomplete, false or misleading information. There is no exoneration of the landlord from paying compensation based on the reason for the incorrect or misleading information and strict liability will remain on the landlord in that regard. Compare with termination below in "Disclosure statement to be provided by landlord".

Disclosure statement to be provided by landlord

ACT Leases (Commercial and Retail) Act 2001	See section 30. The landlord must give the tenant a DS: • at least 14 days before the lease is entered into; or • if the lease contains an option to extend and the tenant, not more than 3 months before the tenant may exercise the option, requests the landlord to give a DS, within 14 days of that request. The time limits do not apply (or are varied) if the tenant provides the landlord with a certificate signed by a lawyer stating that it is aware of the time limits and has chosen to waive or vary them as set out in the certificate.
NSW Retail Leases Act 1994	See section 11. The landlord must provide the tenant with a DS at least 7 days before a lease is entered into. The DS must: • be in writing and (substantially) in the prescribed form; • contain the tenant's DS which the tenant must complete under section 11A of the Act; and • contain lease information and be accompanied by relevant material that is required to complete the landlord's DS. If the tenant is not given a DS as required by the Act, or if the DS provided is incomplete or contains materially false or misleading information, the tenant is entitled to terminate the lease by notice in writing within 6 months of entering into the lease. In the 2021 NSWSC decision of Ausko Cooperation v Junapa Pty Ltd, the lack of a disclosure statement was a material factor indicating that the parties (notwithstanding an agreement to lease in principle) had not entered into a lease for the purposes of the Act. If the tenant terminates the lease, then the tenant is entitled to recover compensation. However, the tenant is not entitled to terminate where the landlord has acted honestly and reasonably and ought reasonably to be excused and the tenant is in substantially as good a position as he would have been if the failure had not occurred. There is a penalty imposed on the landlord of up to 50 penalty units if the tenant is not given a DS as required by the Act. A DS may be amended in writing by agreement between the tenant and landlord before or after a lease is entered into and any such amendment has effect from the date specified in the agreement.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 19. The landlord must provide the tenant with a DS at least 7 days before the lease is entered into, unless a legal practitioner who is not acting for the landlord certifies in writing that they have explained to the prospective tenant the effect of section 19, and that the giving of the certificate will result in a waiver of the time limit. The details required to be included in the DS are prescribed in the Regulations. Maximum penalty: 100 penalty units. If a lease is entered into by way of a renewal, a written statement that updates the provisions of an earlier DS given to the tenant is, in conjunction with the earlier DS, is taken to be the landlord's DS given at the time the landlord's update is given. See section 20. If the landlord fails to provide the DS or the DS is incomplete or contains information which is materially false or misleading (at the time the DS is given), the tenant may terminate the lease by notice in writing within 6 months after the lease was entered into.

	However, the tenant cannot terminate the lease if the landlord acted honestly and reasonably and ought reasonably to be excused from having given an incomplete DS or information that is materially false or misleading, and the tenant is in substantially as good as position as the tenant would have been if the DS had been complete or the information had not been materially false or misleading.
QUEENSLAND Retail Shop Leases Act 1994	See section 21B. The landlord is to provide the tenant with a draft lease and DS containing particulars prescribed by regulation at least 7 days before the tenant enters into the lease. The landlord must also provide a current disclosure statement within 7 days after the tenant exercises any option to renew. The tenant may withdraw the option renewal notice within 14 days after receiving the current disclosure statement. See section 21E. If the landlord fails to comply, or if the landlord's DS is incomplete in a material particular or contains information which is false or misleading in a material particular, the tenant is entitled to terminate within 6 months of the date the tenant enters into the lease. Following the 2016 amendments, there is no longer a defence if the landlord acted honestly and reasonably. Any defective statement will allow the tenant to terminate. The landlord is also liable to pay reasonable compensation to the tenant (decided by way of dispute resolution process) whether or not the lease is terminated. The prescribed particulars for the DS in Qld are found in section 2 of the Regulation. The landlord is taken to have given the DS to the tenant within the disclosure period if the tenant provides a waiver notice and legal advice report. The landlord must still give the DS however it only needs to be given before the tenant enters into the lease not 7 days before. A major lessee does not need to provide a legal advice report to accompany its waiver notice. See section 21B. Under permitted franchising arrangements, the franchisor may request a DS from the landlord. The landlord must provide the DS within 28 days. The Landlord may recover its reasonable expenses of providing the DS. See section 21D.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 12. The tenant must be given a signed DS in duplicate in the form required by the Act and the Regulations before a retail shop lease is entered into. A DS is not required to be given in respect of a renewal of a retail shop lease. If a DS is not provided, or at the time it is given is materially false or misleading, the Magistrates Court may make orders to avoid or vary the lease, or require the landlord to refund money or pay compensation.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 6. The landlord must provide the tenant with a DS at least 7 days before the earliest event of the tenant signing a lease,or signing an agreement to lease or entering into occupation of the premises, or paying rent. The DS is to be in the form of Appendix B to the Code and is to be signed both on behalf of the landlord and the tenant.

	See section 7. The Tenant may terminate the lease within 3 months of its commencement if the landlord fails to notify the tenant in writing of any material changes to the information contained in the DS if the change occurs after the DS is signed but before the earlier of the date on which the tenant signs the lease or enters into occupation of the premises. However, the landlord may contest the tenant's termination on the grounds that the landlord has acted honestly and reasonably and ought fairly to be excused for the contravention and that the tenant is substantially in as good a position as he would have been if there had been no contravention.
VICTORIA Retail Leases Act 2003	See section 17. The landlord, a person acting on behalf of the landlord or a prospective landlord must provide the DS at least 14 days before the parties enter into the lease. If the landlord gives a disclosure statement and/or proposed lease to a tenant less than 14 days before the lease is entered into, the term of the lease will not commence until 14 days after those documents are provided. The DS is to be in the form prescribed by the Regulations (it is in the prescribed form if it contains the information and material specified in the relevant schedule (but the layout of the DS need not be the same as the prescribed DS). The Regulations prescribe 4 forms of DS to be used in the following circumstances: • Schedule 1 – retail premises not located in retail shopping centres • Schedule 2 – retail premises located in retail shopping centres • Schedule 3 – on renewal of a lease • Schedule 4 – assigned lease with an ongoing business A sub-landlord who has been given a DS concerning a head lease is only required to give a sub-tenant a copy of that DS and details of changes from that DS. If the tenant is not given the DS before entering into the lease, the tenant may give the landlord, no earlier than 7 days and no later than 90 days after entering into the lease, a notice that he has not received the DS. If such notice is given, the tenant may withhold payment of rent until the day on which the landlord gives the tenant the DS and the tenant may give the landlord a written notice of termination at any time within 7 days of the landlord giving the DS to the tenant. If the premises are not available for handover to the tenant or prospective tenant on the date specified in the DS, the tenant or prospective tenant is not liable to pay rent attributable to a period before the date on which the premises are available for handover. If the DS is misleading, false or materially incomplete or the tenant is not given a copy of the proposed lease at least 7 days before entering into the lease, the tenant may terminate the lease at any time within 28 days of the tenant being given the DS, the tenant being given a copy of the lease or the lease being entered into, whichever happens last. The tenant may not terminate the lease if the landlord has acted honestly and reasonably and ought fairly to be excused for the contravention and the tenant is substantially in as good a position as the tenant would have been in if there had been no contravention. If a tenant has been given a DS before entering into an agreement for a retail premises lease, the landlord is not required to give a further DS before subsequently entering into a retail premises lease if that lease is in accordance with the earlier agreement for lease.

	See section 26. A landlord must give a DS at least 21 days before the end of the current term of a lease where the tenant has exercised or is entitled to exercise an option to renew, or no later than 14 days after the parties have entered into an agreement to renew a lease. Any disclosure statement issued on renewal of a lease must set out how the statement differs from any previous disclosure statement and include information that is current from a specified date that is within 3 months before the statement is given.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 6. The landlord must provide the tenant with a duly completed DS, and that DS must be signed by both the landlord and tenant, at least 7 days before the "lease" is entered into. The details required to be included in the DS are set out in the prescribed form and must contain a statement notifying the tenant to seek independent legal advice. The DS must attach a copy of the "lease" (as broadly defined). The DS includes a place for the tenant to make disclosure to the landlord of its requirements and representations made to the tenant. If the tenant is not given a DS as required by the Act, or if the DS provided is incomplete or contains materially false or misleading information, in addition to any other rights the tenant may have (including compensation, as referred to above) the tenant is entitled to terminate the lease by notice in writing within 6 months of "entering into the lease". However, the tenant is not entitled to terminate where the landlord has acted honestly and reasonably and ought reasonably to be excused and the tenant is in substantially as good a position as he would have been if the failure had not occurred. A DS does not need to be given by the landlord: • on a renewal of a retail shop lease under an option to renew contained in the lease; or • on an assignment of the retail shop lease.

Disclosure statement to be provided by tenant

ACT Leases (Commercial and Retail) Act 2001	See section 32. The tenant must note on the DS the date it was received, sign the DS and return it to the landlord on the earlier of: • the time the tenant returns the signed copies of the lease to the landlord; or • 3 months after the lease is entered into.
NSW Retail Leases Act 1994	See section 11A. No later than 7 days after the tenant receives the landlord's DS, the tenant must give the landlord the tenant's DS. The details required to be included in the DS (to the extent that they are relevant to the lease concerned) are set out in the prescribed form. If the lease is a renewal of an existing lease, a written statement ("tenant's disclosure update") which updates the provisions of the earlier tenant's DS given to the landlord, together with that earlier tenant's DS, is considered to be the tenant's DS. There is a penalty imposed of up to 50 penalty units if the landlord is not given a DS as required.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 21. The tenant must provide a tenant's DS within 7 days of having received the landlord's DS or such further period as agreed by the prospective Landlord. Maximum penalty: 100 penalty units. The details required to be included in the tenant's written DS are prescribed in the Regulations. If the lease is a renewal of an existing lease, a written statement which updates the provisions of the tenant's DS previously given to the landlord, together with that previous tenant's DS, is considered to be the tenant's DS given at the time the update is given.
QUEENSLAND Retail Shop Leases Act 1994	See sections 22A, B, C, D and E. Section 22A – The tenant must provide the landlord with a DS prior to entering a retail shop lease. Section 22B – An assignor of a lease must give an assignee a DS at least 7 days before the earlier of the day the assignee enters into the sale agreement or the date the landlord is asked to consent to the assignment. The assignee must give a DS to the assignor before the landlord is asked to consent to the assignment. However, if the assignee gives a waiver notice to the assignor before an assignment is entered into, the assignor is able to provide the DS at any time before an assignment is entered into (no requirement to be 7 days prior). See section 22C. At least 7 days before an assignment of a lease, the landlord must give the assignee a DS and copy of the lease. However, if the assignee gives a waiver notice and a Legal Advice Report before an assignment is entered into, the landlord is able to provide the DS at any time before an assignment is entered into (no requirement to be 7 days prior). A Legal Advice Report is not required for a major lessee. See section 22D. If the tenant or assignee is not a major lessee, a financial advice report and legal advice report must be given to the landlord before the lease or assignment is entered into.

	Section 22E(2) deems a RTD to exist if a person fails to comply with sections 22A-D and QCAT may be approached for an order (time limits apply).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	No mention in the Act of a tenant providing a DS to a landlord. See section 12. The tenant must sign both copies and return one copy to the landlord within 14 days. See section 45A. An assignor of a lease is to give an assignee and the landlord a DS. The DS is to be given to the assignee before requesting the landlord's consent to the assignment. The DS is to be given to the landlord at the time of the assignor's request for the landlord's consent.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention in the Code.
VICTORIA Retail Leases Act 2003	No mention in the Act.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	There is only one DS in WA and the tenant's disclosure to the landlord forms part of the prescribed DS referred to in section 6(4) of the Act (above). The details required to be disclosed by the tenant are set out in the prescribed form. Section 6(1) requires the tenant to sign the DS as part of the DS having been given in accordance with the Act.

Lease costs and fit-out costs

ACT Leases (Commercial and Retail) Act 2001	See section 23. Each party is to bear its own costs in relation to the preparation of the lease. If 1 party requires the lease to be registered, that party must pay any fee for registration. The costs of obtaining a mortgagee's consent to the lease are deemed to be the landlord's costs.
NSW Retail Leases Act 1994	See sections 12, 13, 13A and 14 and 16. Section 14. The landlord is responsible for lease preparation costs (excluding registration fees under the RPA). Section 16. If the lease is for a term of 3 years or more or the parties have agreed to register the lease, the parties must lodge the lease for registration within 3 months after the lease is returned to the landlord. There is a penalty imposed of up to 50 penalty units if the landlord has not lodged the lease for registration, unless the delay has been caused in obtaining mortgagee consent. Section 12. A provision of a retail shop lease that requires the tenant to pay or contribute towards the cost of any finishes, fixtures, fittings, equipment or services, in or for the shop is void unless the liability to make the payment or contribution is disclosed in a landlord's DS given to the tenant. Section 13 applies if a tenant of a retail shop is liable to pay for work carried out by or on behalf of the landlord (before or after the lease is entered into) to enable the proposed fit-out of the shop by the tenant. The maximum amount or formula payable with respect to costs is to be agreed between the parties before the lease is entered into. The tenant is not liable to pay more than the agreed amount. Section 13A. If a landlord of a retail shop in an RSC requires a particular standard of construction for fit-outs to be carried out by the tenant, the relevant information about the standard is to be contained in a tenancy fit-out statement. The tenancy fit-out statement should be accompanied by the landlord's DS or in the lease or any agreement for the lease of the shop.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 23. A tenant must only pay the landlord's costs if the tenant is provided with a copy of the account presented to the landlord for those costs and the amount of the costs or the method of calculation of those costs is included within the landlord's DS. A tenant is not liable to pay any more than a "reasonable sum" for legal and other costs incurred in connection with the preparation of a retail shop lease. The landlord may recover a reasonable sum for legal and other expenses incurred in the preparation of the lease from a person who enters into and then withdraws from negotiations with the landlord in respect of the retail shop lease. Other expenses include: • negotiation, preparation and execution of the lease; • obtaining consents from a mortgagee or government agency; and • complying with survey or compliance requirements under an Act. See section 22. A provision of a retail shop lease that requires the tenant to pay or contribute towards the cost of any finishes, fixtures, fittings, equipment or services is void unless the liability to make the payment or contribution is disclosed in a landlord's disclosure statement given to the tenant.

QUEENSLAND Retail Shop Leases Act 1994	See section 48. The landlord cannot recover expenses for preparation/renewing/ extending a lease or mortgagee consent fees or the costs of complying with the Act but a tenant can be required to pay for: • registration fees; and • costs of survey. A landlord may recover reasonable legal or other expenses incurred for preparation of a final lease if: • the terms of the lease are agreed; • the tenant gives notice to the landlord to prepare the final lease; • the lease is prepared; and • the tenant does not sign it. See section 48(3).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 13. The tenant may only be required to fit out or refit or provide fixtures, plant or equipment if the DS discloses the obligation and contains sufficient details for the tenant to obtain an estimate of likely costs. See section 14. The tenant is not required to pay such costs until provided with copies of any account rendered to the landlord. If the tenant is liable for the landlord's costs, the liability cannot exceed the stamp duty and registration fees and half of other "preparatory costs". Preparatory costs include: • fees charged by a mortgagee for consenting to the lease; and • costs of attendances on the tenant by the landlord or landlord's lawyer. Note: This section does not limit the recovery of preparatory costs incurred by the landlord from a person who enters into and then withdraws from lease negotiations.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 8. Each party is to bear its own costs in the preparation of the lease. The landlord may charge the tenant the cost of any alterations the tenant requires to the lease. If the prospective tenant gives written authorisation for the preparation of the lease, the tenant may agree in writing that if the tenant withdraws from lease negotiations then the tenant will be responsible for the costs of preparation of the lease. The parties are to negotiate payment of disbursements such as stamp duty and the costs of procuring mortgagee's consent.
VICTORIA Retail Leases Act 2003	See section 51. The landlord cannot recover expenses relating to: negotiation, preparation or execution of the lease; • obtaining the consent of a mortgagee to the lease; or • the landlord's compliance with the Act. This section does not prevent a landlord from claiming the reasonable legal or other expenses incurred by the landlord in connection with an assignment of the lease or a sub-lease, including investigating a proposed assignee or sub-tenant and obtaining any necessary consents to the assignment or sub-lease.
WESTERN AUSTRALIA	See sections 9(2)(b)-(c) and 14B. A landlord cannot claim from the tenant the landlord's legal or other expenses in relation to:

Commercial Tenancy (Retail Shops) Agreements Act 1985	• negotiation, preparation or execution of the lease as well as an extension or renewal of lease; • obtaining the consent of a mortgagee to the lease; or • the landlord's compliance with the Act (for example, WA SAT application fees), but the above does not prevent a landlord from claiming fair and reasonable legal or other expenses incurred by the landlord in connection with: • the negotiation, preparation and execution of an assignment of the lease or sublease; and • obtaining any necessary consents to the assignment or sublease. See section 12(3A). Any provision in a retail shop lease is rendered void if it has the effect of requiring a tenant to contribute towards the landlord's finishes, fixtures, fittings, equipment or services unless the DS given under section 6 "contains a statement notifying the tenant of the effect of the provision" See section 14C. Any provision in a retail shop lease is void if it requires a tenant to refurbish or refit the shop unless the provision gives "such details of the required refurbishment or refitting as may be necessary to indicate generally the nature, extent and timing of the required refurbishment or refitting". Note sections 12 and 14C are new provisions introduced in the 2013 Amending Act and are not retrospective. They only apply to New Leases (as defined below in "Minimum 5 year term of lease" concerning section 13).

Key money prohibited

ACT Leases (Commercial and Retail) Act 2001	See section 38. The landlord must not ask for or accept key money for the grant of the lease, extension of the lease under option, renewal, assignment, sublease or mortgage of the lease, or consent to assignment, sublease or mortgage of a lease. Key money is defined to mean an amount paid by or on behalf of a tenant to, or at the direction of, a lessor, or any benefit given to, or at the direction of, a lessor, but does not include: • rent; or • a payment for the goodwill or other assets of a business genuinely operated by the lessor that is sold or to be sold by the lessor to the tenant; or • a bond or security deposit, or a guarantee by way of security; or • an amount payable on account of outgoings; or • a reasonable amount payable to someone for attendances on the tenant in relation to the preparation of documents that are relevant to a lease; or • any reasonable amount payable to a lessor for goods and services provided, or to be provided, to the tenant; or • an amount allowed to be paid under this Act. The tenant may recover key money paid as a debt owing by the landlord.
NSW Retail Leases Act 1994	See section 14. A person is prohibited from obtaining key money or lease preparation expenses in connection with the granting of a lease and any provision to the contrary is void. The landlord may, however, recover a reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment that was requested by the tenant. This does not apply to an amendment to insert or vary particulars of the lessee, the rent or the term, an amendment to remedy failure to include a term of the proposed lease that was agreed to be included or an amendment requested before the landlord is given a tenant disclosure statement. This section does not prevent a landlord from securing performance of the tenant's obligations under the lease by requiring the provision of a security bond or other bond or guarantee from the tenant or any other person. There is a penalty imposed of up to 100 penalty units if a person contravenes section 14 of the Act.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 24. Key money is defined in section 5(1) to not only include money paid, but also "a benefit to be given" by way of a premium or something similar in nature to a premium where either there is no real consideration or it is in consideration of a benefit in connection with the granting, renewal, extension or assignment of a retail shop lease. Key money does not include: • payment for legal or other expenses in connection with the preparation and entering into of the retail shop lease; • payment of rent in advance; • bond, security deposit or guarantee; • payment for goodwill of a business (to the extent that the goodwill is attributable to the conduct of the business by the landlord);

	• payment for plant, equipment, fixtures or fittings that are sold by the landlord to the tenant; or • payment for the grant of a franchise. See sections 24 and 54. A landlord or person acting on behalf of a landlord must not seek or accept key money in connection with granting a retail shop lease. Maximum penalty: 100 penalty units. A lease is void to the extent that it requires key money. The tenant may recover key money accepted by or on behalf of the landlord as a debt owed by the landlord.
QUEENSLAND Retail Shop Leases Act 1994	See section 39. Payment of key money or amount for tenant's goodwill is prohibited. The landlord is not however prevented from: • recovering from the tenant costs which the landlord reasonably incurred in investigating a proposed assignee; • recovering the landlord's reasonable expenses incidental to an assignment and any necessary consents to the assignment; • receiving payment of rent in advance (not exceeding the rent payable for 1 rental period under the lease); • getting a repayable bond from the tenant to secure its obligations under the lease; • receiving from the purchaser of the landlord's business conducted in a retail shop, payment for the goodwill of the business or plant, equipment fixtures or fittings in the shop; • receiving payment from the tenant for amounts spent by the landlord for fitting out the shop; or • seeking and accepting payment for the grant of a franchise in relation to the grant of the lease.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 15. The landlord must not seek or accept payment of a premium in connection with the grant of a retail shop lease and any provision of a retail shop lease is void to the extent it requires payment of a premium. See section 20L. The tenant cannot be required to pay a premium for the renewal or extension of a retail shop lease.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 9. Key money payments are prohibited. Key money is defined in section 1 to mean any money paid to or at the direction of a landlord or landlord's agent, or any benefit that is conferred on or at the direction of a landlord or landlord's agent, in connection with the granting, renewal, extension or assignment of a lease, and a reference in the Code to payment of key money includes a reference to the conferral of any such benefit.
VICTORIA Retail Leases Act 2003	See section 23. The landlord, a prospective landlord or any person on behalf of the landlord or prospective landlord must not seek or accept payment of key money or any consideration for the goodwill of any business carried on at the retail premises and any provision to the contrary is void. Penalty: 50 penalty units. The landlord is not however prevented from: • recovering from the tenant costs which the landlord reasonably incurred in investigating a proposed assignee of the lease or sub-tenant of the premises;

	• recovering from the tenant costs which the landlord reasonably incurred in connection with: • an assignment of the lease or a sub-lease; and • obtaining any necessary consents to the assignment or sub-lease; • claiming goodwill from the tenant in relation to the sale of a business that the landlord operated from the retail premises immediately before its sale, if the lease was granted to the tenant in the course of the sale of the business; • receiving payment of rent in advance; • securing the performance of the tenant's obligations under the lease by requiring a bond, security deposit or guarantee to be provided from the tenant or any other person (such as a requirement that the directors of a corporation guarantee performance of the corporation's lease obligations); • seeking and accepting payment for plant, equipment, fixtures or fittings that are sold by the landlord to the tenant in connection with the lease being granted; or • seeking and accepting payment for the grant of a franchise in connection with the lease being granted.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 9. Any provision in a retail shop "lease" (as broadly defined) to the effect that the landlord or any person claiming through the landlord is entitled to or may require from the tenant: • key money; or • any consideration for the goodwill of any business carried on at the retail premises, is void, and any such sum paid or benefit conferred by the tenant is recoverable by the tenant as a debt due. Key money is defined in section 3(1) to include not only money paid, but also any benefit conferred by, or at the request or direction of, a tenant by way of a premium or something of a like nature in consideration of the granting or agreeing to grant a lease or a renewal or assignment of a retail shop lease. In addition to any other benefits outlawed as key money, under section 9(1a) if the tenant is required to make a payment or provide the landlord with some other benefit in consideration of a rental reduction, that payment or other benefit is taken to be key money and therefore void. Section 9(2) permits the landlord to recover any sum: • a tenant has agreed to pay for the goodwill of a business carried on by the landlord in the retail shop concerned immediately before the lease was entered into; or • expenses reasonably incurred by the landlord in investigating a proposed assignee or subtenant; or • permissible lease costs discussed above.

Key money and lease preparation expenses for renewal or extension prohibited

ACT Leases (Commercial and Retail) Act 2001	See section 38. Landlord must not ask for or accept key money in connection with the renewal or extension of a lease. Any money so received is a debt due and payable by the landlord to the tenant. No specific provision concerning costs of lease extensions, however an extension or renewal would be considered to be the grant of a lease and therefore subject to section 23 where each party must bear its own costs of preparing the lease.
NSW Retail Leases Act 1994	See section 45. The landlord is prohibited from obtaining key money or lease preparation expenses in connection with the renewal or extension of a lease and any provision to the contrary is void. The landlord, may however, recover from the tenant reasonable lease preparation expenses incurred in connection with the tenant requesting amendments to a proposed renewal or extension lease.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 61. Landlord must not seek or accept key money in connection with the renewal or extension of a retail shop lease. Any money so received is recoverable by the tenant from the landlord as a debt. Maximum penalty: 100 penalty units. This does not preclude a landlord from requiring payment by the tenant of reasonable legal expenses in connection with the renewal; or receiving payment of rent in advance; or securing performance of the tenant's obligations under the renewed or extended lease (via bond or security deposit); or seeking and accepting payment for the grant of a franchise in connection with the renewal or extension of the lease.
QUEENSLAND Retail Shop Leases Act 1994	Key money – See section 39 and Schedule dictionary. Payment of key money or amount for tenant's goodwill is prohibited. Costs – See sections 24 and 48. Tenant is not liable for legal costs for preparing, renewing or extending a lease or costs of obtaining lessor's mortgagee's consent or the costs of the lessor complying with the Act. Costs of survey, registration fees and legal costs for a variation (after the lease has been entered into) or consent to sublease or licence may be recovered. The prospective landlord may recover its reasonable legal or other expenses incurred in the preparation of the final lease from a prospective tenant if: • the prospective landlord and tenant agree to the terms of the proposed lease; • the prospective tenant gives the prospective landlord a written notice to prepare the final lease and that lease is prepared; • the prospective tenant does not sign the final lease; and • the prospective landlord gives the prospective tenant a copy of the invoice for expenses for the preparation of the final lease (see section 48(3)).

SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 20L. Similar to NSW but no prohibition on recovering renewal lease preparation expenses.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	Payment of key money in relation to the granting, renewal, extension or assignment of a lease is prohibited, and is void (see Regulation 9 and the definition of "Key Money" in Regulation 1). The Landlord may, however, recover from the tenant the costs of any alterations required by the tenant to the lease (see Regulation 8).
VICTORIA Retail Leases Act 2003	The key money prohibition in section 23 above applies in relation to the renewal of a lease and the granting of an option for the renewal of a lease. No specific provision concerning the costs of lease extensions or renewals, however an extension or renewal would be considered to be the grant of a lease and therefore section 51 refers to and the landlord cannot recover expenses relating to: • negotiation, preparation or execution of the lease; • obtaining the consent of a mortgagee to the lease; or • the landlord's compliance with the Act.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	No specific provision concerning lease extensions. The key money prohibition in section 9 above in relation to "leases" would apply equally to extensions of leases. A tenant will not be liable under section 14B for legal costs for preparing, renewing or extending a lease.

Minimum 5 year term of lease

ACT Leases (Commercial and Retail) Act 2001	See section 104. The tenant has a right to extend the term to 5 years if the "total term" of the lease is less than 5 years, and the tenant was not (before entering lease) advised independently about the effect of section 104 and extension of the lease is not: • inconsistent with the terms of a head lease; or • unlawful. The tenant may, no later than 90 days before the end of the term of the lease exercise the right of extension by written notice to the landlord.
NSW Retail Leases Act 1994	Section 16 of the Act no longer prescribes a minimum 5-year term. Previously, a retail shop lease could not be less than 5 years, unless the landlord was given a certificate from a lawyer or licensed conveyancer certifying that the minimum 5-year term did not apply.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 26. There is a minimum 5 year term. The term includes any options for extension or renewal unless the option is entered into / conferred after the retail lease is entered into. A lease in contravention of this section is extended by the period necessary to increase the term to 5 years. This section does not apply: • where the tenant obtains a certificate from a legal practitioner or accountant not acting for the landlord certifying that he has explained the effect of a reduction in the lease term; • where the lease is resulting from the renewal of an earlier lease in accordance with an option under that lease, only if there was no break in the entitlement of the tenant to possession of the retail shop and the option was granted by that earlier lease or an agreement entered into before or at the same time as the earlier lease; or • where a 5-year term would be inconsistent with the terms of a head lease under which the landlord holds the retail shop.
QUEENSLAND Retail Shop Leases Act 1994	No prescribed minimum term.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 20B and 20K. Minimum 5-year term. "Term" assumes any right of renewal will be exercised. But a right of renewal given after the lease is entered into will not be considered. However, the section does not apply to: • a lease containing a certified exclusionary clause (a certificate signed by a lawyer to the effect that the effect of the minimum term provision has been explained, and that the tenant gave assurances that the tenant was not acting under coercion or undue influence); • a fixed term lease of 6 months or less; • a lease arising from holding over with the consent of the landlord for a period which does not exceed 6 months; • a tenant who has been in possession for at least 5 years; • a sublease where the term is as long as the head lease allows; and • a lease excluded by regulation.

TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See sections 10(3)-10(4). Minimum 5-year term. Except where a tenant obtains a certificate from the tenant's legal adviser certifying that he has explained to the tenant the effect of a reduced lease period.
VICTORIA Retail Leases Act 2003	See section 21. The term of a retail premises lease (including any further term) must be at least 5 years or if the term remaining under any head lease under which the landlord holds the premises is 5 years or less, the length of that remaining term less 1 day. This does not apply if the tenant or prospective tenant, obtains a certificate from the SBC which certifies in writing that the effect of the section and the certificate have been explained to the tenant or prospective tenant and the tenant or prospective tenant provides to the landlord a copy of the certificate of the SBC. The SBC must consider a request made within 90 days after entry into the lease and has the discretion to consider a request made outside that time.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 13. Provisions are complex and differ markedly from other States. Within WA they also differ depending on whether the lease is: • an **Existing Lease** – being a lease entered into before 1 January 2013 or pursuant to an option that was originally granted in a lease entered into before 1 January 2013; or • a **New Lease** – being one entered into on or after 1 January 2013 (including an Existing Lease that is amended on or after 1 January 2013 in such a way that it becomes a New Lease at law eg. due to a change in area of the premises whether by way of surrender or addition of more area). Prior to the 2013 Amending Act, section 13: • gave the tenant a right to a statutory option to renew (as long as the tenant was not in default or a statutory option would not be inconsistent with the landlord's rights as tenant under any head lease) if the aggregate term granted to the tenant (taken with any option to renew contained in the lease) gave the tenant less than 5 years possession. The right had to be exercised 90 days before the end of the term granted or such longer period as WA SAT in its discretion allowed. • except for default, prevented the landlord from ending the lease before the tenant had an aggregate of 5 years' continuous possession of the premises (unless the tenant failed to exercise the statutory option in time or a statutory option was inconsistent with the landlord's rights as tenant under a head lease). • in calculating whether the tenant had had 5 years' possession, enabled regard to also be had to immediately prior possession by the same tenant of the same premises under prior leases. • where the lease was assigned and provided there were no amendments in the assignment deed effecting a re-grant, gave the assignee only the rights the assignor had in respect of that lease to 5 years' possession – no more and no less. • if the landlord wished to grant the tenant a retail shop lease for an aggregate term being less than 5 years without a statutory option arising, the tenant (of the tenant's own free will) would first need to apply to the SAT and obtain from SAT an order that the statutory option would not arise: (section13(7b)). Those orders can be difficult to obtain from SAT in our experience. Section 13 in its application to New Leases is similar to the unamended section 13 except that:

	• a statutory option will now not arise to a short-term tenancy provided that the tenant has not had continuous possession of the premises for an aggregate term **exceeding 6 months**.
	• to stop rolling monthly tenancies being used to get around section 13, the time for exercising the statutory option is reduced to 30 days before the end of the term.
	• further, regard also needs to be had to the obligation in section 13C placed on the landlord by the 2013 Amending Act to give the tenant notice of the last day for exercising an option to renew – expressly including a statutory option to renew – otherwise that latest date for exercise is extended.
	• most importantly, section 13 no longer applies to redevelopment/ relocation clauses in New Leases. Those are now governed by substantially more tenant friendly provisions in section 14A (as inserted by the 2013 Amending Act). See detailed discussion below concerning section 14A in "Relocation".
	• where a lease is an Existing Lease, section 13 (as it was drafted before the 2013 Amending Act) continues to govern landlord early break rights for redevelopment/ relocation as well for other reasons (eg. total or partial destruction) and has the effect that:
	  • if WA SAT did **not** approve the inclusion of the early break clause in the Existing Lease – the landlord can simply wait until the tenant has had an aggregate of 5 years continuous possession of the premises (including any prior lease possession) then terminate the Existing Lease on not less than 6 months' notice without offering a new lease nor paying the tenant compensation (unless the parties had contractually agreed otherwise); or
	  • where WA SAT approved the early break clause (which according to WA SAT policy at the time would have required some form of compensation but no obligation to offer a new lease) – the landlord can terminate the Existing Lease before the tenant has had an aggregate of 5 years continuous possession of the premises on not less than 6 months' notice.
	
	Whether a lease is an Existing Lease or a New Lease:
	• The SBC does not take over the role of SAT in relation to early break clauses – that role remains with SAT.
	• There is no ability in WA to get a statement from the tenant, licensed conveyancer or tenant's lawyer contracting out of section 13.

Security bonds

ACT Leases (Commercial and Retail) Act 2001	See section 39. Any bond must not be more than the rent payable for a 3-month period under the lease. See section 41. The landlord must not unreasonably refuse to accept a bank guarantee instead of a bond. See section 42. The landlord must account to the tenant for any interest earned on bonds which must be invested by the landlord in an interest-bearing account.
NSW Retail Leases Act 1994	See Part 2A and sections 16A-16ZC. A landlord is not entitled to unreasonably refuse to accept a bank guarantee in satisfaction of any requirement to provide a security bond, other bond, or third-party guarantee for the performance of the lessee's obligations under the lease. Where a landlord receives a bank guarantee it must return the bank guarantee (unless it expired) within 2 months after the tenant completes its performance of the obligations under the lease. Where a landlord (or its agent) receives a security bond for a lease or a proposed lease, the landlord must within 20 business days deposit the amount with the Secretary. Where section 16D applies, the landlord or the landlord's agent must deposit with the Secretary within 3 months after the relevant day an amount equivalent to the current balance of the amount deposited or paid. Section 16E. No one other than the Secretary is to receive interest in respect of the bond. Section 16G. An application to the Secretary to pay out an amount of money may be made: • jointly by the landlord and tenant; or • by landlord alone; or • by the tenant alone. The Secretary may after receiving notice of a judgment or order relating to a security bond, pay out money. The Secretary must not pay out money if an appeal has been lodged. Division 5: the following accounts are to be established in accordance with the law: • a Retail Leases Security Bonds Trust Account; and • a Retail Leases Security Bonds Interest Account. The Secretary may establish an online retail bond service to facilitate the deposit, claims payment and receipt process. A person must not require another person to use the online retail bond service. There is a penalty imposed of up to 50 penalty units if a person requires the lessee or other person to use the online service.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 63. Security deposits have to be held either in an interest-bearing account or in a licensed real estate agent's account. If the landlord holds the security deposit in an:

	• interest bearing account, it must account to the tenant for interest earned but the landlord is entitled to capitalise the interest so that it forms part of the security deposit; or • in a licensed real estate agent's account, Part V of the Agent's Licencing Act applies. Landlords are not entitled to unreasonably refuse to accept a bank guarantee in satisfaction of the requirement to provide a security deposit. The landlord may appropriate security moneys in accordance with a lawful entitlement to do so.
QUEENSLAND Retail Shop Leases Act 1994	There are no specific provisions regarding the form of security or how it is to be dealt with by the landlord. However, see commentary on section 39 in "Key money prohibited" – a landlord can obtain a repayable bond from the tenant to secure the tenant's obligations under the lease.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 19-20 and 20AA. A person cannot require more than 1 security bond for the same shop or require the payment of an amount by way of security under a security bond exceeding the value of 3 months' rent (ex GST). The maximum amount of the security bond is to be calculated by reference to the rent payable in the first 12 months of the lease. The landlord is required to return any bank guarantee to the tenant within two months of the tenant discharging the obligations secured by the bank guarantee.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 30. The landlord must not unreasonably refuse to accept a bank guarantee instead of a security deposit (section 30(4)). Security deposit limited to 3 months' rent (section 30(1)). The landlord must account to the tenant for interest. This security deposit must be held in an interest bearing account.
VICTORIA Retail Leases Act 2003	See section 24. The landlord must keep a security deposit in an interest-bearing account and account to the tenant for any interest earned. A landlord must return a security deposit within 30 days after the end of the lease.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	No mention in the Act and there are no regulations around them. It is left in the landlord's discretion whether or not to accept one and if it does so how the bond is to be dealt with.

Rent

Rent reviews

ACT Leases (Commercial and Retail) Act 2001	See section 47. A lease provision is void if it allows a change to rent more than once in each year after the first anniversary of the lease, except where the provision: • allows the sub landlord to pass on to the subtenant rent increases under a head lease; • sets out the steps by which rent will increase at predetermined times during the lease; • allows for changes to rent attributable to GST; • allows for abatement of rent; • allows review of rent on the exercise of an option to extend the lease; and • allows for adjustment to turnover rent under section 63. See section 50. Any purported rent change is void if the lease does not: • state the date each rent review is due; or • provide a mechanism so the date of each rent review can be easily worked out.
NSW Retail Leases Act 1994	See section 18. Rent reviews cannot take place more than once a year. This restriction applies, for example, to market rent reviews, but not to reviews by a specified amount or specified percentage. In addition, a provision of a lease is void if it reserves to one party a discretion as to which of two or more methods of calculating a change to base rate is to apply, or the discretion to elect whether or not rent is to be reviewed on a review date, or provides for rent to be changed to the higher of two or more specified methods. Ratchet provisions or provisions limiting the amount of a decrease in rent are prohibited.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 28. Leases must state when reviews are to take place and the basis or formula upon which those reviews are to be made. The basis or formula is to be by fixed percentage, independently published index of prices or wages, a fixed annual amount, the current market rent or a basis or formula prescribed by Regulations. A rent review provision that does not specify how the review is to be made is void. Ratchet provisions which prevent or limit the amount by which rent can be reduced are void, but the basis for review may provide for increases by fixed percentages or fixed amounts. If a review is not initiated by a landlord within 90 days of the due date, the tenant may initiate a review. If a provision in a retail shop lease provides for review of rent but is not a basis or formula permitted under the Act, the rent to be paid is as agreed between the landlord and tenant, or if there is no agreement within 30 days after either party gives the other a written notice specifying an amount of rent for the purposes of the review – the amount determined as the current market rent of the retail premises by a specialist retail valuer appointed by the Commissioner.

	The landlord and the tenant must share the cost of the valuation in equal shares.
QUEENSLAND Retail Shop Leases Act 1994	See sections 27, 28, 36 and 36A. The lease must state timing and bases of reviews. Reviews may be made only once a year (except the first year) and can be made on different bases during the term of the lease. The bases may comprise one method (eg. CPI) or a combination of two or more methods limited to the following: Current Market Rent (CMR), Index (ie. CPI), Fixed Percentage, Actual Amount and any other basis prescribed by regulation. The Act also allows rent to be reviewed to the average of the base and turnover rents payable during the previous year/s and caps on rent increases. Ratchet provisions and requirements for the rent to be calculated on the higher of two or more bases are void or invalid as are provisions allowing a party the discretion to decide which of two or more methods should be used. If an invalid review occurs, the outcome will depend on the breach, eg. reviews to the higher of two bases allow the tenant to choose the basis. The limitation on review methods does not apply to major lessees provided written notice is received from the tenant before the lease is entered into, that the tenant obtained appropriate financial and legal advice. A major lessee may agree to a ratchet provision and must provide appropriate notices under section 27(8) before entering into the lease.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 22. Review provisions are void in a similar fashion to NSW.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 12. The lease must state the method by which rent is to be adjusted. Adjustments are not permitted during the first 12 months of a lease or more frequently than once in each 12-month period. The lease must specify the date for each adjustment of rent otherwise an adjustment cannot be made. The method of adjustment is confined to one of the following methods: • CPI (All Groups Hobart) or other agreed CPI Index; • agreed percentage; • current market value rent; • agreed amount; or • in accordance with an agreed formula other than a formula that involves a combination of any of two or more of the above methods. Lease provisions are invalid if either rent adjustment is permitted by reference to more than 1 of the above methods, or if they reserve a discretion to apply more than 1 of the above methods. If the lease provision relating to adjustments contravenes the Code, then rent must be determined in accordance with the market rent review procedure prescribed by section 21 of the Code. A lease provision which prohibits a decrease in rent (ie. a ratchet clause) is invalid.
VICTORIA Retail Leases Act 2003	See section 35. Only 1 of a fixed number of methods of review may be used at any one time. Any rent review provision unless it is one of the methods fixed under the Act is void to the extent that it purports to preclude, or prevents or enables a person

	to prevent, the reduction of the rent or to limit the extent to which the rent may be reduced.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 11. There is no prescription concerning the frequency of dates for review and this remains a matter of agreement. However, a rent review provision in a retail shop lease is void unless the lease specifies, for each review date, a single basis for reviewing the rent. If the review provisions are void the Act does not provide replacement provisions.

Market rent reviews

ACT Leases (Commercial and Retail) Act 2001	See sections 52-55, 57-59. If the parties are unable to agree on market rent, either party may request the Magistrates Court to refer the dispute to mediation. If mediation does not result in agreement, the market rent is to be determined by valuation in accordance with the principles set out in Schedule 1. Under Schedule 1, market rent is the rent that could reasonably be expected to be paid for vacant possession of the premises on the open market if: • the premises were let by a willing but not anxious landlord to a willing but not anxious tenant; • both parties acted knowledgeably and prudently; and • the use to which the premises may be put under the lease is taken into consideration. Schedule 1 also sets out the matters that the valuer must: • take into account; and • not take into account. If a valuer working out market rent asks the landlord for information about any relevant concession the landlord has given to another tenant, the landlord must give the valuer the information. Where rent is being worked out by mediation or a valuer under section 52 or section 53, but this is not done by the review date, rent is payable at the old rate until the new rent is worked out, with appropriate adjustment to then be made between the parties within 30 days. The Act provides a mechanism (on the application of a party) for disqualification of a valuer and appointment of a new valuer where the appointed valuer has a conflict or fails to comply with valuation obligations under the Act.
NSW Retail Leases Act 1994	See sections 31 and 31A. The CMR of a retail shop is the rent that would be reasonably expected to be paid for the shop, as between a willing landlord and a willing tenant in an arm's length transaction (where the parties are each acting knowledgeably, prudently and without compulsion) determined on an effective rent basis having regard to specified matters. The specified matters are: • the provisions of the lease; • the rent that would reasonably be expected to be paid if the shop were unoccupied and offered for renting for the same or similar use; • the gross rent less outgoings payable; and • rent concessions and other benefits. The CMR excludes goodwill or value of the tenant's fittings and fixtures. Where the landlord and tenant cannot agree on the amount of rent, the amount is to be determined by an SRV. Within 14 days after request by an SRV, the landlord must supply relevant information requested in a list provided by the valuer to assist in determining the CMV, including information about leases for retail shops situated in the same building or shopping centre to assist the SRV to determine the CMR. The SRV's determination is to be in writing, contain reasons for his or her determination and detail the matters considered in making such determination.

	The costs of the SRV are to be split between the parties. The SRV's determination must be made within 1 month after accepting the appointment to make the determination. The Registrar may appoint SRVs on application under the Act and may attach such conditions that the Registrar considers appropriate to the appointment of an SPV.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 29. "Current market rent" is the rent that could be reasonably expected to be paid for the shop, determined on an effective rent basis having regard to: • the provisions of the lease; • the rent that would reasonably be expected to be paid for the shop, in a free and open market between a willing landlord and a willing tenant in an arm's length transaction, if it was unoccupied and offered for rent for the same or substantially similar use to which the premises may be put under the lease; • the gross rent less the landlord's outgoings payable by the tenant; and • rent concessions and other benefits that are frequently generally offered to prospective tenants of unoccupied retail shops. The tenant's goodwill is not to be taken into account and nor is the value of the tenant's fixtures and fittings. If the landlord and tenant cannot agree, the market rent is to be determined in writing by a specialist retail valuer appointed by agreement between the parties. The cost of the valuer is to be shared by the parties. If the parties cannot agree upon the appointment of a specialist retail valuer, the appointment will be made by the Commissioner of Business Tenancies. In determining the amount of current market rent, a specialist retail valuer must take into account the matters set out above. The landlord must, within 14 days of a request by the specialist retail valuer, supply the valuer with all relevant information about leases for retail shops situated in the same building or retail shopping centre.
QUEENSLAND Retail Shop Leases Act 1994	See sections 28-36A. If rent is to be reviewed to the CMR and the parties cannot agree on what this figure will be, the CMR is to be determined by an SRV (who will be appointed by the Chief Executive if the landlord and tenant cannot agree). A provision of a lease is void to the extent that: • the tenant is to pay the SRV's costs (other than their half share); or • determination of CMR is other than in accordance with the Act. In making a determination of CMR, the SRV must determine the rent: • reasonably expected to be paid for the retail shop if it were unoccupied and offered for the use for which it may be used under the lease or a substantially similar use; • on the basis of gross rent less the landlord's outgoings payable by the tenant; and • on an effective rent basis. The SRV must: • not have regard to the value of the goodwill of the business or the tenant's fixtures and fittings; • have regard to the terms and conditions of the lease;

	• have regard to submissions from the parties as to market rent; and • have regard to other matters prescribed by regulation. The SRV may require the landlord to give the SRV relevant information about the leases in the shopping centre, and if no information is given, within 7 days after this failure a "retail tenancy dispute" is said to exist. The information obtained by the SRV is to be confidential. The SRV's determination must: • be in writing; • state the matters taken into consideration in making the determination; • state detailed reasons for the determination (including whether the CMR includes GST); and • be made within 1 month of the final information being provided to the SRV or the finalisation of the submissions period in section 28A.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 23. Similar to NSW, except no provision requiring rent concessions and other benefits to be taken into account. The Act provides for appointment of a valuer if the landlord and the tenant cannot agree. The costs of a valuation must be shared by the landlord and tenant.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See sections 13, 14 and 21. Market value rent is defined in section 1 to mean the rent determined in accordance with the principles set out in Appendix A of the Code. If the parties cannot agree on the market value rent, then either party may initiate an independent valuation by the appointment of a valuer.
VICTORIA Retail Leases Act 2003	See section 37. A retail premises lease that provides for a rent review to be made on the basis of the current market rent of the premises is taken to provide that the current market rent review is the rent obtainable at the time of the review in a free and open market between a willing landlord and a willing tenant in an arm's length transaction having regard to: • the provisions of the lease; • the rent that would reasonably be expected to be paid for the premises if they were unoccupied and offered for lease for the same, or a substantially similar, use to which the premises may be put under the lease; • the landlord's outgoings to the extent to which the tenant is liable to contribute to those outgoings; and • rent concessions and any other benefits offered to prospective tenants of unoccupied retail premises. The current market rent is not to take into account the value of goodwill created by the tenant's occupation or the value of the tenant's fixtures and fittings. If the landlord and tenant do not agree on the amount of rent, the provisions are similar to NSW except that: • if there is no agreement on the valuer, it is appointed by the SBC; and • the valuer must carry out the valuation within 45 days of accepting the appointment, or within such longer period as may be agreed between the landlord and tenant or as determined by the SBC.
WESTERN AUSTRALIA	See section 11. In respect of a market review under a retail shop lease: • The Act's definition of CMR prevails over any definition in the lease.

Commercial Tenancy (Retail Shops) Agreements Act 1985	• CMR is defined in section 11(2)(a) to be the rent obtainable at the time of review in a free and open market as if all the relevant factors, matters or variables used in proper [land] (sic) valuation practice have been taken into account, and as if the retail shop were vacant and to be let on similar terms as are contained in the current retail shop lease.
	• For determining the CMR no account is taken of:
	  • the goodwill of the business carried on by the tenant;
	  • any stock, fixtures or fittings in the retail shop that are not the property of the landlord; or
	  • any structural improvements or alterations of the retail shop carried out or paid for by the current tenant.
	• Provisions in the lease preventing or limiting either the increase or decrease of the CMR (ie. ratchets and caps or collars) are void.
	• Unless specific provision is made in the lease for the time at which a CMR review may be initiated in respect of a review date, a party to the lease may, not more than 3 months before and not 6 months after the review date, initiate the review by serving notice on the other party.
	• If the parties cannot agree on the rent payable for any CMR review, the rent shall be determined by either a single licensed valuer agreed on by the parties (or nominated at the request of each of the parties by the SBC) or by two licensed valuers, one appointed by the landlord and the other by the tenant.
	• If the parties do not agree on a single valuer or do not appoint their single valuer or do so but the two valuers do not reach agreement on behalf of the parties then a party may refer the rent review to the WA SAT for determination.
	
	Under section 11 a valuer, at the request of a party and on payment of the required fee, must provide written reasons for the valuer's decision.
	
	The landlord is obliged to provide, within 14 days after request by the relevant valuer(s) seeking to agree or determine the CMR, such relevant information required by the valuer(s) to assist in the review. The information that can be required of the landlord includes any of the following information about leases for any retail shops in the same building or RSC (whether or not the premises are comparable):
	• current rental for each lease;
	• rent free periods or any other form of incentive;
	• recent or proposed variations of any lease;
	• outgoings for each lease; and
	• any other information that may be prescribed in the Regulations. If the landlord fails to comply with a request without reasonable excuse then the tenant can apply to the WA SAT for an order compelling the landlord to supply the information requested.
	
	Section 11A deals with confidentiality and it allows disclosure by a recipient of confidential information as part of the reasons for the determination, as long as the particular tenant or business is not identified. The recipient of confidential information can also disclose confidential information for the purpose of the legal proceedings.
	
	If the WA SAT is required to make a determination in respect of the CMR, the WA SAT:
	• must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms;
	• will not be bound by rules of evidence;
	• may inform itself on any matter in such manner as the WA SAT thinks fit; and

	• may require the parties to furnish such valuations, documents or other information as the WA SAT thinks fit and the parties must comply with the request. A provision in a retail shop lease preventing the tenant from disclosing the rent under the lease is void.

Rent variations for short-term leases

ACT Leases (Commercial and Retail) Act 2001	No mention in the Act.
NSW Retail Leases Act 1994	Section 21A is repealed. Previously, if a lease was extended to a 5-year term, the landlord could change the rent from the date of commencement of the additional period and then annually, in line with CPI increases.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	No mention in the Act.
QUEENSLAND Retail Shop Leases Act 1994	No mention in the Act.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 22(2). A retail shop lease must not provide for a change to base rent less than 12 months after the lease is entered into or a change to base rent less than 12 months after any previous change to the rent (excluding change to base rent by a specified amount or specified percentage).
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention in the Act.
VICTORIA Retail Leases Act 2003	No mention in the Act.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 13(5). If a retail shop lease is extended to a 5-year term pursuant to the statutory option in section 13(1), the terms and conditions of the lease applicable at the time the statutory option is exercised will apply (other than any options to renew). However, if that retail shop lease does not provide for a review of rent during the new term pursuant to the option, then the lease will be taken to provide that the rental payable is the CMR.

Review of current market rent on option to renew

ACT Leases (Commercial and Retail) Act 2001	See sections 52-55, 57-59. Please see "Market Rent Reviews".
NSW Retail Leases Act 1994	See section 31. All retail shop leases that provide for rent to be changed at CMR must be on an effective rent basis and not take into account the value of goodwill created by the tenant. If the landlord and tenant do not reach agreement about what the CMR should be, the amount of rent is to be determined by valuation by an SRV appointed by agreement of the parties, or failing agreement, by the Registrar. A party to a retail shop lease can also apply to the Registrar of NCAT for the appointment of an SRV. A party to a lease may make written submissions to an SRV to assist in considerations. AN SRV must make a valuation of a CMR within 1 month after receiving the information it has requested of the landlord (such as current rental, outgoings, incentives and variations of the lease) referred to in subsection (1)(d).
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 29. Please see Market Rent Reviews.
QUEENSLAND Retail Shop Leases Act 1994	See sections 28-36A. Please see Market Rent Reviews.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 35. Similar to NSW, but valuer appointed by the person acting in the office of Chair of the SA State Committee of the Australian Property Institute Limited (or the holder of such other office representing property interests in the State prescribed by the regulations).
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No provision in Code for review of current rent on application. See "Early review of current market rent" regarding section 20, when lease provides for review.
VICTORIA Retail Leases Act 2003	See section 37. Please see Market Rent Reviews.
WESTERN AUSTRALIA	Section 11 applies to every market review specified under the retail shop lease. See above for discussion. No special additional rules apply on a renewal.

Commercial Tenancy (Retail Shops) Agreements Act 1985	

Early review of current market rent

ACT Leases (Commercial and Retail) Act 2001	No provision for early review.
NSW Retail Leases Act 1994	See sections 32-32B. A tenant is entitled to have CMR determined during the period that is 6 months before and 3 months before the last day on which the option may be exercised under the lease. If a tenant elects to have the CMR determined, the period within which the tenant must exercise the option is varied, so that the last day in which the option may be exercised is 21 days after the determination of rent is made and notified to the tenant. If the determination of rent is not notified within 21 days before the end of the term, the tenant may exercise the option within 21 days after the determination is notified and the term of the lease is extended by the appropriate period to enable the tenant to exercise the option. A party to a lease may apply to the Registrar of NCAT (within 21 days) for the appointment of 2 SRVs to conduct a review of a determination of the CMR. The determination is to be made no later than 1 month after notification. The party who applied for the appointment of the SRV is to bear the costs if the CMR is jointly determined by the SRVs to be the same as or within 10% of the amount specified in the determination. Otherwise, the parties are to pay the costs of the review in equal shares. Section 32B sets out the process of the Registrar appointing an SRV.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 30 – similar to section 32 of the NSW Act. No referral to SRV. A tenant is entitled to request a determination of the current market rent at any time within the period that begins 6 months before, and ends 3 months before, the last day on which the option may be exercised under the lease (this period is reduced to 3 months and 30 days respectively, if the term is 12 months or less), but may not make the request if the landlord and the tenant have already agreed as to the actual amount of that rent. If the tenant makes the request: • the amount of the current market rent is to be determined (as at the time of the request) in accordance with the provisions of a lease mentioned in section 29; and • the period within which the tenant must exercise the option is varied so that the last day on which the option may be exercised is 21 days after the determination of rent is made and notified to the tenant in writing or the last day of the term of the lease, whichever is the earlier. If the tenant extends the lease, the parties must pay for the determination in equal shares, otherwise the tenant must pay the costs.
QUEENSLAND Retail Shop Leases Act 1994	See section 27A. Where rent on the exercise of an option is to be CMR, the tenant may request the CMR be determined 3 to 6 months (for a lease greater than 1 year) or 1 to 3 months (for a lease for 1 year or less) prior to the last day on which an option may be exercised. If a tenant makes the foregoing request, the period within which the tenant must exercise the option is varied,

	so that the option must be exercised by the earlier of the last day of the term or 21 days after the rent is determined. This section does not apply if the tenant is a major lessee (has more than 5 retail shops in Australia), which has given the required notice before entering into the lease, and the lease provides for the timing and basis of each review of the rent.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 36. Similar to NSW except the CMR is to be determined 2 to 6 months prior to last day on which the option may be exercised. Note: If the term of the lease is 12 months or less, the above periods are shortened to 3 months and 30 days.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 20. No provisions for early review. If an option is to be exercised at CMR, the tenant, no less than 4 months or more than 6 months before the expiry of the period to exercise the option, may request the landlord to state the proposed rent to apply from the commencement of the new term. The landlord is to then give notice of the amount of the proposed rent not less than 3 months before the expiry of the period to exercise the option. Within 30 days after receiving the landlord's notice, the tenant must notify the landlord that the tenant: • exercises the option at the rent proposed; or • does not agree with the rent proposed but wishes to negotiate an amount; • requires the rent to be determined in accordance with the market review procedure under section 21.
VICTORIA Retail Leases Act 2003	See section 28A. Tenants have the right to require an early determination of market rent at the commencement of any option term. Within 28 days of receiving notice of the tenant's right to exercise an option from the landlord (which must be given at least 3 months before the last date the option may be exercised), the tenant will be able to request an early determination of market rent. Then, if a specialist retail valuer is appointed to determine market rent, the date for the tenant to exercise its option will, if necessary, be delayed to 14 days after the tenant is advised of the outcome of the valuer's determination. Additional provisions allow for the extension of the term, if necessary, to allow for determination of the rent and consideration of this by the tenant prior to exercising its option.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	Section 11 applies on every market review specified under the retail shop lease. There is no specific separate provision in relation to when the market review is to commence where an option to renew is being exercised. In particular there is no ability for the tenant to have the CMR determined early.

Outgoings

Outgoings (general)

ACT
Leases (Commercial and Retail) Act 2001
	See section 70. The landlord may only recover from the tenant:
	• a reasonable expense directly related to the operation of, or a reasonable expense of repairing or maintaining:
	  • for shopping centre premises – an area used in connection with the retail area of a shopping centre that contains the premises; or
	  • in any other case – the building that contains the premises;
	• rates, taxes, levies or other statutory charges payable by the landlord;
	• in relation to shopping centre premises – the reasonable cost of promoting the premises or centre; and
	• an outgoing or expenditure incurred in obtaining statistical information.
	See section 71. The tenant must pay an amount to the landlord for outgoings only if:
	• the nature of the outgoings was stated in the DS; and
	• the lease states:
	  • the outgoings that may be recovered by the landlord;
	  • how the amount of the outgoings will be worked out and apportioned to the tenant;
	  • how the outgoings or part of them may be recovered from the tenant; and
	  • the outgoings are "recoverable outgoings" (as defined under section 70).

NSW Retail Leases Act 1994	See sections 3A, 12A. Section 12A. The tenant is not liable to pay any amount to the landlord in respect of outgoings, unless the liability to pay the amount was disclosed in the landlord's DS. If the landlord's DS provides an estimate of an outgoing and that outgoing is less than the actual amount and there was no reasonable basis for the landlord giving the estimate then the tenant's liability is to be determined on the basis of the landlord's estimate of the outgoing (not the actual amount).
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 38. The tenant is not liable to pay outgoings unless the lease specifies the outgoings that are recoverable, how the amount of those outgoings will be determined, how they will be apportioned to the tenant, and how those outgoings may be recovered by the landlord from the tenant. Costs associated with the advertising or promotion of a retail shop or retail shopping centre, or of a business carried on there, are not considered to be outgoings for the purposes of section 38.
QUEENSLAND Retail Shop Leases Act 1994	See sections 7 and 37. The type of outgoings to be charged must accord with provisions of the Act. The lease must specify how outgoings are to be paid, determined, apportioned and recovered.

	See section 24. A lease cannot contain a provision requiring the tenant to make payments other than for the items listed, including rent and the landlord's outgoings or a specified part of such outgoings. See section 53A. There is a limit on the landlord's recovery of outgoings incurred outside core trading hours.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 26. The tenant is not liable to pay outgoings unless the provisions of the lease specify: • the outgoings that are to be regarded as recoverable; • how the amount of outgoings will be determined and apportioned; and • how the outgoings may be recovered by the landlord. Costs associated with the advertising or promotion of a retail shop or retail shopping centre are not outgoings for the purpose of this section of the Act. Note: Refer to section 30 regarding restrictions on land tax. See section 13. Capital expenditure is not recoverable and a provision to the contrary is void except: • a tenant may be required to reimburse the cost of making good damage to the premises arising when the tenant is in possession of the premises; • a tenant may be required to fit the shops or provide fixtures, plant or equipment if the DS discloses the obligation and estimates the cost; and • a tenant may be required to contribute to a sinking fund to cover major items of repair or maintenance if reasonable details are disclosed in the DS. A provision requiring a tenant to make or reimburse capital expenditure is void unless it is a "permissible" obligation (as described above). A tenant cannot be required to compensate the landlord for depreciation attributable to ordinary wear and tear.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 18. The landlord may require the tenant to contribute to outgoings and major items of repair and maintenance that are directly attributable to the operation of the premises. The lease must state in detail which outgoings are recoverable and how unforeseen outgoings are to be dealt with, the method used to calculate outgoings, and the time for payment of the outgoings.
VICTORIA Retail Leases Act 2003	See section 39. The lease must specify recoverable outgoings, how the outgoings are to be determined and apportioned to the tenant, and how those outgoings may be recoverable by the landlord from the tenant. "Outgoings" are defined in section 3, and include the cost, or part of the cost, of repairs or maintenance work in respect of an essential safety measure or an installation relating to fitout which the tenant has agreed to pay.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12. The tenant is not liable to pay an amount in respect of the landlord's "operating expenses" except to the extent that the retail shop lease specifies: • the items of operating expenses that are to be regarded as recoverable wholly or in part from the tenant; • how the amount of an operating expense will be determined and, where applicable, apportioned to the tenant; and • how and when an amount payable by the tenant is to be paid by the tenant,

	and in any event the tenant's proportion of operating expenses cannot be greater than the "relevant proportion" without the approval of the WA SAT.
	
	The "relevant proportion", in relation to a retail shop that is part of a "group of premises", is the proportion that the "lettable area" of the retail shop bears to the "total lettable area" of the group of premises at the commencement of the accounting year, with the overriding requirements that:
	
	• a tenant of a retail shop in a group of premises is not liable to contribute to costs which are not specifically referable to that shop; and
	• regard is to be had only to those premises that benefit from the expense in calculating the proportion.
	
	The "lettable area" – is the area of a retail shop defined or calculated:
	
	• in such manner prescribed by the Regulations [Note there has been no prescription yet but landlords generally apply the PCA method of measurement]; and
	• if the shop is part of a "group of premises" in the same or substantially the same way for all retail shops in the group.
	
	The concept of a "group of premises" means either:
	
	• an RSC; or
	• 2 or more premises at least 1 of which is a retail shop that are adjacent to each other or form a cluster and which:
	  • have a common head lessor; and
	  • are grouped together for the purpose of allocating to each of those premises a portion of an item of expense, and includes any part of the group.
	
	"Total lettable area" is defined in the Act to mean the aggregate of:
	
	• the lettable areas of the premises that are retail shops (or set aside for retail shops); and
	• for any premises that are not retail shops, the lettable area of those premises defined or calculated in such manner prescribed by the Regulations.
	
	There is no requirement for operating expenses to be reasonably and properly incurred in order to be recoverable from the tenant (unless the retail shop lease itself contains that requirement).
	
	Under section 12(1)(c), the landlord cannot require a tenant (under a retail shop lease of premises which forms part of a group of premises) to contribute to operating expenses **outside** the "standard trading hours", if the tenant did not open for trade outside the standard trading hours. "Standard trading hours" are the hours prescribed from time to time under the Regulations.

Depreciation, capital costs, charges incurred by landlord on borrowings and costs of landlord associated with unrelated land

ACT Leases (Commercial and Retail) Act 2001	See section 70. The tenant can only be liable for "recoverable outgoings" and, under sections 76-77, a lease provision is void if it requires the tenant to pay an amount for capital costs or depreciation.
NSW Retail Leases Act 1994	See sections 23-24B. These are not recoverable from the tenant and any provision to the contrary is void.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See sections 43-45. Provisions within leases requiring the tenant to pay any capital costs of the building in which the retail shop is located or a building in a retail shopping centre, or any areas used in association with a building, or capital costs of plant in such building or area, depreciation or interest or other charges incurred by a landlord in respect of its borrowings, are void.
QUEENSLAND Retail Shop Leases Act 1994	See section 7(3). The landlord cannot recover from tenant as outgoings: • land tax; • expenditure of a capital nature including the amortisation of capital costs; • contributions to a depreciation or sinking fund; • insurance premiums for loss of profits; • insurance excess on a claim on the landlord's insurance policies; • landlord's contributions to merchants associations and centre promotion funds; or • payment of interest and charges on amounts borrowed by the landlord.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 13. Similar to NSW sections 23-24. However, no equivalent to NSW sections 24A or 24B. Note: Refer to section 13 regarding Outgoings.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See sections 18(2) and 18(4). The tenant is not liable for the following outgoings: • capital expenditure in relation to the premises; • any contribution by the landlord to depreciation or a sinking fund; • any contribution by a landlord to promotion and advertising; • any interest or charge on money borrowed by the landlord; • any insurance premium for loss of income by the landlord; and • any outgoings not specified in the lease that were reasonably foreseeable at the time the lease was entered into. The landlord may not recover depreciation from tenant.
VICTORIA Retail Leases Act 2003	See sections 41-45 and 50. The landlord cannot recover from the tenant as outgoings: • capital costs of the building in which the premises are located or any areas used in association with the building or of plant in the building (**unless** there

	is a provision in the lease that requires the tenant to undertake capital works at the tenant's own cost, or in respect of an essential safety measure, there is a provision that requires the tenant to pay for the costs, or part thereof, of carrying out repairs or maintenance work, or an installation relating to fitout for which the tenant has agreed to pay); • depreciation; • contribution to a sinking fund to provide for capital works; • interest or other charges incurred by the landlord in respect of amounts borrowed by the landlord; • rent under a head lease or rent and any other costs associated with other land; or • from 1 July 2003, land tax. See section 49. From 1 July 2003, management fees are only recoverable if: • they relate to the management of the building/centre in which the premises are located; and • the lease or DS specifies the amount of the management fee and its rate/method of calculation. Management fees cannot increase annually by more than the adjustment in CPI. The amount of salaries and administrative costs is not included in the indexation base.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12. Under section 12(2) a provision in a retail shop lease of premises in an RSC which would require the tenant to make a payment to or for the benefit of the landlord (whether by way of contribution to a sinking fund, as part of the operating expenses or however) for or in respect of the amortisation of all or part of the costs of or incidental to: • the construction of the RSC; or • any extension of or structural improvement to the RSC; or • any plant or equipment that is or becomes the property of the owner of the RSC, is void. In addition to the above, in respect of any retail shop lease: • management fees (defined in section 3(1) to include costs of and incidental to the collection of rent or other moneys or the management of premises such as costs in respect of management offices, plant and equipment and staff) are not recoverable from the tenant: section 12(1f); • land tax is limited as set out below. See section 12(3A). A provision in a retail shop lease that obliges the tenant to contribute towards the cost of any landlord's finishes, fixtures, fittings, equipment or services is void unless the DS contains a statement notifying the tenant of the provision. Other than the above (and the section 9 proscriptions concerning key money) there are no prohibited inclusions in the operating expenses and the general operating expenses provisions above apply, for example, the specificity required in the lease.

Sinking fund

ACT Leases (Commercial and Retail) Act 2001	See section 70. No reference to sinking fund but the tenant can only be liable for "recoverable outgoings". Recoverable outgoings means outgoings recoverable under section 70.
NSW Retail Leases Act 1994	See sections 25-25B. Sinking funds are allowable, subject to contributions being limited to 5% of landlord's outgoings for a year and there being no contributions allowed where the fund is in credit by more than $250,000. There is a penalty imposed of up to 50 penalty units if the landlord accepts contributions in breach of the Act. Any credit balance of a sinking fund must be placed into an interest bearing account. The landlord cannot use the sinking fund or any interest paid on the sinking fund for any purpose other than major items of repair and maintenance. A landlord is liable to contribute any deficiency to a sinking fund for major items of repair or maintenance that arise from any failure by the landlord or a predecessor in title to apply amounts in the fund only for the purpose for which the fund was established. The landlord must (within 3 months after the end of each accounting period) provide an expenditure statement and auditor's report.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See sections 35-36 – similar to NSW. The limitations of section 35 are deemed to be included in a lease where the lease provides for the establishment of a sinking fund. Maximum penalty: 50 penalty units. See section 37. If the building or retail shopping centre in which the retail shop is located is destroyed or demolished or the retail shopping centre ceases to operate, the landlord must repay to each tenant liable to contribute to the sinking fund an amount equal to that proportion that the lettable area of the tenant's shop bears to the total lettable area of all the shops in respect of which contributions are required to be made to the fund. See section 43(3). A provision in a retail shop lease is void to the extent that it requires the tenant to make a contribution to a sinking fund to provide for capital works.
QUEENSLAND Retail Shop Leases Act 1994	See sections 7(3), 38 and 40. The landlord cannot recover from the tenant as outgoings, the landlord's contribution to a depreciation or sinking fund. However, the tenant can be required to make separate contributions ("maintenance amounts") to a sinking fund, provided: • contributions from all tenants to the sinking fund do not exceed 5% of the landlord's outgoings for a year; and • no contributions are allowed where the fund is in credit of more than $100,000. The landlord must pay maintenance amounts from the tenant into an interest bearing account, and may only apply amounts standing to the credit of the sinking fund and interest earned on it for major items of maintenance and repair.

	The landlord must pay any deficiency attributable to a failure by the landlord or predecessor in title to apply the fund for the specified purposes only. The landlord must comply with section 38A (see "Estimates of Outgoings"), including providing annual estimates and audited statements.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 29. Similar to NSW. However, section 29 does not limit contributions to 5% of the landlord's estimated outgoings. No reference to no contributions where fund over $250,000.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 18(5). The landlord may establish a sinking fund (defined in section 1) for major items of repair and maintenance, but the funds recovered from tenants must be paid into a separate account and only utilised for those purposes specified in the lease. Under section 18(2)(b), the landlord cannot recover from the tenant any contribution by the landlord to a sinking fund.
VICTORIA Retail Leases Act 2003	See section 43. The landlord cannot recover from the tenant as outgoings, any contribution to a sinking fund to provide for capital works.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12A which applies to any retail shop lease. Note section 12(2) prohibition on capital costs recovery would also apply to sinking funds in an RSC. The purpose of the sinking fund must be specified in the lease (section 12A(2)). The landlord may only apply the sinking fund to the specified purpose and to taxes and imposts on the fund, the cost of an end of accounting year audit by a registered company auditor and accountant (section 12A(3)(b)). The fund must be paid into 1 or more appropriately designated interest bearing accounts held by the landlord with a bank in WA (section 12A(3)(a)). Full and accurate accounts and records must be kept (section 12A(3)(c)(i)). At the end of each accounting year the accounts must be audited by an auditor who is a registered company auditor within the meaning of the Corporations Act 2001 (Cth) (section 12A(3)(c)(iii)). A copy of the auditor's report must be distributed to the tenant within 3 months after the end of the relevant accounting period (section 12A(3)(c)(iv)). If a tenant, within 3 years after the tenant receives the copy of the report referred to above, notifies the landlord that there is a deficiency in the fund due to any non-compliance of the foregoing obligations by the landlord (or by any predecessor of the landlord) then the landlord is liable for the deficiency (section 12A(5)). Section12A sets no limit on the level of contribution that may be recovered from a tenant (ie. whether by way or a percentage of the landlord's estimated operating expenses or by freezing payments if the accumulated fund exceeds a stipulated dollar figure).

Land tax

ACT Leases (Commercial and Retail) Act 2001	See section 70. Recoverable outgoings can include land tax (by definition). No special provisions in land tax legislation for multiple holdings nor threshold amounts.
NSW Retail Leases Act 1994	See section 26. Land tax is recoverable from the tenant. However, the amount is limited to the lessor's liability of the land concerned being assessed on a single holding basis, the land not being subject to any special trust and the landlord not being classified as a non-concessional company.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	There is no land tax in the Northern Territory.
QUEENSLAND Retail Shop Leases Act 1994	See section 7(3)(a). The landlord cannot recover land tax from the tenant.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 30. Not recoverable but the landlord's liability for land tax in respect of the premises may be taken into account in the assessment of rent.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 18. Outgoings can include land tax.
VICTORIA Retail Leases Act 2003	See section 50. From 1 July 2003, the landlord cannot recover land tax from the tenant.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12(1g). The landlord can only recover land tax on a single holding basis and it must be calculated by reference to the tenant's relevant proportion.

Estimates of outgoings

ACT Leases (Commercial and Retail) Act 2001	See section 65. A lease providing for the payment of outgoings by the tenant must include a provision requiring the landlord to: • give the tenant a written estimate of the outgoings at least 1 month before the start of each accounting period; and • make a written expenditure statement available for examination by the tenant within 1 month after the end of the accounting period that the statement relates to. Both the estimate and the statement must itemise the outgoings using the same item descriptions used in the DS. The statement must also contain details of expenditure by the landlord for outgoings to which the tenant contributes.
NSW Retail Leases Act 1994	See section 27. The landlord must provide in writing: • estimates of outgoings before the lease is entered into in the form of the landlord's DS; and • an outgoings statement at least 1 month before the commencement of the accounting period concerned. If the shop is in an RSC, the estimate must include a statement of management fees (broken down into the fees to be paid by the tenant towards the administration costs of running the centre and other fees paid to the management company), cleaning costs (broken down in into the costs of consumables and other costs), and any other particulars.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 39. Where outgoings are recoverable under the lease, section 39 provisions are deemed to be included in the lease. A landlord must give the tenant a written estimate of the outgoings for which the tenant is liable under the lease to make a payment to the landlord. The estimate of outgoings is to be given to the tenant: • in respect of each accounting period of the landlord during the term of the lease; and • before the lease is entered into and, during the term of the lease, at least one month before the commencement of the accounting period concerned. A landlord must make a written expenditure statement available for examination by the tenant, detailing all expenditure by the landlord on account of outgoings in respect of which the tenant is liable under the lease to make a payment to the landlord. The expenditure statement is to be made available at least twice in each of the landlord's accounting periods.
QUEENSLAND Retail Shop Leases Act 1994	See sections 38A-38C. If the tenant is required to pay all or part of the landlord's apportionable outgoings, the landlord must give to the tenant: • an annual estimate 1 month before the start of the period to which the estimate relates or when the tenant enters into the lease; and • an audited annual statement 3 months after the end of the period to which the outgoings relate. Estimates and audited annual statements must include a breakdown of the estimated fees to be paid by the tenant towards the administration costs of

	running the centre and any other fees to be paid to a centre management entity. Estimates and audited annual statements must be itemised so that the amount shown is not more than 5% of the total outgoings (except where it relates to a charge, levy, rate or tax payable under an Act or it cannot be itemised further). If the landlord does not provide an outgoings estimate or an audited annual statement, the tenant may withhold payments on account of outgoings until the estimate or audited annual statement is provided.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 31-32. The landlord must give to the tenant before the lease is entered into and at least 1 month prior to each accounting period, a written statement setting out estimates as to the tenant's liability and an auditor's report within 3 months of each accounting period.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See sections 18(6) and 19. The Code does not require regular financial statements to be given by the landlord regarding outgoings as a prerequisite to the tenant's liability. The tenant may request in writing a detailed estimate of outgoings at least 1 month prior to the commencement of an accounting year and may also request a statement showing the actual expenditure on outgoings. The tenant may request that the landlord provide an audited report of outgoings for any accounting year. However if the landlord's statement is found by the auditor to be at least 95% accurate, then the tenant is liable for the cost of the audit.
VICTORIA Retail Leases Act 2003	See sections 46-47. The landlord must furnish to the tenant: • an annual estimate 1 month before the beginning of each accounting period and when the tenant enters into the lease. The tenant is not liable to contribute to outgoings until the tenant is given that estimate; and • a statement of actual expenditure to be given once during each accounting period and 3 months after the end of each accounting period. If a landlord fails to give notice of estimated outgoings, the tenant's liability for outgoings incurred prior to the estimate being provided is not revived or enlivened once that estimate is given.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12. Where under a retail shop lease a tenant is required to pay operating expenses, the lease is deemed to provide that the tenant is not required to pay and the landlord cannot recover from the tenant any operating expenses in respect of a year or any part of the year until at least 1 month after the landlord has given to the tenant annual estimates of expenditure under each item of operating expenses payable by the tenant in respect of the year.

Outgoings statement and auditor's report

ACT Leases (Commercial and Retail) Act 2001	See section 66. A lease providing for the payment by the tenant of outgoings must include a provision requiring the landlord to give the tenant a written report within 3 months after the end of the relevant accounting period. Subject to section 66(4), the report must: • be prepared by an auditor on a cash accounting basis (unless the DS or lease provides for another accounting method) to be used; • contain details of the landlord's spending on outgoings that the tenant contributed to in the accounting period; and include a statement by the auditor about whether or not: • the outgoings were recoverable outgoings; and • the outgoings the tenant contributed to were more than the amount spent by the landlord in the accounting period. Under section 66(4), the report need not be prepared by an auditor (nor contain the auditor's statement) if the outgoings only relate to rates, other statutory charges, insurance and/or certain contributions under the Unit Titles (Management) Act 2011. A majority of tenants in a retail shopping centre may waive the requirement for an auditor's report (see section 72).
NSW Retail Leases Act 1994	See sections 28-28A. The outgoings statement must detail all expenditure by a landlord (to which the tenant is required to contribute) in each accounting period and must be given to the tenant within 3 months of the end of the accounting period to which it relates. If the shop is in an RSC, the statement must include: • details of the gross lettable area; • details of any material change in that gross lettable area to which the statement relates; • statement of total management fees; • statement of total cleaning costs; and • any other prescribed particulars. The statement must be prepared in accordance with accounting standards and is to be accompanied by the auditor's report which is to be prepared by a registered company auditor. The report must include a written statement by the auditor as to whether: • the outgoings statement correctly states the landlord's expenditure; and • estimated outgoings exceed actual outgoings. The outgoings statement does not require an auditor's report if the statement does not relate to statutory outgoings, insurance and strata levies if it is accompanied with copies of all assessments, invoices and proof of payment. A tenant is to be given a reasonable opportunity to make a written submission to the auditor about the accuracy of the landlord's outgoing statement. A tenant is entitled to withhold payment of contributions for outgoings in certain circumstances.
NORTHERN TERRITORY	See section 40. The provisions are similar to those of NSW with the exception of the provision requiring RSCs to provide specifics of management fees and cleaning costs.

Business Tenancies (Fair Dealings) Act 2003	The provision of an auditor's report can be avoided if the outgoings statement only relates to water, sewerage and drainage rates and charges, council rates and charges and insurance premiums, and the landlord's statement is accompanied by copies of all assessments, invoices, receipts or other proofs of payment of those outgoings. The outgoings statement may be a composite statement provided that each tenant to whom it relates is able to ascertain the required information that is relevant to that tenant.
QUEENSLAND Retail Shop Leases Act 1994	See section 38B-38C. An auditor registered under the Corporations Act 2001 (Cth) must prepare an audited annual statement of outgoings in accordance with the Act. The statement must contain things such as: • the auditor's opinion on whether the statement fairly reflects the landlord's outgoings; • a comparison between the estimate and the amount actually spent by the landlord; and • a comparison between the total amount spent and the amount paid by the tenant. If the landlord does not provide an audited annual statement, the tenant may withhold payments on account of outgoings until the audited annual statement is provided.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 32. Similar to NSW. However, the auditor's report must include a statement as to whether or not the amounts paid by the tenant for outgoings were properly payable. The report does not need to be audited where the tenant is only liable to payment of council rates, water and sewerage rates and insurance premiums provided receipts are provided with the report.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 19. A tenant may request a landlord to provide an audited report of outgoings for any "accounting year" (being an accounting year as set out in a lease or if not set out, a financial year). If requested a landlord is to provide a report within 3 months of the end of each accounting year. A report is to contain a statement, prepared in accordance with recognised accounting principles showing: • whether the landlord's outgoings have been properly charged; • the manner in which they have been expended; and • whether the outgoings recoverable from the tenant exceed the amount incurred by the landlord. If the landlord's statement is found by the auditor to be at least 95% accurate, the tenant is liable for the cost of the audit.
VICTORIA Retail Leases Act 2003	See section 47. The outgoings statement must be prepared in accordance with the Australian Accounting Standards Board and the yearend statement must be accompanied by a report prepared by a registered company auditor that states whether: • the statement correctly states the landlord's expenditure and each individual outgoing that comprises more than the prescribed percentage of the total amount of outgoings to which the tenant is liable to contribute; and • the total amount that the estimated outgoings for that period exceeded the total actual expenditure.

	Outgoings statements are not required to be provided where council rates, insurance and the like are the only recoverable outgoings provided receipts of such outgoings are given.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12. Within 3 months after the end of an "accounting year" (being a financial year unless otherwise specified in the lease) the landlord must give the tenant an "operating expenses statement". An operating expenses statement in respect of a retail shop in an RSC must detail the total lettable area (current and any material changes during the accounting period). An operating expenses statement in respect of any retail shop lease: • must be prepared in accordance with applicable accounting standards made by the Australian Accounting Standards Board; and • may be a composite statement relating to more than 1 tenant, as long as a tenant can ascertain the required information relevant to it. The statement (unless the statement relates to only certain rates, taxes and relevant authority payments and insurance costs) must be accompanied by a report on the statement prepared by a registered company auditor within the meaning of the Corporations Act 2001 (Cth) stating whether the operating expenses statement correctly states the expenditure and also whether the estimated operating expense exceeded the actual expenditure. The landlord must pay half the audit costs.

Adjustment of contributions to outgoings

ACT Leases (Commercial and Retail) Act 2001	See section 67. If a lease requires the tenant to contribute to outgoings, the lease must include a provision to the effect that, within 3 months of the end of each payment period, there must be an adjustment for any underpayment or overpayment by the tenant in relation to the outgoings (on the basis of estimated expenditure versus actual expenditure reasonably and properly incurred by the landlord).
NSW Retail Leases Act 1994	See section 29. Requirement for adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred. The adjustment is to take place within 1 month after the landlord gives the tenant the outgoings statement and within 4 months after the end of the period referred to in the outgoings statement.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 41. Similar to NSW.
QUEENSLAND Retail Shop Leases Act 1994	No mention in the Act.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 33. Similar to NSW except adjustment to take place within 3 months after the end of each accounting period.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention in the Code as to adjustment.
VICTORIA Retail Leases Act 2003	See section 48. Requirement for adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred. Any adjustment is to take place within 1 month after the landlord gives the tenant the outgoings statement or within 4 months after the end of the accounting period, whichever is the earlier.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12. There is no time period provided by the Act within which any necessary adjustments must take place after the operating expenses statement is provided.

Limitation of non-specific outgoings contribution

ACT Leases (Commercial and Retail) Act 2001	See section 70. Recoverable outgoings for premises located in the retail area of a shopping centre must be a reasonable expense directly related to the operation, or a reasonable expense, of repairing or maintaining an area used for or in connection with the retail area of the shopping centre that contains the premises.
NSW Retail Leases Act 1994	See section 30. A RSC tenant is not liable to contribute toward non-specific outgoings of the landlord, unless the outgoing is referable to that shop, and the tenant is liable for no more than its proportion, being the proportion that the lettable area of the shop bears to the total lettable areas of all shops in the RSC to which the outgoing is referable. An outgoing on account of GST payable by the landlord in respect of rent payable under a lease is not a non-specific outgoing of the landlord for the purposes of this section.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 42. In order for the outgoing to be recoverable, the shop must be one of the shops for which the outgoing is referable, and the amount recoverable is limited to the ratio that the lettable area of the shop to the total lettable area of all retail shops to which the outgoing is referable. An outgoing is referable to a retail shop if the shop is one of the shops that enjoys or shares the benefit resulting from the outgoing.
QUEENSLAND Retail Shop Leases Act 1994	See section 38. Limited to the ratio that the area of the leased shop bears to the total area of all premises leased or occupied or available for lease or occupation (whether or not retail shops) who share or would share the benefits of such outgoings. The total area of all premises will not include areas that, if they were not leased, would be within a common area of the centre or building provided such areas are used for a prescribed purpose, being: • information, entertainment, community or leisure facilities; • telecommunication equipment; • ATM; • vending machines; • advertisement displays; • seating, tables and other furniture; • trade out areas; • storage; and • parking.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 34. Similar to NSW. A tenant is not liable to contribute to an outgoing not specifically referable to any particular shop in a centre unless the shop is one of the shops to which the outgoing is referable.
TASMANIA Fair Trading (Code of Practice for Retail	See section 18(3). The proportion of outgoings to be paid by a tenant is calculated as: • the ratio of the lettable area of the tenant's premises to the lettable area of all lettable premises sharing the benefit of a particular outgoing; or

Tenancies) Regulations 1998	• the ratio of the assessed annual value of the tenant's premises to the assessed annual value of all lettable premises sharing the benefit of a particular outgoing.
VICTORIA Retail Leases Act 2003	See section 39(2) and regulation 5 and regulation 9. Limited to the ratio that the lettable area of the retail premises bears to the total of the lettable areas of all the retail premises which receive the benefit of the outgoing.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12, similar to NSW but without the GST provision. As noted above, a tenant under a retail shop lease of premises in a "group of premises": • is not required to contribute to any operating expense that is not "referable" to the tenant's shop; or • where an operating expense is "referable" to the tenant's shop as well as other premises in the group, cannot be required to pay more than the ratio of lettable area of the shop to total lettable areas of all premises in the group of premises to which the outgoing is "referable". "Referable" is defined to mean a retail shop enjoys or shares the benefit of the expense.

Interference with the shop

Compensation for disturbance

ACT Leases (Commercial and Retail) Act 2001	See sections 81-82. The landlord is liable to pay the tenant reasonable compensation for loss or damage (other than nominal loss or damage) suffered by the tenant if the landlord adversely affects the trade of the tenant by the landlord's conduct without reasonable cause, whether by act or omission. For example, if the landlord: • materially inhibits access by the tenant to the premises; or • takes action that would materially inhibit or alter the flow of customers to the premises; or • fails to fix a breakdown of plant or equipment under the lessor's care and maintenance as soon as practicable; or • for premises located in the retail area of a shopping centre, does not adequately clean, maintain or repair the shopping centre (including common areas). In working out reasonable compensation for section 81, any concession given to the tenant (for example, reduced rent) based on the disturbance, or likelihood of disturbance, of the tenant's trade must be taken into account.
NSW Retail Leases Act 1994	See section 34. A landlord is required to pay reasonable compensation for loss or damage suffered by the tenant if the landlord: • inhibits access to the shop in a substantial manner; or • takes action that would alter substantially the flow of customers; or • unreasonably takes action that causes significant disruption of trading; or • fails to take reasonable steps to prevent disruption; or • fails to rectify the breakdown of plant and equipment under the landlord's care or maintenance; or • fails to adequately clean, maintain or repair common areas of an RSC, and the landlord does not rectify the matter as soon as reasonably practicable after being requested by the tenant in writing to do so. Certain exceptions apply to Transport for NSW, Transport Asset Holding Entity of New South Wales, Sydney Metro, Sydney Trains and NSW Trains (as landlords), where any disturbance is done for safety or security in respect of a railway or railway station, or satisfying a regulatory requirement – see section 82A. A retail lease may include a provision preventing or limiting a claim for compensation if a written statement containing details of the anticipated disturbance was given to the tenant before the lease was entered into and the statement included specific description of the nature of the disturbance, a statement assessing the likelihood of the disturbance, a statement about the timing, duration and effect of the disturbance (so far as it can be predicted).
NORTHERN TERRITORY	See section 47. The landlord is liable to pay reasonable compensation to the tenant if it does not rectify any of the following matters as soon as reasonably practicable after receiving written notice from the tenant:

Business Tenancies (Fair Dealings) Act 2003	• inhibits access of the tenant to the shop in a substantial manner; • takes an action that would inhibit or alter, to a substantial extent, the flow of customers to the shop; • unreasonably takes an action that causes significant disruption of, or has a significant adverse effect on, trading of the tenant in the shop (applying the shopping centre management practices); • fails to take all reasonable steps to prevent or put a stop to anything that causes significant disruption of, or which has a significant adverse effect on, trading of the tenant in the shop and that is attributable to causes within the landlord's control; • fails to rectify a breakdown of plant or equipment under the landlord's care or maintenance; or • fails to adequately clean, maintain or repair the retail shopping centre, including common area. The lease can limit liability for compensation in respect of a particular occurrence where the likelihood of the occurrence was specifically drawn to the attention of the tenant before the lease was entered into.
QUEENSLAND Retail Shop Leases Act 1994	See sections 42-44. Compensation is payable for disturbances similar to NSW. However, under the Qld Act, the right to compensation from the landlord extends to a tenant holding over, and also to a sublessee or franchisee of the tenant (see definition of lessee). In addition: • compensation is payable if the landlord does not rectify any defect in the building (other than a defect reasonably apparent when the tenant enters into the lease or accepts an assignment); and • Section 43(1)(f) provides compensation for loss or damage suffered by a tenant having to vacate a shop early because of the extension, refurbishment or demolition of the centre. Compensation is not payable to the tenant for loss or damage suffered due to the landlord taking action as a reasonable response to an emergency or in compliance with a duty imposed under an Act (section 43AB). See also comments below in relation to relocation (see section 46G) and demolition (see section 46K), where compensation payable by a landlord may be limited in accordance with those sections. Section 43AD confirms that the landlord is not liable to pay compensation under section 43(1)(f) to the extent the tenant is otherwise entitled to payment of relocation costs under section 46G or reasonable compensation under section 46K (demolition). Tenant must give the landlord written notice of loss or damage under section 43(1) as soon as practicable after it is suffered. Failure to do so does not affect the tenant's right to compensation but must be considered when deciding the amount of compensation. A landlord may, for the period 1 year from the date the lease is entered into, limit a claim for compensation by providing the tenant with a written notice of the anticipated disturbance. See section 44A for details which must be included in the notice.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 38. Similar to NSW except that disturbance by the landlord under section 38 is specified as: • inhibiting access of the tenant to the shop in a substantial manner; or

	• taking action that would inhibit or alter, to a substantial extent, the flow of customers to the shop; or • unreasonably taking action that causes significant disruption of, or has a significant adverse effect on, trading of the tenant in the shop; or • failing to take all reasonable steps to prevent or put a stop to anything attributable to causes within the landlord's control that causes significant disruption of, or which has a significant adverse effect on, trading of the tenant in the shop; or • failing to rectify any breakdown of plant or equipment under the landlord's care or maintenance; or • in the case of a shop within a retail shopping centre – failing to clean, maintain or repair the retail shopping centre (including common areas). A disclosure statement under section 12 is an appropriate means of specifically drawing the attention of the tenant to the likelihood of the occurrence of the disturbance.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 23(1). Similar to NSW except that the tenant is not required to request the landlord to rectify the matter before the compensation right applies. The landlord must compensate the tenant if it acts as stated (equivalent to sections 23(1)(a)-(d) and (g) in the Code). Additional basis for compensation provided in section 23(1)(e)-(f) and (h)-(k), namely if the landlord: • "acts in a manner which, in all the circumstances is unconscionable" (section 23(1)(e)); • terminates a lease dishonestly, maliciously, or for a non-genuine purpose (section 23(1)(f)); • fails to take reasonable steps to ensure the premises are kept in good order and repair (section 23(1)(h)); • relocates the tenant's business (section 23(1)(i)); • fails to take reasonable steps to ensure that any defect in the shopping centre or premises is rectified (section 23(1)(j)); • causes the tenant to vacate before the end of the lease because of extensions/ refurbishment or demolition (section 23(1)(k)). Similar to NSW: the lease can limit liability for compensation in circumstances referred to in sections 23(1)(a)-(d), and (g) above only if: • before execution of lease, specific disturbance is brought to tenant's attention by landlord; and • the lease contains a specific clause providing a formula for compensation in the event of specific disturbance referred to. No limitation of liability for compensation in circumstances referred to in sections 23(1)(e)-(f) is permitted.
VICTORIA Retail Leases Act 2003	See section 54. Similar grounds for compensation to NSW, except that the tenant is not required to request the landlord to rectify the matter before the compensation right applies. The landlord must maintain in a condition consistent with the condition of the premises when the retail premises lease was entered into: • the structure of and fixtures in the premises; • plant and equipment at the premises; and • appliances, fittings and fixtures provided by the landlord relating to services,

	except if: • the need for repair arises out of misuse by the tenant; or • the tenant is entitled or required to remove the item at the end of the lease. • Tenants can be required to carry out repairs or maintenance work in respect of an essential safety measure on behalf of the landlord by express agreement in the lease. Landlords should note however that the carrying out of repairs or maintenance work by a tenant does not affect the obligations of the landlord as a building owner under the Building Act 1993 (Vic) (including regulations). • (see section 52).
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	In relation to a retail shop in an RSC, section 14 contains similar compensation rights to the NSW provisions except that: • the circumstances giving rise to the right to claim compensation are not identical; • before the right arises the tenant must give the landlord written notice of the matter requiring the landlord to rectify the matter and the landlord does not do so within such time as is reasonably practicable; and • giving a written statement to the tenant before the lease was entered into which included certain details regarding disturbance does not necessarily prevent or limit a claim (depending on all of the circumstances).

Relocation

ACT Leases (Commercial and Retail) Act 2001	See sections 136-138. A provision in a lease allowing relocation of the tenant must require the landlord to: • give the tenant at least 3 months' written notice; and • offer to provide alternative comparable premises for a period equivalent to the unexpired term of the lease on terms no less favourable than the original lease. Comparable premises include premises that have not yet been built. The tenant may give written notice to the landlord (within 1 month after receiving a relocation notice) of the tenant's intention to terminate. If the tenant does elect to terminate, termination takes effect 3 months after the relocation notice was received unless otherwise agreed by the parties. If the tenant accepts the relocation offer, the landlord must give the tenant a new lease in accordance with that offer and the landlord must pay the tenant's reasonable costs of relocation and pay reasonable compensation to the tenant for any other loss or damage incurred because of the relocation. See section 137. A provision in a lease that allows the tenant to be relocated other than so the landlord can repair, refurbish, redevelop or extend a shopping centre is void. See section 138. The landlord must not use a provision of a lease that allows relocation of the tenant within a shopping centre because of proposed repairs, refurbishment, redevelopment or extension unless: • the proposed repairs, refurbishment, redevelopment or extension cannot practicably be carried out without vacant possession of the premises; and • the landlord presents the tenant with a plan for the repairs, refurbishment, redevelopment or extension. The proposed repairs, refurbishment, redevelopment or extension must be carried out within a reasonable time after the relocation of the tenant. The relocation provisions of the Act only apply to leases for premises in the retail areas of shopping centres (see section 128).
NSW Retail Leases Act 1994	See section 34A. Certain provisions in the event of a relocation clause being included in a lease are implied as being included in a lease. The tenant cannot be required to be relocated unless: • details of a genuine proposed refurbishment, redevelopment or extension have been provided; • the landlord has given at least 3 months' written notice of relocation and the notice gives details of an alternative shop to be made available; and • the tenant has received an offer of a new lease of an alternative shop on the same terms and conditions for the remainder of the term of the existing lease (with the subject rent being adjusted to take into account differences in the commercial values of the existing retail shop and the alternative shop at the time of relocation). The tenant is then entitled to terminate the lease within 1 month of receiving the relocation notice. In this event, the lease terminates 3 months after the relocation notice is given. The landlord is to pay the tenant's reasonable costs of the relocation (including dismantling and re-installing of fixtures and fittings and legal costs).

	If the tenant does not give a notice of termination, the tenant is taken to have accepted the offer of an alternative lease as offered. The tenant is entitled to payment by the landlord of the tenant's reasonable costs of the relocation. If landlord and tenant cannot agree on what is a reasonable amount of costs, the amount is to be determined by a quantity surveyor.

NORTHERN TERRITORY
 	
Business Tenancies (Fair Dealings) Act 2003
	See section 48 – similar to NSW.
	
	If a retail shop lease contains a provision that enables the business of the tenant to be relocated, the lease is taken to include provisions to the following effect:
	
	• the tenant's business cannot be required to be relocated unless and until the landlord has provided the tenant with details of a proposed refurbishment, redevelopment or extension sufficient to indicate a genuine proposal that:
	  • is to be carried out within a reasonably practicable time after relocation of the tenant's business; and
	  • cannot be carried out practicably without vacant possession of the tenant's shop;
	• the tenant's business cannot be required to be relocated unless the landlord has given the tenant at least 3 months written notice (relocation notice) of relocation and the notice gives details of an alternative shop to be made available to the tenant within the retail shopping centre;
	• the tenant is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease, except that the term of the new lease is to be for the remainder of the term of the existing lease;
	• the rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation;
	• if a relocation notice is given to the tenant, the tenant may terminate the lease within one month after the relocation notice is given by giving written notice of termination to the landlord, in which case the lease is terminated 3 months after the relocation notice was given, unless the parties agree that it is to terminate at some other time;
	• if the tenant does not give a notice of termination as mentioned in section 48(e), the tenant is taken to have accepted the offer of a lease as mentioned in section 48(c), unless the parties have agreed to a lease on some other terms; and
	• the tenant is entitled to payment by the landlord of the tenant's reasonable costs of the relocation (including but not limited to costs incurred by the tenant in dismantling and reinstalling fixtures and fittings) and legal costs in connection with the relocation.

QUEENSLAND Retail Shop Leases Act 1994	See sections 43(1)(f), 46C-46G. The landlord's right to relocate the tenant under sections 46D-46G is taken to be included in the lease if the lease provides for relocation of the tenant's business. Similar to NSW in terms of notice periods, offering alternative premises and tenant's right to terminate. The tenant is entitled to payment by the landlord for its reasonable costs of relocation under section 46G.

	Section 43AD confirms that the landlord is not liable to pay compensation under section 43(1)(f) to the extent the tenant is otherwise entitled to payment of relocation costs under section 46G.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 57. Similar to NSW however offer of new lease is on the same terms and conditions as the existing lease (excluding rent). (The section sets out minimum entitlements of the tenant. The section does not prevent the tenant from accepting other arrangements offered by the landlord when details of relocation are being negotiated.)
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 35. Certain provisions (in the event of a relocation clause being included in a lease) are implied in a lease. The tenant cannot be required to be relocated unless the tenant is presented with plans for refurbishment, redevelopment or extension of the shopping centre showing that: • a genuine proposal is to be carried out within a reasonably practicable time after relocation of the tenant; and • the proposal cannot be carried out practicably without vacant possession of the tenant's premises. The landlord must give the tenant at least 6 months' written notice of the date for relocation including an offer of alternative premises and the terms and conditions on which they are offered. The tenant must be compensated for actual reduction in, or loss of, profit during relocation from the point of closure to the point of opening. The tenant can remain at the existing premises unless the tenant is satisfied that: • the new premises are equivalent to the existing premises; or • the tenant will be returned to his existing premises within a mutually agreed time. The area and configuration of the new premises is to be materially the same as the existing premises unless agreed otherwise by the tenant. The tenant may terminate the lease if alternative premises or the terms or conditions of the lease of those premises are not acceptable. The new lease is to be on the same terms as the existing lease except as to rent which unless otherwise agreed is to be the CMR. The landlord is to pay the tenant's reasonable costs of relocation. Similar to NSW, the lease is to provide that the landlord is to pay the tenant’s reasonable costs of relocation. No similar provision regarding determining reasonable amount.
VICTORIA Retail Leases Act 2003	See section 55. Similar to NSW.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 14A included in the Act by the 2013 Amending Act and this section applies to New Leases (see section 13 discussion above in "Minimum 5 year term of lease "). Section 14A now sets out the only relocation/ redevelopment clauses that can be contained in leases. If any of those are not utilised there is no landlord right to terminate a retail shop lease for relocation/ redevelopment.

	As well as addressing the mechanics of termination and the offer of alternative premises (if the landlord wishes to offer those), section 14A puts in place 2 different compensation regimes. Which regime applies depends on whether or not the tenant has already had 5 years' possession under the current lease (or any option contained in that current lease) before the termination or not. No regard is had to prior possession under a prior lease. The first regime applies where the tenant has had less than 5 years in occupation of the premises; the second regime applies where the tenant has been in occupation for over 5 years. The first regime is substantially more onerous and its provisions are prescribed in the Regulations. Section 14A renders void a relocation /redevelopment provision included in a New Lease unless that provision is either: • in the prescribed form; or • approved by SAT under section 14A(3); or • complies with section 14A(2) if at least 5 years of the term of the retail shop lease (including any extended period under an option to renew contained in that lease) has expired. Section 14A(2) sets the following minimum requirements where the tenant has had more than 5 years in possession for the above purpose: • a minimum 6 months relocation notice must be given to the tenant by the landlord; • the relocation notice must include details of the alternative premises; • the tenant must be offered a new lease of those alternative premises on the same or better terms and conditions for at least the remainder of the term of the current lease and the rent is to be no more than the rent of the existing premises adjusted to take into account any difference in commercial values of the existing shop and the alternative shop at the time of the relocation; and • the landlord must pay the tenant's reasonable costs of relocation – including but not limited to: • costs incurred by the tenant in dismantling fittings, equipment or services; • costs incurred by the tenant in replacing, re-installing or modifying finishes, fittings or equipment or services to the standard existing in the existing retail shop immediately before the relocation (but only to the extent reasonably required to the alternative shop); • packaging and removal costs incurred by the tenant; • legal costs incurred by the tenant; and • if the landlord does not offer the tenant a new lease of an alternative retail shop then the landlord is liable to pay to the tenant such reasonable compensation as is agreed in writing between the parties, or determined by WA SAT. Under section 14A (3) WA SAT can, on application to it by the landlord (notice of which has been given to the tenant), approve a different relocation provision if WA SAT is satisfied that special circumstances exist by reason of which approval ought to be given. Given how onerous the prescribed clause is this is only, if ever, used if the parties agree more beneficial terms to the tenant than those in the prescribed clause.

Demolition

ACT Leases (Commercial and Retail) Act 2001	See section 78. A lease may provide for termination because of the proposed demolition of the building containing the premises, but the lease cannot be terminated because of proposed demolition unless the landlord has: • provided the tenant with sufficient details of the proposed demolition to indicate a genuine proposal to demolish the building within a reasonable time after the lease is to be terminated; and • given the prescribed period of notice (at least 3 months if term is up to 1 year, and at least 6 months in any other case). The landlord must pay reasonable compensation to the tenant if the lease is terminated because of the proposed demolition before the end of the term, whether or not the landlord goes ahead with the demolition.
NSW Retail Leases Act 1994	See section 35. If a lease provides for termination on the grounds of proposed demolition of the building or any part of the building, the lease cannot be terminated, unless the landlord has: • provided the tenant with sufficient details of the proposed demolition to indicate a genuine proposal to demolish the building, within a reasonably practicable time after termination; • the lease cannot be terminated by the landlord unless the proposed demolition cannot be carried out practicably without vacant possession; and • provided at least 6 months written notice of termination. If such notice is given to the tenant, the tenant may terminate the lease by giving the landlord 7 days written notice within 6 months before the termination date given by the landlord. If the lease is for 12 months or less, the notice period is shortened from 6 months to 3 months. If the proposed demolition does not occur within a reasonable time after the termination date, the landlord may be liable to pay compensation to the tenant for damages. If the tenant was required under the lease to fit out the shop, the landlord is liable to pay compensation to the tenant (whether or not the proposed demolition is carried out). "Demolition" includes repair, renovation and reconstruction. A recent case that considered section 35 of the Retail Leases Act 1994, including what details are sufficient to indicate a genuine proposal, is Wynne Avenue Property Pty Ltd v MJHQ Pty Ltd [2019] NSWCATAP 41.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 49. "Demolition" is defined as substantial repair, renovation or reconstruction of the building that cannot be carried out practicably without vacant possession of the shop. If a retail shop lease provides for the termination of a lease on the grounds of the proposed demolition of the building of which the retail shop forms part, the following applies: • the lease cannot be terminated until the landlord has provided the tenant with details of the proposed demolition sufficient to indicate a genuine proposal to demolish the building within a reasonably practicable time after the termination; • the lease cannot be terminated by the landlord without at least 6 months written notice; and

	• if the landlord serves the notice of termination, the tenant may terminate the lease giving 7 days written notice at any time within 6 months of the termination date notified by the landlord. If a lease is for 12 months or less, the period of 6 months referred to above is shortened to 3 months. Unless the landlord can establish at the time of notice that there was a genuine proposal to demolish the premises, the landlord is liable to pay the tenant reasonable compensation for damage suffered as a consequence of the early termination if: • a retail shop lease is terminated on the grounds of the proposed demolition of the building of which the retail shop forms part; and • the demolition of the building is not carried out within a reasonably practicable time after the termination date notified. If a retail shop lease is terminated on the grounds of proposed demolition, the landlord is liable to pay the tenant compensation for the fit-out if the tenant is required under the lease to fit out the retail shop regardless of whether the demolition of the building is carried out or not.
QUEENSLAND Retail Shop Leases Act 1994	See sections 46H-46K. The Act implies these provisions into leases which include a right to terminate the lease for demolition (as noted in section 46H). These provisions (sections 46I-46K) limit the landlord's right to terminate the lease for demolition by requiring a genuine proposal to demolish the building with sufficient details to be provided to the tenant. At least 6 months' notice must be given and the tenant may elect for an earlier termination. The Act provides for reasonable compensation to be paid to the tenant for its fit-out, and where the demolition does not proceed, for any loss suffered by the tenant. However the compensation rights for loss and damage if the demolition is not carried out do not apply if the landlord can prove that as at the date of the landlord's notice, the landlord had a genuine proposal to demolish the building within a reasonable time after the termination date. Section 43AD confirms that the landlord is not liable to pay compensation under section 43(1)(f) to the extent the tenant is otherwise entitled to payment of reasonable compensation under section 46K (demolition).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 3 and 39. Demolition of a building of which a retail shop forms part includes a substantial repair, renovation or reconstruction of the building which cannot be carried out practicably without vacant possession of the premises. The landlord is only entitled to terminate a lease on the grounds of a proposed demolition of the building of which the retail shop forms part if the lease contains a provision to that effect. If termination on the grounds of demolition is provided for in the lease, the lease is taken to include the following provisions: • the lease cannot be terminated on the grounds of demolition unless and until the landlord has provided the tenant with details of the proposed demolition sufficient to indicate a genuine proposal to demolish that building within a reasonably practicable time after the lease is to be terminated; • the lease cannot be terminated by the landlord without at least 6 months' written notice of the termination; • if a notice of termination is given to the tenant, the tenant may terminate the lease by giving the landlord not less than 7 days' written notice of

	termination at any time within 6 months before the termination date notified by the landlord. If the lease is for a term of 12 months or less, the 6-month periods are shortened to 3 months. If a retail shop lease is terminated on the grounds of demolition and demolition of the building is not carried out within a reasonably practicable time after the termination date, the landlord is liable to pay the tenant reasonable compensation or damage suffered by the tenant as a consequence of the early termination of the lease, unless the landlord establishes that at the time of notice of termination was given by the landlord there was a genuine proposal to demolish the premises within that time.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 24. For a demolition clause to be invoked, a landlord must provide to the tenant firm proposals for the demolition affecting the tenancy involved. The landlord must give the tenant at least 6 months written notice of the termination of the lease. The tenant may then terminate on 1 month's written notice which can be given to the landlord at any time within 6 months before the termination date specified by the landlord.

VICTORIA
 	
Retail Leases Act 2003
	See section 56. A retail premises lease that provides for termination of the lease on the ground of proposed demolition of the building in which the retail premises are located is taken to provide the following:
	• The landlord cannot terminate the lease on that ground unless the landlord has:
	• provided the tenant with details of the proposed demolition that are sufficient to indicate a genuine proposal to demolish the building within a reasonably practicable time after the lease is to be terminated; and
	• given the tenant at least 6 months' written notice of the termination date. (section 56(2)).
	• If the landlord gives the tenant a notice of termination in accordance with section 56(2), the tenant may terminate the lease before the termination date by giving the landlord not less than 7 days' written notice (section 56(3)).
	• If the lease is terminated by the landlord in accordance with section 56(2), or by the tenant in accordance with section 56(3), the landlord is liable to pay the tenant reasonable compensation:
	• if the demolition of the building is not carried out, or not carried out within a reasonably practicable time after the termination date, for damage suffered by the tenant as a consequence of the early termination of the lease; and
	• whether or not the demolition of the building is carried out, for the fit out of the retail premises to the extent that the fit out was not provided by the landlord (section 56(4)).
	• However, the landlord is not liable to pay compensation for the damage mentioned in section 56(4)(a) if the landlord establishes that when the notice was given there was a genuine proposal to demolish the premises within a reasonably practicable time after the termination date.
	• The amount of the compensation is the amount that is:
	  • agreed between the landlord and the tenant; or
	  • if there is no agreement, determined under Part 10 of the Act (Dispute Resolution).
	
	For the purposes of the section, "demolition" of the building in which retail premises are located includes any substantial repair, renovation or reconstruction of the building that cannot practicably be carried out without vacant possession of the premises.

WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	There is no provision in the WA Act specifically addressing termination of a retail shop lease to allow a demolition. Sections13 and 14A apply – see "Minimum 5 year term of lease" and "Relocation" for the detailed discussion concerning landlord's early termination rights in WA, as regulated by the Act.

Assignment and termination

Assignment of lease

ACT Leases (Commercial and Retail) Act 2001	See sections 93-96. Before asking for the landlord's consent to assign or sublet a lease, the tenant must give a prospective assignee or subtenant a copy of the DS and details of any material change that has happened in the information contained in the DS since the DS was given to the tenant. If the tenant does not have access to a copy of the DS, the tenant may ask the landlord to give the tenant a copy and the landlord must not (without reasonable excuse) fail to comply with that request within 14 days. Where the tenant has provided the DS to the proposed assignee or subtenant, the tenant may (in writing) ask the landlord to agree to the assignment, sublease or mortgage of the lease. Within 14 days after receiving a request to assign, sublet or mortgage, the landlord may in writing ask the tenant to provide the landlord with further information. If the tenant's request is for consent to an assignment or sublease, the landlord may only request any or all of the following: • information about the financial standing of the prospective assignee or subtenant or the prospective guarantor; • a certificate of occupancy for the premises; • information about the business skills of the prospective assignee or subtenant; • information about the proposed use of the premises by the prospective assignee or subtenant and references relating to their ability to operate the proposed business. If the tenant's request is for consent to a mortgage of the lease, the landlord may only request any or all of the following: • information about the identity and financial standing of the proposed mortgagee; • details of the loan or other obligation to be secured by the mortgage (including the amount of the loan, the purpose to which it is to be put, the term, the repayment schedule and the powers that may be exercised by the mortgagee). See section 99. Where the tenant makes a request for an assignment, sublease or mortgage of a lease, the landlord must consent or refuse to consent within: • 28 days after receiving the request; or • 21 days after receiving any further information requested, failing which consent will be deemed to have been given. See section 100. The landlord may refuse to consent to an assignment of a lease or granting of a sublease requested by a tenant only if it is reasonable to do so in all the circumstances. Refusal will be taken to be reasonable if the landlord has reasonable grounds for believing that: • the prospective assignee or subtenant intends to use the premises for a purpose not allowed under the lease or does not have the financial

	resources or adequate skills to run the business or they or their business will not be compatible with other tenants in the building; or • the tenant cannot produce a current certificate of occupancy or is in breach of the lease. See section 102. Within 6 months after giving or refusing consent, the landlord may recover from the tenant the reasonable costs of legal or other expenses incurred in making a decision about whether to consent to an assignment, sublease or mortgage.
NSW Retail Leases Act 1994	See sections 39, 41 and 41A. Section 39 provides that the landlord is only entitled to withhold consent to the assignment of a lease: • if the assignee proposes to change the use of the shop, the assignee has financial resources or retailing skills inferior to the assignor; • the tenant does not comply with the procedure for obtaining consent under section 41; • the circumstances set out in section 80E (which relates to a retail shop lease of airside premises at Sydney (Kingsford-Smith) Airport); or • in the case of a retail shop lease that has been awarded by way of public tender, the assignee fails to meet any criteria of the tender. In addition, the landlord must deal expeditiously with a request for consent. Consent is deemed to have taken place if the tenant complies with its obligations under this section and the landlord has not given notice either consenting or withholding consent within 28 days. Section 41A. A person who assigns a retail shop lease has no liability to the landlord in respect of amounts payable after the lease is assigned, provided the tenant: • gives the assignee an updated landlord DS; • gives the assignee an assignor's DS in the prescribed form; and • gives the landlord a copy of the assignor's DS and a disclosure confirmation. Provides that an assignor, guarantor or covenantor that assigns a lease of an outgoing business is released on assignment if the assignor gives a DS to the landlord and the assignee, provided the DS does not contain information that is materially false or misleading or is incomplete.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 53. The landlord is only entitled to withhold its consent following a written request for assignment if: • a proposed assignee proposes to change the use to which the shop is put; • the proposed assignee does not have the financial resources or retailing skills that will enable it to fulfil all the obligations under the lease; or • the tenant has not met its obligations under the Act to provide information about the proposed assignee or a copy of an "assignor's disclosure statement". See section 55. A lease is taken to include provisions obliging landlords to deal expeditiously with requests for consent and deeming the landlord to have given its consent if the tenant has met its obligations under the Act and the landlord has failed within 42 days after the request to provide its consent or withhold its consent. See section 58. An assignor, guarantor or covenantor that assigns a lease of an outgoing business is released on assignment if the assignor gives a DS to the landlord and the assignee, provided the DS does not contain information that is materially false or misleading or is materially incomplete.

QUEENSLAND Retail Shop Leases Act 1994	See sections 22AA-22E. Assignor must give a DS and a copy of the lease to the assignee at least 7 days before the earlier of: • if the assignment is related to an agreement for the sale of the assignor's business carried on in the leased shop – the day the assignee enters that agreement; or • the day the landlord is asked to consent to the assignment. The assignee may waive the 7 day period by providing a waiver notice (see section 22B) – although the DS and lease must still be provided before the business sale agreement is entered into or the landlord's consent is requested (as set out above). The assignee must give the assignor a DS before the landlord is asked to consent to the assignment. When the landlord's consent is requested, the assignor must give the landlord a copy of the DS it issued to the assignee. At least 7 days before the assignment is entered into, the landlord must give the assignee a DS and a copy of the Lease. The assignee may waive the 7 day period by providing a waiver notice (see section 22C) although the DS and lease must still be provided before the assignment is entered into. The assignee must give a DS to the landlord before the assignment is entered into. A financial and legal advice report must also be provided by the assignee (who is not a major lessee). If sections 22A-D are not complied with, a RTD is said to exist between the relevant parties. Section 50 deals with RTDs on assignment. Section 50A releases the assignor and guarantor of assignor from liability under the lease for which it would otherwise be liable if there is any default by the assignee, if the assignor has complied with their obligations to give DSs in section 22B and each DS is complete and does not contain information that is false or misleading in a material particular.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 43. The landlord is only entitled to withhold consent to assignment if: • the assignee proposes to change use; • the assignee is unlikely to be able to meet its financial obligations as tenant under the lease; • the assignee's retailing skills are inferior to the assignors; or • the tenant has not complied with procedural requirements (section 45). Similar to NSW regarding the landlord dealing expeditiously with a request, and consent is deemed after 42 days (section 45). The landlord must not seek or accept the payment of a premium in connection with the granting of consent to the assignment (section 44). However, the landlord may require payment of a reasonable sum for legal and other expenses incurred in connection with the consent. Note: section 45A sets out procedural requirements a tenant can follow to restrict liability post assignment.
TASMANIA	See section 28. The landlord is only entitled to reject the assignment if the proposed assignee intends to change the use of the premises, or the proposed

Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	assignee does not have the financial standing or the necessary skills to conduct the business, or the proposed assignee does not enter into a written agreement with the landlord in accordance with the terms of the lease or as otherwise reasonably required by the landlord. The landlord must advise the tenant of information it requires to make a decision within 14 days of receiving a request to an assignment and is deemed to have consented after 21 days of receiving all required information. If, on assignment, the landlord changes the terms of the lease with the agreement of the original tenant and its guarantors, then the original tenant and its guarantors remain liable for pre-existing guarantees. However, they are released from liability if the terms of a lease, other than the rent, are changed after an assignment without their agreement.
VICTORIA Retail Leases Act 2003	See section 60-62. The landlord is only entitled to withhold consent to an assignment of the lease if 1 or more of the following applies: • the proposed assignee proposes to use the premises in a way that is not permitted under the lease; • the landlord considers that the proposed assignee does not have sufficient financial resources or business experience to meet the obligations under the lease; • the proposed assignor has not complied with the reasonable assignment provisions of the lease; • the assignment is in connection with a lease of retail premises that will continue to be used for the carrying on of an ongoing business and the proposed assignor has not provided the proposed assignee with business records for the previous 3 years or such shorter period as the proposed assignor has carried on business at the retail premises. The landlord must deal expeditiously with the request for consent and is taken to have consented to the assignment if the tenant has complied with its obligations under this section and the landlord has not within 28 days after the request was made, given written notice to the tenant consenting or withholding consent. If assignment is for premises that will continue to be used to carry on an ongoing business and the tenant gives the landlord and the proposed assignee a copy of a DS in accordance with the section and such DS does not contain any information that is false, misleading or materially incomplete, then the tenant and any guarantor is not liable to perform any obligations under the lease or to pay to the landlord any money in respect of amounts payable by the proposed assignee.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 10. The tenant under a retail shop lease has the statutory right to assign the lease, subject only to a right of the landlord to withhold consent on "reasonable grounds". The Act does not set out any grounds and the general law applies. Consent is deemed given by the landlord if the landlord has not given notice either consenting or withholding consent within 28 days after receiving the request to assign. Assignors and the assignors' guarantors under a retail shop lease are released only in regard to future obligations on the assignment. Any provision in a retail shop lease enabling the landlord to: • withhold consent unless the assignor (or the assignor's guarantor) agrees to pay any money that is payable by the assignee under the lease; or

	• recover from the assignor (or the assignor's guarantor) any money payable by the assignee under the lease, • is void. Note above that no DS is required by the Act to be given on an assignment. Note above concerning key money that recovery is permissible from a tenant of: • the landlord's reasonable expenses incurred in investigating the assignee; and • the landlord's fair and reasonable costs of the assignment document preparation.

Termination of lease

ACT
Leases (Commercial and Retail) Act 2001
	See section 108. The section applies to a lease for premises in the retail area of a shopping centre if the landlord proposes to re-lease the premises and the tenant wants to renew or extend the lease.
	Where the section applies, the landlord must allow the tenant to extend/renew the lease in preference to other possible tenants. The landlord must assume that the tenant intends to renew the lease unless it gives notice in writing to the contrary within 12 months before the end of the lease.
	The landlord may, however, offer the premises to a third party if it would be substantially more advantageous to the landlord to do so.
	The landlord is not required to give the tenant a preferential right if:
	• the landlord reasonably wants to change the tenancy mix;
	• the tenant has substantially or persistently breached the lease;
	• the tenant has signed an exclusionary certificate under section 111;
	• the lease is excluded from section 108 by regulation;
	• the sublease is as long as the term of the head lease allows;
	• the tenant is in holding over for 6 months or less; or
	• the landlord:
	  • does not propose to re-lease the premises within 6 months after the end of the lease; and
	  • needs vacant possession during that period for the landlord's own purposes.

NSW Retail Leases Act 1994	See sections 44-44A. The landlord is required not less than 6 months or more than 12 months before the expiry of the lease to notify the tenant if he will be offered a renewal or extension of the lease. A notice given by the landlord is not capable of revocation for 1 month after it is made. If the landlord fails to give the tenant a notice, the term of the lease is extended until the end of 6 months after the landlord does give such notification, if the tenant requests the 6-month extension. During the term of the lease (or holding over), a landlord of a retail shop must not, by written or broadcast advertisement, indicate the availability of the shop for lease or invite tenders or expressions of interest for tendering (section 44A), unless: • the landlord has made an offer to the tenant for a lease renewal or extension and that offer has not been accepted; • the landlord has given notice that it does not intend to offer the tenant a lease renewal or extension; • the tenant informs the landlord that it does not wish to enter into negotiations; • the tenant vacates or agrees to vacate; or • tenant consents to the publication of the advertisement. A penalty (up to 50 penalty units) applies if the landlord breaches section 44A.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 60. Similar to section 44 of the NSW provisions where the lease contains no option for renewal. Not less than 6 months and not more than 12 months before the expiry of a lease, the landlord must by written notice to the tenant:

	• offer the tenant a renewal or extension of the lease on terms (including terms as to rent) specified in the notice; or • inform the tenant that the landlord does not propose to offer the tenant a renewal or extension of the lease. An offer made under section 60 cannot be revoked until after one month after it is made. If the landlord fails to give a notice to the tenant, the term of the lease is extended until the end of 6 months after the landlord gives the notice, but only if the tenant requests that extension by notice in writing to the landlord given before the lease would otherwise have expired. During any resultant extension of the lease, the tenant may terminate the lease by giving not less than one months' notice of termination in writing to the landlord. This section does not apply to a lease: • containing an option to renew or extend the lease; or • that is the subject of an agreement for the renewal or extension of the lease. If a retail shop lease is for a term of 12 months or less, the periods of 12 months and 6 months mentioned in parts of section 60 are shortened to 6 months and 3 months respectively.
QUEENSLAND Retail Shop Leases Act 1994	See sections 46-46AA. If there is no option for renewal in the lease, the landlord must by written notice either offer the tenant a renewal or extension of the lease on terms stated in the notice or tell the tenant that the landlord does not intend to offer the tenant a renewal or extension. The landlord's notice must be given: • between 3 to 6 months before the existing lease expires – for a lease term of not more than 1 year; or • between 6 months to 1 year before the existing lease expires – for a lease term of more than 1 year. If the landlord fails to inform the tenant whether or not it offers a renewal, the lease term can be extended until 6 months after the landlord gives the notice, if before the lease expires, the tenant requests the extension by written notice. Where a lease includes an option to renew, the landlord must give the tenant between 2 and 6 months' notice of the last date to exercise the option (section 46).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 20D- 20J. Similar to NSW for short-term and excluded leases. However Part 4A Division 3 (rather than section 20J) applies to premises in an RSC and excluding: • a lease containing a certified exclusionary clause; • fixed term leases of 6 months or less; • a sublease where the term is as long as the head lease allows; and • a lease excluded by regulation. For leases which do not contain a right of renewal, unless the tenant notifies the landlord within 12 months before the end of the term, the landlord is to presume the tenant wants a renewal or extension of the term. The existing tenant is to have a right of preference (subject to specified exceptions) and the landlord must between 6 and 12 months before the end of the term begin negotiations with the tenant for a renewal or extension of the lease. If the landlord fails to negotiate or give notification as required by Part 4A Division 3, the term of the lease is extended until the end of 6 months after the

	landlord begins the required negotiations or gives the required notice, if the tenant requests the 6-month extension.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 29. The lease may be terminated or renewed at any time prior to its expiry by written agreement between the parties. In the absence of agreement, the landlord is to give the tenant 3 months' prior notice: • as to whether or not landlord wishes to renew the lease, and if so, on what terms; or • that the tenant is to remain as a periodical tenant on the current terms of the lease; or • that the tenant may continue to occupy on a monthly tenancy on terms to be agreed. The tenant is to respond to the landlord within 30 days of receiving the notice unless the notice states that the lease will not be renewed. If the tenant fails to do so, the lease is not renewed. If the landlord fails to negotiate or give notice as to the landlord's intentions, then the terms of the lease may be extended (at the tenant's election) by a period equal to that period of non-compliance (ie. by 3 months). No mention in Code of restriction on advertising. See section 9. Similar to NSW. Payment of key money regarding the granting, renewal, extension or assignment of a lease, is prohibited (and void).
VICTORIA Retail Leases Act 2003	See section 64. Similar to NSW if the lease contains no option for further term except that the lease will continue until 6 months after the notice is given. Whether or not the landlord has given the tenant a notice, the tenant can terminate the lease no earlier than on the expiry of the term. See section 28. Where the lease contains an option to renew, the landlord is required to notify the tenant of the date after which the option is no longer exercisable. The landlord must make this notification in writing at least 3 months before the last date that the option may be exercised. In addition, the landlord's notice must include: • the rent payable for the first 12 months of the further term; • notice that the tenant may require an early review of rent; • notice that a cooling-off period may be available; and • details of any changes to the most recent disclosure statement provided to the tenant (other than any changes in relation to the rent). If the landlord fails to give all of the information required or fails to give the notice within the time specified • the lease is taken to provide that the date after which the option is no longer exercisable is instead 3 months after the landlord notifies the tenant as required; and • if that date is after the term of the lease ends, the lease continues until that date on the same terms and conditions as applied previously, unless the parties agree otherwise; and • the tenant, whether or not the landlord has then notified the tenant as required, may give written notice terminating the lease from a specified day that is on or after the date on which the term of the lease ends and before the date until which the lease would otherwise have continued, if extended under this section. See section 28B. A tenant who exercised an option and did not request an early market rent review under section 28A, may give the landlord written notice that they no longer wish to exercise that option to renew. The cooling-off notice must be given in the period ending 14 days after exercising the option,

	in which case, the lease is extended by 14 days and is taken not to have been renewed.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 13B. Once a lease (including any extensions or renewals in the lease or conferred by section 13) has expired and the tenant has no available option terms remaining, the tenant has no further right to a new lease. If the tenant, within 12 months before the expiry of the lease, requests in writing from the landlord a statement as to the landlord's intentions, the landlord must within 30 days of receiving the request give a written statement to the tenant of the landlord's intentions. If the landlord intends to grant the tenant a renewal of the lease then the statement must contain the terms and conditions of the proposed new lease (other than the rent which need not be given until 3 months before the expiry date). The statement will constitute an offer to lease. If the landlord fails to give the statement within the 30 day period after receipt of the request (ie. either notifying the tenant that the landlord will not be granting any further lease or that the landlord is prepared to do so and the terms), the term of the lease is deemed to be extended by a period equal to that period of non-compliance. Note section 13C which is of similar effect to the NSW section 44 regarding when an option ceases to be exercisable.

Shopping centres

Advertising or promotion

ACT Leases (Commercial and Retail) Act 2001	See sections 131-132. The landlord may recover advertising and promotion levies only if a marketing plan with expenditure details is made available to the tenant: • before the lease is entered into in respect of the landlord's first accounting period; and • at least 1 month before each subsequent accounting period. There is a similar requirement for opening promotions.
NSW Retail Leases Act 1994	See section 52. Provisions in the lease requiring the tenant to undertake any advertising or promotion of the tenant's business are void.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 68 – similar to NSW. Does not apply to a provision in a lease that requires a payment to the landlord for advertising and promotion costs incurred or to be incurred by the landlord.
QUEENSLAND Retail Shop Leases Act 1994	See section 40A-41. If the tenant is required to contribute to the promotion and advertising of the centre and the promotion amounts are not treated as part of outgoings under the lease, the landlord may only apply promotion amounts for promotion and advertising directly attributable to the centre. However, the moneys may also be applied for joint promotions and advertising with other RSCs. The landlord must provide the tenant with an audited annual statement within 3 months after the end of the accounting period. It must be prepared by a registered auditor and contain the auditor's opinion on whether the statement presents fairly the lessor's expenditure during the accounting period for promotion amounts. Any amount not spent must be carried forward for spending on promotion and advertising of the centre.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 53. Similar to NSW.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 34. The landlord cannot charge a tenant for advertising or promotion costs incurred in the promotion of the landlord only. However, if the landlord does charge the tenant other advertising or promotion costs, then the landlord must provide an annual marketing plan, including a budget, to the tenant. The landlord may not require the tenant to undertake any advertising of the tenant's business in addition to the tenant's contribution to outgoings for advertising and promotion specified in the lease.
VICTORIA Retail Leases Act 2003	See section 69. Similar to NSW.

WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	No similar provision in WA to NSW section 52 provisions. Section 12B governs contributions to marketing or promotion funds. Section 12B provisions are similar to those discussed above in relation to section 12A in "Sinking fund". The purpose of the fund must be specified in the lease. The landlord may only apply the fund to the specified purpose and to taxes and imposts on the fund, and the cost of an end of accounting year audit by a registered company auditor and accountant. The fund must be paid into one or more appropriately designated interest bearing accounts held by the landlord with a bank or financial society in WA. Full and accurate accounts and records must be kept. At the end of each accounting year the accounts must be audited by an auditor who is a registered company auditor within the meaning of the Corporations Act 2001 (Cth). A copy of the auditor's report must be distributed to a tenant within 3 months after the end of the relevant accounting period. If a tenant, within 3 years after the tenant receives the copy of the report referred to above, notifies the landlord that there is a deficiency in the fund due to any non-compliance of the foregoing obligations by the landlord (or by any predecessor of the landlord) then the landlord is liable for the deficiency.

Marketing plan

ACT Leases (Commercial and Retail) Act 2001	See "Advertising or promotion".
NSW Retail Leases Act 1994	See sections 53-55A. Requires a landlord to at least 1 month before the start of each accounting period make available to the tenant a marketing plan. The landlord must make available a written expenditure statement, and an advertising statement on advertising and promotion expenditure available at least twice in each of the landlord's accounting periods. Within 3 months after the end of the accounting period the landlord must give the tenant an advertising statement accompanied by an auditor's report on advertising and promotion expenditure. A tenant may withhold payment of contributions in respect of advertising or promotion costs of the landlord in circumstances where the landlord has failed, for 10 business days after request from the tenant, to make available a marketing plan, details of proposed expenditure on an opening promotion, a written statement of expenditure or an advertising statement.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See sections 69-70 – similar to NSW, however the NT does not permit the tenant to withhold payment and the expenditure statement must be made available within 1 month after the end of the 6 month period to which it relates.
QUEENSLAND Retail Shop Leases Act 1994	See section 40A. The landlord must, at least 1 month before the start of each accounting period, make the marketing plan available to the tenant (including details of the proposed spending on promotion and advertising during that accounting period).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 54-55. Similar to NSW except the marketing plan must be provided at least 2 months before the start of each accounting period.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 34. See above and similar to NSW. No mention in Code of any right of the tenant to withhold payment.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 12B in "Advertising or promotion". No requirement in WA for the preparation of a marketing plan and provision to tenants.
VICTORIA Retail Leases Act 2003	See section 70. At least 1 month before the start of each accounting period of the landlord, the landlord must provide the tenant with a marketing plan that gives details of the landlord's proposed expenditure.

Restrictions

ACT Leases (Commercial and Retail) Act 2001	See section 141. The lease must not contain any provisions preventing or restricting the tenant from carrying on business outside the shopping centre either during or after the term of the lease.
NSW Retail Leases Act 1994	See sections 37 and 59. Section 37. Subject to exceptions, a retail shop lease must not contain a provision that limits the tenant's right to employ a person of its own choosing. Section 59. The lease must not contain a provision restricting the tenant from carrying on business outside the RSC either during or after the expiry of the lease.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 74 – similar to NSW. A provision in a retail shop lease is void to the extent that it has the effect of preventing or restricting the tenant from carrying on business outside the retail shopping centre, either during the term of or after the expiry of the lease. This section does not operate to prevent a lease or other agreement from containing a provision that prevents the use of the name of the retail shopping centre in connection with a business carried on outside the shopping centre.
QUEENSLAND Retail Shop Leases Act 1994	No mention in the Act. General law restraint of trade applies.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 59. The lease must not contain a provision restricting the tenant from carrying on business outside the RSC either during or after the expiry of the lease.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention in the Code.
VICTORIA Retail Leases Act 2003	See section 74. Similar to NSW.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	No mention in the Act and no prohibition. General law restraint of trade applies and reasonable restraint permitted.

Trading hours

ACT Leases (Commercial and Retail) Act 2001	See section 140. The tenant may trade outside core trading hours with the landlord's agreement provided the tenant meets the costs (calculated proportionately where there are other tenants operating outside the core hours), including advertising and promotion costs associated with opening and operating the shopping centre for the additional hours. Core trading hours means the time when retail premises in the shopping centre are generally required to be open (see dictionary).
NSW Retail Leases Act 1994	See section 61. The landlord may not change core trading hours of a shopping centre except with the approval in writing of a majority of the retail shops in the centre.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See section 75 – similar to NSW. A lease of a retail shop is taken to include a provision to the effect that the landlord is not entitled to change the core trading hours of the retail shopping centre of which the shop forms part except with the approval in writing of the tenants of a majority of the retail shops in the shopping centre (whether or not those retail shops are retail shops to which this Act applies). The initial fixing of trading hours in a new retail shopping centre is not a change to core trading hours and is not affected by the section. The landlord is not permitted to ignore the requirements of another agreement, arrangement or understanding that prevents or restricts a change to core trading hours by the landlord in a retail shopping centre. The section does not prevent a lease providing for the action that may be taken by a landlord in the event of a tenant not trading in accordance with core trading hours, including provisions: • enabling the landlord, as a condition of granting consent to a tenant trading outside core trading hours, to require the tenant to pay, or pay a contribution towards, the costs of opening the retail shopping centre during those extended trading hours; or • requiring a tenant who trades outside core trading hours to make specified payments or additional payments in respect of advertising and promotional costs for the shopping centre. Core trading hours means the time the tenant is required to be open for business, whether imposed by lease or under some other arrangement, agreement or understanding between the landlord or tenant.
QUEENSLAND Retail Shop Leases Act 1994	See sections 51-53A. Core trading hours means the hours not outside the allowable trading hours under the Trading (Allowable Hours) Act 1990 that are passed by a resolution supported by at least 75% of retail shops (who voted) in a shopping centre (on the basis of 1 vote for each eligible shop and at least 50% of eligible shops voted). Until a resolution is passed: • for leases existing before the commencement of the Trading (Allowable Hours) Amendment Act 1994 (Qld) (ie. 16 May 1994) the trading hours immediately prior to that Act; or • for other leases – the trading hours required by the landlord. A provision which requires the tenant to trade outside the hours permitted under the core trading hours for the RCS is void.

	See section 53A. There is a limit on the landlord's recovery of outgoings incurred outside core trading hours.
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See section 61. Trading hours can only be regulated if: • the shop is within an "enclosed shopping complex" (as defined in the Act); • the lease does not reduce permitted hours to less than 50 hours per week; • core trading hours do not exceed 54 hours per week and do not include any time on a Sunday, and have been approved by 75% of voters. The provisions in this section should be read in conjunction with the Shop Trading Hours Act 1977 (SA).
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 38. Trading hours for a shopping centre are divided into three categories: core trading hours, centre trading hours, and special trading hours. Core trading hours may be negotiated between landlords and tenants, and once negotiated, the tenants must open during the agreed minimum hours of trading. Centre trading hours are the times that the centre facilities must be made available and during which any shop may trade. Special trading hours are the times outside centre trading hours and are negotiable between the landlord and the tenant and they are not compulsory so that the tenants may open if they wish. To change trading hours, a resolution must be passed by 2/3 of the total number of tenants voting at the meeting of tenants occupying the retail premises within the shopping complex.
VICTORIA Retail Leases Act 2003	See section 66. Similar to NSW.
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See sections 12 and 12C which are markedly different from all other states. Under the Act the landlord can set the trading hours for the centre (subject to any contractual arrangements the landlord may have made altering those rights). However, under section 12C, a provision in a retail shop lease requiring a tenant to open the shop at specified times is void. The tenant of a retail shop is free to stay closed whenever the tenant wishes to do so (but see section 12 above concerning the tenant's obligation to pay its share of outgoings during "standard trading hours" if it chooses not to trade during those hours). If the landlord refuses to grant the tenant a lease renewal and the tenant believes the refusal is because the tenant did not open the shop at specific times, the tenant can apply to WA SAT for compensation for pecuniary loss suffered by the tenant as a result of the non-renewal. Under section 12(1)(c) the landlord cannot recover costs from a tenant under a retail shop in a group of premises where that tenant was not open for trade outside the standard trading hours.

Unconscionable conduct and misleading and deceptive conduct

ACT Leases (Commercial and Retail) Act 2001	See section 22. A party to a lease or negotiations for a proposed lease must not deal with other parties to the lease or negotiations in a manner which is unconscionable, or harsh and oppressive. In determining a dispute, the Magistrates Court may consider any of the following: • the relative strengths of the bargaining positions of the parties; • whether the conduct required the other party to comply with conditions which were not reasonably necessary for the protection of the legitimate interests of the party engaging in the conduct; • whether the party who did not prepare the lease could understand its conditions; • whether undue influence, pressure or unfair tactics were used; • whether the tenant could have acquired a lease on similar terms for similar premises from another person; • the extent to which the landlord's conduct was consistent with its conduct in similar lease transactions towards similar tenants; • the requirements of the Act; • whether there was proper disclosure of intended conduct or risk; and • the extent to which the parties acted honestly.
NSW Retail Leases Act 1994	Part 7A and sections 62A-62B provide that the landlord or tenant must not engage in conduct that is, in all the circumstances, unconscionable. A party that suffers loss or damage by reason of unconscionable conduct may recover the amount of loss or damage by lodging a claim with the NSW SAT. Sections 62D and 62E provide that a party to a retail shop lease must not engage in conduct that is misleading or deceptive to another party to the lease or that is likely to mislead or deceive. A party who suffers due to the latter conduct may recover the amount of loss or damage by lodging a claim under section 71.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See Part 10, Unconscionable conduct provisions – similar to sections 62A-62B in NSW but the claim is lodged with a court. No provisions for misleading and deceptive conduct.
QUEENSLAND Retail Shop Leases Act 1994	See section 46A. A landlord or a tenant must not engage in conduct which is, in all the circumstances, unconscionable. Sections 46A-46B only apply to leases entered into on or after 24 June 2001. QCAT may determine if a party has acted unconscionably and take into account matters similar to those provided for in the Leases (Commercial and Retail) Act 2001 (ACT).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	No specific section in the Act. However note section 20A (Objects) which states that the minimum 5 year term requirement is to achieve "fair dealing" between the landlord and the tenant in relation to renewal/extension of lease. See also section 20M which prohibits any threats to dissuade a tenant from exercising a right or an option to renew or from exercising its rights under Part 4A of the Act.

TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 3. A person must not engage in conduct that is harsh, unjust or unconscionable. Unconscionable conduct may include the threat by a property owner to subsidise a competitor to the tenant in nearby premises, or not to renew a lease unless the tenant agrees to a proposal of the property owner or is prepared to pay a rental in excess of the CMR. See section 23(1)(e). The landlord must compensate the tenant if he acts in a manner which, in all the circumstances, is unconscionable. See section 7(3). If the landlord provides a DS containing misleading information, the tenant may, in addition to other rights, terminate the lease within 3 months after its commencement.
VICTORIA Retail Leases Act 2003	See Part 9. Similar to NSW except there is no provision for misleading and deceptive conduct and claims must be lodged with the Victorian Civil and Administrative Tribunal.

WESTERN AUSTRALIA
 	
Commercial Tenancy (Retail Shops) Agreements Act 1985
	See Part IIA of the Act.
	
	Unconscionable conduct
	
	A landlord or a tenant under a retail shop lease must not engage in conduct that is, in all the circumstances, unconscionable.
	
	A party who suffers loss or damage by reason of unconscionable conduct that contravenes the Act may recover the amount of loss or damage by lodging a claim with WA SAT.
	
	Part IIA also applies to retail shop leases entered into prior to Part IIA coming into operation.
	
	In determining whether a party has acted unconscionably, the WA SAT may take into account matters similar to those provided for in the Leases (Commercial and Retail) Act 2001 (ACT) and also:
	• the requirements of any applicable industry code;
	• the extent to which a landlord or tenant was willing to negotiate the terms and conditions of any lease or the rent with the other party;
	• the extent to which a landlord or tenant unreasonably used information about the turnover of the tenant or a previous tenant's business to negotiate the rent; and
	• the extent to which:
	  • in the case of the landlord, it required the tenant to incur reasonable refurbishment or fit-out costs; or
	  • in the case of a tenant, it was willing to incur reasonable refurbishment or fit-out costs.
	
	Misleading and deceptive conduct
	
	See sections 16A-16D (Division 2). These provisions were introduced by the 2013 amending Act.
	
	These are similar to NSW sections 62D and 62E except that the claim is brought before the WA SAT.
	
	Misleading and deceptive conduct is defined as conduct that is misleading or deceptive to another party to the lease or that is likely to mislead or deceive another party to the lease.
	
	Division 2 will not apply to conduct that occurred before the relevant provisions in the amending Act were proclaimed.
	
	A misleading or deceptive conduct claim must be lodged within 6 years after the alleged conduct occurred.

	The WA SAT has extensive powers in relation to the orders it may make.

Disputes

Dispute resolution

ACT Leases (Commercial and Retail) Act 2001	See Part 14. The Magistrates Court has jurisdiction to hear and determine applications (section 144). Section 17 sets out disputes in relation to which an application may be made. See sections 147-149. The Magistrates Court must hold a case management meeting for each application it receives to determine whether resolution is likely or not, and if: • likely: the Court must promote settlement either at the meeting or by referral to other dispute resolution mechanisms; or • unlikely: the Court must give directions about how the proceedings will be conducted. Procedures for hearings are outlined in section 151 and, if appropriate, the proceeding may be transferred to the Supreme Court (section152).
NSW Retail Leases Act 1994	See Part 8. Section 63 covers RTDs being disputes between parties to a retail shop lease even if the lease is entered into before the commencement of the Act. Section 5 of the Retail Leases Regulation 2022 (NSW) provides that where premises become a retail shop due to the commencement of the Regulation, Part 8, Division 2 of the Act (Mediation) applies to a lease of premises entered prior to the commencement of the Regulation, and a lease of premises entered into under an option granted or agreement made prior to the commencement of this Regulation. Section 68 provides that RTDs or other disputes or matters specified cannot be the subject of any court proceedings (defined to include a tribunal or an arbitrator), unless the Registrar has certified that mediation or some other form of alternative dispute resolution of the dispute has failed or is unlikely to resolve the dispute or matter. Section 67 provides that mediation is not limited to formal mediation procedures. An exception to this provision is if a court is otherwise satisfied that mediation under the Act is unlikely to resolve the RTD.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See Part 11. Parties to a retail shop lease may refer a claim to the Commissioner of Business Tenancies for conciliation. If the parties are unable to resolve the dispute, the claim can be referred to courts or (where the claim is less than $10,000) proceed to an inquiry. An inquiry is conducted by the Commissioner and is open to the public. The Commissioner has a number of powers in Division 4 of Part 11 to request evidence, however is not bound by evidentiary rules. The Commissioner may make orders set out in section 102. The Local Court may hear and determine retail tenancy claims in respect of any disputed matter (unless the claim involves a monetary amount in excess of $250,000, which is the limit of the Local Court's civil jurisdiction). Otherwise, the Supreme Court has jurisdiction to hear and determine retail tenancy claims that relate to monetary amounts in excess of $200,000. Retail tenancy claims can only be the subject of court proceedings where the remedy sought is in the nature of an injunction, or if the Commissioner of

	Business Tenancies certifies that the parties have failed to resolve the claim after a preliminary conciliation conference (but prior to an inquiry being commenced). Parties to retail tenancy proceedings may be represented by lawyers, and where a matter proceeds to court and the amount recovered is less than $10,000, no costs are recoverable unless the court is satisfied that there were reasonable grounds for the plaintiff to believe it was entitled to $10,000 or more. Unconscionable conduct claims are excluded from the tenancy dispute provisions, and must be brought before a court.
QUEENSLAND Retail Shop Leases Act 1994	See Parts 8-9. The Act provides for resolution of disputes through mediation (sections 54-115) and by reference or application to the QCAT processes under the QCAT Act 2009 (sections 63-64) respectively. Where a dispute has not been resolved through mediation, a mediator or party may refer a dispute to QCAT in specified circumstances. QCAT may direct the parties to attend compulsory conferences or mediation (QCAT Act sections 67 and 75). QCAT also allows sub-tenants and franchisees to apply to be joined to a QCAT proceeding including regarding compensation claims and refer matters to the QCAT even though they are not the tenant (QCAT Act section 42).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	See sections 63-69. Parties to a retail shop lease may refer a dispute to the Small Business Commissioner for mediation. The Commissioner may intervene in proceedings before a court concerning a dispute about a retail shop lease. The Magistrates Court is the relevant jurisdiction (unless the claim involves a monetary claim exceeding $100,000, in which case the Magistrates Court must on the application of a party to a proceeding refer the matter to the District Court).
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See section 39. The parties must first attempt to resolve any dispute by direct negotiations. If this fails, either party may request the Office of Consumer Affairs and Fair Trading to investigate the dispute and attempt to negotiate a mutually acceptable solution. If the dispute remains unresolved, then either party may refer the dispute to the Retail Tenancies Code of Practice Monitoring Committee for conciliation. If this fails, then either party may refer the dispute to a court of competent jurisdiction.
VICTORIA Retail Leases Act 2003	See Part 10. Similar to NSW. RTD means any dispute between a landlord and tenant arising under or in relation to a lease of retail premises even if the Act or former retail legislation does not apply. RTD does not include a dispute solely relating to payment of rent or a dispute re turnover or CMR capable of determination by an SRV. Before the RTD goes before the Tribunal, the Small Business Commission must certify in writing that mediation or another appropriate form of alternative resolution has failed or is unlikely to resolve the RTD. This does not apply to injunctions. A guarantor of a tenant's obligations under a lease and a person who has given an indemnity to a landlord for loss as a result of breach by the tenant may refer a dispute to the Small Business Commission for mediation (section 86(1A) & (1B)).

WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See Part III. See "Retail tenancy claim by commercial tribunal" below for WA SAT jurisdiction. Where both the WA SAT and a court has jurisdiction, proceedings may be instituted before either the court or the WA SAT, but not both. If proceedings are instituted before a court, but the WA SAT also has jurisdiction the parties may agree, or the court may determine, that the matter be transferred to the WA SAT. The matter will then be transferred to the WA SAT and will be heard and determined as if instituted before the WA SAT. The converse also applies to proceedings instituted before the WA SAT. **SBC** The SBC is a new concept in WA. The role has been set up under the Small Business Development Corporation Act 1983 by the Small Business and Retail Shop Legislation Amendment Act 2011. That legislation has also extended the role of the SBC into the Retail Act. For example, section 25A allows persons to a retail shop lease who are entitled to take a matter to WA SAT to request the SBC to provide assistance or an alternative dispute resolution process for the matter. Under section 25D a matter cannot be brought before WA SAT for determination unless the SBC has issued a certificate under section 25C that alternative dispute resolution is unlikely to resolve the matter, would not be reasonable or has failed. The SBC certificate can also be used by the SBC to include a report to SAT about the conduct of the parties in any dispute resolution before the SBC. Certain disputes may be excluded from section 25D by regulation and there will be no need for SBC certification before going directly to WA SAT. Under section 25E the SBC may at any time intervene in SAT proceedings. Under section 30A, the role of SBC in relation to the Retail Act is to provide assistance in attempting to resolve disputes under retail shop leases or to provide information and guidance in relation to retail shop leases. Under section 33 WA SAT can have regard to the SBC's certificate (eg. conduct of the parties) when awarding costs.

Retail tenancy claim by commercial tribunal

ACT Leases (Commercial and Retail) Act 2001	No commercial tribunal available. Disputes are determined by the ACT Magistrates Court – see "Dispute Resolution".
NSW Retail Leases Act 1994	See sections 70-71B. A party to a lease, instead of initiating court proceedings, may, after having exhausted the mediation requirements of the Act, make an RTC with the NCAT. An RTC is a claim in connection with an RTD and includes a claim for payment of money, relief from payment of money, or a claim for the doing of specific work or the provision of specified services. It also includes a claim for the surrender of possession, assignment of rights under a lease, a declaration that the landlord cannot withhold consent to an assignment, a claim for relief against forfeiture and a claim for rectification of the lease or the landlord DS. A party may also lodge a claim for relief for unconscionable conduct with the NCAT. A claim under these sections may be lodged more than 3 years but no later than 6 years after the liability or obligation that is the subject of the claim arose if NCAT orders that the claim may be lodged. The monetary limit of NCAT's jurisdiction is $750,000 (see section 73). For any proceeding for a retail tenancy claim, NCAT may make any one or more of the orders listed in section 72(1). For any proceeding for unconscionable conduct claims, NCAT may make any one or more of the orders listed in section 72AA that it considers appropriate.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See Division 4 of Part 11. Where the parties fail to resolve the dispute through conciliation and the amount in dispute is less than $10,000, the matter proceeds to an inquiry before the Commissioner of Business Tenancies. An order of the Commissioner can be registered as an order of the Local Court.
QUEENSLAND Retail Shop Leases Act 1994	See section 64. Provided the lease has not ended more than 1 year before the dispute notice was lodged, and other specified criteria are satisfied, a party may refer a dispute to the QCAT. QCAT does not have jurisdiction to hear a dispute regarding arrears of rent (unless the dispute is also about the payment of compensation by the landlord) or the amount of rent or outgoings payable. However QCAT can hear a dispute about the procedure for determining rent or the basis upon which outgoings are payable (section 103). QCAT also has jurisdiction to set aside a valuation if not made in accordance with the Act and to order rectification of a lease with the parties' consent (section 83). Parties generally bear their own costs of proceedings (QCAT Act section 100). QCAT may make a costs order in the interests of justice or where the dispute is frivolous or vexatious, or a party has caused further costs through delay, failing to comply with the Act or to attend mediation or a hearing (QCAT Act, sections 48(1) and 102). Cost penalties may apply under the Rules if an earlier offer to settle the dispute has been made but not accepted (QCAT Act, section 105).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	No commercial tribunal under the Act. Disputes can be referred to the Commissioner for mediation or determined by the Magistrates Court or District Court (as applicable) – see "Dispute Resolution" and sections 63-69.

TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	See sections 39 and 42. A property owner and a tenant must attempt to resolve any dispute by direct negotiation. If the parties fail to resolve the dispute, either party may request the Office of Consumer Affairs investigate the dispute and negotiate a mutually acceptable solution. If a dispute still remains unresolved, either party may refer the dispute to the Retail Tenancies Code of Practice Monitoring Committee for conciliation. Once this process is exhausted either party may refer the dispute to a court of competent jurisdiction.
VICTORIA Retail Leases Act 2003	See sections 89-92. The Tribunal has jurisdiction to hear and determine an application by a landlord or tenant under a retail premises lease or by an SRV seeking resolution of a RTD. In an application for forfeiture or relief against forfeiture (whether or not for non-payment of rent), the Tribunal has the same jurisdiction, including equitable jurisdiction, and powers as the Supreme Court. The Tribunal's jurisdiction is exclusive in relation to RTDs other than an application for relief against forfeiture or a claim under Part 9 for unconscionable conduct. Recovery of prohibited key money and goodwill payments may be made in Court or by order of the Tribunal. Claims against guarantors and against anyone who has given an indemnity in favour of a landlord are to be heard by the Tribunal and not by a Court (section 89(4)(c)).
WESTERN AUSTRALIA Commercial Tenancy (Retail Shops) Agreements Act 1985	See Part III in "Dispute Resolution". Any question between the parties under a retail shop lease may be referred to the WA SAT. The WA SAT is to: • determine whether the question does arise under the lease (which determination can be made in such manner as the WA SAT thinks fit, subject to each party being given an opportunity to make a written submission); and • if so, hear the question with a view to achieving a solution acceptable to the parties. See section 3(3). A question arising under a retail shop lease also extends to questions concerning forfeiture. If a solution acceptable to the parties is obtained and is reduced to writing and signed by the parties ("mediation agreement") the agreement is filed with the WA SAT. Where a mediation agreement is not possible or a mediation agreement is obtained but breached, the matter can then be referred to the WA SAT for determination. The WA SAT has jurisdiction to hear: • an application by the tenant for a compensation order under particular sections in the Act which give the tenant rights to compensation (eg. failure by the landlord to give a DS or incorrect information in a DS); • a key money debt action; • referrals of questions arising under a retail shop lease; and • unconscionable conduct claims or misleading and deceptive conduct claims if at the time the application was made no civil proceedings had been commenced before a court.

Appeals

ACT Leases (Commercial and Retail) Act 2001	See section 155. A party may appeal to the Supreme Court on a question of law or fact from a decision of the Magistrates Court. The appeal should be made within 28 days after the order was made (under Rule 5103 of the Court Procedure Rules 2006 (ACT)).
NSW Retail Leases Act 1994	No mention in this Act. Sections 77-77C were repealed on 1 January 2014. This has removed the right under the Act to appeal from a decision of NCAT to an Appeal Panel and then to the Supreme Court.
NORTHERN TERRITORY Business Tenancies (Fair Dealings) Act 2003	See Part 12. An appeal against an order of the Business Tenancies Commissioner may be made to the Local Court as an appeal de novo. The appeal must be lodged within 14 days of the date that the reasons for the order are given to the parties. A copy of the notice is sent to the Commissioner, who is required to provide the court all information in his or her possession related to the order, except anything said or done during a prior conference under section 96.
QUEENSLAND Retail Shop Leases Act 1994	See section 126 QCAT Act. A decision of the QCAT is binding on all parties to the proceeding and may be registered as a court order (QCAT Act sections 131-132). Appeals from non-judicial QCAT member's decisions lie to the QCAT Appeals Tribunal, or to the Court of Appeal against a decision by a judicial QCAT member or on questions of law. Appeals lie to the Court of Appeal against decisions of the QCAT Appeals Tribunal on a question of law relating to a cost amount decision or a final decision with leave of the Court of Appeal (QCAT Act section 150). QCAT decisions may be reopened where certain grounds exist (QCAT sections 138-141). QCAT may change a final tribunal decision to correct a clerical error, an error arising from an accidental slip or omission, a material miscalculation of figures, material error in the description of an entity, thing or matter referred to in the decision or a defect of form (QCAT Act section 135).
SOUTH AUSTRALIA Retail and Commercial Leases Act 1995	No mention in the Act.
TASMANIA Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998	No mention in the Code.
VICTORIA Retail Leases Act 2003	See section 148 Victorian Civil and Administrative Tribunal Act 1998. A party may appeal on a question of law to the Court of Appeal or Trial Division of the Supreme Court if leave is given.
WESTERN AUSTRALIA	No mention in the Act.

Commercial Tenancy (Retail Shops) Agreements Act 1985	See section 105 of the State Administrative Tribunal Act 2004 (WA). A party may appeal from a decision of the WA SAT on a question of law and with leave of the court, to the Court of Appeal if the WA SAT included a judicial member, or to the Supreme Court.

Definitions

"CMR" means current market rent.

"CMV" means current market value.

"DS" means disclosure statement.

"NCAT" means the NSW Civil and Administrative Tribunal.

"QCAT" means Queensland Civil and Administrative Tribunal.

"RSC" means retail shopping centre.

"RTC" means retail tenancy claim.

"RTD" means retail tenancy dispute.

"SAT" means State Administrative Tribunal.

"SBC" means Small Business Commissioner.

"SRV" means specialist retail valuer.

"VCAT" means Victorian Civil and Administrative Tribunal.

"WA SAT" means the State Administrative Tribunal of Western Australia.

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