

# New leasing laws will test landlords

Commercial landlords and commercial property managers need to exercise caution when entering into new retail shop leases or undertaking rent reviews of existing leases.

New regulations under the Retail and Commercial Leases Act will increase the number of commercial leases that are governed by the Act.

The Act previously applied only to leases with annual commencing rent of \$250,000 or less. That amount will now be \$400,000, meaning that many more leases will now be affected.

Where a commercial lease is not governed by the Act, the landlord has much more flexibility with the lease terms that they can agree with their tenant. But if a lease is subject to the Act, various standard terms are imposed. One of those relates to Land Tax. If a lease is subject to the Act, the landlord cannot recover land tax from the tenant.

Some of the amendments came into effect on 1 September 2010, and others will become operable on 4 April 2011. There are several areas of uncertainty in relation to the amendments. In some cases it is not



completely clear whether or not a lease is subject to the Act, and a legal opinion should be sought. For example:

1. The changes affect new leases with annual rent of \$400,000 or less, entered into on and from 4 April 2011. However, it is not clear at what point existing leases with annual rent of between \$250,000 and \$400,000 will become subject to the Act.

2. If the rent payable under an existing lease is less than \$400,000 on 4 April 2011, but later exceeds it as a result of a rent review, it is unclear whether or not the Act will still apply to the lease.
3. It is not clear whether the rent threshold of \$400,000 includes or excludes GST. If GST is to be included, the Act would apply only to a rent component up to approximately \$360,000.

It would be helpful if further regulations were enacted to clarify these areas of uncertainty. There are no transitional provisions to offer guidance.

Commercial landlords need to clarify their legal entitlements, as these affect the return on their real property investment. Other risks to be avoided are costly disputes between landlord and tenant, or loss of a valued tenant as a result of the uncertainties I have outlined.



*Lorenzo Mazzocchetti  
Commercial Property Partner  
Grove Hamilton Lawyers*

Think about investing in Southern Adelaide

To find out more go to [www.southernadelaide.com.au](http://www.southernadelaide.com.au)

**southernadelaide**  
knowledge · innovation · environment