

Schedule 2: **Lessor's Disclosure Statement**

Shop and lease details

Before signing this agreement

Before signing agreements to a lease or leases, both the lessor and the lessee should ensure they fully understand the documents. If there is any doubt, you should seek independent legal advice.

1 Address of shop: Shop no. _____ | Address _____

_____ | Postcode _____

2 Permitted use of shop _____

3 Section 16 of the Retail Leases Act provides for a minimum term of 5 years for a retail shop lease. The 5 year term can be made up of an initial term and any combination of options (see Note 1).

Lease start date _____ | Lease end date _____

4 Is there an option to renew the lease?

No

Yes ► Option period(s) _____

The first option to renew must be exercised between what dates?

_____ | and _____

5 Is the rent and/or outgoings calculated on a per square metre basis
OR

Is the shop in a retail shopping centre (see Note 4 for definition)?

No

Yes ► What is the lettable area in square metres? _____ m²

6 Will the lessee have to pay for any portion of work that the lessor will carry out in relation to finishes, fixtures, fittings, equipment and services?

No

Yes ► Give details of those things for which the lessee is expected to pay and the amount to be paid

About your lease

When entering into a retail shop lease the following documents are required by law:



The lease +
NSW Retail Tenant's Guide



Lessor's Disclosure Statement
+ appendix



Lessee's Disclosure Statement

Note 1: About the lease dates

Section 16 of the Retail Leases Act 1994 provides for a minimum term of 5 years for a retail shop lease. The 5 year term can be made up of an initial term and any combination of options. **If the parties to the lease agree to a term of less than 5 years, the lessee must provide the lessor with a certificate from the lessee's solicitor or conveyancer indicating that:**

(a) the lessee's rights under Section 16 have been explained to them, and

(b) the lessee has made a decision to accept a term of less than 5 years.

Making a decision about the viability of a retail business with a term of less than 5 years should form part of the lease negotiation.

A pro forma Section 16 certificate is available for download from www.retail.nsw.gov.au. It can be provided to the lessor within 6 months of entering into the lease. Without a Section 16 certificate, the term of the lease may be extended to 5 years.

Attach a separate sheet if space is insufficient

Note: The lessor's works are the works which must be done by the lessor's trade contractors or employees prior to the lessee fitout beginning. The cost of the lessor's work is to be agreed before works are carried out and if actual cost exceeds the agreed cost, the lessee is not liable to bear the difference.

Fitout and rent details

Retail Tenancy Unit
1300 795 534

7 What work is the lessee expected to carry out in relation to the finishes, fixtures, fittings, equipment and services?

Attach a separate sheet
if space is insufficient

8 Are there any particular requirements regarding the quality and standard of the fitout, the fittings or the fixtures being undertaken by the lessee (see Note 2)?

No

Yes ► Is there a guide available for the lessee setting out the standards?

Yes ► Please attach the guide

No ► Please provide details of the standards required

Note 2: About the standard of fitouts

If the lessor requires a particular standard of construction for the fitout, the lessee is to be provided with a fitout guide setting out this information, with this disclosure statement.

Attach a separate sheet
if space is insufficient

9 Are there any restrictions as to when the lessee can access the shop outside trading hours?

No

Yes ► What times/days is the lessee **unable** to access the shop? _____

10 When will the shop be available for occupation/possession?

This is the date the keys will be available to the lessee _____

11 Details of the base rent and additional rent (include GST in these amounts)

Total annual base rent \$ _____ p/a

Total additional annual rent \$ _____ p/a

12 What method will be used to calculate any additional annual rent stated in Q11?

13 Date the rent will commence _____

14 Rent reviews: frequency of rent reviews _____

Basis for review (how will the new rent be calculated) _____

15 Give details of any current legal proceedings in relation to the lawful use of the premises/retail shopping centre

Attach a separate sheet
if space is insufficient

Outgoings per annum

16 State the estimates of any outgoings to be paid by the lessee **this year**.
 These are amounts that are in **addition** to the rent.
 They are to be GST inclusive.

Services to the public

Child minding \$ _____
 Car parking \$ _____
 Public address/music \$ _____
 Security \$ _____
 Signs \$ _____
 Telephone (public) \$ _____
 Uniforms \$ _____

Administration costs

Audit fees \$ _____
 Management fees \$ _____
(for management of centre)
 Management fees \$ _____
(administration cost to run centre)

Government charges

Land tax \$ _____
 Local government rates and charges \$ _____
 Water, sewerage & drainage rates & charges \$ _____

Waste management costs

Sewage disposal & sullage \$ _____
 Waste disposal & removal \$ _____

Costs to run centre

Air conditioning/ventilation \$ _____
 Building intelligence & emergency systems \$ _____
 Electricity \$ _____
 Energy management systems \$ _____
 Fire protection \$ _____
 Lifts & escalators \$ _____
 Gardening \$ _____
 Gas & oil \$ _____
 Insurance \$ _____
 Cleaning (consumables) \$ _____
 Cleaning (other) \$ _____
 Pest control \$ _____
 Repairs & maintenance \$ _____
 Sinking fund for repairs & maintenance \$ _____
 Strata levies \$ _____

Other outgoings not listed above

_____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____

Sub total column A \$ _____

Subtotal column B \$ _____

17 Total of all outgoings for year one. **Grand total (A + B)** \$ _____

18 What is the formula for apportionment of outgoings if the lessee is not liable for the total amount?

19 Additional outgoings to be borne by lessee

Attach a separate sheet if space is insufficient

Obligations affecting the shop

20 Is the lessor...

The owner of the shop (go to Q21)

OR

The lessee of the shop under a head lease (give details)

Where you are the lessee of the shop under a head lease, give details of any obligations or rights the lessor has under the head-lease of the shop that may affect the shop.

Attach a separate sheet
if space is insufficient

21 Give details of any anticipated disturbance likely to occur during the term of the lease where the disturbance is likely to have a significant adverse effect on trading (see Note 3).

Note 3: About disturbances

Section 34 allows the lease to limit a lessee's claim for compensation if an event disturbing a lessee's trade was brought to the attention of the lessee in writing, before the lease was entered into. A general written statement made to the lessee before the lease is entered into will not be enough to limit liability of the lessor. A statement must specifically describe the nature of the disturbance, include an assessment of the likelihood of the disturbance taking place (including an indication of the basis on which the assessment was reached) and have regard to its timing, duration and effect during the lease term. Lessees should be aware that it is not always possible to predict the timing and the duration of disturbances with certainty.

Attach a separate sheet
if space is insufficient

22 Give details of any other agreements (including verbal commitments or written statements) between the lessor and lessee. Include those agreements relating to exclusivity or limitations on competing uses.

Attach a separate sheet
if space is insufficient

Retail shopping centre details

23 Is the shop in a retail shopping centre (see Note 4)?

No Sign at Q41 (you do not need to complete Q23 to Q40)

Yes Complete Q23 to Q40 and sign at Q41.

24 Name of retail shopping centre

25 Address of retail shopping centre

_____ Postcode _____

26 Total number of retail shops in the retail shopping centre

27 Gross lettable area of the shopping centre _____ m²

28 Number of parking bays available for customers _____

Number of parking bays reserved for the lessee _____

29 Services and facilities provided by the lessor _____

30 Give the annual turnover of the retail shopping centre to the extent it is collected by the lessor for the previous accounting year.

(see Note 5) \$ _____ p/a

31 Give the annual turnover of specialty shops on a per m² basis for the previous accounting period (see Notes 5 and 6).

Annual turnover – food \$ _____ per m²

Annual turnover – non-food \$ _____ per m²

Annual turnover – services \$ _____ per m²

32 State the core trading hours (the times when the retail shops in the shopping centre are required to be open for business)

Sunday from _____ to _____

Monday from _____ to _____

Tuesday from _____ to _____

Wednesday from _____ to _____

Thursday from _____ to _____

Friday from _____ to _____

Saturday from _____ to _____

Public holidays from _____ to _____

Retail Tenancy Unit

1300 795 534

Note 4: Definition of a retail shopping centre

A retail shopping centre is:

1. at least 5 retail shops

and

2. all have the same owner, lessor, head-lessor or are part of a single strata plan

and

3. are located in one building or in 2 or more adjoining buildings (can be joined by common area)

and

4. promoted as, or generally regarded as shopping center, mall, court or arcade.

Attach a separate sheet if space is insufficient

Note 5: About Annual Turnover Disclosure

The lessor is not liable for a claim under Division 2 of Part 7A of the Act for misrepresentation or for any error in the annual turnover of the retail shopping centre or speciality shops if the error is the result of inaccurate information provided to the lessor by the lessee(s).

Note 6: About turnover breakdown

This breakdown MUST not identify an individual lessee. For example, if there are only one or two food lessees in a centre, the food category would be excluded from disclosure, or incorporated in non-food or services and noted. This is to be provided to the extent it is collected by the lessor.

Retail shopping centre details continued

33 Will the lessee be required to contribute to the retail shopping centre advertising and promotions?
No
Yes ▶ Lessee's contribution per annum (this year) _____

34 Is there a tenant/merchant association in the retail shopping centre?
No
Yes ▶ Attach details of the constitution, voting rights and contributions

35 Attach a floor plan showing existing and proposed tenancy mix of the precinct and the location of common areas and kiosks within the precinct (see Note 7).

36 Is the lessor able to assure the lessee/assignee that the current tenant mix as shown on the attached floor plan will not be altered through the introduction of a competitor or any other type of tenant?
No
Yes

37 Are there any retail leases within the shopping centre where the lettable area is more than 1,000 m²?
No
Yes ▶ Attach a list showing the month and year each lease will expire.

38 What is the total shopping centre traffic count where available for the previous accounting period?

39 Are there any changes or developments planned by the lessor (or known to the lessor) for the retail shopping centre?
No
Yes ▶ Give details _____

40 Are there any changes or developments planned by the lessor (or known to the lessor) for the surrounding roads?
No
Yes ▶ Give details _____

41 **Signed by or for and on behalf of the Lessor**

Lessor's signature

Date

Note 7: Tenancy mix

This arrangement applies at the date of this statement but may be changed from time to time subject to agreements or representations, details of which are given in this disclosure statement.

Attach a separate sheet if space is insufficient

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