



andrew warren associates

SOLICITORS & BARRISTERS

MORTGAGES & FINANCE

Leasing business premises

How you deal with the highly regulated file of commercial leases depends on your particular interest.

If you are a landlord (lessor), your main interest in a commercial lease is how it is going to protect you in generating a financial return on your investment in the premises.

Most tenants (lessees) enter into commercial leases as a means of securing premises from which to operate their business. The lease thus forms an integral part of their business and a long-term lease on favourable terms is certainly a valuable business asset.

The important significance of commercial leases for both landlords and tenants has given rise to a broad regulatory framework imposing rights and obligations on both parties. In NSW for example, the Retails Leases Act 1994 covers most shops, stores, eating-places and food outlets, and service providers (e.g. art galleries, hairdressers, video libraries).

All commercial leases require compliance with certain conveyancing procedures and, as ever, there are taxation implications including capital gains tax, goods and services tax and stamp duty.

Not all tenancies are the same. Indeed, there may not even be a lease. For example, in several situations where it may not be timely to enter into a lease, the parties may choose to enter into an agreement for a lease or, alternatively, the arrangement may represent a sublease or a licence.

A prospective tenant will need to carefully check important features of the lease such as the nature of the premises (including rights of access and use of amenities), the term of the lease and any options for renewal, and rent and other outgoings. From the landlord's perspective, issues such as fit out costs, rent reviews, and termination rights may be especially important.

There can be no doubt that commercial leases represent an area of business requiring the most careful and diligent attention.