

Update: 30 April 2012 Commercial lease rent reviews – part 3



Fleming Muntz
Solicitors



Summary

In part 1, we looked at CPI and fixed rent reviews in commercial leases. Part 2 set out some detail about market reviews, as well as explaining ratchets, caps and collars.

This week, part 3 concludes by setting out some of the current trends we see in commercial lease rent review provisions.

Current trends

No market reviews We are seeing clearly that powerful landlords such as shopping centres are increasingly avoiding market reviews altogether, offering leases only for a single term, with fixed annual increases and without any option period. This gives the landlord certainty of income and the ability to by-pass the *Retail Leases Act* prohibition on ratchet clauses.

It also gives the landlord flexibility if it wants to change the layout or tenant mix in a centre without becoming involved in the *Retail Leases Act* provisions dealing with demolition and relocation clauses.

Banks setting lease terms Landlords' banks are becoming increasingly involved in the leasing process and chances are that a fixed rental increase in a lease of new premises will be entirely non-negotiable because it will have been specified, not by the landlord, but by its bank.

More fixed increases We have seen fixed increases of around 3% become more popular for retail and some commercial tenancies, as parties decide that the certainty they get outweighs the risk that the CPI may deviate markedly from the fixed percentage.

Early market determination Finally, one right under the *Retail Leases Act* that we think more shop tenants *should* be using is s 32. This allows the tenant to have current market rental determined early – before deciding whether or not to exercise an option. Like most provisions in the *Retail Leases Act*, it cannot be excluded.

How can Fleming Muntz help?

The standard 'annual CPI and market on exercise of option' is justifiably popular and works well in many cases. However, if you would like to look further at options for reviewing rental in commercial leases, we have the experience and expertise to help.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au.

For more information, please contact:



Ian Byles
B Sc LLB (hons) LLM
Notary Public
Accredited Specialist Business Law
Telephone: (02) 6021 2222
Email: Ian.Byles@flemingmuntz.com.au

Solicitors for New South Wales and Victoria

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

enquiries@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804

Telephone (02) 6021 2222



A member of Law Australasia. The National Association of Law Firms.
Liability limited by a scheme approved under Professional Standards Legislation.

