

Session 4: **Agreements for lease and leasing practice update**

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Overview

- **HEADS OF AGREEMENT**
- **AGREEMENT TO LEASE**
- **LEASING PRACTICE UPDATE**

Heads of Agreement

- **WHAT'S IN A NAME?**
 - Letter of offer, invitation to lease, terms sheet
- **KEY COMMERCIAL TERMS**
 - Parties, premises, term, rent, rent reviews, permitted use, landlord and/or tenant works, security amount and any other deal breakers
 - Form of lease (subject to negotiated amendments)
- **IS IT BINDING?**
 - Subject to both landlord and tenant approval processes (Ministerial, LGA, Board)
 - Sufficient certainty as to all the terms and conditions

Heads of Agreement

- **WHY DOES IT MATTER?**
 - **Avoid wasted time and costs**
 - **Loss of bargaining power**
- **LEASE DEPOSIT**
 - **Intention to proceed**
 - **Security for legal and other costs**
- **EXCLUSIVITY PERIOD**
- **CONFIDENTIALITY**

Heads of Agreement

- **WHAT HAPPENS NEXT?**
 - **Negotiations and approval processes**
 - **Representations**
 - **Charging new rent**
 - **Starting works**

- **PRACTICAL SUGGESTIONS**
 - **Rely on overholding provision**
 - **Enter into early access agreement**
 - **Rely upon right to use lease deposit**

Agreements For Lease

- **WHAT IS AN AGREEMENT FOR LEASE?**
 - A binding and enforceable agreement to enter into a lease
 - Can still be subject to approvals (board, LGA, Ministerial)
 - Concluded agreement on essential terms - parties, premises, term, rent and any other terms considered material
 - In writing and signed by the parties

- **WHEN IS IT APPROPRIATE TO USE AN AGREEMENT FOR LEASE?**
 - Conditions that needs to be satisfied before the lease commences (e.g. planning approval or landlord works)
 - Why not deal with these as conditions in the lease itself?

Agreements For Lease

- **EXAMPLE CONSIDERATIONS**

- **What approvals are required, who is to obtain them and when?**
- **What happens if approvals are not obtained?**
- **What works are required, who is to undertake them and when?**
- **Is a landlord and tenant consultation/approval process required?**
- **Who owns the completed works?**
- **Is additional security required from the tenant during any works period?**
- **Is early access required and on what terms and for what purpose?**
- **What is the trigger for the commencement of the lease?**

Agreements For Lease

- **OTHER CONSIDERATIONS**

- **Compliance with the *Local Government Act 2020 (Vic)***
- **Compliance with the *Retail Leases Act 2003 (Vic)***
- **Maximum lease term - *Crown Land (Reserves) Act 1978 (Vic)***
- **Protection by caveat – *Transfer of Land Act 1958 (Vic)***

Leasing Practice Update

- **UNFAIR CONTRACT TERMS**

- **New provisions took effect 9 November 2023**
- **Regime now applies to small businesses with fewer than 100 employees or turnover of less than \$10 million**
- **Applies to ‘standard form’ contract**
- **New civil penalty provisions for non-compliance**

Leasing Practice Update

- **RETAIL LEASES ACT**

- *Q St Kilda Tenancy Pty Ltd v Kane (Building and Property) [2023] VCAT 75 (24 January 2023) and Roberts Family Enterprises Pty Ltd v Meddles Bekirofski and Reshat Bekirofski (Building and Property) [2023] VCAT 121 (7 February 2023)*
- *Medical One Pty Ltd v 328 Hampshire Road Pty Ltd (Building and Property) [2022] VCAT 795*

Disclaimer

The information contained in these presentations is intended as general commentary and should not be regarded as legal advice.

Should you require specific advice on the topics or areas discussed please contact the presenter directly.

Questions and Contacts



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