

RENT REVIEW OF RETAIL LEASES IN AUSTRALIA

For landlords and tenants, any major increases or reductions in rent have significant ramifications. In Australia, the law controls the type and the basis of rent reviews that can be undertaken.

In the context of retail leases, the law controlling rent review is similar whether it is a major shopping centre, a strip shop or a stand-alone shop.

The standard types of rent review are the following:

- Inflation adjustment or consumer price index adjustment on a periodic basis.
- Market rent review to bring the rent up or down to the current market.
- Fixed amount or fixed percentage increases so that the rent steps up or steps down by agreed amounts of money or percentages at agreed intervals.

General rent review provisions

The position on rent reviews is similar in each state and is largely governed by the legislation in that state. Some features regarding the timing and basis of rent reviews are:

- A lease must specify when the rent reviews are to be conducted and the basis on which they are to be made.
- In most states, a lease must not provide for a change to base rent more frequently than 12 monthly after the first anniversary of the commencement of the lease. An exception to this provision applies in NSW and South Australia if the change in rent is by a specified amount or percentage.
- "Ratchet clauses", which have the effect of preventing the rent from decreasing on a market rent review, are void in every state.
- A rent review can be made on the basis

of a fixed percentage, an independently published index of prices or wages, a fixed annual amount, the current market rent, or a basis or formula prescribed by regulations.

Methods of undertaking rent reviews

In Victoria, Queensland, Tasmania and Northern Territory, the methods by which a rent review may be undertaken are prescribed by legislation.

In NSW and South Australia, a provision of a retail shop lease is void to the extent that it allocates to one party discretion to decide which of two or more methods of calculating a change to base rent is to apply, or provides for base rent to change in accordance with whichever of two or more methods of calculating the change would result in the higher or highest rent.

In NSW a lease provision is void if it provides a method of calculating a change to the base rent but allocates to one party a discretion to decide whether or not the base rent is to be changed in accordance with that method, while in South Australia the allocation of the decision to one party regarding whether or not to review rent is also void.

Despite what parties may write into their lease, the basis for the type of review, the timing of those reviews and the method in which the reviews are undertaken are largely governed by the legislation of each state. If a provision of a lease is contrary to the legislation, then the offending provision in the lease is of no effect.



**GARY NEWTON
& JACKIE CHEUNG**

Gary Newton and Jackie Cheung work in the legal team at CBP Lawyers.

"If a provision of a lease is contrary to the legislation, then the offending provision in the lease is of no effect."