

# Retail Leases Regulation 2022

## Fact sheet



Small  
Business  
Commissioner

The *Retail Leases Regulation 2022* ('the Regulation') is a new principal regulation under the *Retail Leases Act 1994* (NSW) ('the Act'). The Regulation commenced on 1 January 2023.

The Regulation replaces the Schedule 1 list of businesses in the Act and adds the following new business leases regulated by the Act:

- Gymnasiums and fitness centres, including yoga, barre, pilates and dance studios, and
- Small bars with a maximum patron capacity of 120.

The Regulation is available at:  
[Retail Leases Regulation 2022 - NSW Legislation](#)

The new businesses are now prescribed as 'retail shops' and will be covered by the provisions of the *Retail Leases Act 1994* which sets out the rights and responsibilities of lessors and lessees under a retail lease.

### Transitional arrangements:

From 1 January 2023, Part 8, Division 2 of the *Retail Leases Act 1994* will apply to existing leases (entered into before 1 January 2023) of the fitness business or small bars and will apply to leases made before 1 January 2023.

This means that from 1 January 2023 the low-cost dispute resolution (mediation) process for retail tenancy disputes will apply to the new businesses with leases.

Part 8, section 68 of the Act requires that retail tenancy disputes are submitted to mediation before proceedings can be taken.

**Note: The application of the Act to existing leases (entered into before 1 January 2023) is not retrospective, except for Part 8, Division 2.**

All provisions of the Act will apply to new leases of the newly prescribed businesses entered into on or after 1 January 2023.



# FREQUENTLY ASKED QUESTIONS

## Why was the Regulation made?

The Regulation was made to add gyms and fitness businesses to Schedule 1 of the Act. These businesses are now covered by the Act irrespective of whether the premises are in a shopping centre, on a retail shopping strip or stand-alone premises.

The Regulation also adds small bars (with a maximum capacity of 120) to Schedule 1 to remove uncertainty and clarify that these businesses are covered by the Act irrespective of the proportion of liquor and foods sales of a business.

## Is a 'retail lease' different to a commercial lease?

A retail lease is different to a commercial lease as the lease terms cannot override the regulatory framework of the *Retail Leases Act 1994* and must comply with the Act's requirements. Some types of lease provisions commonly found in a commercial lease are prohibited by the Act, for example there are a number of limitations in section 18 of the Act on lease provisions that adjust the base rent.

## How do I prepare a pre-lease disclosure statement so that it complies with the requirements of the Act?

The *Retail Leases Act 1994* requires lessors and lessees to sign disclosure statements before the lease is entered into.

There are two parts to the Disclosure Statement: one that the lessor prepares and signs (Part A: Lessor's Disclosure Statement) and one part that the lessee prepares and signs (Part B: Lessee's Disclosure Statement).

A template lessor and lessee's disclosure statement can be downloaded at:

[Lessor and lessee's disclosure statement | Small Business Commissioner \(nsw.gov.au\)](#)

Part 2 of the Act details the rights and obligations of lessors and lessees in relation to pre-lease disclosure.

There is further information available at: [www.smallbusiness.nsw.gov.au/get-help/retail-leases/disclosure-statements](http://www.smallbusiness.nsw.gov.au/get-help/retail-leases/disclosure-statements)

## Where can I find information about the rights and obligations of lessors and lessees under the *Retail Leases Act 1994*?

The *Retail Leases Act 1994* is available at:

[Retail Leases Act 1994 No 46 - NSW Legislation](#)

The Retail Tenancy Guide is a plain English guide to help lessors and lessees understand the key rights and obligations of the Act at all stages of a retail lease including:

- Starting a lease
- Leasing costs
- Lease management, and
- Lease expiry

We recommend reviewing the guide before lease negotiations start.

Other information is available at:

[Learn about retail leases | Small Business Commissioner \(nsw.gov.au\)](#)

The Retail Tenancy Guide 2022 can be downloaded at:

[Retail Tenancy Guide 2022 | Small Business Commissioner \(nsw.gov.au\)](#)

## Are there any exclusions or limits on the size of a gym or other prescribed business that will be covered by the Act?

The Act excludes:

- Leases of premises with a lettable area of 1,000 metres or more
- Leases of premises used predominantly for carrying on a business on behalf of a lessor
- Leases of premises where the principal business carried on the premises is the operation of a cinema, bowling alley or skating rink and the business is operated by the person who operates the cinema, bowling alley or skating rink
- Leases of premises uses for any one or more of the purposes listed in Schedule 1A (excluded uses)
- Leases of terms greater than 25 years



## Will gyms in industrial zones be included?

A gym will be included in the Act irrespective of the location of the premises.

## Does the Act apply to existing leases that were entered into before the Regulation commenced on the 1 January 2023?

Only Part 8, Division 2 of the *Retail Leases Act 1994* will apply to existing leases (entered into before 1 January 2023) for a fitness business or small bar.

**Note: The application of the Act to existing leases (entered into before 1 January 2023) is not retrospective, except for Part 8, Division 2.**

This means that from 1 January 2023 the low-cost dispute resolution (mediation) process for retail tenancy disputes will apply to the new businesses.

Part 8, section 68 of the Act requires that retail tenancy disputes are submitted to mediation before proceedings can be taken.

## If mediation does not resolve a dispute, will I be able to file an application in the NSW Civil and Administrative Tribunal (NCAT)?

A party to a lease for a fitness business or small bar entered into on or after 1 January 2023 will be able to file an application for the matter to be determined by NCAT. A party to an existing lease of a fitness business or small bar will need to file an application in the appropriate civil court.

## I have a question about a retail lease – who can I contact?

The NSW Small Business Commission can provide general information about retail leasing but cannot provide independent legal advice:

Send us an [online inquiry here](#)  
Call us on [1300 795 534](tel:1300795534)

Before preparing or entering into a retail lease a lessor or lessee may want to obtain independent advice on anything they are unsure about and try to negotiate any aspects of the lease they are not happy with.

Contact the NSW Law Society's solicitor referral service: [lawsociety.com.au/for-the-public/going-to-court-and-working-with-lawyers/solicitor-referral-service](https://lawsociety.com.au/for-the-public/going-to-court-and-working-with-lawyers/solicitor-referral-service)

Clearly understand the overall costs and risks of the lease for their business and seek independent advice if unsure. Business support is available from Business Connect: [business.nsw.gov.au/support-for-business/businessconnect](https://business.nsw.gov.au/support-for-business/businessconnect)

Also see section 2 of the Retail Tenancy Guide 2022 on 'Understanding the Costs of Leasing' available at: [www.smallbusiness.nsw.gov.au/Retail-Tenancy-Guide-2020](https://www.smallbusiness.nsw.gov.au/Retail-Tenancy-Guide-2020)

