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# The Commercial Lease Setup Checklist for NSW Landlords

A practical, page-by-page guide to setting up a commercial or retail lease properly. Every checkpoint that protects your position over the lease term.

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INTRODUCTION

# Set the lease up once. Set it up right.

A commercial lease runs for years and moves real money the whole time. The day you sign decides whether you recover your outgoings, win a make-good dispute, and hold a tenant to terms that actually protect you.

Most landlords treat lease setup as paperwork to rush through. Then five years later the tenant leaves, the property is damaged, and there is no condition report to enforce against. Or the outgoings clause missed a chargeable category and tens of thousands of dollars went unrecovered across the term.

This checklist walks you through the setup work that decides those outcomes: what to settle before a solicitor drafts anything, what the lease document needs to cover, how to verify the tenant, how to structure security, how to document condition, and how the Retail Leases Act 1994 changes the rules for shops. Work through each page. Tick what is done. Flag what is not.

A solicitor prepares the lease deed and handles registration. This checklist covers the commercial and operational setup that sits alongside the legal work, the part most landlords get wrong on their own.

# Lock the commercial terms first

Settle the commercial terms first. A solicitor drafts what you instruct. Vague instructions produce a vague lease.

- [ ] **Confirm the commercial terms in writing.**
  Annual rent, term, options, rent review basis, incentives, and permitted use, agreed with the tenant before drafting starts.

- [ ] **Decide the lease structure.**
  Net, gross, or semi-gross. This decides who carries outgoings and changes the rent you should be asking.

- [ ] **Map the registration question.**
  Any term over three years, including options that push the total beyond three years, needs a deed and registration. Plan for it early.

- [ ] **Brief the outgoings position.**
  List every outgoing you intend to recover so the solicitor drafts a clause that captures all of them.

- [ ] **Set the make-good standard now.**
  Decide the condition the tenant must return the property in. Defining it at the end of the lease is too late.

# The lease document scope

The lease is the only thing that binds the tenant. Confirm it covers all eight.

- [ ] **Parties and entity.**
  The correct tenant entity, with a guarantor named where the tenant is a company.

- [ ] **Annual rent and review mechanism.**
  Rent stated as an annual figure, with the review basis and timing defined precisely.

- [ ] **Term and options.**
  Initial term, option periods, and the exact mechanism and notice window to exercise each option.

- [ ] **Permitted use.**
  Defined tightly enough to stop unauthorised changes of use that breach consent or insurance.

- [ ] **Outgoings clause.**
  Every recoverable category listed, with the basis of apportionment set out.

- [ ] **Repair and maintenance obligations.**
  Who maintains the structure, services, and the tenant's fitout, with no gaps.

- [ ] **Default and termination rights.**
  Clear triggers, cure periods, and the landlord's remedies on default.

- [ ] **Insurance obligations.**
  Public liability cover, the landlord noted as an interested party, and certificate of currency required annually.

# Tenant verification

A strong lease against a weak tenant protects nobody. Verify before you commit.

- [ ] **Confirm the exact legal entity.**
  ASIC search the company name and ACN. Lease the entity that actually trades, not a dormant shell.

- [ ] **Check the directors.**
  Confirm director identity and any history of deregistered or failed companies.

- [ ] **Run a PPSR check.**
  Look for security interests that signal financial stress over the tenant's assets.

- [ ] **Assess trading history.**
  Years trading, the nature of the business, and whether the rent suits its turnover.

- [ ] **Require personal or director guarantees.**
  For any company tenant without a strong balance sheet, secure a guarantee from a person of substance.

- [ ] **Confirm capacity to fit out and operate.**
  The tenant has the funds to complete fitout and trade, not just to sign.

# Bank guarantee and bond

Security is your protection when a tenant defaults. Structure it so you can actually call on it.

- [ ] **Set the security amount.**
  Typically three to six months of annual rent plus outgoings and GST. Higher for a weaker covenant.

- [ ] **Choose the form.**
  An unconditional bank guarantee is stronger than a cash bond. Confirm the wording is unconditional and has no expiry that predates the term.

- [ ] **Check the guarantee wording.**
  Payable on demand, no conditions, issued by an Australian bank, naming the correct landlord entity.

- [ ] **Diarise the expiry.**
  Many guarantees expire on a fixed date. Set a renewal reminder well before it lapses.

- [ ] **Hold the original safely.**
  A bank will not honour a copy. Store the original guarantee where you can produce it on demand.

# The ingoing condition report

This single document wins or loses your make-good claim at the end of the lease. Most landlords skip it. Do not.

- [ ] **Photograph every surface.**
  Walls, floors, ceilings, glazing, doors, and external areas, dated and captioned.
- [ ] **Record every service.**
  Air conditioning, electrical, plumbing, fire services, roller doors, and their working condition.
- [ ] **Note every existing defect.**
  Document pre-existing damage so the tenant cannot be charged for it, and you cannot be blamed for it.
- [ ] **Capture meter readings.**
  Electricity, water, and gas readings at handover.
- [ ] **List the fixtures.**
  What belongs to the landlord versus the tenant's removable fitout.
- [ ] **Bind it properly.**
  A 25 to 40 page report, printed and bound, not a loose folder of phone photos.
- [ ] **Date and sign by both parties.**
  Both landlord and tenant sign the report on or before handover day.
- [ ] **Store a counter-signed copy.**
  Keep the signed report for the life of the property. It is your evidence base.

# The make-good standard

Make-good is where landlords lose the most money. Define it now, in writing, with evidence.

- [ ] **Define the return condition.**
  State the exact condition the tenant must return the property in, with no ambiguity.
- [ ] **Decide on fitout removal.**
  Specify whether the tenant strips the fitout or leaves it, and who owns what remains.
- [ ] **Set the baseline against the condition report.**
  Tie make-good to the documented ingoing condition, not an undefined standard.
- [ ] **Address services and damage.**
  Require services returned in working order and damage from the fitout repaired.
- [ ] **Capture the notice mechanism.**
  Define when and how you can require make-good, and the timeframe to complete it.
- [ ] **Plan the end-of-lease inspection.**
  Diarise a make-good inspection before the lease ends, while you still have leverage.

# The key dates calendar

A lease has a dozen dates that cost money if you miss them. Build the calendar on day one. Sample below.

| DATE TRIGGER | WHAT IT CONTROLS | SET REMINDER |
|---|---|---|
| Rent review date | Annual increase by CPI, fixed, or market | 60 days before |
| Option exercise window | Tenant's right to renew lapses if missed | 90 days before opens |
| Bank guarantee expiry | Security lapses if not renewed | 60 days before |
| Insurance certificate renewal | Tenant cover must stay current | 30 days before |
| Outgoings estimate due | Annual estimate to the tenant | Start of each period |
| Outgoings reconciliation | Statutory deadline in retail | Within statutory window |
| Make-good notice trigger | End-of-lease restoration rights | 6 months before expiry |
| Lease expiry | Renewal, re-letting, or vacancy | 9 months before |

# Retail Leases Act 1994 compliance

Retail leases carry statutory duties that commercial leases do not. Miss them and the tenant gains rights against you.

### S.11 LESSOR'S DISCLOSURE STATEMENT

Give the tenant a disclosure statement at least 7 days before the lease is entered into. Fail, and the tenant may terminate within the first six months.

### S.11A TENANT'S DISCLOSURE STATEMENT

Obtain the tenant's disclosure statement so representations sit on the record from both sides.

### S.16 MINIMUM FIVE-YEAR TERM

A retail lease must run at least five years including options, unless the tenant provides a lawyer's or conveyancer's certificate to contract out.

### S.18 RENT REVIEW LIMITS

The Act limits how rent can be reviewed and voids ratchet clauses that stop rent decreasing on a market review.

### S.39 TO 41 OUTGOINGS

The tenant pays only outgoings disclosed in advance. You must provide annual estimates and an audited annual outgoings statement.

### S.55 ADVERTISING AND PROMOTION

Spend any tenant marketing contribution on advertising and promotion, and give an annual statement of how it was spent.

# Common traps to avoid

- **No ingoing condition report.** You lose every make-good argument before it starts.
- **Charging a retail tenant land tax.** The Retail Leases Act 1994 s.26 voids that clause. You cannot recover it.
- **Missing the retail outgoings reconciliation deadline.** s.28 sets a hard window. Miss it and recovery rights are lost permanently.
- **A vague make-good clause.** Undefined standards collapse in a dispute and you fund the repairs.
- **An option window with no diarised reminder.** A missed exercise date can hand a tenant a renewal you did not want, or cost you one you did.
- **A bank guarantee that expires before the term.** Your security quietly disappears mid-lease.
- **Leasing the wrong entity.** A dormant shell with no assets leaves you with no one to pursue.
- **An outgoings clause missing a category.** Every unlisted charge is money you carry for the whole term.
- **Rent quoted per square metre, not annually.** Per-metre framing hides the real annual liability and the real review impact.
- **Treating a retail lease as a commercial lease.** Different statute, different traps, and statutory penalties for getting it wrong.

# When you want this done properly, we run it.

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## FIXED-FEE PRODUCTS

| | |
|---|---|
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