

November 2005

## NEW! UPCOMING CHANGES TO THE RETAIL LEASES ACT

The Retail Leases Amendment Bill 2005 (Bill) was introduced into Parliament on 19 October 2005. The object of the Bill is to amend the Retail Leases Act 1994 (Act).

The reforms if enacted will allow landlords and small retailers to better understand their legal rights and financial responsibilities under the Retail Leases Act and ensure that they are clearly set out in the lease document.

### Key points of the proposed Reform

1. Protection for the collection, management and refund of cash security bonds. Landlords and retail tenants will have more certainty that cash deposits held to ensure performance under a retail lease are managed simply and securely.

Currently, landlords have to set up a separate account in which to deposit a retail tenant's bond security, meaning more paperwork for landlords and often less money being returned to tenants because of bank fees.

Under the new scheme a landlord will simply need to lodge with the bond scheme and then, providing the retail tenant fulfills their lease obligations, they will receive their money back at the end of the lease.

Security deposits will be safe as they will be held with an independent body. The reforms will give retail tenants greater confidence that their bonds are accessible, well managed, and are not being eroded by account-keeping fees.

Landlords and tenants will still be able to choose whether to use bank guarantees as an alternative form of security.

2. A new disclosure statement will be required to ensure that both parties understand the implications of the lease they are about to sign.
3. An important new procedure will be established for setting market rent increases when a landlord and tenant cannot agree on what the new rent should be.

The Bill proposes that qualified valuers be appointed by the Administrative Decisions Tribunal to conduct current market rent reviews. This should reduce the likelihood of problems escalating to the courts.

4. Tenants will receive some protection where they are operating under multiple rolling leases of less than six months duration. This will not prevent landlords and tenants agreeing to holding over arrangements.
5. Misleading and deceptive conduct claims will be included for dispute resolution. This will give the Administrative Decisions Tribunal a wider role in dealing with misleading or deceptive conduct.

As the Bill progresses through Parliament it will become clearer as to the exact detail of the Reforms.

If you require any further information in relation to this topic, please contact Ilona Teremi, Partner on (02) 9375 2258 or email [ilona.teremi@kreissonlegal.com.au](mailto:ilona.teremi@kreissonlegal.com.au)