Australian Government
The Treasury

Harmonisation of retail tenancies and related commercial leasing

Consultation paper

August 2026

treasury.gov.au

© Commonwealth of Australia 2026

This publication is available for your use under a Creative Commons Attribution 4.0 International licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, third party materials, materials protected by a trademark, signatures and where otherwise stated. The full licence terms are available from creativecommons.org/licenses/by/4.0/legalcode.



Use of Treasury material under a Creative Commons Attribution 4.0 International licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics – then Treasury prefers the following attribution:

> Source: *The Commonwealth of Australia.*

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

> *Based on Commonwealth of Australia data.*

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see www.pmc.gov.au/government/commonwealth-coat-arms).

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Contents

Contents iii

Consultation process 1
The purpose of this consultation 1
Request for feedback and comments 1
Confidentiality 2
Privacy 2
Privacy collection statement 2

Harmonisation of retail tenancies and related commercial leasing 3
Executive summary 3
Scope 4

Background and policy context 4
Current regulatory landscape 4
History of reform efforts 5

Summary of Consultation Questions 6
Economic and market context questions 6
Divergence questions 6
Legislative scope and coverage questions 6
Pre-lease disclosure and information requirements questions 6
Lease terms and conditions questions 7
Rent and rent review questions 7
Shopping centre questions 7
Outgoings and operating expenses questions 8
Fit-out, incentives and make-good questions 8
Assignment, sub-letting and changes of control questions 8
Dispute resolution questions 8
Prohibited conduct and enforcement questions 9
Harmonisation options and approaches questions 9
Model choice 9
Impact of preferred model 9
Prioritisation and sequencing 10
Governance and durability 10
Risks and unintended consequences 10

Economic and market context 11
Overview 11
What we can measure (and what we cannot) 11
Market structure 11
Economic and market context questions 12

Key areas of legislative divergence **12**
Types of divergence 12
Divergence questions 12
Legislative scope and coverage 13
Legislative scope and coverage questions 13
Pre-lease disclosure and information requirements 13
Pre-lease disclosure and information requirements questions 14
Lease terms and conditions 14
Lease terms and conditions questions 14
Rent and rent review 15
Rent and rent review questions 15
Shopping centres 15
Shopping centre questions 16
Outgoings and operating expenses 16
Outgoings and operating expenses questions 17
Fit-out, incentives and make-good 17
Fit out, incentives and make-good questions 17
Assignment, sub-letting and changes of control 17
Assignment, sub-letting and changes of control questions 18
Dispute resolution 18
Dispute resolution questions 18
Prohibited conduct and enforcement 18
Prohibited conduct and enforcement questions 19

Harmonisation options and approaches **20**
Decision frame 20
Models for harmonisation 21
What could sit in a national minimum baseline 21
Indicative costs and benefits (and key evidence gaps) 22
Implementation and transition design choices 22
Governance and durability 22
Interaction with economy-wide protections 23
Harmonisation options and approaches questions 23
Model choice 23
Impact of preferred model 23
Prioritisation and sequencing 23
Governance and durability 23
Risks and unintended consequences 24

Appendix A — Jurisdictional overview (legislation and institutions) **1**
A1. Retail tenancies and related commercial leasing legislation by jurisdiction 1
Table A1.1: Retail tenancies and related commercial leasing legislation by jurisdiction 1
A2. Legislative scope and coverage 1
Table A2.1: Legislative scope and coverage by jurisdiction 2

A3. Pre-lease disclosure and information requirements....3
Table A3.1: Pre-lease disclosure and information requirements by jurisdiction....3
A4. Lease terms and conditions....4
Table A4.1: Minimum lease-term protections by jurisdiction....4
Relocation, demolition and renewal notices....5
Table A4.2: Relocation, demolition and renewal notices — common issues and key divergences....5
A5. Rent and rent review....6
Table A5.1: Rent and rent review mechanisms — common issues and key divergences....6
A6. Shopping centres....7
Table A6.1: Shopping-centre settings — common issues and key divergences....7
A7. Outgoings and operating expenses....8
Table A7.1: Outgoings and operating expenses — common issues and key divergences....9
A8. Fit out, incentives and make-good....10
Table A8.1: Fit out, incentives and make-good — common issues and key divergences....10
A9. Assignment, sub-letting and changes of control....11
Table A9.1: Assignment and related transfers — common issues and key divergences....11
A10. Dispute resolution....13
Table A10.1: Summary of retail tenancies dispute resolution pathways by jurisdiction....13
Table A10.2: Dispute resolution pathways — common issues and key divergences....14
A11. Prohibited conduct and enforcement....15
Table A11.1: Prohibited conduct and economy-wide protections — common issues and key interactions....15

Consultation process

The purpose of this consultation

Treasury is seeking views and evidence on whether, and how, governments could improve consistency across state and territory retail tenancies frameworks. In some jurisdictions, this includes related commercial leasing settings where retail and commercial protections extend beyond a narrow retail-only model, within statutory scope and subject to thresholds and exclusions.

Request for feedback and comments

Treasury welcomes written submissions on the issues raised in this consultation paper. Stakeholders may respond to one or more consultation questions and do not need to answer every question.

Submissions are most useful when they include:

- practical examples (for example, multi-jurisdiction documentation changes, delays, or dispute pathway confusion)
- evidence of costs (legal/advisory costs, systems and training costs, time delays, or compliance burden)
- dispute data (volumes, common issues, time to resolve, outcomes) where held by regulators, commissioners, tribunals, courts or industry bodies
- views on which divergences should be prioritised and what a workable "minimum baseline" could include.

Email	retailtenancy@treasury.gov.au
Mail	Retail Tenancy Consultation Small Business and Not-for-Profits Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Enquiries can be initially directed to Retail Tenancy Consultation
Phone	02 6263 2111

This is a consultation paper. It does not represent government policy. Treasury will use submissions to inform advice to government on whether, and how, greater consistency across state and territory retail tenancies frameworks could improve outcomes, identifying priority areas for alignment and the relative costs and benefits of reform.

Confidentiality

Submissions may be shared with other Commonwealth agencies for the purposes of the consultation process. If you would like only part of your submission to remain confidential, clearly mark that information in a separate statement. Automatically generated confidentiality statements in emails do not meet this requirement. Legal requirements, including under the *Freedom of Information Act 1982*, may affect confidentiality.

Privacy

Privacy collection statement

Your personal information is protected by law, including the *Privacy Act 1988* and the *Australian Privacy Principles* in Schedule 1 to that Act.

Personal information statement

We may also use your name and email to:

- ask you for more feedback
- invite you to provide feedback to future, related consultations.

If you do not provide this information, you cannot submit your response via Converlens.

We collect the following personal information:

- full name
- email address
- location, such as your state or territory, or the jurisdiction most relevant to your submission
- the organisation you represent, if applicable.

We'll only use or share your information for the consultation, unless:

- you agree otherwise
- you'd expect it, or
- the law allows or requires it.

Information may be shared with Treasury staff, contractors, ministerial offices or relevant agencies.

Converlens privacy policy

We use Converlens to collect and store your information in Australia. Visit Converlens' privacy policy for more details.

Our privacy policy

To learn how the Treasury manages personal information, including how to access, correct or make a complaint, read our privacy policy.

Harmonisation of retail tenancies and related commercial leasing

Executive summary

Building on the work of the Economic Reform Roundtable, the Government is making it easier to work and do business across states and territories through the revitalised National Competition Policy (NCP). Once implemented, these NCP reforms are expected to increase long-run GDP by around $13 billion per year.

This consultation forms part of the NCP reform agenda announced in Budget 2026-27. It sits within the Single National Market reform stream and seeks stakeholder views to inform consideration of a nationally coordinated approach to retail tenancies and related commercial leasing regulation. Feedback will support advice to Government on whether reform could deliver enduring productivity gains by reducing regulatory fragmentation, improving how markets function across jurisdictions, and improving practical outcomes for tenants, landlords and other parties affected by retail tenancies arrangements.

Retail tenancies and related commercial leasing settings shape entry, expansion and exit decisions for many small and medium businesses by affecting occupancy costs, risk allocation and dispute exposure.

Retail tenancies are regulated through eight state and territory statutory regimes. These frameworks pursue broadly similar objectives, including improving transparency, addressing information asymmetry, supporting fair dealing between landlords and tenants, and providing accessible dispute resolution. However, they differ materially in coverage, disclosure settings, rent review rules, outgoings treatment, assignment procedures, dispute resolution pathways and enforcement arrangements. At a high level, these differences fall into three broad areas: who is covered and when the law applies; the rules governing leasing arrangements; and the institutions, mediation pathways and enforcement settings that apply if issues arise.

Divergence is not necessarily a problem. It can also reflect deliberate policy choices that support different retail environments, leasing formats and risk allocations across jurisdictions.

Where divergence imposes real-world costs, it can create practical complexity and uncertainty, particularly for:

- businesses operating across borders that require different lease templates, processes and advice in each jurisdiction
- landlords and advisers managing multi-jurisdiction portfolios and national roll-outs
- small businesses seeking to understand their rights and the most appropriate forum to resolve disputes.

This paper identifies opportunities to improve consistency across retail tenancies and related commercial leasing frameworks. It outlines key areas of divergence and potential models for greater consistency, such as a single national law, a model law, or nationally agreed minimum standards, and seeks evidence on the practical costs and benefits of reform.

The consultation aims to assess whether greater consistency could reduce regulatory complexity, improve transparency and market efficiency, and support businesses operating across multiple jurisdictions, while maintaining appropriate tenant protections and recognising legitimate landlord

interests. It does not assume harmonisation is necessary in all cases and seeks feedback on where alignment would deliver meaningful benefits and where local flexibility remains appropriate.

Treasury is particularly interested in evidence relating to:

- compliance and advisory costs for multi-jurisdiction operators compared with single-site businesses
- dispute volumes, causes and resolution timeframes across jurisdictions
- transaction delays arising from differing disclosure or approval processes
- the impact of assignment rules on business saleability and exit outcomes.

The paper also tests potential reform options to inform future regulatory impact analysis, including consideration of costs, benefits and implementation challenges. Given the absence of a comprehensive national dataset on retail tenancies, stakeholders are encouraged to provide reliable data sources, practical examples and lease-level evidence to support policy development and advice to government.

Scope

In this paper, "harmonisation" refers to improving consistency across jurisdictions in selected rights, obligations, definitions, processes or templates (for example, disclosure settings or dispute resolution gateways).

This paper focuses on:

- retail tenancies legislation in each state and territory
- related commercial leasing settings where jurisdictions operate broader retail and commercial regimes within statutory scope (for example, South Australia and the Australian Capital Territory), or where differences create practical uncertainty about rights and dispute pathways
- differences in statutory coverage, pre-lease disclosure, rent and rent review, minimum lease terms, shopping centre settings, outgoings, assignment rules, dispute resolution and enforcement
- options to align selected aspects of these frameworks, including potential minimum baseline standards.

It is not a review of commercial leasing law more broadly.

Background and policy context

Current regulatory landscape

Retail tenancies are regulated at the state and territory level through a mix of dedicated Acts, associated regulations and other operative instruments. While these frameworks share common objectives (including transparency, fairness and access to dispute resolution), they differ significantly in scope, definitions, disclosure requirements, coverage thresholds and remedies. In this context,

regulatory fragmentation may also have broader implications for the efficient operation of Australia's single national market, consistent with the objectives of the NCP framework.

Tasmania is in a transitional position. *The Retail Leases Act 2022* (Tas) has been enacted, but only section 2 and section 88 have commenced. Section 88 continues the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 which is in force until rescinded under the Act. Accordingly, this paper distinguishes Tasmania's current Code-based framework from the enacted but largely yet to commence 2022 Act.

Each jurisdiction regulates retail tenancies through dedicated legislation. Details on these legislative arrangements can be found in Table A1.1 at Appendix A.

Some jurisdictions extend coverage beyond retail premises to defined categories of commercial leasing, within statutory thresholds and exclusions, for example in South Australia and the Australian Capital Territory.

History of reform efforts

Retail tenancies have been subject to sustained inquiry and review at the Commonwealth and state and territory levels. These processes have repeatedly identified issues including information asymmetry, unequal bargaining power, dispute costs and inconsistent protections across jurisdictions. Australia has not achieved durable national alignment of retail tenancies frameworks.

The most prominent review is the Productivity Commission's *Market for Retail Tenancy Leases in Australia* inquiry (2008). The Commission examined the structure and functioning of the retail tenancy market, including competition, regulatory and access constraints, the extent and impacts of information asymmetry, and the scope for reform (including differences in regulation and dispute resolution frameworks across jurisdictions). The terms of reference also required the Commission to identify, and where practicable quantify, the likely benefits and costs of its recommendations.

The Commission's 2008 report recommended measures to improve transparency and accessibility of lease information (including a standard one-page lease summary and greater public accessibility of key lease information), reduce unnecessary prescriptiveness, and move towards more nationally consistent approaches. It also proposed exploring a voluntary national code of conduct for shopping-centre leases, enforceable by the Australian Competition and Consumer Commission (ACCC), as part of a less prescriptive regulatory framework.

Subsequent follow-through on national harmonisation was partial and uneven, with reform largely progressed through state and territory processes and without durable national alignment. Coordinated leasing responses during the COVID-19 period, including nationally consistent principles implemented by jurisdictions, demonstrated that governments can align leasing settings where shared mechanisms exist.

This consultation supports evidence-based consideration of whether, and how, greater alignment could reduce avoidable complexity and support efficient retail and commercial tenancy markets.

Summary of Consultation Questions

Economic and market context questions

1. What are the most reliable contemporary data sources to estimate the number, characteristics and trends of regulated retail leases in Australia? Please indicate coverage, frequency, limitations and whether the data supports trend analysis.
2. What minimum data items would enable consistent national comparison of lease terms, occupancy costs and dispute outcomes across jurisdictions? Please indicate which items are feasible to collect consistently.

Divergence questions

3. What are the top three divergences across jurisdictions that impose the greatest practical costs or uncertainty? If possible, for each divergence, please provide:
    a. how often it arises (for example, per cent of leases or transactions)
    b. the main impact (cost, delay, dispute, uncertainty)
    c. indicative magnitude (for example, legal costs, compliance costs, time delays)
    d. affected groups.

Legislative scope and coverage questions

4. Which aspects of scope and coverage (definitions, thresholds, exclusions, shopping centre triggers or more integrated frameworks) most commonly lead to different outcomes across jurisdictions, and what practical impacts do they have? Please provide:
    a. examples and frequency where possible
    b. compliance, legal or administrative impacts
    c. documentation or process complexity
    d. delays or uncertainty
    e. any effect on dispute incidence.
5. Should any elements of scope and coverage be standardised in a national baseline? If yes, which elements should be consistent, which should remain flexible, and what costs and benefits would be expected?

Pre-lease disclosure and information requirements questions

6. Which differences in disclosure requirements, including timing, content, provision of the draft lease, remedies and remedies for defective disclosure, most affect decision-making, transaction timeframes or dispute incidence, and what practical impacts do they have? Please provide indicative evidence on:
    a. transaction delays (for example, days or weeks)
    b. legal or advisory costs

c. frequency of disputes or renegotiation.

7. Would a nationally consistent disclosure baseline improve outcomes? If yes:
    a. what minimum elements should be standardised?
    b. the expected impact on costs, decision quality and disputes.

Lease terms and conditions questions

8. Which differences in lease terms (including minimum lease-term protections, relocation or demolition clauses, and renewal rules) most affect investment decisions or exit outcomes? Please provide evidence or examples of practical impacts, including:
    a. tenant investment and certainty
    b. exposure to rent increases or reviews over the lease term
    c. process or advisory costs
    d. relocation, demolition or early termination impacts
    e. whether minimum lease-term protections improve outcomes compared with a no-minimum-term approach.
9. What minimum standards (if any) should be included in a national baseline? Please indicate expected impacts on costs, investment, flexibility and dispute incidence.

Rent and rent review questions

10. Which differences in rent and rent review settings (including permitted mechanisms, market rent processes, clauses preventing rent from decreasing, turnover rent and turnover arrangements) most commonly drive disputes or uncertainty, and what practical impacts do they have? Please provide indicative evidence on:
    a. dispute frequency
    b. variation in rent outcomes or predictability
    c. compliance or advisory costs
11. Would greater consistency in rent and rent review settings improve outcomes? If yes, what minimum approach should apply and what impacts would be expected?

Shopping centre questions

12. Which shopping centre-specific settings (including marketing funds, centre-level charges, turnover information requirements, trading-hours mechanisms or casual mall licensing) most commonly create issues in practice, and what practical impacts do they have? Please indicate impacts on:
    a. transparency
    b. tenant decision-making
    c. dispute incidence
    d. administrative burden.

13. Would minimum standards, a voluntary industry code or statutory requirements improve transparency and reduce disputes in shopping centre-specific matters? Please provide examples and reasons, including implications for consistency, enforceability, flexibility and dispute outcomes.

Outgoings and operating expenses questions

14. Which outgoings categories, disclosure practices or verification requirements most often create uncertainty or disputes, and what practical impacts do these differences have? Please provide indicative evidence on:
    a. cost impacts
    b. frequency of disputes
    c. administrative burden
    d. comparability of occupancy costs.
15. Would greater consistency in outgoings disclosure and reporting materially improve comparability and reduce disputes? If yes, what minimum approach is workable?

Fit-out, incentives and make-good questions

16. Which aspects of fit-out, incentives and make-good obligations most commonly lead to uncertainty or disputes, and what practical impacts do these issues have, particularly at the end of the lease? Please provide examples and indicative costs where possible.
17. Would minimum disclosure requirements or limited standardised rules reduce disputes? If yes, what elements should be standardised?

Assignment, sub-letting and changes of control questions

18. Which differences in assignment processes (including consent timeframes, conditions and liability release) most commonly delay or disrupt business transactions, and what are the practical impacts of these differences? Please provide indicative evidence on:
    a. delays (for example, transaction time)
    b. legal or advisory costs
    c. impact on business saleability
    d. residual liability for outgoing tenants or guarantors.
19. What elements of assignment, sub-letting or change-of-control processes (if any) should be standardised to improve predictability and reduce costs?

Dispute resolution questions

20. Which differences in dispute resolution pathways, including mediation gateways, institutional models, tribunal or court processes and post-mediation pathways, most affect cost, speed and accessibility? Would greater consistency improve outcomes? Please provide evidence on:
    a. dispute volumes

b. common causes of disputes

c. timeframes and outcomes

d. whether data is administrative, survey-based or anecdotal

e. the design features that would be most important in any consistent pathway.

Prohibited conduct and enforcement questions

21. Where do retail-leasing-specific provisions and Australian Consumer Law protections overlap or create ambiguity in practice? What impacts does this have, and what design features would improve clarity while maintaining protections? Please indicate impacts on:

    a. cost

    b. delay

    c. duplication of processes or forums

    d. pathway or remedy uncertainty.

22. What design features would improve clarity while maintaining protections?

Harmonisation options and approaches questions

Model choice

23. Which harmonisation model is most workable in practice (single national law, model law or national minimum baseline), and why?

Impact of preferred model

24. For your preferred model, please estimate:

- transition impacts (one-off)
  - legal or documentation changes
  - system or process changes
  - training and implementation costs
- ongoing impacts
  - compliance costs
  - transaction time
  - dispute incidence
- distributional impacts
  - which stakeholders bear costs?
  - which stakeholders benefit?

Prioritisation and sequencing

25. Which areas should be prioritised for alignment (top three), and why? What sequencing or staging approach would minimise disruption while delivering early benefits?

Governance and durability

26. What governance arrangements would best maintain alignment over time?

Risks and unintended consequences

27. What are the main risks of greater consistency or harmonisation (for example, reduced flexibility, increased costs or impacts on investment), and what safeguards or design features would mitigate these risks?

Economic and market context

Overview

Retail tenancies support a large and diverse part of the economy across shopping centres, strip or high street premises, standalone sites and mixed-use developments, and underpins a major property investment class.

Australia lacks a comprehensive national register or consistent public dataset of retail lease counts, terms and key economic features across formats. This paper therefore treats market-wide statements about lease stock and lease terms as scale indicators or hypotheses unless supported by consistent administrative or repeatable datasets.

What we can measure (and what we cannot)

The national lease stock baseline is dated but widely used. The Productivity Commission estimated around 290,000 regulated retail tenancy leases nationally in 2006–07, with up to 58,000 leases written each year, and around one-fifth of leases in shopping centres. This provides a national "scale" reference point but is not a current administrative count and does not provide a post-2008 national time series.

Adjacent public indicators help with scale, but they are not lease counts. Retail sector business counts and employment indicators describe sector footprint, but do not map directly to regulated retail leases because statutory coverage does not align with industry classifications and not all retail businesses occupy premises captured by retail tenancies legislation.

State and territory material is useful but does not form a national series. Jurisdictional regulatory impact statements (RIS) and review material can test the plausibility of baseline estimates and illustrate how coverage settings affect which leases are captured, but they do not create a consistent national lease stock time series.

Given these limitations, stakeholders are encouraged to identify the most decision-relevant data sources and clearly indicate where evidence is robust, indicative or based on practitioner experience.

Market structure

Retail tenancies do not operate as a single, uniform market. Shopping centres typically operate as actively managed environments, with coordinated tenant-mix decisions and established practices such as turnover reporting and centre-level outgoings. Strip or high street retail often involves more dispersed ownership and management.

These differences can affect information availability, negotiation dynamics, occupancy cost composition, and renewal and exit experiences.

Shopping-centre benchmarks can provide standardised metrics within that segment but have defined scope and exclusions and should not be treated as national lease counts or measures of tenant profitability.

Economic and market context questions

1. What are the most reliable contemporary data sources to estimate the number, characteristics and trends of regulated retail leases in Australia? Please indicate coverage, frequency, limitations and whether the data supports trend analysis.
2. What minimum data items would enable consistent national comparison of lease terms, occupancy costs and dispute outcomes across jurisdictions? Please indicate which items are feasible to collect consistently.

Stakeholders are also invited to provide evidence on the broader regulatory burden associated with fragmented retail tenancies frameworks, including impacts on productivity, business dynamism and market entry or expansion decisions.

Key areas of legislative divergence

Divergence is not necessarily a problem. In some cases, jurisdictions may tailor settings to local market conditions or policy preferences. The key policy question for this consultation is whether some differences create avoidable complexity or uncertainty that outweighs the benefits of local tailoring.

Where relevant, stakeholders are encouraged to identify whether these divergences could be addressed through nationally consistent baseline settings or other harmonisation approaches.

Treasury is seeking evidence on where divergence changes real-world outcomes (for example, documentation and advice costs, negotiation timeframes, dispute incidence or forum uncertainty), and which differences are “high impact” and feasible to address through a more consistent baseline.

Across Australia, retail tenancies legislation operates as a specialised overlay on general property and contract law. Jurisdictions pursue broadly similar objectives, but frameworks have developed independently over time. Key aspects of regulation differ across states and territories, including coverage, disclosure, rent review, shopping-centre settings, dispute resolution and enforcement.

This section summarises major areas of divergence and seeks stakeholder views on whether, and how, greater alignment could improve transparency, consistency and the efficient operation of retail and commercial tenancy markets.

Types of divergence

Jurisdictions diverge in three broad ways: (1) coverage settings; (2) substantive regulation of leasing arrangements; and (3) institutional and enforcement settings (including mediation frameworks and tribunal or court pathways).

To support focused and comparable feedback, stakeholders are encouraged to prioritise the top 2 or 3 divergences of greatest practical impact based on their experiences.

Divergence questions

3. What are the top three divergences across jurisdictions that impose the greatest practical costs or uncertainty? If possible, for each divergence, please provide:
    a. how often it arises (for example, per cent of leases or transactions)
    b. the main impact (cost, delay, dispute, uncertainty)

c. indicative magnitude (for example, legal costs, compliance costs, time delays)

d. affected groups.

Legislative scope and coverage

Legislative scope determines which premises and leases receive statutory protections, including disclosure obligations and access to dispute resolution pathways. Jurisdictions use different definitions, thresholds and triggers to determine coverage, and some apply more integrated frameworks covering retail and defined commercial leasing within statutory scope.

These differences can mean that similar premises receive different statutory protections depending on the jurisdiction, affecting access to disclosure rights, minimum lease protections and dispute resolution pathways.

Stakeholders are invited to provide examples of where coverage differences have affected leasing decisions, documentation or dispute outcomes, including where a lease or occupancy arrangement sits near a threshold or exclusion.

Legislative scope and coverage questions

4. Which aspects of scope and coverage (definitions, thresholds, exclusions, shopping centre triggers or more integrated frameworks) most commonly lead to different outcomes across jurisdictions, and what practical impacts do they have? Please provide:
    a. examples and frequency where possible
    b. compliance, legal or administrative impacts
    c. documentation or process complexity
    d. delays or uncertainty
    e. any effect on dispute incidence.
5. Should any elements of scope and coverage be standardised in a national baseline? If yes, which elements should be consistent, which should remain flexible, and what costs and benefits would be expected?

Pre-lease disclosure and information requirements

Disclosure requirements aim to reduce information asymmetry by ensuring prospective tenants receive key information before entering into a lease. Jurisdictions differ in the timing and content of disclosure, when the proposed lease must be provided, tenant disclosure obligations (in some jurisdictions), and remedies for defective disclosure. Differences in both the content of disclosure and the timing at which information is provided may affect outcomes in distinct ways.

These differences can affect the comparability of lease offers and the ability of prospective tenants to assess total occupancy costs and risks before committing. They may also create process and compliance complexity for landlords with multi-jurisdiction portfolios and advisers supporting national roll-outs.

Stakeholders are invited to identify which disclosure elements most influence decision making and which differences most often contribute to disputes or renegotiation, including any evidence on transaction delays or associated costs.

Pre-lease disclosure and information requirements questions

6. Which differences in disclosure requirements, including timing, content, provision of the draft lease, remedies for defective disclosure, most affect decision-making, transaction timeframes or dispute incidence, and what practical impacts do they have? Please provide indicative evidence on:
    a. transaction delays (for example, days or weeks)
    b. legal or advisory costs
    c. frequency of disputes or renegotiation.
7. Would a nationally consistent disclosure baseline improve outcomes? If yes:
    a. what minimum elements should be standardised?
    b. the expected impact on costs, decision quality and disputes.

Lease terms and conditions

Retail tenancies legislation regulates certain lease terms to address potential imbalances in bargaining power and to provide greater certainty where tenants invest in leased premises. Jurisdictions differ in minimum lease term protections, relocation and demolition clauses, renewal notice requirements and other operational settings.

These differences can affect security of tenure and the allocation of commercial risk, particularly where tenants incur material fit-out costs. Differences in minimum lease-term settings may also influence how rent arrangements operate in practice. In particular, shorter or longer lease durations can affect tenants' exposure to rent increases or reviews and their ability to recover fit-out investment over the lease term. They may also complicate standard leasing templates for businesses operating across multiple jurisdictions. Where waiver mechanisms apply, they may add process and advisory requirements, while in some cases supporting flexibility for particular leasing arrangements.

Stakeholders are invited to provide examples of how these differences affect investment decisions, renewal outcomes, or the practical ability to exit or relocate. This includes evidence on costs associated with relocation, demolition or early termination.

Lease terms and conditions questions

8. Which differences in lease terms (including minimum lease-term protections, relocation or demolition clauses, and renewal rules) most affect investment decisions or exit outcomes? Please provide evidence or examples of practical impacts, including:
    a. tenant investment and certainty
    b. exposure to rent increases or reviews over the lease term
    c. process or advisory costs
    d. relocation, demolition or early termination impacts
    e. whether minimum lease-term protections improve outcomes compared with a no-minimum-term approach.
9. What minimum standards (if any) should be included in a national baseline? Please indicate expected impacts on costs, investment, flexibility and dispute incidence.

Rent and rent review

Rent is often the largest single cost for retail tenants. Legislative settings governing rent determination and rent review influence business viability, investment decisions and risk allocation. Jurisdictions differ in permitted rent review mechanisms, market rent review processes, the treatment of clauses preventing rent from decreasing (for example, restrictions on downward rent adjustment), and the use of turnover rent and turnover information.

These differences may affect the predictability of rent outcomes and the transparency of rent setting. They may also increase the need for jurisdiction-specific drafting and advice and reduce the comparability of leasing costs across jurisdictions.

Stakeholders are invited to provide evidence on which rent review differences drive the greatest uncertainty or disputes in practice, and which features of a consistent baseline would improve transparency without imposing unnecessary prescription.

Rent and rent review questions

10. Which differences in rent and rent review settings (including permitted mechanisms, market rent processes, clauses preventing rent from decreasing, turnover rent and turnover arrangements) most commonly drive disputes or uncertainty, and what practical impacts do they have? Please provide indicative evidence on:
    a. dispute frequency
    b. variation in rent outcomes or predictability
    c. compliance or advisory costs
11. Would greater consistency in rent and rent review settings improve outcomes? If yes, what minimum approach should apply and what impacts would be expected?

Shopping centres

Shopping centres operate as coordinated retail environments, typically involving centre-level charges, marketing funds and turnover reporting obligations. Jurisdictions differ in shopping centre-specific regulatory settings, including requirements relating to marketing funds, centre-level disclosure and the collection and use of turnover information.

These differences may affect the transparency of centre-level costs, the handling of commercially sensitive information, and the administrative burden for landlords operating across multiple jurisdictions.

Casual mall licensing provides one example of an existing shopping centre-specific framework, operating through a voluntary industry code in most jurisdictions and through a statutory code in South Australia.

Existing framework: Casual Mall Licensing Code of Practice

The *Casual Mall Licensing Code of Practice* is a voluntary industry code agreed between retailer bodies and the Shopping Centre Council of Australia and authorised by the Australian Competition and Consumer Commission until 31 December 2030. It addresses matters such as casual mall licence policies, information to lessees, sightlines, competitor impacts, outgoings adjustments and mediation.

The Code states that it is intended to apply across Australia except South Australia. In South Australia, casual mall licensing is instead regulated through *the Retail and Commercial Leases Act 1995 (SA)*, which includes section 62A and a Schedule—Casual Mall Licensing Code. That Schedule covers similar subject matter to the voluntary code, including licence policies, information obligations, sightlines, competitor impacts, special events and outgoings adjustments, but does so as a statutory code rather than a voluntary industry instrument.

Stakeholders are invited to provide evidence on which shopping centre-specific settings most influence tenant decision making and dispute incidence, including practical examples of issues arising from marketing funds, promotion levies or turnover information requests.

Shopping centre questions

12. Which shopping centre-specific settings (including marketing funds, centre-level charges, turnover information requirements, trading-hours mechanisms or casual mall licensing) most commonly create issues in practice, and what practical impacts do they have? Please indicate impacts on:
    a. transparency
    b. tenant decision-making
    c. dispute incidence
    d. administrative burden.
13. Would minimum standards, a voluntary industry code or statutory requirements improve transparency and reduce disputes in shopping centre-specific matters? Please provide examples and reasons, including implications for consistency, enforceability, flexibility and dispute outcomes.

Outgoings and operating expenses

Outgoings form a significant component of occupancy costs. Most jurisdictions require disclosure of estimated outgoings and annual statements of actual outgoings, but they differ in audit requirements, the treatment of capital expenditure, and the treatment of marketing and promotion costs.

These differences can affect tenants' ability to forecast occupancy costs and compare lease offers. They may also increase administrative burden for landlords through differing reporting formats and verification requirements across jurisdictions.

Stakeholders are invited to provide evidence on which outgoings categories and verification requirements create the most uncertainty or friction, and whether greater consistency would improve transparency and reduce disputes, including any indicative cost ranges (where available).

Outgoings and operating expenses questions

14. Which outgoings categories, disclosure practices or verification requirements most often create uncertainty or disputes, and what practical impacts do these differences have? Please provide indicative evidence on:
    a. cost impacts
    b. frequency of disputes
    c. administrative burden
    d. comparability of occupancy costs.
15. Would greater consistency in outgoings disclosure and reporting materially improve comparability and reduce disputes? If yes, what minimum approach is workable?

Fit-out, incentives and make-good

Legislation generally addresses fit-out, incentives and make-good obligations through disclosure rather than substantive rules. Jurisdictions differ in the level of disclosure detail, and contractual practices vary, affecting the transparency of total occupancy costs and end-of-lease risk.

These differences can affect the transparency of the effective cost of leasing and the financial risk of exit.

Stakeholders are invited to identify which disclosure items most improve understanding of fit-out and make-good exposure, where ambiguity most often arises (including at end-of-lease), and whether minimum disclosure standards (or limited minimum rules) would materially reduce disputes.

Fit out, incentives and make-good questions

16. Which aspects of fit-out, incentives and make-good obligations most commonly lead to uncertainty or disputes, and what practical impacts do these issues have, particularly at the end of the lease? Please provide examples and indicative costs where possible.
17. Would minimum disclosure requirements or limited standardised rules reduce disputes? If yes, what elements should be standardised?

Assignment, sub-letting and changes of control

Assignment provisions affect business saleability and transferability. Jurisdictions differ in assignment procedures, consent timeframes, rules governing release of outgoing tenant liability, and related disclosure obligations. Assignment settings can directly affect whether small business owners are able to realise value on exit, including through the sale of goodwill.

These differences can affect business saleability and transaction certainty, including timeframes for landlord consent and ongoing liability exposure for outgoing tenants and guarantors. They may also increase legal and advisory costs for multi-jurisdiction transactions, particularly for franchise systems and multi-site operators.

Stakeholders are invited to provide examples of assignment process differences that have delayed or prevented business sales, and evidence on which elements of a consistent baseline (including consent timeframes, required information and liability release rules) would provide the greatest benefit.

Assignment, sub-letting and changes of control questions

18. Which differences in assignment processes (including consent timeframes, conditions and liability release) most commonly delay or disrupt business transactions, and what are the practical impacts of these differences? Please provide indicative evidence on:
    a. delays (for example, transaction time)
    b. legal or advisory costs
    c. impact on business saleability
    d. residual liability for outgoing tenants or guarantors.
19. What elements of assignment, sub-letting or change-of-control processes (if any) should be standardised to improve predictability and reduce costs?

Dispute resolution

Retail tenancies disputes often involve small businesses with limited resources. Jurisdictions differ in whether mediation is mandatory, how mediation services operate, and which forum applies if mediation does not resolve the dispute.

These differences can affect the cost, speed and accessibility of resolving disputes, and may lead to different outcomes for similar issues across jurisdictions.

Stakeholders are invited to provide evidence on which pathway features most influence accessibility and resolution timeframes, including any data held by commissioners, tribunals or courts on dispute volumes, common dispute types and outcomes.

Dispute resolution questions

20. Which differences in dispute resolution pathways, including mediation gateways, institutional models, tribunal or court processes and post-mediation pathways, most affect cost, speed and accessibility? Would greater consistency improve outcomes? Please provide evidence on:
    a. dispute volumes
    b. common causes of disputes
    c. timeframes and outcomes
    d. whether data is administrative, survey-based or anecdotal
    e. the design features that would be most important in any consistent pathway.

Prohibited conduct and enforcement

Some jurisdictions include retail-leasing-specific prohibited conduct provisions that operate alongside economy-wide protections in the Australian Consumer Law (ACL). Retail tenancies legislation also performs distinct functions, including mandated disclosure and specialised dispute resolution pathways.

These settings may interact in ways that create overlapping obligations or uncertainty about the most appropriate pathway or forum for resolving disputes. For example, some issues arising in lease negotiations, disclosure or lease administration may potentially engage both retail tenancies specific provisions and ACL protections.

Treasury is seeking practical examples of where this interaction creates duplication, uncertainty or additional costs in practice (for example, through delay, different outcomes or the need to pursue parallel avenues). Stakeholders are invited to describe what "clarification" would look like in practice (for example, guidance, aligned remedies, clearer gateway rules or clearer pathway allocation between forums), and whether greater consistency across retail tenancies frameworks would improve coherence without weakening protections. The intent of this analysis is not to reduce existing protections, but to clarify pathways and improve coherence between overlapping regimes.

Prohibited conduct and enforcement questions

21. Where do retail-leasing-specific provisions and Australian Consumer Law protections overlap or create ambiguity in practice? What impacts does this have, and what design features would improve clarity while maintaining protections? Please indicate impacts on:
    a. cost
    b. delay
    c. duplication of processes or forums
    d. pathway or remedy uncertainty.
22. What design features would improve clarity while maintaining protections?

Harmonisation options and approaches

This section outlines practical models that governments could consider. It does not assume harmonisation is necessary in all cases or that all divergence warrants alignment.

For analytical purposes, reform options will be assessed relative to current settings, including the extent to which existing arrangements already address identified issues.

In jurisdictions with enacted but yet to commence reforms, current settings may need to be distinguished from future intended frameworks. This is relevant to assessing implementation timing, transition costs and the extent to which a jurisdiction may already be moving towards settings that align with a potential harmonisation model.

Decision frame

Governments can compare harmonisation approaches using a common decision frame. The frame is intended to help stakeholders explain preferences, identify trade-offs, and highlight who bears transition costs and who benefits from greater consistency. Submissions are most useful when linked to practical examples, dispute experience, or evidence on costs.

Decision frame criteria

- Consistency: The extent to which the approach delivers consistent rights, obligations and processes across jurisdictions.
- Targeting and proportionality: Whether the approach focuses on high-impact divergences and avoids unnecessary prescription.
- Flexibility: The extent to which jurisdictions can retain local tailoring outside a defined baseline, including for different leasing formats.
- Feasibility and effort: The legal and institutional effort required, including whether changes involve primary or subordinate legislation, guidance, templates or operational practices.
- Durability: How the approach manages future divergence, including agreed review points, update processes and transparency mechanisms.
- Costs and distributional impacts: Transition costs and who bears them (tenants, landlords, advisers and regulators), and whether benefits accrue mainly to multi-jurisdiction operators or also to single-site small businesses.
- Evidence readiness: Whether existing evidence supports implementation now, or whether further work is needed to quantify impacts and refine design.

Stakeholders may wish to address, for any preferred model:

- which specific divergences the approach should prioritise, and why
- what “success” would look like in practice (for example, fewer templates, faster transactions, fewer disputes or clearer pathways)
- what implementation supports would be needed (for example, standard forms, guidance, education, phased commencement)

- what governance arrangements would be required to maintain alignment over time.

Stakeholders may also wish to comment on whether greater consistency across retail tenancies frameworks could improve regulatory coherence and reduce duplication where retail-leasing specific provisions interact with economy-wide protections such as the ACL.

Models for harmonisation

The models below represent different degrees of national consistency, institutional complexity and implementation effort.

Option A: Single national law

A single Commonwealth law applied nationally and replacing state and territory retail tenancies legislation could deliver high formal consistency.

This may involve referral of powers or other constitutional mechanisms and would likely require transition from existing state and territory frameworks, including replacement or integration of current legislation.

Option B: Model law and national minimum baseline

A common legislative baseline adopted by jurisdictions through their own Acts could focus on high-impact areas while allowing flexibility outside the baseline, supported by governance mechanisms through the NCP to prevent re-divergence. A national minimum baseline may offer a proportionate balance between consistency and jurisdictional flexibility, depending on scope and design.

In practice, this could involve agreed minimum legislative standards in defined priority areas, supported by a nationally consistent model law approach, while allowing jurisdictions to retain flexibility in other aspects of their frameworks.

What could sit in a national minimum baseline

If governments were to pursue a model law or national minimum framework, scoping choices would be central. A baseline could focus on elements that most directly support comparability, reduce transaction costs, and improve practical access to rights, while allowing tailoring where leasing dynamics differ by format and location.

Illustrative baseline topics (for consultation only):

- Definitions and coverage: Minimum common definitions (retail premises and business), a common approach to key thresholds and exclusions, and the treatment of shopping-centre triggers.
- Pre-lease disclosure: Minimum disclosure timeframes, provision of the proposed lease during negotiations, a nationally consistent core disclosure dataset, and an approach to remedies for defective disclosure.
- Outgoings transparency: Minimum requirements for disclosure of estimated outgoings and annual statements (timing and content), and, where appropriate, minimum rules on recoverability categories.

- Dispute resolution gateway: A consistent mediation or ADR entry point before tribunal or court pathways, with clear post-mediation pathways.
- Shopping centre transparency: Minimum standards for marketing fund reporting and clear rules on turnover information settings.

This list is not exhaustive and is included to assist stakeholders to provide targeted feedback on scope.

Indicative costs and benefits (and key evidence gaps)

A key evidence gap remains the absence of a published, jurisdiction-specific cost-benefit analysis of harmonising retail and commercial leasing law. Prior national reviews have not produced a quantified estimate of the cost of fragmentation, and reform processes have often relied on qualitative submissions rather than detailed modelling.

Stakeholders are invited to provide evidence on compliance costs associated with operating across jurisdictions (including legal advice, documentation, systems and training), and on dispute incidence and costs affected by divergence (including time costs and forum costs).

Implementation and transition design choices

Experience from previous regulatory harmonisation efforts suggests that durable alignment depends not only on the model adopted, but also on careful scoping, well-designed transition arrangements and governance mechanisms to manage change over time.

Transition design would also need to account for jurisdictions with recently enacted but yet to commence legislation, or legislation under active amendment. In those cases, governments may need to decide whether harmonisation should be assessed against the current operational framework, the enacted but yet to commence framework, or a staged pathway that recognises both.

For consultation purposes, governments may wish to consider the following transition design choices:

- Application and transition scope: Whether reforms apply to new leases only, new and renewed leases, or new, renewed and varied leases.
- Implementation supports: National templates (for example, disclosure forms), guidance materials, and education for landlords, tenants and advisers.
- Sequencing: Whether reforms are implemented as a single package or staged by topic (for example, disclosure first, then outgoings, then dispute resolution gateways).

Governance and durability

Where jurisdictions adopt a baseline, mechanisms may be required to maintain alignment over time. These may include intergovernmental governance arrangements, scheduled reviews, and publication of changes and deviations.

Interaction with economy-wide protections

Interaction between retail-leasing-specific provisions and economy-wide protections (including the ACL) may, in some cases, create overlap or uncertainty about dispute pathways and forums. This issue is discussed in *Prohibited conduct and enforcement* above.

In considering harmonisation options, stakeholders are invited to comment on whether greater consistency across retail tenancies frameworks could improve coherence and reduce duplication, and what design features would improve clarity while maintaining safeguards (for example, guidance, aligned remedies, or clearer gateway rules).

Harmonisation options and approaches questions

Stakeholders are not expected to respond to every question and may focus on the issues most relevant to their experience. Targeted responses supported by practical examples and evidence are preferred to comprehensive but general responses. Responses that quantify impacts or provide comparative information across jurisdictions will be particularly valuable in assessing the net benefits of different approaches.

Model choice

23. Which harmonisation model is most workable in practice (single national law, model law or national minimum baseline), and why?

Impact of preferred model

24. For your preferred model, please estimate:

- transition impacts (one-off)
  - legal or documentation changes
  - system or process changes
  - training and implementation costs
- ongoing impacts
  - compliance costs
  - transaction time
  - dispute incidence
- distributional impacts
  - which stakeholders bear costs?
  - which stakeholders benefit?

Prioritisation and sequencing

25. Which areas should be prioritised for alignment (top three), and why? What sequencing or staging approach would minimise disruption while delivering early benefits?

Governance and durability

26. What governance arrangements would best maintain alignment over time?

Risks and unintended consequences

27. What are the main risks of greater consistency or harmonisation (for example, reduced flexibility, increased costs or impacts on investment), and what safeguards or design features would mitigate these risks

Appendix A — Jurisdictional overview (legislation and institutions)

A1. Retail tenancies and related commercial leasing legislation by jurisdiction

Table A1.1 lists the main legislation and subordinate instruments governing retail tenancies and related commercial leasing arrangements in each jurisdiction.

Table A1.1: Retail tenancies and related commercial leasing legislation by jurisdiction

Jurisdiction	Primary Act	Subordinate legislation / instruments
New South Wales	*Retail Leases Act 1994* (NSW)	*Retail Leases Regulation 2022* (NSW)
Victoria	*Retail Leases Act 2003* (Vic)	*Retail Lease Regulations 2023* Determinations made by the Minister for Small Business.
Queensland	*Retail Shop Leases Act 1994* (Qld)	*Retail Shop Leases Regulation 2016* (Qld)
Western Australia	*Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA)	*Commercial Tenancy (Retail Shops) Agreements Regulations 1985* (WA).
South Australia	*Retail and Commercial Leases Act 1995* (SA)	*Retail and Commercial Leases Regulations 2025* (SA).
Tasmania	Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998, continued in force by section 88 of the *Retail Leases Act 2022* (Tas)	*The Retail Leases Act 2022* (Tas) has been enacted, but only section 2 and section 88 have commenced. Section 88 continues the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 in force until rescinded under the Act.
Australian Capital Territory	*Leases (Commercial and Retail) Act 2001* (ACT)	*Leases (Commercial and Retail) Regulation 2002* (ACT).
Northern Territory	*Business Tenancies (Fair Dealings) Act 2003* (NT)	*Business Tenancies (Fair Dealings) Regulations 2004* (NT).

A2. Legislative scope and coverage

Jurisdictions use different statutory models to determine which premises and leases are covered. The principal points of divergence are the coverage trigger, threshold or exclusion mechanism, and the extent to which the legislation extends beyond a narrow retail-only model.

Table A2.1 highlights where jurisdictions use materially different coverage architectures, thresholds and exclusion mechanisms.

Table A2.1: Legislative scope and coverage by jurisdiction

Jurisdiction	Coverage model	Key thresholds / exclusions	Notable features of divergence
New South Wales	Dual model: prescribed "listed business" and all premises in a retail shopping centre	Excludes shops ≥1,000 m²; various carve-outs for short-term and other arrangements. Leases less than 6 months and greater than 25 years.	Shopping-centre "catch-all" means identical premises may be covered in NSW but not elsewhere
Victoria	Retail use model with financial trigger	Occupancy cost threshold (rather than floor area)	Diverges from floor-area approaches used in many other jurisdictions
Queensland	Retail business and shopping-centre triggers	Excludes shops >1,000 m² and specified premises.	Similar architecture to NSW/NT but not identical in detail
Western Australia	Premises in a shopping centre; retail sale of goods; specified businesses	Excludes retail shop leases >1,000 m², and leases held by a listed corporation (or subsidiary).	Combination of centre-based and business-use coverage
South Australia	Broader retail and commercial tenancy framework within statutory scope	Prescribed rent threshold rather than floor area (maximum annual rent $420,000). Leases one month or less.	Broader framework extending beyond narrow retail-only model
Tasmania	Specified business list and shopping-centre trigger (dual model)	Applies to retail premises with a lettable area of not more than 1,000 m². Excludes retail premises over 1,000 m² and certain businesses within larger entertainment venues.	Only jurisdiction to regulate retail tenancies through a Code rather than a standalone Act. Coverage is closer to the retail business and shopping-centre model.
Australian Capital Territory	Integrated framework covering retail and small commercial premises	Excludes "large excluded premises" (>1,000 m² leased to listed public companies) and leases less than 6 months unless they are continuous occupation leases.	Extends statutory protections beyond retail premises
Northern Territory	Retail business and shopping-centre triggers	Excludes shops ≥1,000 m², certain listed-corporation leases, specified premises or arrangements, leases less than 6 months with no extension right, and leases of 25 years or more.	Similar retail business and shopping-centre trigger to NSW/Qld, with additional short-term and long-term lease exclusions.

The jurisdictions reviewed broadly fall into 4 approaches:

- Retail business and shopping-centre trigger: New South Wales, Queensland, Tasmania and the Northern Territory
- Mixed retail shopping centre and business-use model: Western Australia

- Broader retail and broader commercial tenancy framework: South Australia and the Australian Capital Territory
- Retail-use model with a financial trigger: Victoria.

A3. Pre-lease disclosure and information requirements

All jurisdictions require disclosure before a retail lease commences, but they differ in timing, supporting documents, tenant disclosure obligations and remedies for defective disclosure.

Table A3.1 summarises key differences in pre-lease disclosure and information requirements across jurisdictions.

Table A3.1: Pre-lease disclosure and information requirements by jurisdiction

Jurisdiction	Minimum timing before entry	Proposed lease required?	Tenant disclosure obligations	Remedies for defective disclosure
New South Wales	≥7 days	Commonly required with disclosure	Yes (part of statutory architecture)	Tenant termination in specified circumstances
Victoria	≥14 days	Yes	No general tenant disclosure	Termination rights; if late, lease term taken to start 14 days after disclosure
Queensland	≥7 days	Draft lease and disclosure required	Limited (not general)	Tenant termination in specified circumstances
Western Australia	≥7 days	Required	No general tenant disclosure	Tenant termination in specified circumstances, right to apply to the State Administrative Tribunal for compensation for loss suffered by tenant
South Australia	Before entry (no fixed day count)	Lease copy required as soon as negotiations commence and provision of the *Retail and Commercial Leasing Guide*	No general tenant disclosure	Court-ordered remedies including orders to avoid, or vary the lease or provide compensation)
Tasmania	≥7 days	Must be available for inspection, copy as early as practicable	No general tenant disclosure	Tenant termination within 3 months of commencement (subject to landlord right to contest), right to recover losses
Australian Capital Territory	≥14 days	"As early as practicable" in negotiations	No general tenant disclosure	Termination and timing consequences where defective
Northern Territory	≥7 days (via disclosure architecture)	Required	Yes (tenant disclosure forms part of regime)	Tenant termination in specified circumstances

The main practical differences are:

- minimum timing: 7 days in several jurisdictions; 14 days in Victoria and the ACT; no fixed minimum day count in South Australia
- tenant disclosure: most evident in New South Wales and the Northern Territory
- remedy model: most jurisdictions use statutory termination rights in specified circumstances, while South Australia relies more explicitly on court-ordered remedies.

A4. Lease terms and conditions

Jurisdictions regulate selected lease terms to address bargaining-power imbalances and practical issues arising over the life of a lease. The clearest direct point of divergence is the treatment of minimum lease-term protections. Jurisdictions also diverge in their treatment of relocation clauses, demolition clauses and renewal notice requirements.

Table A4.1 summarises minimum lease-term protections by jurisdiction.

Table A4.1: Minimum lease-term protections by jurisdiction

Jurisdiction	Statutory minimum five-year term	Waiver mechanism	Practical point of difference
New South Wales	No	Not applicable	New South Wales does not provide a statutory five-year minimum lease term.
Victoria	Yes	Yes	Victoria retains a statutory minimum term, generally subject to waiver.
Queensland	No	Not applicable	Queensland aligns with New South Wales in not providing a statutory five-year minimum lease term.
Western Australia	Yes	Yes	Western Australia retains a statutory minimum term, with a statutory waiver that requires the tenant to apply to the Tribunal for an order that the statutory five-year term does not apply.
South Australia	Yes	Yes	South Australia retains a statutory minimum term but uses a certified exclusionary clause process rather than a waiver.
Tasmania	Yes	Yes	Tasmania retains a statutory minimum term, generally subject to waiver.
Australian Capital Territory	Yes	Yes	The Australian Capital Territory retains a statutory minimum term, generally subject to waiver.
Northern Territory	Yes	Yes	The Northern Territory retains a statutory minimum term, generally subject to waiver.

On minimum lease-term settings, the jurisdictions reviewed fall into two broad groups:

- no statutory five-year minimum term: New South Wales and Queensland
- minimum term retained, generally subject to waiver: Victoria, Western Australia (waiver subject to tribunal application), South Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

Relocation, demolition and renewal notices

Table A4.2: Relocation, demolition and renewal notices — common issues and key divergences

Issue	Key point for stakeholders
Relocation notice and process	Most jurisdictions require advance notice (generally 3–6 months) and detailed information about proposed works and alternative premises. New South Wales, Victoria, Queensland and Northern Territory provide more prescriptive requirements on notice content and relocation logistics, while Tasmania impose longer notice period. Western Australia applies a tiered approach where leases < 5 years clauses must use prescribed form in the regulations. Relocation clauses in Leases > 5 years must comply with provisions in the Act with require a 6-month notice period and detailed information about alternative premises.
Rent adjustment on relocation	New South Wales, Victoria, Queensland, Western Australia and Northern Territory generally require rent to be maintained subject to adjustment for the commercial value of the new premises. South Australia and the Australian Capital Territory do not provide the same level of explicit rent protection, while Tasmania resets rent to market value.
Compensation for relocation	Compensation for relocation-related disruption is a common feature across all jurisdictions, typically covering reasonable costs. Some jurisdictions (for example, New South Wales and Western Australia) address compensation through separate clauses, while others rely on general "reasonable compensation" standards without detailed guidance.
Demolition and redevelopment grounds	Frameworks generally permit lease termination for demolition or redevelopment where there is a genuine proposal requiring vacant possession. New South Wales provides more explicit statutory requirements, while Tasmania relies on the Code rather than the primary Act. Western Australia does not currently have a specific demolition/redevelopment clause (under review to align with Victoria and New South Wales) but does have a mechanism for landlords to apply to the Tribunal to approve a clause that permits termination prior to end of the five-year term if "special circumstances" exist.
Demolition notice periods	Some jurisdictions distinguish between short-term and longer leases, with notice periods of 3 months (short leases) or 6 months (longer leases). New South Wales, Tasmania and Victoria consistently require at least 6 months' notice, while other jurisdictions vary depending on lease duration.
Compensation for demolition	Compensation rights are broadly available where leases are terminated for demolition, although the level of prescription differs. Some jurisdictions specify circumstances and entitlements (for example, New South Wales), while others rely on more general "reasonable compensation" standards.
Renewal notification requirements	Most jurisdictions require landlords to notify tenants of renewal or non-renewal between 6 and 12 months before lease expiry. Queensland and Victoria impose shorter minimum notification timeframes linked to option dates, while Tasmania has a minimum 3-month notification window. Western Australia puts the onus on the tenant to ask for a statement of the landlords' intentions (under review to align with other jurisdictions).

Issue	Key point for stakeholders
Tenant protections in renewal processes	Tenant protections vary in form, including mandatory notice of options, disclosure obligations, and in some cases requirements to commence negotiations. The Australian Capital Territory requires both parties to engage in renewal negotiations within a specified timeframe. Tasmania's current Code also provides a structured option-renewal process, including a tenant right to request a proposed market rent and an independent valuation pathway if agreement cannot be reached.
Short-term lease treatment	Several jurisdictions impose reduced notice requirements for leases of one year or less (typically 3 months), particularly for demolition or redevelopment termination. This creates a distinct regulatory treatment between short- and long-term leases.

A5. Rent and rent review

Rent and rent review settings vary across jurisdictions in ways that affect transparency, comparability and the allocation of commercial risk. The main areas of divergence identified in the paper are permitted review mechanisms, market rent review processes, treatment of clauses preventing rent from decreasing, and turnover rent and turnover information settings. Table A5.1 sets out the principal jurisdictional points of difference.

Table A5.1 summarises the principal points of divergence in rent and rent review settings.

Table A5.1: Rent and rent review mechanisms — common issues and key divergences

Issue	Key point for stakeholders
Permitted rent review mechanisms	. Jurisdictions vary in how prescriptive they are about allowable rent review methods. New South Wales, Victoria and Western Australia restrict leases to a single prescribed method per review, while Queensland permits combinations of methods where both parties agree. Other jurisdictions, including Tasmania under its current Code, rely more heavily on agreement between parties and lease terms, with a general preference towards market-based approaches.
Market rent determination processes	Market rent is a central mechanism across all jurisdictions, but the supporting processes differ. Victoria, South Australia, Western Australia and the Australian Capital Territory provide more structured dispute resolution pathways, including appointment of independent valuers or referral to courts or professional bodies where agreement cannot be reached. Other jurisdictions rely more heavily on lease terms.
Frequency of rent reviews	Most jurisdictions limit rent reviews to once every 12 months (for example, New South Wales, Queensland, South Australia and the Australian Capital Territory), providing greater certainty for tenants. Victoria and Western Australia are less restrictive, allowing frequency to be determined by lease agreement, with fewer statutory constraints.
Clauses preventing rent decreases (ratchet clauses)	New South Wales, Queensland, Western Australia and South Australia explicitly prohibit clauses that prevent rent from decreasing. Victoria achieves a similar outcome through its prescribed methods framework. In contrast, Tasmania and the

Issue	Key point for stakeholders
	Australian Capital Territory do not expressly prohibit such clauses, relying on general lease terms.
Turnover rent frameworks	Turnover rent is widely included but regulated to varying degrees. New South Wales, Victoria, Western Australia and South Australia provide detailed legislative frameworks, including clear definitions of included and excluded turnover components. Western Australia prohibits rent based on turnover unless the tenant specifically approves and includes detailed protections for tenants if rent is based on turnover. Queensland has comparatively limited provisions, requiring only that the calculation method be specified in the lease. Tasmania's current Code contains limited turnover rent provisions, including specified exclusions from rent calculated as a percentage of turnover and audit-related requirements.
Tenant protections in turnover rent arrangements	Tenant protections in turnover rent arrangements vary. Western Australia allows tenants to object to turnover-based rent calculations in certain circumstances, while more prescriptive jurisdictions focus on transparency through detailed disclosure and defined calculation components. Tasmania's current Code contains limited turnover rent provisions, including specified exclusions where rent is calculated as a percentage of turnover and audit-related requirements.
Clarity and prescription of legislative frameworks	There is a spectrum in legislative detail. New South Wales, Victoria, Western Australia and South Australia adopt more prescriptive and structured approaches, particularly for turnover rent and rent review methods. Queensland takes a more flexible approach, while Tasmania, the Northern Territory and the Australian Capital Territory rely more heavily on negotiated lease terms with fewer explicit statutory constraints.

A6. Shopping centres

Shopping centres are treated as a distinct leasing environment in most jurisdictions, but the mechanisms differ. This reflects the fact that shopping-centre tenants are affected not only by the terms of their own lease, but also by centre-level decisions about trading hours, tenant mix, marketing and promotion funds, customer traffic, common areas, redevelopment, relocation and the use of turnover information.

Table A6.1: Shopping-centre settings — common issues and key divergences

Issue	Key point for stakeholders
Centre-specific disclosure	The largest practical divergence is the depth of centre-level information provided before entry. Queensland and Western Australia provide more detailed models, including information about anchor tenants, traffic, tenant mix and centre performance. Tasmania's current Code does not require the same level of centre-specific disclosure but contains shopping-centre-specific obligations on matters including advertising and promotion funds, trading hours and inadequate-sales protections.
Turnover information	Most relevant regimes protect turnover information once provided, but Western Australia more directly limits when turnover figures can be required at all.

Issue	Key point for stakeholders
Marketing and promotion funds	Marketing plans, expenditure statements, auditor reports and treatment of unspent contributions are common issues, but timing and reporting obligations differ. Some jurisdictions regulate shopping-centre marketing or promotion funds through planning, reporting, audit and treatment of unspent contribution requirements.
Core trading hours	Jurisdictions use different mechanisms including tenant approval, ballot requirements, cost rules for extended trading, provisions voiding specified opening-hours clauses, and Code-based trading-hours provisions.
Relocation and redevelopment	Retail tenancies frameworks commonly address disturbance, relocation or redevelopment, but jurisdictions vary in the extent to which they provide centre-specific redevelopment or relocation mechanisms, including requirements relating to notice, alternative premises, rent adjustment and compensation. .
Casual mall licensing	South Australia is the main statutory outlier. Elsewhere, the Shopping Centre Council of Australia Casual Mall Licensing Code is voluntary where adopted, with Western Australia drawing it into disclosure.
Sales and geographical restraints	Restrictions on inadequate-sales termination and geographical restraint clauses are common. The divergence is mainly in drafting and placement rather than broad policy direction.

The main practical differences are:

- depth of centre-level disclosure: particularly the more detailed models in Queensland and Western Australia. Tasmania's current Code does not require the same detailed centre-level disclosure but contains shopping-centre-specific obligations on matters including advertising and promotion funds, trading hours, relocation and inadequate-sales protections.
- turnover information: especially whether the law only protects confidentiality or also limits when turnover information can be required
- centre-level cost transparency: including marketing and promotion fund reporting, audit and treatment of unspent contributions
- trading-hours mechanisms: including tenant approval, ballot requirements, cost rules and voiding of specified opening-hours clauses
- casual mall licensing: South Australia's statutory model compared with the voluntary code approach elsewhere.

A7. Outgoings and operating expenses

Outgoings and operating expenses are a significant component of occupancy costs. Jurisdictions commonly require disclosure of estimated outgoings and statements of actual outgoings, but they differ in the level of detail required, verification or audit settings, and the treatment of specific cost categories such as marketing, promotion and capital expenditure.

Table A7.1: Outgoings and operating expenses — common issues and key divergences

Issue	Key point for stakeholders
Estimates before lease entry	Most jurisdictions require estimated outgoings to be disclosed before lease commencement. The practical issue is whether tenants receive enough comparable information to assess total occupancy costs before committing to a lease.
Annual statements of actual outgoings	Most jurisdictions require statements of actual outgoings during the lease term. Tasmania's current Code provides for audited outgoings reporting within 3 months of the end of an accounting year where requested by a tenant. The key issue is whether those statements are timely, comparable and useful for reconciling estimated and actual costs.
Audit and verification	Verification requirements are not uniform. Victoria, Western Australia and the Australian Capital Territory include specific audit or auditor-reporting requirements for outgoings statements or reports, subject to exceptions. Other jurisdictions vary in whether they require audit, reporting, substantiation or tenant-request mechanisms.
Marketing and promotion costs	Some jurisdictions, including Tasmania, regulate contributions to shopping-centre marketing or promotion funds through planning, reporting, audit and treatment of unspent contributions. The issue is whether these costs should be treated as ordinary outgoings, separately accounted for, or subject to specific reporting requirements.
Capital expenditure recovery	Jurisdictions differ in the extent to which capital expenditure may be recovered through outgoings, particularly for building upgrades, improvements, depreciation, finance costs or owner-side costs. The practical concern is whether tenants can identify when improvement or upgrade costs may be passed through.
Comparability of occupancy costs	Disclosure, annual statements and verification settings all affect whether tenants can compare occupancy costs across lease offers and jurisdictions. A possible baseline could focus on minimum information categories rather than prescribing every recoverable cost item.

The main practical differences are:

- comparability before entry: whether tenants can compare estimated outgoings across lease offers including whether estimates are provided before entry or on request
- reconciliation during the lease: whether annual statements are sufficiently clear, timely and useful
- verification: whether independent audit or other assurance should be required, and when that would be proportionate
- treatment of specific costs: particularly marketing, promotion contributions, capital expenditure, depreciation, finance costs, insurance and other categories of non-recoverable outgoings
- shopping-centre specific funds: whether marketing and promotion funds are separately planned, accounted for, reported on and retained for tenants' benefit

- baseline design: whether harmonisation should focus on disclosure categories, reporting standards, shopping-centre fund transparency, verification requirements or limits on recoverable costs.

A8. Fit out, incentives and make-good

Fit out, incentives and make-good obligations can materially affect the effective cost of entering, operating and exiting leased premises. These matters are generally addressed through disclosure requirements and lease terms, rather than detailed substantive rules. The main issue for consultation is whether tenants receive clear and comparable information about required works, responsibility for costs, landlord contributions, rent-free or discounted periods, fit out standards, refurbishment obligations and end-of-lease reinstatement requirements.

Table A8.1: Fit out, incentives and make-good — common issues and key divergences

Issue	Key point for stakeholders
Fit out cost disclosure	Jurisdictions differ in how specifically fit out costs and contribution obligations must be disclosed. New South Wales requires agreement on the maximum amount, or a basis or formula, for certain works carried out by or for the lessor to enable the proposed fit out and includes a tenancy fit out statement mechanism where a shopping-centre lessor requires a particular standard of construction. Queensland provides detailed prescribed disclosure of tenant fit-out works, lessor contributions to tenant fit-out, fit out or shopfront standards and known alteration works. South Australia requires fit out or refit obligations to be disclosed with enough detail for the tenant to estimate likely costs. Tasmania's current Code does not prescribe equivalent fit-out cost disclosure, but its general disclosure requirements provide baseline transparency for key lease terms and costs.
Consequences of non-disclosure	Some jurisdictions attach stronger consequences to undisclosed contribution obligations. The Northern Territory provides that a lease provision requiring a tenant to pay or contribute towards finishes, fixtures, fittings, equipment or services is void unless disclosed in the landlord's disclosure statement. Western Australia uses a similar voiding approach where the disclosure statement does not notify the tenant of the effect of the contribution provision.
Lessor contributions, rent-free periods and incentives	Queensland's prescribed disclosure captures any rent-free period and any lessor contribution to tenant fit-out. Landlord contributions or rent-free/discounted periods may be reflected in a higher stated lease value, with future negotiations then premised on that higher figure.
Refurbishment and refit obligations	South Australia requires fit out or refit obligations to be disclosed with sufficient detail to enable the tenant to estimate likely costs. The Australian Capital Territory legislation includes building alteration and refurbishment-related provisions, and Victoria has provisions dealing with fit out of premises and refurbishment, relocation and other interferences with tenancy.
Make-good and end-of-lease condition	Make-good obligations are primarily determined by the lease, but some jurisdictions prescribe related end-of-lease or condition matters. The Australian Capital Territory's standard lease provisions require the tenant to hand over the premises in good repair at the end of the lease, having regard to the state of repair at commencement and excluding fair wear and tear and specified damage. Western Australia's prescribed redevelopment provision clause provides that, where a lease is

Issue	Key point for stakeholders
	terminated under the relevant redevelopment clause, the tenant is not required to make good the retail shop despite any contrary lease term.

The main practical differences are:

- pre-entry cost transparency: whether tenants receive enough information to understand required works, cost responsibility and applicable fit-out standards
- baseline disclosure: whether general disclosure obligations provide sufficient transparency, or whether specific prescribed disclosure is needed for fit-out, incentive, refurbishment and make-good obligations
- cost certainty: whether obligations must be capped, calculated by a disclosed formula, or described with enough detail to estimate likely costs
- consequences of non-disclosure: whether undisclosed contribution obligations are void, capped or otherwise unenforceable
- incentive transparency: whether rent-free periods, discounts and landlord contributions are disclosed in a way that shows the effective cost of the lease
- exit-risk transparency: whether make good obligations, fixture ownership, removal obligations and expected end-of-lease condition are clear before the tenant commits.

A9. Assignment, sub-letting and changes of control

Assignment, sub-letting and related transfer provisions affect whether a tenant can sell or transfer a business conducted from leased premises. Jurisdictions differ in the process for seeking landlord consent, the grounds on which consent may be refused, assignment-related disclosure obligations, response timeframes and whether outgoing tenants and guarantors are released from future liability. These differences may affect business saleability, transaction certainty and the cost of legal or advisory support for businesses operating across jurisdictions.

Table A9.1 summarises common assignment, sub-letting and change-of-control issues relevant to business transfers.

Table A9.1: Assignment and related transfers — common issues and key divergences

Issue	Key point for stakeholders
Grounds for withholding consent	Jurisdictions differ in how they constrain landlord refusal of consent. New South Wales, South Australia and the Northern Territory limit refusal to specified grounds such as change of use, assignee financial capacity or retailing skills, and non-compliance with assignment procedures. Queensland also treats certain consent issues as retail tenancy disputes, including where a landlord seeks to impose new obligations, withdraw existing rights or impose conditions the tenant considers unreasonable. In Western Australia the lease is taken to grant the tenant a right to assign the lease, subject to the landlord's right to refuse on reasonable grounds.

Issue	Key point for stakeholders
Consent timeframes and non-response	Timeframes can affect whether a business sale proceeds. Victoria has a 28-day deemed consent model where the tenant has complied with the relevant requirements and the landlord does not respond. Comparative material identifies a similar 28-day deemed consent model in New South Wales. Queensland instead creates a dispute trigger if the landlord does not answer within one month after receiving full particulars and a written request.
Assignment disclosure	Assignment disclosure helps incoming tenants understand the lease and business context. New South Wales requires an updated lessor disclosure statement and has an assignor disclosure statement mechanism. Victoria requires disclosure to the proposed assignee and, for an ongoing business assignment, a prescribed disclosure statement to the landlord and proposed assignee. The Northern Territory regulations prescribe an assignor's disclosure statement form. Assignment disclosure is not currently required in Western Australia (under review).
Release of outgoing tenant and guarantor liability	Liability release is a major practical issue because it affects residual risk after a sale. Victoria provides release for the outgoing tenant and guarantor or covenantor where the required disclosure conditions are met. New South Wales also provides protection from liability for the assignor and extends it to guarantors or covenantors, subject to the assignor's disclosure statement not being materially false or misleading.
Subleases, licences, concessions and parting with possession	Assignment settings interact with other occupancy transfers. New South Wales allows the lease to reserve absolute discretion to refuse consent to a sublease, licence, concession, parting with possession, mortgage or encumbrance. In Tasmania, the yet to commence 2022 Act defines assignment to include subleases, but the current Code does not contain a comparable definition.
Licence arrangements, including franchise arrangements	Victoria contains a specific franchise arrangements provision requiring disclosure before a licence is granted to use retail premises for a business under a name or mark associated with, or controlled by, the tenant or a connected person.
Changes of control	Jurisdictions differ in whether change-of-control events are expressly regulated, treated as assignment or transfer events, or left primarily to lease drafting. This may affect corporate tenants, franchise systems and multi-site operators where ownership or control changes without a conventional lease assignment.

The main practical differences are:

- grounds for refusal: whether landlords may refuse consent only on specified statutory grounds or may rely more heavily on lease terms
- process and timing: whether there are clear response timeframes, deemed consent rules or dispute triggers for non-response
- assignment disclosure: whether incoming tenants receive current lease information and prescribed assignor disclosure
- liability release: whether outgoing tenants and guarantors are released after assignment and what disclosure conditions apply

- related occupancy transfers: how subleases, licences, concessions and parting with possession are treated
- change-of-control uncertainty: whether corporate control changes are expressly regulated, dealt with through lease drafting, or not identified in the current legislative comparison.

A10. Dispute resolution

Dispute resolution settings determine how parties access retail tenancies rights in practice. Jurisdictions differ in mediation or conciliation gateways, the role of small business commissioners or equivalent agencies, and the tribunal or court pathway available if a dispute is not resolved. These differences may affect the cost, speed and accessibility of resolving disputes, particularly for small businesses.

Table A10.1 highlights the different jurisdictions dispute resolution pathways and relevant parties involved in the process.

Table A10.1: Summary of retail tenancies dispute resolution pathways by jurisdiction

Jurisdiction	Responsible party for ADR	Mandatory ADR (Y/N)	Primary tribunal or court pathway
New South Wales	NSW Small Business Commissioner*	Y	NSW Civil and Administrative Tribunal
Victoria	Victorian Small Business Commissioner	Y	Victorian Civil and Administrative Tribunal
Queensland	Queensland Small Business Commissioner	Y	Queensland Civil and Administrative Tribunal
Western Australia	Small Business Development Corporation	Y**	State Administrative Tribunal of Western Australia
South Australia	Small Business Commission SA	Y***	Magistrates Court of South Australia, Civil (Consumer and Business) Division.
Tasmania	Direct negotiation, then Office of Consumer Affairs investigation and negotiation, then Retail Tenancies Code of Practice Monitoring Committee conciliation****	N	Court of competent jurisdiction
Australian Capital Territory	Conflict Resolution Service ACT*****	N	ACT Civil and Administrative Tribunal
Northern Territory	Northern Territory Consumer Affairs / Commissioner of Business Tenancies	N	Local Court or Supreme Court after certificate for unresolved retail tenancy claims

*Under *Retail Leases Act 1994* (NSW), the NSW Small Business Commissioner has been appointed the Registrar of Retail Tenancy Disputes.

**There are limited exceptions in Western Australia where a dispute can be brought directly to the Western Australia State Administrative Tribunal (WASAT). A table of exceptions is available on the WASAT website.
***Following reforms commencing on 1 July 2025, the Small Business Commission's power was expanded to allow the Commission to compel mediation, including in relation to retail shop lease disputes.
**** Under Tasmania's current Code, parties must first try to resolve a dispute by direct negotiation. If unresolved, either party may request the Office of Consumer Affairs to investigate the dispute and attempt to negotiate a mutually acceptable solution. If the dispute remains unresolved, either party may refer the dispute to the Retail Tenancies Code of Practice Monitoring Committee for conciliation. If still unresolved, either party may refer the dispute to a court of competent jurisdiction.
*****The ACAT refers potential dispute resolution cases to the Conflict Resolution Service website.

Jurisdictions use different institutional models for retail tenancies disputes. Some require parties to attempt mediation or another form of alternative dispute resolution before commencing tribunal or court proceedings. Others provide information, referral or nomination functions rather than a dedicated small business commissioner model. These differences may affect the accessibility, cost and sequencing of dispute resolution pathways.

Table A10.2 summarises common dispute-resolution issues and divergences most relevant to consultation.

Table A10.2: Dispute resolution pathways — common issues and key divergences

Issue	Key point for stakeholders
Mediation or conciliation gateway	Most jurisdictions provide a mediation, conciliation or alternative dispute resolution pathway before a dispute proceeds to a tribunal or court. The main differences are whether the gateway is mandatory, how it is triggered, and whether it is delivered through a small business commissioner, equivalent agency, tribunal, court, monitoring committee or other staged pathway.
Small business commissioner or equivalent model	Some jurisdictions use specialist small business bodies to support early resolution. New South Wales, Victoria and Western Australia and South Australia utilise mediation through their Small Business Commissions before tribunal or court proceedings, although their statutory roles and post-ADR pathways differ. Other jurisdictions use different institutional models.
Mandatory alternative dispute resolution	Victoria provides a clear example of a mandatory gateway. A retail tenancy dispute may only proceed before the Tribunal if the Small Business Commission has certified that mediation or another appropriate form of alternative dispute resolution has failed, or is unlikely to resolve the dispute. South Australia also has a strengthened designated ADR process, including Commission powers to require attendance, require documents and certify outcomes.
Post-mediation pathway	Jurisdictions differ in where unresolved disputes go after mediation or conciliation. Some pathways lead to tribunals, some to courts, and some use different combinations of mediation, tribunal and court processes. These differences can affect cost, formality, available remedies and time to resolution.
Scope of access	Access to dispute resolution may extend beyond the landlord and tenant in some circumstances. Victoria's legislation expressly includes certain disputes involving guarantors and indemnifiers who have been called on to perform obligations or indemnify a landlord.

The main practical differences are:

- gateway design: whether mediation, conciliation or other alternative dispute resolution is mandatory, optional or required before tribunal or court proceedings

- institutional model: whether disputes are handled through a small business commissioner, equivalent agency, tribunal, court, monitoring committee or other staged pathway
- post-mediation pathway: which forum applies if early resolution is unsuccessful, including any certification, threshold or jurisdictional requirements
- scope of access: whether related parties, such as guarantors or indemnifiers, can access the dispute-resolution pathway
- cost and process features: how pathway design influences the conduct of matters (for example, fees, formality and procedural steps)
- data availability: whether jurisdictions collect comparable information on dispute volumes, issues, timeframes and outcomes.

A11. Prohibited conduct and enforcement

Retail tenancies legislation in some jurisdictions includes conduct protections directed at leasing relationships, including provisions addressing unconscionable, unfair, harsh or oppressive conduct. These provisions operate alongside economy-wide protections in the Australian Consumer Law, including misleading or deceptive conduct, unconscionable conduct and unfair contract terms. The key issue for consultation is whether retail-leasing-specific conduct protections remain necessary and effective, and whether overlap with economy-wide protections creates uncertainty, duplication or inconsistent pathways for landlords and tenants.

Table A11.1 summarises key conduct, enforcement and regulatory interaction issues relevant to consultation.

Table A11.1: Prohibited conduct and economy-wide protections — common issues and key interactions

Issue	Key point for stakeholders
Retail-leasing-specific conduct protections and ACL overlap	Some jurisdictions include retail-leasing-specific conduct protections, including provisions addressing unconscionable, unfair, harsh or oppressive conduct in leasing relationships. These provisions operate alongside Australian Consumer Law protections, particularly unconscionable conduct. The key issue is whether sector-specific provisions remain necessary and effective, and whether they duplicate, broaden, narrow or usefully tailor economy-wide protections to leasing-specific bargaining dynamics, disclosure issues and dispute pathways.
Misleading or deceptive conduct	*Australian Consumer Law* material identifies section 18 as prohibiting misleading or deceptive conduct, or conduct likely to mislead or deceive, in trade or commerce. It also notes that silence may be misleading where there is a reasonable expectation that a fact, if it exists, will be disclosed. This may overlap with retail tenancies issues involving disclosure statements, pre-lease representations, omissions, lease administration and statements made during negotiations.
Unfair contract terms and standard form leases	The Australian Consumer Law unfair contract terms regime may interact with retail tenancies where leases are standard form consumer or small business contracts, including contracts renewed or varied after 9 November 2023. The key issue is whether standard form leases, renewals or variations raise risks already addressed by

Issue	Key point for stakeholders
	the Australian Consumer Law unfair contract terms regime, including terms dealing with unilateral variation, default and termination, indemnities, cost recovery, abandoned goods, trading hours and other landlord-controlled lease settings.
Sector-specific conduct standards	Some retail tenancies regimes tailor conduct standards to lease-specific circumstances or apply conduct obligations to both landlords and tenants. The practical issue is whether these sector-specific standards create useful, accessible leasing pathways or add complexity alongside general law protections.
Remedies and enforcement pathways	Retail tenancies legislation may provide enforcement pathways through dispute resolution mechanisms, tribunal proceedings, compensation or other statutory remedies. The key divergence is whether parties pursue retail tenancies pathways, Australian Consumer Law pathways, or both, and whether different remedies or forums affect practical outcomes.
Interaction with other state and territory regulatory regimes	Retail tenancies may also interact with other state and territory regimes where a tenant's ability to trade depends on trading-hours rules, liquor licensing, tobacco licensing or tobacco and vape laws. These interactions may affect lease operation, assignment, termination risk or dispute pathways.

The main practical differences are:

- sector-specific conduct protections and ACL overlap: whether retail-leasing-specific conduct provisions remain necessary alongside Australian Consumer Law protections, and whether they usefully tailor those protections to leasing-specific risks.
- misleading or deceptive conduct overlap: whether disclosure, representation and omission issues are best addressed through retail tenancies legislation, Australian Consumer Law pathways, or both.
- unfair contract terms interaction: whether standard form leases, renewals or variations raise issues already addressed by the Australian Consumer Law unfair contract terms regime.
- forum and remedy choice: whether parties face uncertainty about the most appropriate pathway, forum or remedy where protections overlap.
- other regulatory interactions: whether trading-hours, liquor licensing, tobacco licensing or tobacco and vaping closure laws affect lease operation, assignment, termination risk or dispute pathways.