

The new Law Society Retail Lease and the Law Society Commercial Lease

The Law Society Lease has now been replaced by two new separate leases:

- the Law Society Retail Lease; and
- the Law Society Commercial Lease.

The Law Society Retail Lease has been drafted to comply with the requirements of the *Retail Leases Act 1994*.

The Law Society Commercial Lease is similar to the Law Society Retail Lease, but does not include the provisions that are required to comply with the *Retail Lease Act 1994*.

It is important to choose the appropriate Lease:

- Where the premises to be leased are subject to the provisions of the [Retail Leases Act 1994](#), use the Law Society Retail Lease.
- Where the premises to be leased are NOT subject to the provisions of the *Retail Leases Act 1994*, use the Law Society Commercial Lease.

Format

The format for the new Law Society Retail Lease and the new Law Society Commercial Lease follows the format of previous editions of the Law Society Lease. Annexure A contains the Schedule of Items, and Annexure B contains the lease covenants.

As was the case with the Law Society Lease, any alterations and additions to the lease covenants in Annexure B must be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

Where to purchase

The Law Society Retail Lease and the Law Society Commercial Lease are available to purchase from the [Law Society e-shop](#). The Lease annexures are delivered via email in the form of an editable pdf.

For very limited purposes, such as the exercise of an option, the Law Society Lease (2007 edition) may be purchased in paper format from the Law Society e-shop.

The main differences between the Law Society Lease (2007 edition) and the Law Society Retail Lease

The main differences include:

- **Changes to reflect amendments made to the Retail Leases Act 1994 (“Act”)**
Since the Lease was last reviewed, a number of changes to the *Retail Leases Act 1994* have been made. The provision mandating a five year minimum term was removed from the Act, meaning there is no longer a need for a solicitor’s certificate for leases for a term of less than five years. Other legislative changes include the new requirements for the provision of an executed copy of the lease to the lessee, provisions about the registration of the lease and requirements on assignment.

- **Changes to reflect other legislative developments**
The *Personal Property Securities Act 2009* (Cth) (“PPSA”) commenced after the Law Society Lease was last reviewed. The Law Society Retail Lease (and the Law Society Commercial Lease) include a PPSA clause as is now common in most leases.
- **Changes to reflect changes in practice**
Like the Contract for the sale and purchase of land 2018 edition, both new Leases make provision for email service.
- **Changes to assist in the preparation of the lease**
An example of this type of change is the new section for guarantor execution to reduce the likelihood that execution by the guarantor is overlooked.

The main differences between the Law Society Retail Lease and the Law Society Commercial Lease

The main differences include:

- **A ratchet clause**
As a commercial lease is not subject to the prohibition on ratchet clauses under the *Retail Leases Act 1994*, the Law Society Commercial Lease includes a ratchet clause at clause 5.7. A ratchet clause prevents rent from decreasing at a market rent review. This new clause is also highlighted in Item 16 of Annexure A. This is the most critical difference between the two leases and it highlights the importance of choosing the correct form of lease.
- **Removal of some of the specific requirements of the Retail Leases Act 1994**
For example, the provisions governing the transfer or assignment of lease in clause 10 are different in the Law Society Commercial Lease, as leases of commercial premises are not subject to the requirements of the *Retail Leases Act 1994*.
- **Market rent and valuer**
Clause 5.17 follows the position for non-retail premises under the Law Society Lease (2007 edition) that where the parties cannot agree upon a valuer, the parties can ask the President of the Law Society to nominate a valuer. (The corresponding provision in the Law Society Retail Lease adopts the mechanism stipulated by the *Retail Leases Act 1994*, which is the appointment of a valuer by the Registrar of Retail Tenancy Disputes.)
- **An alert to the requirements of the Commercial Building Disclosure program**
Important note 2 on the final page of the Law Society Commercial Lease alerts the parties that a requirement for an up-to-date Building Energy Efficiency Certificate may apply.