

# Property Legal update

19 January 2011

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## Exposure draft Retail Leases Amendment Bill 2011

**The New South Wales Government Fair Trading Department has just released a consultation draft for the *Retail Leases Amendment Bill 2011* with an invitation to comment. There is a deadline for public comments to be made by 11 February 2011 to the Department.**

This exposure draft of the Bill follows the April 2008 New South Wales Government discussion paper on issues affecting the retail leasing industry in New South Wales. There were more than 140 submissions to the discussion paper and, following those submissions, a range of meetings were held with the various industry stakeholders.

The consultation draft of the *Retail Leases Amendment Bill 2011* can be obtained from the [Department of Fair Trading's website](#). The draft Bill has more than 50 changes to the existing law with the following key elements:

- stronger requirements for landlord disclosure and a longer notice period for tenants;
- mandatory registration of leases;
- simplifying and clarifying elements of the *Retail Leases Act*; and
- prohibiting landlords passing on land tax to tenants

Gary Newton of our firm is on a subcommittee of the Property Law Committee of the Law Society and is involved in the preparation of a submission on the new *Retail Leases Amendment Bill 2011*.

If you wish to make any comments please send them to the Project Manager of the Retail Leases Amendment Bill, Fair Trading Policy, PO Box 972, Parramatta, NSW 2124 (Fax: (02) 9338 8990).

## Residential Tenancies Act 2010

**The *Residential Tenancies Act 2010* commences on 31 January 2011. The new legislation introduces over 100 changes to the previous residential tenancy legislation. Below we outline just a few of the interesting changes which come into effect on 31 January 2011.**

### 90 day notice period

If the term of a fixed period tenancy agreement has expired the landlord is now required to give the tenant 90 days notice to vacate without grounds. This replaces the previous 60 day notice period. If notice to vacate is given by the landlord prior to the expiry of a fixed period tenancy agreement then 30 days notice must be given. This replaces the previous 14 day notice requirements.

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## New lease

Under the new legislation the landlord or his or her managing agent must provide the tenant with a lease in the new approved format contained in the new regulation. The landlord is no longer permitted to pass on the cost of preparing the lease to the tenant.

A landlord is entitled to request a holding fee from an approved tenant equal to 1 weeks rent. The effect of paying this fee reserves the property for the tenant for at least 7 days. If the tenant does not proceed the holding fee is forfeited to the landlord.

Importantly, it should be noted that if the tenant enters into possession of the property without having a written tenancy agreement in place the term is deemed to be 6 months.

## Sale of rented premises

The new legislation requires the tenant to receive 14 days notice of the intended listing of the rented premises for sale. In addition the selling agent must try and come to an agreement with the tenant in relation to inspection times for the property. The landlord is entitled to 2 inspections times a week. The tenant is entitled to request compensation from the landlord during the period inspections are undertaken for inconvenience suffered as well as for any loss suffered if items were stolen from the premises during an inspection.

**If you have any queries in relation to this new legislation please contact:**

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