



Does the Retail Leases Act Apply?

The mere fact that you operate a shop in a retail area does not automatically mean that the Lease will be governed by the Retail Leases Act. Further a business operating within a shopping centre may be subject to the terms of the Act notwithstanding that it does not carry on a retail business.

The definition of a Lease under the Retail Leases Act (RLA) is very wide. It provides that a Lease is any agreement under which a person grants or agrees to grant to another person for value a right of occupation of premises for the purposes of use of the premises as a retail shop.

That is the RLA applies whether the occupation is exclusive or non exclusive, whether the agreement is expressed or implied and whether the agreement is oral or written.

To ascertain whether the business being carried on is a "retail shop" you must determine:

- a) whether the premises are used wholly or predominately for the carrying on of one or more of the business which are set out in detail in the Schedule to the RLA.
- b) Whether the premises are being used for the carrying on of any business (whether retail or not) in a shopping centre.

That is, a retail shop is one used or predominately used for carrying on of a prescribed retail business set out in the RLA or any business in a retail shopping centre, regardless of usage.

In those cases the RLA applies.

It is often difficult to ascertain whether the prescribed retail usages as set out in the RLA apply and accordingly whether the Retail Leases Act applies.

For example, the RLA provides that a second hand goods shop is a retail shop however we query whether a second hand car dealership is a retail usage.

We take the view that if it not clear as to whether the Act applies, the safer approach is to assume that the RLA applies as there are major consequences for both the Lessee and Lessor if the terms of the Act are not adhered to.

We will cover these consequences in another article.

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