

When does the Retail Code apply to Leases in Tasmania?

The first step when leasing a commercial property should be to determine whether or not the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 (Code) will apply to the lease. This is because the Code imposes a range of obligations on the landlord, with some obligations required to be attended to prior to the parties entering into a retail lease.

The ramifications for the failure to comply with the Code can have significant consequences for the landlord.

The Code will apply to the following:

-)] Agreements for occupation of retail premises not exceeding 1000m².
-)] Retail premises are premises used:
 - (a) for any business in a shopping centre;
 - (b) if not in a shopping centre, wholly or predominantly for a business listed in Appendix C to the Code.
-)] A licence or other agreement to use the common area of a shopping centre for more than 6 months.

The Code does not apply to:

-)] Leases entered into before 1 September 1998 or pursuant to an agreement for lease entered into before that date;
-)] A lease pursuant to an option in an original lease entered before 1 September 1998 which is not varied otherwise than as provided for in the original lease;
-)] Leases of premises with a lettable area of more than 1000m²;
-)] Premises used for businesses conducted by the tenant on behalf of the landlord; and
-)] Premises within venues such as cinemas and bowling alleys if the business in the retail premises is run by the same person who runs the principal business (ie the cinema or bowling alley).

For landlords in a retail lease matter, Simmons Wolfhagen will:

-)] Draft and prepare the lease and the disclosure statement required by the Code;
-)] Advise and explain your preliminary obligations arising from the Code;
-)] Negotiate the terms of the lease with the tenant;
-)] Assist with arranging signing of the lease; and
-)] Arrange for the lease to be registered (if required)

For tenants in a retail lease matter, Simmons Wolfhagen will:

-)] Review the proposed lease agreement prepared by the landlord's solicitor;
-)] Provide a detailed letter of advice on the lease, including any recommendations as to proposed amendments that may be required to the lease;
-)] Negotiate the terms of the lease with the landlord;
-)] Ensure that any agreed amendments to the lease are properly effected; and
-)] Assist with arranging signing of the lease.

Simmons Wolfhagen has extensive experience in acting for both landlords and tenants in all types of leasing matters. If you would like more information on the requirements of the Code or how we can assist you with your lease, whether it is retail, non-retail, commercial or industrial, please contact us on 03 6338 2390 (Launceston) or 03 6226 1200 (Hobart) or visit our website as www.simwolf.com.au.

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