



Schedule 2 Retail Leases Act 1994 Lessor's Disclosure Statement

Lessor/Landlord

Lessee/Tenant

Premises

Note:

If the terms "landlord" and "tenant" are substituted for "lessor" and "lessee" in this form, they have the same meanings as "lessor" and "lessee" have, respectively, in the Retail Leases Act 1994.

KEY DISCLOSURE ITEMS

1 Annual base rent under the lease \$ _____ p.a.
(See item 10.1, pg 4) Including / Excluding GST

2 Is rent based on turnover payable by the lessee in year 1? Yes No
(See item 12, pg 5)

3 Total estimated outgoings and promotion and marketing costs for the lessee in year 1 \$ _____
(See Part 5 and Part 6, pgs 5-7) Including / Excluding GST

4 Term of the lease _____ years _____ months
(See item 5, pg 3)

5 Estimated commencement date of the lease _____ / _____ / 20
(See item 5.1, pg 3)

6 Estimated handover date of the premises _____ / _____ / 20
(See item 7.1, pg 3)

7 Does the lessee have an option to renew for a further period? Yes No
(See item 6, pg 3)

8 Does the lease provide the lessee with exclusivity in relation to the permitted use of premises? Yes No
(See item 2.2, pg 2)

PART 1. PREMISES

1 Premises details

1.1 Street address of premises

[Insert street address of premises and, as applicable, shop number, name of the building/centre in which the premises are located, street address of the building/centre]

1.2 Plan of premises (if available)

[Insert description of premises by reference to a prepared plan.]

1.3 Lettable area of the premises _____ m2 *Actual / Estimate*

Will a survey be conducted?

Yes No

1.4 Existing structures, fixtures, plant and equipment in the premises, provided by the lessor (excluding any works, fit out and refurbishment described in Part 3)

[Select as appropriate]

- | | |
|--|---|
| <input type="checkbox"/> air conditioning | <input type="checkbox"/> separate utility meter - electricity |
| <input type="checkbox"/> cool room | <input type="checkbox"/> separate utility meter - water |
| <input type="checkbox"/> floor coverings | <input type="checkbox"/> plastered walls |
| <input type="checkbox"/> grease trap | <input type="checkbox"/> shop front |
| <input type="checkbox"/> hot water service | <input type="checkbox"/> sink |
| <input type="checkbox"/> lighting | <input type="checkbox"/> sprinklers |
| <input type="checkbox"/> mechanical exhaust | <input type="checkbox"/> suspended ceilings |
| <input type="checkbox"/> painted walls | <input type="checkbox"/> telephone |
| <input type="checkbox"/> electrical distribution load (3 phase) | <input type="checkbox"/> water supply |
| <input type="checkbox"/> electrical distribution load (single phase) | <input type="checkbox"/> waste |
| <input type="checkbox"/> separate utility meter - gas | <input type="checkbox"/> other |

1.5 Services and facilities provided by the lessor for the benefit of the premises (for example security services, cleaning)

2 Permitted use

2.1 Description of permitted use

2.2 Is the permitted use described in item 2.1 exclusive to the lessee?

Yes No

3 Number of car parking spaces

3.1 Approximate total spaces _____ spaces

3.2 Available spaces for customers of the building/centre _____ spaces

3.3 Reserved spaces for use of the lessee only _____ spaces

Attach the plan to this disclosure statement as per item 33.1

Note:
the lessee should investigate if the proposed use of the premises is permitted under planning laws

Attach a separate sheet if space is insufficient

Attached at item 33.2

4 Head lease

4.1 Is the premises under a head lease or Crown lease?

 Yes No

4.2 Has the lessor provided a copy of the head lease or Crown lease to the lessee?

 Yes
 No
 Not applicable

4.3 Current term under the head lease or Crown lease and option/s to renew

 Not applicable
 Details of head lease as follows:
Current term: _____ years / / 20 to / / 20
[List any options for further terms held by the lessor under the head lease]
Options to renew: _____ years / / 20 to / / 20

4.4 Is the head lessor's consent to the lease required?

 Yes No**PART 2. TERM OF LEASE AND OPTION/S TO RENEW LEASE****5 Term of lease**

5.1 Date lease commences (see also date of handover at item 7)

____ / ____ / 20 *Actual / Estimate*

5.2 Length of term _____ years _____ months

5.3 Date lease expires ____ / ____ / 20

(based on the date indicated at item 5.1 as the date the lease commences)

6 Option/s to renew lease6.1 Option/s details *[List all options to renew]*

Length of option	Period of option	Exercise date
_____ years	____ / ____ / 20	____ / ____ / 20
	to ____ / ____ / 20	to ____ / ____ / 20
	<i>Actual / Estimate</i>	<i>Actual / Estimate</i>
_____ years	____ / ____ / 20	____ / ____ / 20
	to ____ / ____ / 20	to ____ / ____ / 20
	<i>Actual / Estimate</i>	<i>Actual / Estimate</i>

Attach a separate sheet
if space is insufficient**PART 3. WORKS, FIT OUT AND REFURBISHMENT****7 Date of handover**

7.1 Date of handover

(If different to the date the lease commences indicated at item 5.1)

____ / ____ / 20 *Actual / Estimate*

8 Lessor's works

8.1 Description of works to be carried out by the lessor before the date the lease commences *[exclude any works that form part of the lessee's fit out at item 9]*

Attach a separate sheet if space is insufficient

8.2 Estimate of expected contribution by the lessee towards the cost of the lessor's works *[see also outgoings (item 14) in relation to any maintenance and repair outgoings]*
\$ _____

9 Lessee's fit out works

9.1 Fit out works to be carried out by the lessee (excluding the lessor's works at item 8)

Attach a separate sheet if space is insufficient

9.2 Is the lessor providing any contribution towards the cost of the lessee's fit out?
 Yes – *[Insert details of lessor's contribution]*

 No

Attach a separate sheet if space is insufficient

9.3 Does the lessor have requirements as to the quality and standard of shop front and fit out?
 Yes – *[Insert details or provide fit out guide]*

 No

Attach a separate sheet if space is insufficient or fit out guide

PART 4. RENT

10 Annual base rent

10.1 Starting annual base rent \$ _____
(ie. when the lease commences) *Including / Excluding GST*

10.2 Rent free period *[Describe any rent free period]*

10.3 Date of rent commencement ____ / ____ / 20 ____

10.4 How rent payments are to be made? *[Insert description of how rent is paid – eg by equal monthly instalments in advance on the first day of each month, other than the first and last payments which is calculated on a pro-rata basis]*

11 Rent adjustment (rent review)

11.1 Rent adjustment date(s) and adjustment method

[Insert a list of all rent adjustment dates and adjustment methods – eg. fixed increase by X%, fixed increase by \$X, current market rent, indexed to CPI]

*Attach a separate sheet
if space is insufficient*

12 Rent based on turnover

12.1 Is rent based on turnover payable by the lessee? (Note, the lease must specify the method by which a rent based on turnover is to be determined.)

Yes *[Insert method of calculating the turnover rent]*

No

*Attach a separate sheet
if space is insufficient*

12.2 If a rent based on turnover is not required to be paid, does the lessor require the lessee to provide details of turnover?

Yes

No

PART 5. OUTGOINGS**13 Contribution by lessee towards lessor's outgoings**

13.1 Is the lessee required to pay or contribute to the lessor's outgoings?

Yes

No

13.2 Describe any period during which the lessee is not required to pay outgoings

13.3 Date on which payment of outgoings is to commence ____ / ____ / 20

13.4 Formulae for apportioning outgoings

[Insert formulae on how outgoings payable by lessee are to be apportioned]

14 Outgoings estimates (annual) for the 12 month period

[State which of the following are payable by the lessee. The lessor may be prevented by the Retail Leases Act 1994 from claiming certain costs.]

____ / ____ / 20 to ____ / ____ / 20

Estimate (including GST) per annum for the building/centre:

14.1 Administration

Administration costs (excluding management fees and wages): \$ _____

Audit fees: \$ _____

Management fees: \$ _____

14.2	Air conditioning/temperature control	
	Air conditioning maintenance:	\$ _____
	Air conditioning operating costs:	\$ _____
14.3	Building/centre management	
	Body corporate/strata levies:	\$ _____
	Building intelligence services:	\$ _____
	Customer traffic flow services:	\$ _____
	Energy management services:	\$ _____
	Gardening and landscaping:	\$ _____
	Insurance:	\$ _____
	Pest control:	\$ _____
	Ventilation:	\$ _____
14.4	Building/centre security	
	Caretaking:	\$ _____
	Emergency systems:	\$ _____
	Fire levy:	\$ _____
	Fire protection:	\$ _____
	Security services:	\$ _____
14.5	Cleaning	
	Cleaning consumables:	\$ _____
	Cleaning costs (excluding consumables):	\$ _____
14.6	Communications	
	Post boxes:	\$ _____
	Public telephones:	\$ _____
14.7	Customer facilities	
	Car parking:	\$ _____
	Child minding:	\$ _____
	Escalators:	\$ _____
	Lifts:	\$ _____
	Uniforms:	\$ _____
14.8	Customer information services	
	Information directories:	\$ _____
	Public address/music:	\$ _____
	Signage:	\$ _____
14.9	Government rates and charges	
	Local government rates and charges:	\$ _____
	Water sewerage and drainage rates and charges:	\$ _____
	Land tax:	\$ _____
14.10	Repairs	
	Repairs and maintenance:	\$ _____
	Sinking fund for repairs and maintenance:	\$ _____
14.11	Utility services	
	Electricity:	\$ _____
	Gas:	\$ _____
	Oil:	\$ _____
	Water:	\$ _____

Note:

Under section 23 of the Retail Leases Act 1994, the lessor may not recover the capital costs of the building/centre from the lessee

- 14.12 Waste management
- | | |
|--------------------------------|----------|
| Sewerage disposal: | \$ _____ |
| Waste collection and disposal: | \$ _____ |
- 14.13 List any other outgoing
- | | |
|-------|----|
| _____ | \$ |
| _____ | \$ |
| _____ | \$ |
| _____ | \$ |
| _____ | \$ |
- 14.14 Total outgoing for the building/centre \$ _____
- 14.15 Formula for determining lessee's share of the total outgoing for the building/centre _____
- _____
- _____
- 14.16 Estimated lessee contribution to outgoing \$ _____

Attach a separate sheet if space is insufficient

Attach a separate sheet if space is insufficient

PART 6. OTHER COSTS

15 Advertising and promotional costs

- 15.1 Is the lessee required to contribute towards advertising and promotional costs (including marketing fund contributions) for the building/centre?

- Yes
 No

- 15.2 Lessee's contribution to advertising and promotional costs per annum

- Not applicable
 Yes – contribution per annum is \$ _____ *Actual / Estimate*
 Yes – contribution per annum is _____ % of the rent (excluding GST) payable from time to time
 Yes – *[insert details of lessee's contribution per annum and how this is determined]*
- _____
- _____
- _____
- _____

Attach a separate sheet if space is insufficient

16 Other monetary obligations and charges

- 16.1 Outline any costs arising under the lease including up-front costs or other costs not part of the outgoing and not referred to elsewhere in this disclosure statement: [eg interest and legal costs]

Attach a separate sheet if space is insufficient

PART 7. ALTERATION WORKS (INCLUDING RENOVATIONS, EXTENSIONS, REDEVELOPMENT, DEMOLITION)

PAGE 8 of 15

Retail Tenancy Unit
1300 795 534

17 Alteration works

17.1 Are there any alteration works, planned or known to the lessor at this point in time, to the premises or building/centre, including surrounding roads, during the term or any further term or terms?

Yes – [Insert details of proposed works]

No

18 Clauses in lease dealing with relocation and demolition works

18.1 Clause(s) in lease providing for relocation of lessee:

Clause(s) _____ of the lease

Not applicable

18.2 Clause(s) in lease providing for demolition of the premises or building/centre

Clause(s) _____ of the lease

Not applicable

Attach a separate sheet
if space is insufficient

PART 8. TRADING HOURS

19 Core trading hours relevant to lessee

Monday _____ am to _____ pm

Tuesday _____ am to _____ pm

Wednesday _____ am to _____ pm

Thursday _____ am to _____ pm

Friday _____ am to _____ pm

Saturday _____ am to _____ pm

Sunday _____ am to _____ pm

Public holidays _____ am to _____ pm

20 Lessee access to premises outside core trading hours

20.1 Is the lessee permitted to access the premises and building/centre outside core trading hours?

Yes – [provide details including cost of access]

No

Attach a separate sheet
if space is insufficient

PART 9. RETAIL SHOPPING CENTRE DETAILS

21 Retail shopping centre details

21.1 Total number of shops _____ shops

21.2 Gross lettable area of the centre _____ m2

Actual / Estimate

22 Annual turnover of the shopping centre

22.1 Annual estimated turnover (where collected): \$ _____
Including / Excluding GST

22.2 Annual estimated turnover for specialty shops, per m2 (where collected)

Food \$ _____ per m2 Including / Excluding GST

Non food \$ _____ per m2 Including / Excluding GST

Services \$ _____ per m2 Including / Excluding GST

Note:

This Part must only be completed if the premises are in a retail shopping centre as defined in section 3 of the Retail Leases Act 1994.

23 Major/anchor lessees

23.1 Major/anchor lessees and lease expiry dates:
[List all major and anchor lessees (eg department stores, discount department stores, supermarkets) and the dates on which leases held by those lessees expire]

Attach a separate sheet if space is insufficient

24 Floor plan and tenancy mix

24.1 Floor plan showing tenancy mix, common areas, common area trading, kiosks and major lessees:

- Yes
- Not applicable

24.2 Does the lessor assure the lessee that the current tenant mix will not be altered by the introduction of a competitor?

- Yes
- No

Attached at item 34.1

25 Customer traffic flow information

25.1 Does the lessor collect customer traffic flow information?

- Yes
- No

Attached at item 34.2

26 Casual mall licensing for common areas

26.1 Do you adhere to the Shopping Centre Council of Australia's Casual Mall Licensing Code of Practice?

- Yes
- No

Attached at item 34.3

PART 10. OTHER DISCLOSURES

27 Other disclosures

27.1 Are there any current legal proceedings in relation to the lawful use of the premises or building/centre?

- Yes – [provide details]

- No

Attach a separate sheet if space is insufficient

28 Representations by lessor

28.1 Any other representations by the lessor or the lessor's agent:
[Lessor to insert details of any other oral or written representations made by the lessor or the lessor's agent]

Attach a separate sheet if space is insufficient

29 Acknowledgements by lessor

By signing this disclosure statement, the lessor confirms and acknowledges that:

- this disclosure statement contains all representations in relation to the proposed lease by the lessor and the lessor’s agents as at the date of this disclosure statement,
- this disclosure statement reflects all agreements that have been made by the parties,
- the lessor has not knowingly withheld information which is likely to have an impact on the lessee’s proposed business.

Warnings to lessor when completing this disclosure statement:

- The lessee may have remedies including termination of lease if the information in this statement is misleading, false or materially incomplete.

30 Lessor’s signature

30.1 Name of lessor *[Insert name of the lessor]*

30.2 Signed by the lessor or the lessor’s agent for and on behalf of the lessor

30.3 Name of lessor’s authorised representative or lessor’s agent
[Insert name of person signing with the authority of the lessor]

30.4 Date ____ / ____ / 20 ____

31 Acknowledgements by the lessee

By signing this disclosure statement, the lessee confirms and acknowledges that the lessee received this disclosure statement.

Before entering into a lease, lessees should consider these key questions:

- Does the planning authority allow your proposed use for the premises under planning law?
- Is the security of your occupancy affected by:
 - mortgages, charges or encumbrances granted by the lessor?
 - rights and obligations under a head lease?
- Does the premise comply with building and safety regulations?
Are the premises affected by outstanding notices by any authority?
- Could your trading be affected by disturbances or changes to the building/centre?
- Does the lessor require you to refurbish the premises regularly or at the end of the lease?
- Can the lessor end the lease early even if you comply with the lease?
- Are all the existing structures, fixtures, plant and equipment in good working order?
- Are you required to make good the premises at the end of the lease?
- Is the tenancy mix of the shopping centre (if applicable) likely to change during the term of the lease? (see question 24.2)

32 Lessee's signature

It is important that a lessee seek independent legal and financial advice before entering into a lease.

32.1 Name of Lessee *[Insert name of the lessee]*

32.2 Signed by the lessee or for and on behalf of the lessee

32.3 Name of lessee's authorised representative

[Insert name of the person signing with the authority of the lessee]

32.4 Date ____ / ____ / 20 ____

Note:

[Section 11A of the Retail Leases Act 1994 requires a lessee's disclosure statement to be provided to the lessor within 7 days (or any agreed further period) of the lessee receiving the lessor's disclosure statement. The lessee may be liable to a penalty for an offence under that Act if the lessee's disclosure statement is not provided.]

PART 13. ATTACHMENTS

33 List of attachments

33.1 Plan of premises (see item 1.2)

- Yes
 Not applicable

33.2 Head lease or Crown lease (see item 4.2)

- Yes
 Not applicable

33.3 Additional attachments

[list of any additional attachments]

**Attach a separate sheet
if space is insufficient**

34 List of attachments – retail shopping centre

34.1 Floor plan (see item 24.1)

- Yes
 Not applicable

34.2 Customer traffic flow statistics (see item 25.1)

- Yes
 Not applicable

34.3 Casual mall licensing policy (see item 26.1)

- Yes
 Not applicable

34.4 Additional attachments relating to the retail shopping centre

[list of any additional attachments]

**Attach a separate sheet
if space is insufficient**



Additional information & advice for lessees

Information for the lessee to consider when entering into a retail shop lease

Before signing a lease:

- You should have detailed discussions with the lessor/agent and also seek advice from business associations, your solicitor and your accountant. Also consult your local Council about any regulations, permitted use or development applications affecting the shop.
- Information on these topics is included in the retail tenancy guide.
- Ensure that all agreements arrived at with the lessor are included in the lease. Documentation is critical to avoiding and managing disputes about the lease.

Rent—be clear about the following issues:

- What the starting rent is, and on what basis it is calculated.
- How the rent will increase during the lease.
- If you have agreed to pay turnover rent, be clear as to how you will give this information to the lessor.
- If there is an option as part of the lease, find the clauses of the lease that tell you how and when you must exercise the option and that explain how the rent will be set.

Lease establishment—check:

- That you have read the lease and asked for advice on what it means.
- That the description of the premises in the lease is accurate and covers any rights you will have to use common areas or car parking for you, your staff or visitors.
- Whether statements you have relied on in agreeing to the lease have been documented in the Lessee's Disclosure Statement, so as to avoid disagreements later.
- Whether you need to provide a security bond or personal guarantee to secure the lease, and how much this will be. If a cash security bond is agreed to, be sure it is lodged under the NSW Government's retail bond scheme.
- What expenses you will have to meet to fit-out the shop ready for trading, and whether you will have to meet any of the costs incurred by the lessor in preparing the shop for you to occupy it.

The premises—you will need to be sure that:

- The location and building suit the proposed use you will make of the leased premises and to check whether you will have to renovate to enable the shop to operate.
- The hours you can access the shop and open it to trade, as allowed by the lessor and the Council, will be sufficient to allow you to trade profitably.
- You have, or can readily obtain, all the permits and licences required to operate the type of business you have chosen, and that the Council's zoning for the premises does not restrict you from operating this type of business.
- You have a condition report or photos to document the state of the premises when taking possession, to prevent or address disputes at the end of the lease. Agreements about equipment should also be documented.

Outgoings and expenses—you need to understand:

- The extra expenses you will have to meet as outgoings, and how they may change over the term of the lease. These are set out in the Lessor's Disclosure Statement.
- The information that the lessor will provide and your rights to receive estimates to allow you to plan for these expenses.
- The insurance costs you will have to meet, including any contribution to the lessor's insurance.

When you want to sell the business

If you want to sell your business, you need to be aware of the process set out in the Retail Leases Act 1994 for assigning the lease. The lessee becomes the assignor of the lease, and the potential new lessee becomes the assignee. In brief, these are the steps:

- 1 Get an updated copy of the lessor's disclosure statement. If an updated disclosure statement has not been issued during the term of your lease, request one in writing from the lessor. If it is not provided within 14 days, provide the latest version of the disclosure statement you have to the assignee (or if none exists, this requirement does not apply to you).
- 2 Give a copy of the assignor's disclosure statement to the assignee (and to the lessor at least 7 clear days before the assignment if you want to be protected from on-going liability under the lease).
- 3 Gather, from the assignee, the following information to provide to the lessor:
 - (a) The assignee's name and contact details.
 - (b) Documentation to indicate the assignee's financial standing.
 - (c) Business experience of the assignee.
 - (d) Written records of statements made by the assignor or lessor which influenced the assignee in deciding to enter the assignment.
- 4 Provide information in point 3 to the lessor in writing, by:
 - (a) delivering it personally, or
 - (b) leaving it at or posting it to the last known residential or business address of the lessor, or
 - (c) or in any other manner referred to in section 81A of the Act.
- 5 The lessor must respond to the request for assignment of the lease within 28 days from the time all the required information is received, or the assignment is deemed to have taken place.
- 6 The reasons the lessor can refuse a request for assignment of a lease are:
 - (a) If the use of the premises is to change.
 - (b) If the assignee (new lessee) has inadequate retail skills compared to the assignor (current lessee).
 - (c) If the assignee has inferior financial resources to the proposed assignor.
 - (d) If the lessee has not complied with the procedure for obtaining consent to the assignment, as set out in section 41 of the Act.
 - (e) If the shop is in airside premises at Sydney (Kingsford-Smith) Airport and the lessor exercises the right to withhold consent to the assignment under section 80E of the Act.

General

- Check with your accountant the most tax effective way to structure the payment of rent, fit-out costs and GST.
- Make sure that all negotiated agreements are written into the lease.
- Inspect the property and take notes and photographs prior to moving in.
- Section 11A of the *Retail Leases Act 1994* requires a lessee's disclosure statement to be provided to the lessor within 7 days (or any agreed further period) of the lessee receiving the lessor's disclosure statement. The lessee may be liable to a penalty for an offence under that Act if the lessee's disclosure statement is not provided.



Part 2. Lessee's disclosure statement

Advice to the lessor

- 1 The lessee acknowledges that the attached Part 1, Lessor's Disclosure Statement, was received from the lessor prior to entering into the lease.
- 2 The lessor has made available to the lessee a copy of the proposed retail shop lease and a copy of a retail tenancy guide as prescribed by or identified in the regulations.
- 3 The lessee has **sought/not sought** independent advice in respect of the commercial terms contained in the Lessor's Disclosure Statement and the obligations contained in the proposed retail shop lease.
- 4 The lessee believes that the lessee will be able to fulfil the obligations contained in the lease, including the payment of the proposed rent, outgoings and other amounts, based on the lessee's own business projections for the business.
- 5 In entering into the retail shop lease, the lessee has relied on the following statements or representations made by the lessor or the lessor's agents:

- 6 Apart from the statements or representations set out above, no other promises, representations, warranties or undertakings (other than those contained in the lease) have been made by the lessor to the lessee in respect of the premises or the business to be carried out on the premises.

Signed by or for and on behalf of the lessee:

Date ___ / ___ / 20 ___

Note: About the process

The lessee should receive the lease and the Retail Tenant's Guide at the time of negotiation

The lessee receives the Lessor's Disclosure Statement at least 7 days before the lease begins.



Within 7 days (or longer if agreed) the lessee completes their disclosure statement and returns it to the lessor.



Where the Lessee's Disclosure Statement is provided to the lessor in the time frame - no penalty is enforced



Where the lessee fails to provide the Lessee's Disclosure Statement within 7 days - a penalty can be enforced

Note:

Matters such as agreements or representations relating to exclusivity or limitations on competing uses, sales or customer traffic should be detailed.

Attach a separate sheet if space is insufficient