

Update: 23 April 2012 Commercial lease rent reviews – part 2



Fleming Muntz
Solicitors



Summary

In part 1, we looked at CPI and fixed rent reviews in commercial leases.

This week, part 2 looks at market reviews, as well as explaining some jargon - ratchets, caps and collars.

Market reviews

Like CPI clauses, reviews to market rent are very common. They typically occur on exercise of an option, although superannuation fund landlords will often require a market review every three years for prudential reasons, regardless of whether or not that involves exercise of an option.

The meaning of 'current market rent' and the method used to determine it have produced a lot of case law, but most valuers we deal with prefer the parties to leave the broad methodology to the valuer to decide, with particular inclusions or exclusions only needed in occasional cases.

In the case of retail shops, s 19 of the *Retail Leases Act* sets out a methodology that is generally regarded as well-suited to those premises.

In most leases a formal rental assessment is not compulsory for every market review. The parties can and, in our experience often do, agree between themselves what the current market rental is to be for the following term.

Again, superannuation fund landlords can be a special case, requiring a written assessment to justify the rent, especially to a related party.

Ratchets, caps and collars

Ratchet clauses prevent rent from decreasing, even if conditions mean that the CPI or market rent has declined. These are prevalent in capital city CBD tenancies, less so in regional areas.

A *cap* limits the amount by which rent can be increased on a market review, while a *collar* puts limits on both the increase and decrease that can be imposed.

Both ratchets and collars (but not caps) are prohibited for retail tenancies by s 18 of the *Retail Leases Act*.

Next week

Part 3 will discuss some of the current trends we see in rent review provisions.

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

 **lawaustralasia**

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

