

Commercial and Retail Leases Code of Practice Variation

Instrument No. 118 of 2000

Explanatory Notes

Circulated by Authority of the Minister for Justice and Community Safety

Commercial and Retail Leases Code of Practice Variation

Outline

The Minister may, by disallowable instrument, approve the variations to the Commercial and Retail Leases Code of Practice under paragraph 75(1)(b) of the *Tenancy Tribunal Act 1994*.

A number of changes are made to the Code to clarify its operation as a result of the GST.

Rent increases resulting from the GST

Most lease agreements contain rent review clauses. As such:

- contracts entered into before 8/7/99 will be GST free until the first opportunity for review or 1/7/05 (whichever is the earlier); and
- contracts entered into on or after 8/7/99 will be subject to GST.

Clause 46 of the Code provides that a provision in a lease that allows a change to be made to rent more frequently than once every 12 months is void. There is some concern that this might also void lease clauses included by agreement between lessee and landlord in anticipation of the GST that would permit a landlord to pass on the GST.

In general, there should be no legislative inhibition to a person passing on the impact of the GST to a consumer of goods and services.

Accordingly, Clause 46 of the Code is amended to provide that it does not apply to a provision enabling rental to be adjusted as a result of the GST.

Turnover

The Code permits a rental to be based in whole or part on turnover by the tenant. Clause 48 excludes a number of financial transactions from the concept of turnover (including allowances for losses, refunded deposits, exchanges and returns, the sale of fixtures and fittings, discounts and uncollected credit accounts, etc). Paragraph 48(j) also specifically excludes "the net amount paid or payable on by the tenant on account of any purchase tax, receipt tax or other similar tax imposed at the point of sale or hire of goods or services".

Paragraph 48(j) is amended to remove any doubt that GST is excluded from the calculation of turnover, because failure to amend paragraph 48(j) to exclude GST from the calculation of turnover would result in unearned windfall profits to landlords.

Revenue/Cost Implications

The Bill has no direct revenue or cost implications.

Detail

Clauses 1 and 2 are formal clauses. The variations to the Code will take effect from 1 July 2000.

Clause 3 includes a definition of GST in the Code.

Clause 4 amends clause 46 of the Code to provide that clause 46 does not apply to a provision enabling rental to be adjusted as a result of the GST.

Clause 5 amends paragraph 48(j) of the Code to remove any doubt that GST is excluded from the calculation of turnover.