



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:JvdPgl231122

23 November 2022

Mr Chris Lamont
Small Business Commissioner
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

By email: speakingup@smallbusiness.nsw.gov.au

Dear Commissioner,

Retail Leases Regulation 2022

The Law Society of NSW welcomes the opportunity to provide feedback on the proposed Retail Leases Regulation 2022 ("Draft Regulation"). The Law Society's Property Law Committee contributed to this submission.

Small bars with a maximum patron capacity of 120

We support the inclusion of "small bars with a maximum patron capacity of 120" as a prescribed business under the *Retail Leases Act 1994* ("Act"), as proposed in the Draft Regulation. As noted in the Regulatory Impact Statement ("RIS"), a restaurant is currently a prescribed business under the Act, as are cafeterias and coffee lounges. Small bars are reasonably similar in nature to these existing prescribed businesses, and, in our view, the proposed amendment is an appropriate extension of the coverage of the Act. As noted in the RIS, including a small bar as a prescribed business under the Act will remove the need to consider whether a small bar operates predominantly as a restaurant so as to be captured by the Act. This simplification is welcome from an administrative and practical perspective.

Gymnasiums and fitness centres, including yoga, barre, pilates and dance studios

In our view, these types of businesses should be captured by the Act. Currently such businesses are only caught by the Act if located within a shopping centre. Given the growth of these businesses since the Act commenced in 1994, both within and outside shopping centres, it is now appropriate, in our view, to regulate these businesses under the Act. We therefore support the proposed inclusion of these businesses as prescribed businesses under the Act. We also note that the exclusion of premises that have a lettable area of 1,000 square metres or more under section 5(a) of the Act will mean that large gymnasiums and fitness centres will not be subject to the Act which is appropriate in our view.

Transitional provision

We note clause 5 of the Draft Regulation is a specific transitional provision which will effectively allow small bars and gymnasiums with existing leases on foot to access the dispute mechanisms under the Act. We suggest that any guidance material or FAQs prepared in relation to the Draft Regulation also include guidance on the important effect of sections 84B and 84C which deal with other key transitional issues.

Commencement date

We note it is proposed that the Draft Regulation commence on 1 January 2023. If publication of the Regulation is delayed beyond mid-December 2022, we suggest that the commencement date may need to be revised.

Schedule 1A of the Act

Schedule 1 of the Draft Regulation replicates existing Schedule 1 in the Act, with amendment, effectively moving the list of prescribed retail lease businesses from the Act to the Draft Regulation. We support this approach and note that it will provide greater flexibility should the need to prescribe additional businesses arise in the future.

We suggest consideration should also be given to moving Schedule 1A – Excluded uses from the Act to the Draft Regulation. In our view it would be logical for the list of excluded uses to be specified in the same legislative instrument as the prescribed businesses.

Retail Tenancy Guide

The provision of the Retail Tenancy Guide, published by the Small Business Commissioner, to a prospective tenant is recommended as good practice, but is not currently a requirement of the Act. However, we note section 9(1)(b)(ii) of the Act contemplates that it could be made a requirement of the Act by regulation.

We suggest that consideration be given to whether this gap in the framework should be addressed in the Draft Regulation such that provision of the Retail Tenancy Guide becomes a *requirement* under the Act, as appears to have been originally intended.

Any questions in relation to this letter should be directed to Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours sincerely,



Joanne van der Plaats
President