# Essential Leasing Checklist for Commercial Tenants

**Prepared by P&B Law**

P&B LAW

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| COMMON ISSUES | | TO CHECK | WHAT YOU'RE LOOKING FOR |
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| **Physical space and what's included.** | **1. Condition Report** | Are the Premises safe and structurally sound?<br>☐ Yes<br>☐ No<br>☐ Unknown<br><br>Do you have all of the following?<br>☐ A condition report<br>☐ Photos of the Premises<br>☐ A defect list | Check if a condition report with photographs attached has been or will be prepared.<br><br>Make sure you agree with everything on the condition report.<br><br>Inspect the Premises and check carefully that they are sound, weatherproof and in good order.<br><br>Take your own photos if necessary and write down any repairs you need the Landlord to do to make the Premises suitable for occupation prior to executing the Lease.<br><br>Make sure that any works which are required by the Landlord are covered in the Lease. |
| | **2. Plant and Equipment** | Are all services, plant and equipment in good order and do they meet your needs?<br>☐ Yes<br>☐ No<br>☐ Unknown | Inspect all the plant and equipment and check it is suitable for your business needs.<br><br>Make sure it is also included in the Lease.<br><br>Ask for a maintenance report to confirm it has been appropriately maintained.<br><br>Note down any repairs or replacements you will need to run your business.<br><br>Under the Retail Leases Act, the Landlord generally only needs to maintain these in the condition they were in at the start of the Lease, so it is essential to be clear about their condition and suitability before you enter the Lease.<br><br>We'll also clarify who is responsible for maintaining these during the Lease. |
| | **3. Access / traffic / competition** | Have you checked the following?<br>☐ Traffic<br>☐ Access<br>☐ Parking<br>☐ Competition | Also make sure you also look at:<br>• Foot traffic if you are expecting passing trade.<br>• Access and parking for customers and staff.<br>• Neighbouring businesses – are they complementary or will they compete with your business? |

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| **Details of the lease** | **4. Type of premises** | What type of premises are you leasing?<br>☐ Retail<br>☐ Non-Retail | This makes a difference because Victoria's *Retail Leases Act 2003* applies to Premises which are predominantly used for the retail of goods or services to the end consumer.<br><br>*The Retail Leases Act 2003* provides extra protections and rights for the Tenant, including limiting the recovery of Land Tax as an Outgoing.<br><br>It's not always obvious whether a Premises falls under the definition of retail premises – so this is something we'll work with you to help determine prior to the execution of the Lease. |
| | **5. Lettable area** | Do you know what part of the area you have access to?<br>☐ Yes<br>☐ No<br>☐ Unknown<br><br>Do you have a detailed plan showing lettable area?<br>☐ Yes<br>☐ No<br>☐ Unknown | Make sure an up-to-date plan is attached to the Lease that accurately identifies the area you will have access to.<br><br>Note any parts of the building you're expecting to access so you can run your business. Also whether you need exclusive or shared access.<br><br>We will check to make sure these are included in the **lettable area** under the Lease.<br><br>That might include:<br>• toilets;<br>• kitchen;<br>• reception areas;<br>• parking;<br>• storage; and / or<br>• delivery access. |
| **Use, Planning and permissions** | **6. Permitted use clause** | Does the permitted use clause cover the type of business you want to run?<br>☐ Yes<br>☐ No<br>☐ Unknown | Check the **Permitted Use** clause to check how you are allowed to use the Premises and that it allows you to run your business as planned |
| | **7. Planning permits** | Do you need any other planning permits to operate your business?<br>☐ Yes<br>☐ No<br>☐ Unknown | Consider everything you'll need to be able to do to run your business so we can check whether it's allowed under the zoning, and whether any other permits are required. For example, we'll ask about whether you need to:<br>• prepare food;<br>• serve and / or sale of alcohol; or<br>• put up signage. |

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| | **8. Fit-out plans** | Have you considered what alterations to the fit-out you will need to run your business?<br>☐ Yes<br>☐ No<br>☐ Unknown | Consider how much work needs to be done to fit the Premises out.<br><br>If you are planning significant alterations, we recommend getting the Landlord's agreement up front.<br><br>You may also need planning permission for certain structural alterations.<br><br>The amount of work the Landlord needs to do may affect the start date of the Lease. |
| | **9. Working on the fit-out** | Are you considering doing any of the fit-out work yourself?<br>☐ Yes<br>☐ No<br>☐ Unknown | If you prefer to do more of the work yourself, you may be able to negotiate early access for these works.<br><br>In that case you'd also need to arrange appropriate insurances and the terms for early access. |
| **Negotiating and signing the Lease** | **10. Your business entity** | How would you describe your business?<br>☐ Sole trader<br>☐ Company<br>☐ Partnership<br>☐ Trust | The entity that enters into the Lease is legally responsible for complying with its terms and paying all amounts due under the Lease. Not all business structures can hold a lease in the same way, so it is important to ensure the correct entity is named from the outset.<br><br>If you enter into the Lease as an individual (sole trader), you will generally be personally liable for the Tenant's obligations. This means that if the business is unable to meet its obligations under the Lease, the Landlord may pursue you personally for any amounts owing.<br><br>Chosing the right entity can have important legal, tax and asset protection implications, so it is worth considering this carefully before signing the Lease. |
| | **11. Heads of agreement** | Which of the following is the Landlord asking for?<br>☐ Heads of agreement<br>☐ Deposit | Landlords may ask you to sign a heads of agreement document and pay a deposit to secure the Lease.<br><br>This may allow the Landlord to claim their costs out of your deposit if you withdraw from negotiations and the Landlord is still willing and able to go ahead. |

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| **Financial and business documents to prepare** | **12. Financial due diligence** | Do you know what you need to provide as evidence of your capacity to pay? Check the relevant documents below.<br>☐ Statement of assets and liabilities<br>☐ Business plans | Landlords can ask for evidence of your capacity to pay the rent and other costs.<br><br>That could include business plans and financial documents.<br><br>Financial documents signed off by an accountant and a considered business plan will help provide reassurance. |
| | **13. Security and guarantees** | You will also need to be prepared to provide financial security. Check the relevant documents below.<br>☐ Personal guarantee<br>☐ Security deposit<br>☐ Title deeds | You can also expect to be asked for a guarantee or security.<br><br>If you are using property as security, the Landlord can check that the property is in your name.<br><br>Also be aware that you cannot use superannuation as security for entering a lease. |
| **Costs – ongoing** | **14. Outgoings** | What ongoing costs will you be responsible for?<br>☐ Rates<br>☐ Insurances<br>☐ Common area costs<br>☐ Utilities<br>☐ Ongoing maintenance<br>☐ Compliance costs<br>☐ Owners Corporation Levy | We'll try and help make clear what costs you are liable for as Tenant in respect of the Premises, in addition to the obligation to pay rent. |
| **Length of lease and possible disruptions** | **15. Term and Options** | Do you know how long the Lease is for?<br>☐ Yes<br>☐ No<br>☐ Unknown<br><br>Do you have Options to Renew?<br>☐ Yes<br>☐ No<br>☐ Unknown | Have you thought about how long you're planning to stay in these Premises?<br><br>We always advise negotiating as many options to renew as possible as this gives you more choices. It also adds value to your business in the event you look to sell it in the future. |
| | **16. Termination clause** | Would you agree to terminate the Lease early?<br>☐ Yes<br>☐ No<br>☐ Unknown | We always check if the Lease includes **an early termination clause**. This could mean the Landlord can terminate the Lease early, for example, if the site is scheduled for redevelopment.<br><br>You may decide you are prepared to agree to this in exchange for rent or other conditions. But consider whether you would be prepared to move on six (6) months' notice. |

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| | **17. Refurbishment clause** | Are any refurbishments planned for the building?<br>☐ Yes<br>☐ No<br>☐ Unknown | Another clause to watch out for is a **refurbishment clause**. If the Landlord is planning major refurbishment of the building, this could limit access to your space for you and your customers. |
| | **18. Make good provisions** | Are you clear what condition you must leave the premises in at the end of the Lease?<br>☐ Yes<br>☐ No<br>☐ Unknown | We'll also check the **make-good provisions** and make sure you understand and agree what is expected of you – for example, whether you need to remove fittings, repaint the Premises, etc. |
| | **19. Property title** | Is there a mortgage or does anyone else have an interest in the property?<br>☐ Yes<br>☐ No<br>☐ Unknown | It's important to check the **title to the property**, for example, whether the Landlord has a mortgage on the property.<br>If so, we'll recommend you get the mortgagee's (lender's) consent to the Lease.<br>This protects you in case the Landlord defaults on the mortgage as it means the property can only be sold subject to your Lease. |