

Changes proposed by the *Retail Leases Amendment Bill 2019 (Vic)*

1 Essential safety measures (ESMs)

Commencement: The day after the date of assent.

Retrospective: These provisions will also apply retrospectively to a retail lease that was entered into prior to, and is in force on, the date of commencement, and that contains a provision to the effect that the tenant must pay the landlord as a contribution to outgoings, for the cost, or part of the cost, of installation, repairs or maintenance work in respect of an ESM (s122 *Retail Leases Act 2003* (VIC) (RLA)).

Current position	Proposed changes
<p>Provisions of the Building Act and the Regulations impose obligations on an owner of certain buildings with regard to ESMs.</p> <p>If an owner fails to comply with these obligations, an occupier may comply and recover or offset the cost of doing so (s251 (1) and (2) Building Act).</p>	<p>The definition of 'Outgoings' under the RLA will be amended to include the cost of repairs or maintenance work in respect of an ESM, or an installation relating to fit-out for which a tenant has agreed to pay (s3 RLA). Provisions in the RLA that invalidate the recovery of certain capital costs from retail tenants will not preclude this recovery (s41(2) RLA).</p> <p>A tenant may contractually agree to carry out repairs or maintenance work in respect of an ESM on behalf of the landlord (s52(6) RLA), but this will not abrogate the landlord's legislative obligations as owner with regard to ESMs under the Building Act or the Regulations for which it will remain responsible (s25(7) RLA).</p> <p>Amendments to the Building Act mean that the cost recovery and offset rights under s251(2) of the Building Act (when an occupier undertakes works because the owner has failed to do so) cannot be used to circumvent a tenant's obligation under a retail lease to contribute to outgoings for repair and maintenance of an ESM (s251(2A) Building Act).</p>

2 Landlord disclosure on grant of lease

Commencement: 1 October 2020 unless proclaimed earlier.

Current position	Proposed changes
<p>A landlord must give a tenant:</p> <ol style="list-style-type: none">a disclosure statement, and;written copy of the proposed lease, <p>at least 7 days before entering into a lease (s17(1) RLA).</p>	<p>A landlord must give a tenant:</p> <ol style="list-style-type: none">a disclosure statement, and;a written copy of the proposed lease, including particulars of the tenant, the rent and the term of the proposed lease, <p>at least 14 days before entering into a lease (s17(1) RLA).</p> <p>If a disclosure statement is given less than 14 days before the lease is to be entered into, the lease is taken to commence 14 days after the disclosure statement and lease are given to the tenant (s17(1C) RLA).</p> <p>If the proposed lease contains any changes to the previous copy given to the tenant (at the negotiation stage), then the tenant must be notified of those changes when it is given the proposed lease (s17(1B) RLA).</p>

3 Landlord disclosure on renewal of lease

Commencement: 1 October 2020 unless proclaimed earlier.

Retrospective: These provisions will also apply retrospectively to a retail lease that was entered into prior to, and in force on, the date of commencement of the provisions, unless there are on the date of commencement less than 21 days before the end of the current term of the lease (s124 RLA).

Current position	Proposed changes
<p>A disclosure statement must be given on renewal of a lease.</p>	<p>The disclosure statement must, in addition to existing requirements, set out any changes to the previous disclosure statement given to the tenant in respect of the lease (26(2) RLA).</p>

4 Option to renew

Commencement: 1 October 2020 unless proclaimed earlier.

Retrospective: These provisions will also apply retrospectively to a retail lease that was entered into prior to, and in force on, the date of commencement of the provisions, unless there are on the date of commencement less than 3 months before the Last Option Date (S125 RLA).

Current position	Proposed changes
<p>A landlord must notify a tenant in writing of the date after which an option is no longer exercisable (Last Option Date) at least 6 months, and no later than 12 months, before that date (s28(1) RLA).</p> <p>A failure to give the notice means that the Last Option Date is taken to be 6 months after the date on which the notice is given (s28(2) RLA).</p> <p>If this means that the Last Option Date is now after the lease ends, then the lease continues until that date on the same terms and conditions.</p>	<p>At least 3 months before the last date on which an option may be exercised (Last Option Date) the landlord must give the tenant a written notice (Renewal Notification) stating:</p> <ol style="list-style-type: none">the Last Option Date;the rent payable for the first 12 months of the renewed term;the availability of an early rent review - see 6 below;the availability of a cooling off period - see 7 below; andany changes to the most recent disclosure statement provided to the tenant (except with regard to rent) (s28(1A) RLA). <p>A failure to give the Renewal Notification, or to give it out of time means that the Last Option Date is taken to be 3 months after the date on which the notice is given (s28(2) RLA).</p> <p>If this means that the Last Option Date is now after the lease ends, then the lease continues until that date on the same terms and conditions unless that landlord and tenant agree otherwise.</p>

5 Security deposit

Commencement: 1 October 2020 unless proclaimed earlier.

Retrospective: This provision will also apply retrospectively to a retail lease entered into prior to, and in force on, the date of commencement of the provision (s123 RLA).

Current position	Proposed changes
A landlord must return a security deposit to a tenant as soon as practicable after the lease ends (if the tenant has complied with all of its obligations under the lease) (s24(d) RLA).	A landlord must return a security deposit to a retail tenant within 30 days after the lease ends (if the tenant has complied with all of its obligations under the lease) (s24(d) RLA).

6 Early rent review

Commencement: 1 October 2020 unless proclaimed earlier.

Current position	Proposed changes
No equivalent provision	<p>If a lease provides for a current market rent review, a tenant has 28 days from receipt of a Renewal Notification (see 4 above) to request an early rent review (s28A RLA).</p> <p>If a specialist retail valuer is appointed to determine the early rent review but the tenant is not notified of that determination at least 14 days before the Last Option Date, then the Last Option Date is extended to 14 days after the tenant is notified of the determination (s28A(4) RLA).</p> <p>If this extension means that the Last Option Date is now after the lease ends, then the lease is extended until that date, on the same terms and conditions, unless the parties agree otherwise (s28A(5) RLA).</p> <p>If the tenant does not exercise the option to renew and the date that is 3 months after the Last Option Date is now after the lease ends, then the lease is extended until that date, on the same terms and conditions, unless the parties agree otherwise (s28A(6) RLA).</p> <p>If the rent determined by the specialist retail valuer is less than the rent payable under the lease, then the rent payable under any extended lease term is to be equal to the valuer's determination (s28A(7) RLA).</p>

7 Cooling off

Commencement: 1 October 2020 unless proclaimed earlier.

Current position	Proposed changes
No equivalent provision	<p>If a tenant exercises an option to renew and has not requested an early rent review it may, within 14 days of exercising that option, give the landlord written notice that it no longer wants to exercise that option (s28B(1) RLA).</p> <p>If a notice is given, the lease is extended by 14 days, the lease is taken not to have been renewed, and the tenant cannot subsequently change its mind and exercise an option to renew (s28B(2) RLA).</p>