

# COMMERCIAL LEASE LAW OPTIONS PAPER

The Leasing Working Party of the Property Law Reform Alliance has reviewed laws and procedures Australia-wide and developed a leading practice model for leasing.

The model was developed by examining current practices and identifying preferred approaches on the basis of effectiveness and national consistency.

This was done by drafting three matrices, which examined stamp duties, registration, and lease legislation as they are applied in each state and territory.

The Property Law Reform Alliance asked the Working Party to focus on commercial leases, so there is no discussion of retail leasing either in this options paper or in the matrices.

In its review, the Working Party was guided by the following principles:

- the need for national uniformity;
- minimisation of cost; and
- simplicity and certainty for all stakeholders.

The matrices are attached as appendices, and some of the Working Party's thinking is described below.

## Matrix 1: Stamp Duty

The Working Group agreed that stamp duty should be abolished.

The following recommendations are therefore proposed only for those jurisdictions that have not abolished stamp duty from commercial leases.

- **Definition of lease** – No preference.

The majority of jurisdictions do not define the term 'lease'. It is a term that is widely known and the Working Party suggested that no further definitions were required.

- **How is duty charged?** – Should only be charged on the base rent on a GST-exclusive basis

Where stamp duty on leases is retained, it should be charged on the base rent only to minimise costs for landlords and tenants.

- **Rate of duty** – No preference  
The Working Party had no view on the rate other than to highlight the jurisdictions that have already abolished duty.
- **Exemption** – No duty if the annual cost is less than \$20,000.00  
Again, this is instead of our preference for abolition of duty on leases.
- **Who is liable to pay the duty?** – The Lessee  
The Working Party recommended that the lessee should pay any duty as it is a cost for the lessee taking on the lease.
- **Time for payment of duty** – Within 90 days of full execution  
This is sufficient time to pay a stamp duty.
- **Unascertainable lease costs** – These should not be included in stamp duty calculations.

## Matrix 2: Lease Registration

It should be noted that one member of the Working Party argued that registration was unnecessary, and his dissenting view was noted.

- **Definition of registration under the Act** – A lease is registered when the Registrar-General records it in the Register.  
The majority of the Working Party members agreed that leases should be registered notwithstanding different practices across the states.  
This is because registration provides certainty as well as a means for interested parties to determine the status of a property.
- **Is the lease required to be registered under the Act?**  
The majority of the Working Party members agreed that:
  - short term leases (of 12 months or less) should be exempt from the need for registration;
  - leases of between 12 months and three years may be registered at the request of either the lessor or lessee; while
  - all leases except short term leases of 12 months or less should be registered.
- **What is the prescribed form of the document?** – There should be a standardised form for the front page only.  
This delivers greater certainty and convenience of use. A standardised form for the front page will achieve this.
- **What other administrative requirements are there (eg paper weight/page numbering)?** – Administrative requirements should be minimised and be consistent across all jurisdictions and possibly only limited to:
  - page numbering; and

- a requirement for the parties to initial the first and last pages and complete the execution clause.

There is no reason from an administrative point of view why requirements should not be consistent across jurisdictions with a minimum burden on stakeholders.

- **Is there a timetable for registration under legislation?** – There should be no timetable for registration.
- **What is the cost of registration?** – \$50 (including GST) is appropriate.
- **What is the consequence of non-registration?**

An unregistered lease for a term in excess of 12 months does not achieve indefeasibility and the interest could be defeated by a subsequent registered interest.

Although it is not recommended that there be a period to register a document, failure to register could result in defeasibility of the title.

Leases of 12 months or less automatically have indefeasibility of title.

- **Is the consent of mortgagees required? In what form?**

Mortgagee's consent should be confirmed by signing the front page of the lease or alternatively upon registration or production of the Certificate of Title, which would be deemed to be consent.

From the administrative point of view there seems to be little reason to have several different ways of obtaining mortgagee consent.

### Matrix 3: Lease Law

- **What notice procedures are required for a landlord seeking to enforce a right to forfeit for breach of a covenant under a lease?** – Landlord must give the tenant notice specifying the breach, requiring the tenant to remedy the breach (if the breach is capable of remedy), and giving notice of any compensation the tenant may be required to pay.

The Working Group suggested that written notification of any breach is required to ensure that there is an appropriate opportunity for a tenant to remedy the situation.

- **Does the court have the power to protect an under-lessee upon the forfeiture of the superior lease?** – Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.

Sub-lessees should not be adversely affected by the forfeiture of a superior lease, but should not be protected beyond their lease agreement.

- **In order to register a transfer, what must be produced with it?** – The following must be produced:

- Transfer form;
- Duplicate of original Certificate of Title;
- Notice of Sale; and
- Fee.

These requirements are relatively standard across all jurisdictions.

- **Is duplicate title required to register the lease?** – Yes.

This is a standard requirement across all jurisdictions.

- **Is duplicate title required to register variations on a lease?** – No – this simplifies the process.

The Working Group suggested that this was unnecessary.

- **Is duplicate title required to register the sublease?** – No – this simplifies the process.

The Working Group suggested that this was unnecessary.

- **Must an agreement for lease be in writing?** – Yes – all agreements for leases should be in writing.

This was seen as a sensible legal approach to protect lessor and lessee interests.

- **Will a (reversionary) lease be void if it is for a term of more than 21 years (or other such long term)?** – No.

The Working Group suggested that there was no need to limit the timeframe for such leases.

- **In what circumstances will a lease be enlarged into a fee simple?** – None.

The Working Group agreed that this 300 year leases are so rare that this provision is unnecessary.

- **Is a registered assignee from the landlord bound to observe covenants in an unregistered lease?** – No, this only applies for registered leases – refer to the Registration matrix.
- **Can a landlord recover land tax from a tenant?** – As a matter of principle, a landlord should be able to claim land tax from a tenant.  
Landlords should be able to pass operational costs down to tenants as occurs with any other business.
- **Can a landlord recover outgoings from a tenant?** – For commercial/retail properties outgoings should be recoverable.  
Landlords should be able to pass operational costs down to tenants as occurs with any other business.
- **Can a landlord recover from a tenant the legal costs that the landlord has incurred?** – Yes.  
Landlords should be able to pass operational costs down to tenants as occurs with any other business.
- **In what circumstances will a court grant relief for loss of an option?** – Where a term of a lease purports to make the grant of an option conditional on the tenant's performance of some obligation, the landlord must give the tenant notice that the tenant is in breach of that obligation. If no notice is given, the option will not be lost.  
This provision provides some protection to an existing lessee in a commercial building.
- **Is it possible to lease to yourself?** – Yes, A can lease to A.  
There should be no restrictions on a company about how it wishes to occupy space, whether in its own property or someone else's.
- **Is there a limit on the damages that a landlord can recover for breach of a tenant's covenant to repair?** – Yes, to the amount by which the breach diminishes the value of the reversion.  
This provision gives reasonable rights to a landlord to recoup losses caused by a breach and through lost time rectifying it.
- **Can a landlord assign his/her right to receive rent separately from the land over which the lease exists?** – Yes. The landlord's rights under the lease attach to the reversion, despite any severance.  
This provision protects a landlord's interest in a lease agreement.
- **When a registered lease expires by effluxion of time, is there anything required to remove it as an encumbrance on the title?** – The encumbrance either falls from the title the next time there is a dealing or is automatically removed from the title after ninety days has passed, whichever comes first. All documentation relevant to the expired lease (such as transfers or variations) is removed simultaneously.  
This simplifies the leasing process and removes the need to seek court approval to remove an encumbrance.

## **The Property Law Reform Alliance**

The Property Law Reform Alliance is a coalition of legal and industry associations committed to bring about uniformity and the reform of property law and procedures in Australia.

The purpose of such a goal is to ensure efficiency and cost-effectiveness for all stakeholders in property law transactions.

The Alliance aims to achieve this outcome through discussions with government and the development of a model Real Property Act, which will establish leading practices for possible adoption by States and Territories.

Members of the Alliance include:

- Australian College of Community Association Lawyers Inc;
- Australian Institute of Conveyancers;
- Australian Institute of Quantity Surveyors;
- Australian Property Institute;
- Australian Property Law Group of the Law Council of Australia;
- Australian Spatial Information Business Association;
- Facility Management Association;
- Law Institute of Victoria;
- Law Society of the Australian Capital Territory;
- Law Society of New South Wales;
- Law Society of the Northern Territory;
- Law Society of South Australia;
- Master Builders Australia;
- Property Council of Australia (including the Shopping Centre Council of Australia) ;
- Real Estate Institute of Australia;
- Royal Institute of Chartered Surveyors, Oceania; and
- Urban Development Institute of Australia.

## Appendix 1: Stamp Duty on Leases

The Leasing Working Party believes as a matter of principle that stamp duty on leases should be abolished. However, in the absence of such a move, the following is considered to be the best approach:

Issue	Preferred	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Definition of lease	None expressed	S.133 – lease, AFL, licence franchise	S.164A - lease, agreement to lease, licence, franchise agreement	S.4 Tax Admin Act — lease, AFL, franchise					
How is duty charged?	Should only be charged on the base rent on a GST-exclusive basis	S.135/136 – cost or value of lease – rent, outgoings, premiums, rates	S.165 - cost of the lease: rent, rates and taxes, improvements made by tenant, royalties	Sch 1 Item 12 – rent					
Rate of duty	None expressed	Determination 2003 No.1 Disallowable Instrument No. 170 – 50c per \$100 or \$20 whichever is greater	S170 - 35 cents per \$100 (or remaining part of \$100) of the total cost of the lease To be abolished 1.01.08	Sch 1 Item 12 – 50c/\$100	Abolished 01.01.06	No duty after 01.07.04	Abolished 1.07.02	Abolished 1.07.02	Abolished from 1.07.04 unless a premium then conveyancing rates
Exemption	No duty if annual cost less than \$20,000.00	S.150 – no duty if annual cost less than \$10,000.00	S.179 – no duty if annual cost less than \$20,000.00	Sch 1 Item 12 – no duty if annual cost less than \$30,000.00					
Who is liable to pay the duty?	Lessee	S.138 – Lessor	S.168 - lessee	S.50 TAA – lessee					
Time for payment of duty	Within 90 days of full execution	S.139 – 90 days after first execution	S.169 - within 3 months of first execution	S.9 TAA – within 60 days					
Unascertainable lease costs	Should not be included in stamp duty calculations	S.145 – interest and CPI. Turnover rent/interim stamping	S.172 - interim stamping. CPI	S.55 TAA					

## Appendix 2: Registration of Leases

It was noted that some jurisdictions prefer there not to be any registration. While that has been kept in mind, the following table has been drafted to provide recommendations for registration practices.

Issue	Preferred	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Definition of registration under the Act	A lease is registered when the Registrar-General records it in the Register in a manner of his choosing.	N/A – Leases are not required to be registered in the ACT.	Sec 36(6A) A dealing is registered when the Registrar-General has made such recording in the Register with respect to the dealing as the Registrar-General thinks fit.	Section 4 <i>Land Title Act</i> (NT), "Register" in relation to a lot, interest, instrument or thing, means record the particulars of the thing in the land register."	"Registered" "means the making or recording by proper authority in the appropriate register (if any) or other book, instrument or document of such entries, endorsements, particulars or other information as may be requisite for recording a dealing or other transaction with respect to land" – as defined in the <i>Property Law Act</i> 1974.	'Registration' not defined in the <i>Real Property Act 1886</i> , but 'registered proprietor' means any person appearing by the Registrar Book, or by any registered instrument of title to be the proprietor of land.	Registered under the <i>Land Titles Act 1980 (LTA)</i> or prior repealed legislation.	Registered under the <i>Transfer of Land Act 1958 (TLA)</i> or prior repealed legislation.	Section 7 <i>Property Law Act</i> , "Registered or duly registered means registered in the manner provided by the <i>Transfer of Lands Act 1893</i> where the land affected is under that Act, and otherwise means registered in the manner provided by the <i>Registration of Deeds Act 1856</i> .
Is the lease required to be registered under the Act (Yes/No)	All leases except short-term leases. Short term leases (of 12 months or less) should be exempted from registration. Short term leases of between 12 months and three years may be registered at the request of either the lessor or lessee. Any lease with a term in excess of three years must be registered.	s.82 of the <i>Land Titles Act 1925</i> 'enables' registration only. Registration is not required by law, however is a standard Westfield requirement.	Leases are required to be registered unless: (i) the term for which the tenancy was created does not exceed three years, and (ii) in the case of such an agreement or option, the additional term for which it provides would not, when added to the original term, exceed three years." [Section 42 of the <i>Real</i>	Similar to the QLD position. Section 65 of the <i>Land Title Act</i> provides that a lot or part of a lot may be leased by registering an instrument of lease for the lot or part of the lot. However, s 73 headed 'Validity of an Unregistered Lease' states that despite s 184, but subject to ss 188 & 189, an unregistered lease of a lot operates as a	Section 71 <i>Land Title Act</i> 1994 states "An unregistered lease for a lot or part of a lot is not invalid merely because it is unregistered." However, see ss 184 and 185 of the same Act. A lease under 3 years cannot be registered. If the term of the lease exceeds 3 years, registration will achieve indefeasibility	Section 116 of the <i>Real Property Act</i> 1886 exempts short term leases from the requirement for registration. A short term lease is a lease for a term of 12 months or less. A lease for a term exceeding 12 months must be registered to achieve indefeasibility - see section 69(h).	No. Note: leases not exceeding 3 years cannot be registered: section 63 of the LTA.	No. Note: leases not exceeding 3 years cannot be registered: section 66 of the TLA. In any case, practice is not to register leases in Victoria but to rely upon the indefeasibility provisions of the TLA: section 42(2)(e).	The commentary suggests that a lease for less than 3 years cannot be registered, and its validity depends on the provisions of the Torrens statute protecting unregistered short term leases. The commentary also seems to suggest that in WA, a lease between 3 and 5 years <b>may</b> be registered.

Issue	Preferred	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
			<p><i>Property Act</i>] Old system leases are in a different category.</p>	<p>lease at law between the parties.  Section 184 states that an instrument does not transfer or create an interest in a lot at law until it is registered.  Basically, the effect of s 73 when read together with ss 184 and 188 and section 189 is that a short lease, which is defined as a lease under 3 years is not required to be registered, but if a lease exceeds 3 years it must be registered to achieve indefeasibility  Registration means that a registered proprietor holds the interest subject to registered interests affecting the lot but free from all other interests, and in particular, the registered proprietor is not affected by actual or constructive notice of an unregistered interest affecting the lot: s 188.</p>					

<p>What is the prescribed form of the document?</p>	<p>There should be a standardised form for the front page only.</p>		<p>LPI front page required. Apart from that there are no formalities other than keeping prescribed margins. This is a very minor matter</p>	<p>Section 7 headed 'Form of Instrument' states that an instrument lodged by a person or issued by the Registrar-General must be in the appropriate form.</p> <p>Under s 4, 'Appropriate form' means the form that is the approved form for the instrument; or if a form is approved or prescribed for the instrument under another Act - that form.</p> <p>The Registrar-General prescribes the appropriate forms pursuant to a Direction under the <i>Land Title Act</i> - The prescribed form for a lease is a Form 31 (Lease) and a Form 32 (Sub-lease).</p>	<p>Queensland Land Registry front page required. Need to insert following details:</p> <ul style="list-style-type: none"> <li>- Lessor, Lot no. county, parish, title and reference; lessee; interest being leased;</li> <li>description of premises being leased;</li> <li>term of lease;</li> <li>rental and/or consideration.</li> </ul> <p>Requirements under <i>Land Title Regulation 2005</i> s 3(2).</p>	<p>Under seal or in accordance with section 127 of the <i>Corporations Act 2001</i> for companies. The execution by individuals or attorneys must be in accordance with the Lands Titles Office requirements.</p> <p>Section 267 <i>Real Property Act</i> - witness to execution by individuals or attorneys must complete their full name, address and telephone no.</p>	<p>Approved form of cover sheet and annexure pages.</p>	<p>Approved form of cover sheet and annexure pages.</p>	<p>Regulation 3 of the <i>Transfer of Land Regulation 1997</i>:</p> <p>(1) Each document presented for registration:</p> <ul style="list-style-type: none"> <li>(a) is to be prepared on paper of a type and quality approved by the Registrar;</li> <li>(b) is to be clearly and legibly handwritten;</li> <li>(c) is to have the signature of any party to the document &amp; that of any witness to such signature written in ink;</li> <li>(d) consisting of more than 1 page is to be bound in a manner approved by the Registrar;</li> <li>(e) on an approved form is to show the Registrars approval no. for the form at the top of the first page.</li> </ul>
<p>What other administrative requirements are there (eg paper weight/page numbering)</p>	<p>Administrative requirements should be minimised and be consistent across all jurisdictions, possibly limited just to:</p> <ul style="list-style-type: none"> <li>• page numbering; and</li> <li>• a requirement</li> </ul>			<p>Form 31 (Lease) and Form 32 (Sublease). Forms 31 &amp; 32 are a 2 page panel form which must be placed at the front to the provisions of the lease. There are also stringent execution requirements for all Land Titles</p>			<p>Each annexure page must show first title reference, page number and total number of pages. Each annexure page must be signed by parties to dealings and witnesses.</p>	<p>Each annexure page must show the date of the document, the page number and total number of pages. Each annexure page must be signed by parties to dealings and witnesses. All pages must be stapled in the top left corner.</p>	<p>See above.</p>

	for the parties to initial the first and last pages and complete the execution clause.			forms (eg appropriately qualified witnessing requirements) and where the leased premises forms part of land only, the lease must include a plan depicting the leased area. The plan must clearly indicate the bearings and distances for each boundary of the leased area and connection details to the title boundary.					
Is there a timetable for registration under legislation?	There should be no timetable for registration.		None	<p>If the lease is a "retail shop lease" as defined by the <i>Business Tenancies (Fair Dealings) Act</i>, there is a timeframe in which a landlord must attend to registration. However, this is a statutory imposed contractual obligation on the landlord only for the purposes of expediency.</p> <p>There is otherwise no prescribed timeframe in which a lease must be registered (except that a lease cannot be registered if it has already expired).</p>	No	No time limit for registering lease, but an extension of lease must be lodged for registration within 2 months of the expiry of the lease – <i>Real Property Act</i> , section 153(2).	No.	No.	None, but note the effect of s 149 of the <i>Transfer of Land Act 1893</i> which states that if within 48 hours a properly perfected instrument (which is defined to include a Lease) is duly lodged for registration, it will have priority over any other instrument lodged after this time.

<p>What is the consequence of non-registration?</p>	<p>A lease of under 12 months can claim indefeasibility of title. A lease for a term in excess of 12 months that is not registered does not achieve indefeasibility, as the interest could be defeated by a subsequent registered interest.</p>		<p>Operates as an Agreement for Lease. Lessee's rights can be defeated by a sale of the freehold.</p>	<p>Lease still operates as a lease at law, but if it is not registered, it does not achieve indefeasibility See sections 73, 184, 187 and 189 of the Land Title Act.</p>	<p>Section 181 <i>Land Title Act 1994</i> - An instrument does not transfer or create an interest in a lot at law until it is registered. See section 184 - Lease does not achieve indefeasibility and can be defeated by subsequent registered interests. However, note s 185(1)(b) - provides an exception to indefeasibility in that the interest of the holder of a registered interest is not paramount over a 'short lease' - an unregistered lease for a term of 3 years.</p>	<p>Note s 69 <i>Real Property Act</i> - A lease for a term exceeding 12 months must be registered to gain the benefit of protection against subsequent registered dealings and all unregistered dealings. Lessee does not achieve indefeasibility as interest can be defeated by subsequent registered interests. See <i>Real Property Act</i> s 70, which provides that "title of the registered proprietor of land shall prevail" regardless of the existence in any person of "any estate or interest whatever..."</p>	<p>Lease for a term exceeding 3 years takes effect as an equitable lease only.</p>	<p>A tenant in possession has statutory protection under the TLA.</p>	<p>Section 58 of the <i>Transfer of Land Act</i> states that an instrument is not effectual to pass any interest in land until registered. Still operates as a lease at law, but the lessee does not achieve indefeasibility as interest can be defeated by subsequent registered interests.</p>
<p>Is the consent of mortgagees required? In what form?</p>	<p>The consent of the mortgagee to a lease must be confirmed by signing on the front page of the lease. Alternatively production of a certificate of title by the mortgagee to enable registration of the lease is deemed mortgagee consent.</p>		<p>No form required. From a practical point of view consent is necessary as you need the mortgagee to lodge the title at LPI.</p>	<p>Yes. Pursuant to s 67, a lease or amendment of a lease executed after registration of a mortgage of a lot is valid against the mortgagee only if the mortgagee consents to the lease or amendment before its registration. This implies that the mortgagee's consent is</p>		<p>Yes.</p>	<p>Yes. Usually endorsed on the lease.</p>	<p>Yes. Usually endorsed on the lease.</p>	

				<p>required if a lease is to be valid against the mortgagee. It suggests that the lease can still be registered if mortgagee consent is not obtained, only that it cannot be enforced by the lessee.</p> <p>As for the form, consent of the mortgagee is to be endorsed on the second page of the panel forms in the space provided under the heading "Consent of Interest Holders". The interest holders are subject to the same execution requirements.</p>					
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## Appendix 3: Lease Law Matrix

	Preference	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
In what circumstances should a lease be registered?	Refer to the Registration Matrix	s82 and s85 <i>Land Titles Act 1925</i> Refer to Registration Matrix	s42 <i>Real Property Act 1900</i> Refer to Registration Matrix	s188, s189(1)(b) and s4 <i>Land Title Act 2000</i> Refer to Registration Matrix	s184, s185(1)(b) and s4 <i>Land Title Act 1994</i> Refer to Registration Matrix	s119 <i>Real Property Act 1886</i> Refer to Registration Matrix	s64(2) <i>Land Titles Act 1980</i> Refer to Registration Matrix	s 42(2)(e), s66(1) <i>Transfer of Land Act 1958</i> Refer to Registration Matrix	s91 <i>Transfer of Land Act 1893</i> Refer to Registration Matrix
What notice procedures are required for a landlord seeking to enforce a right to forfeit for breach of a covenant under a lease?	Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	s122 , s123 <i>Leases (Commercial and Retail) Act 2001</i> (ACT) Landlord must give 14 days written notice to the tenant. The tenant may either consent to the termination in writing or contest the termination by application to the Magistrate's court.	s129 <i>Conveyancing Act 1919</i> (NSW) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	s137 and s138 <i>Law of Property Act 2000</i> (NT) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	s124 <i>Property Law Act 1974</i> (QLD) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	ss 9,10 and 11 <i>Landlord and Tenant Act 1936</i> (SA) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	s15 <i>Conveyancing and Law of Property Act 1884</i> (TAS) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	s146 <i>Property Law Act 1958</i> (VIC) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.	s81 <i>Property Law Act 1969</i> (WA) Landlord must give the tenant notice specifying the breach; requiring the tenant to remedy the breach (if the breach is capable of remedy) and giving notice of any compensation the tenant may be required to pay.
Does the court have the power to protect an under-lessee upon the forfeiture of the superior lease?	Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.	s122 , s123 and dictionary <i>Leases (Commercial and Retail) Act 2001</i> (ACT) Yes, Magistrate's Court may refuse to confirm the termination of the lease.	s130 <i>Conveyancing Act 1919</i> (NSW) Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.	s136 and s139 <i>Law of Property Act 2000</i> (NT) Yes, may make orders staying proceedings or vesting the property in the under-lessee, but only to the extent of the sub-lease.	s125 <i>Property Law Act 1974</i> (QLD) Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.	ss 9,10, 11 and 12 <i>Landlord and Tenant Act 1936</i> (SA) Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.	s15(6) <i>Conveyancing and Law of Property Act 1884</i> (TAS) No, protection does not extend to an under-lessee.	s146(4) <i>Property Law Act 1958</i> (VIC) Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.	s81(4) <i>Property Law Act 1969</i> (WA) Yes, wide discretion but can only grant an interest in land to the extent of the sub-lease.
In order to register a transfer, what must be produced with it? The following must be produced:	<ul style="list-style-type: none"> <li>▪ Transfer form;</li> <li>▪ Duplicate of original Certificate of Title;</li> <li>▪ Notice of Sale; and</li> <li>▪ Fee</li> </ul>	<i>Land Titles Act 1925</i> <ul style="list-style-type: none"> <li>▪ Transfer form, marked by ACT Revenue for stamp duty;</li> <li>▪ Duplicate original</li> </ul>	31B <i>Real Property Act 1900</i> <ul style="list-style-type: none"> <li>▪ A Transfer form, marked by the Office of State Revenue for stamp duty;</li> <li>▪ A Notice of</li> </ul>	s61 <i>Land Title Act 2000</i> <ul style="list-style-type: none"> <li>▪ Transfer of Lot form, endorsed with stamp duty;</li> <li>▪ A duplicate original Certificate of</li> </ul>	<i>Land Title Act 1994</i> <ul style="list-style-type: none"> <li>▪ Property Transfer form (form 24), endorsed with stamp duty;</li> <li>▪ Transfer</li> </ul>	<i>Real Property Act 1886</i> <ul style="list-style-type: none"> <li>▪ Transfer of land form, endorsed with stamp duty payment; and</li> <li>▪ Duplicate</li> </ul>	<i>Land Titles Act 1980</i> <ul style="list-style-type: none"> <li>▪ transfer form, endorsed with stamp duty payment;</li> <li>▪ the duplicate original</li> </ul>	s 45 <i>Transfer of Land Act 1958</i> . <ul style="list-style-type: none"> <li>▪ Original Certificate of Title (Title Search);</li> <li>▪ Transfer of land form, endorsed with stamp</li> </ul>	<i>Transfer of Land Act 1893</i> <ul style="list-style-type: none"> <li>▪ Original duplicate Certificate of Title;</li> <li>▪ Transfer of land form, endorsed with stamp</li> </ul>

	Preference	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
		<ul style="list-style-type: none"> <li>▪ Certificate of Title; and</li> <li>▪ Fee of \$170</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sale;</li> <li>▪ A duplicate original Certificate of Title; and</li> <li>▪ fee of \$79</li> </ul>	<ul style="list-style-type: none"> <li>▪ Title, if one has been issued (most of the NT is electronically registered); and</li> <li>▪ A swimming pool notice, if there is a swimming pool on the land.</li> </ul>	<ul style="list-style-type: none"> <li>▪ form (form 1);</li> <li>▪ Original duplicate Certificate of Title only if there is one on issue - approximately 40% of Queensland title has been converted to electronic and no titles are issued; and</li> <li>▪ Fee, of \$111.30 or more (amount assessed on a rising scale depending on consideration paid).</li> </ul>	<ul style="list-style-type: none"> <li>▪ original Certificate of Title (until electronic lodgement applies generally); and</li> <li>▪ Fee, of \$104 or more (amount assessed on a rising scale depending on consideration paid)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Certificate of Title (or a production slip in the case of some financial institutions);</li> <li>▪ the prescribed fee (\$131);</li> <li>▪ a completed Notice of Sale form; and</li> <li>▪ a completed lodgement form.</li> </ul>	<ul style="list-style-type: none"> <li>▪ duty payment; and</li> <li>▪ Fee, of \$94.60 or more (amount assessed on a rising scale depending on consideration paid).</li> </ul>	<ul style="list-style-type: none"> <li>▪ duty payment; and</li> <li>▪ Fee, starts at \$82 and is on a rising scale.</li> </ul>
<p>Is duplicate title required to register the lease?</p> <p><i>(Note: 'duplicate' title is the copy of the title held by the registered proprietor, that is the 'original duplicate')</i></p>	Yes	<p><i>Land Titles Act 1925</i></p> <p>Yes</p>	<p><i>31B Real Property Act 1900</i></p> <p>Yes</p>	<p><i>s61 Land Title Act 2000</i></p> <p>Yes, if a Certificate of Title has been issued. If not produced, the registration will become electronic.</p>	<p><i>Land Title Act 1994</i></p> <p>Yes, if a Certificate of Title has been issued.</p>	<p><i>Real Property Act 1886</i></p> <p>Yes</p>	<p><i>Land Titles Act 1980</i></p> <p>Yes</p>	<p><i>s 45 Transfer of Land Act 1958</i></p> <p>Yes</p>	<p><i>Transfer of Land Act 1893</i></p> <p>Yes</p>
<p>Is duplicate title required to register the variation on lease?</p> <p><i>(Note: 'duplicate' title is the copy of the title held by the registered proprietor, that is the 'original duplicate')</i></p>	No – this simplifies the process	<p><i>Land Titles Act 1925</i></p> <p>Yes</p>	<p><i>31B Real Property Act 1900</i></p> <p>No</p>	<p><i>s61 Land Title Act 2000</i></p> <p>Yes, if a Certificate of Title has been issued. If not produced, the registration will become electronic.</p>	<p><i>Land Title Act 1994</i></p> <p>No</p>	<p><i>Real Property Act 1886</i></p> <p>No</p>	<p><i>Land Titles Act 1980</i></p> <p>Yes</p>	<p><i>s 45 Transfer of Land Act 1958</i></p> <p>Yes</p>	<p><i>Transfer of Land Act 1893</i></p> <p>No</p>

	Preference	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<p>Is duplicate title required to register the sublease?</p> <p>(Note: 'duplicate' title is the copy of the title held by the registered proprietor, that is the "original duplicate")</p>	No – this simplifies the process	<p><i>Land Titles Act 1925</i></p> <p>Yes</p>	<p>31B <i>Real Property Act 1900</i></p> <p>No</p>	<p>s61 <i>Land Title Act 2000</i></p> <p>Yes, if a Certificate of Title has been issued. If it is not produced, the registration will become electronic.</p>	<p><i>Land Title Act 1994</i></p> <p>No</p>	<p><i>Real Property Act 1886</i></p> <p>Yes</p>	<p><i>Land Titles Act 1980</i></p> <p>Yes</p>	<p>s 45 <i>Transfer of Land Act 1958</i></p> <p>? Registrar's lodging book does not specify.</p>	<p><i>Transfer of Land Act 1893</i></p> <p>No</p>
<p>Must an agreement for lease be in writing?</p> <p>(Note: there is a threshold question as to whether an agreement for lease creates an interest in land. if it does so, then in each state it must be in writing.)</p>	Yes – all agreements for leases should be in writing	<p>s201, s202, s203 <i>Civil Law (Property) Act 2006</i></p> <p>Leases should be put into writing, unless that lease if for a term not exceeding 3 years, and the rent is the highest rate reasonably obtainable.</p>	<p>s53 <i>Real Property Act 1900</i></p> <p>Where the term of a lease exceeds 3 years, it should be in writing.</p>	<p>s9(2)(c), s11(1), s11(2) <i>Law of Property Act 2000</i></p> <p>Where the term of a lease exceeds 3 years, it should be in writing.</p>	<p>s12(1) and s12(2) <i>Property Law Act 1974</i></p> <p>Where the term of a lease exceeds 3 years, it should be in writing.</p>	<p>s26, s 29 <i>Law of Property Act 1936</i></p> <p>Lease must be in writing and signed by an authorised person.</p>	<p>Not covered by legislation, however general practice is that a lease must be in writing.</p> <p>Any registered dealing must be in writing: <i>Land Titles Act 1980</i>, Definitions.</p>	<p>s52, s53, s54 <i>Property Law Act 1958</i></p> <p>Where the term of a lease exceeds 3 years, it should be in writing.</p>	<p>s34(1)(a), s35 <i>Property Law Act 1969</i> (WA)</p> <p>Where the term of a lease exceeds 3 years, it should be in writing.</p>
<p>Will a (reversionary) lease be void if it is for a term of more than 21 years (or other such long term)?</p>	No	<p>No equivalent legislation</p>	<p>120A(3) <i>Conveyancing Act 1919</i> (NSW)</p> <p>Yes (21 years)</p>	<p>No equivalent legislation</p>	<p>s 102(3) <i>Property Law Act 1974</i> (QLD)</p> <p>Yes (21 years)</p>	<p>No equivalent legislation</p>	<p>No equivalent legislation</p>	<p>s150(3) <i>Property Law Act 1958</i> (VIC)</p> <p>Yes (21 years)</p>	<p>s74(3) <i>Property Law Act 1969</i> (WA)</p> <p>Yes (21 years)</p>
<p>In what circumstances will a lease be enlarged into a fee simple?</p>	None	<p>None</p>	<p>s134 (1) <i>Conveyancing Act 1919</i> (NSW)</p> <p>Where a 300 year lease has been given, of which at least 200 years are left to run, the lessee may enlarge the lease into a fee simple. There must be no rent or only nominal rent still payable.</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>s153 <i>Property Law Act 1958</i> (VIC)</p> <p>Where a 300 year lease has been given, of which at least 200 years are left to run, the lessee may enlarge the lease into a fee simple. There must be no rent or only nominal rent still payable.</p>	<p>None</p>

<p>Is a registered assignee from the landlord bound to observe covenants in an unregistered lease?</p> <p><i>Background to the question</i></p> <p><i>a leasehold reversion is the interest retained in the estate held by the landlord after part of that estate has been assigned to the tenant. At common law, on assignment of the leasehold reversion, neither the burden nor the benefit of covenants passes to the assignee. In that case, subject to contrary agreement, where a landlord assigns the leasehold reversion, the tenant still has an action against the original landlord.</i></p>	<p><b>No, this only applies for registered leases – refer to the Registration matrix</b></p>	<p>s 85(2), S85(1) <i>Land Titles Act 1925</i> (ACT)</p> <p>s401 <i>Civil Law (Property) Act 2006</i> (ACT)</p> <p><b>Unregistered Lease</b></p> <p>No. The lease itself must be registered.</p> <p>No right or covenant to assign the reversionary interest of the lessor, which is contained in a lease or in an agreement, shall be valid against any subsequent purchaser of the reversion, lessee, mortgagee or encumbrance unless the lease or agreement is registered. S 85(2) <i>Land Titles Act 1925</i> (ACT)</p> <p>This is presumably subject to the exception for short leases (which need not be registered) under s85(1).</p> <p>Registered leases with an option to purchase are annexed to and run with the land as well: s 85(2).</p> <p><b>Generally</b></p> <p>The landlord's obligations run with the reversion. S401 <i>Civil Law</i></p>	<p>S40(3), s42, s51, s53(3) <i>Real Property Act 1900</i> (NSW)</p> <p>s117 and s118 <i>Conveyancing Act 1919</i> (NSW).</p> <p><b>Unregistered Lease</b></p> <p>No. It appears that a registered assignee of a reversion will only be bound by a <i>registered</i> lease. A person recorded in the folio owns the reversion expectant upon any lease recorded in the folio: s40(3) <i>Real Property Act 1900</i> (NSW)</p> <p>This is presumably subject to the exception for short leases (which need not be registered) under s42.</p> <p><b>Generally</b></p> <p>The burden of the landlord's covenants is annexed to and run with the reversion, although the new landlord is not liable for breaches that occurred prior to the assignment: s118 <i>Conveyancing Act 1919</i> (NSW).</p> <p>Some covenants which are</p>	<p>S131 <i>Law of Property Act 2000</i> (NT)</p> <p>s188, s189(1)(b), s204 <i>Land Title Act 2000</i> (NT)</p> <p><b>Unregistered Lease</b></p> <p>A registered proprietor takes their interest free from unregistered interests (s188), but with a number of exceptions, including short leases (s189(1)(b)): <i>Land Title Act 2000</i> (NT). A registered proprietor includes the assignee of a registered proprietor: s204.</p> <p><b>Generally</b></p> <p>The landlord's obligations are annexed and incident to and go with the reversion s131 <i>Law of Property Act 2000</i> (NT). Where:</p> <ul style="list-style-type: none"> <li>▪ the obligations are ones which touch and concern the land; and</li> <li>▪ the landlord had power to bind the reversionary estate expectant under the lease; and</li> <li>▪ the lease</li> </ul>	<p>S196, 184, s185(1)(b) <i>Land Title Act 1994</i> (QLD)</p> <p>s118 <i>Property Law Act 1974</i> (QLD)</p> <p>s196 <i>Land Title Act 1994</i> (QLD)</p> <p><b>Unregistered Lease</b></p> <p>No, the lease must be registered unless it is a short lease.</p> <p>A registered proprietor takes their interest free from unregistered interests (s184), but with a number of exceptions, including short leases (s185(1)(b)). A registered proprietor includes the assignees of the registered proprietor.</p> <p><b>Generally</b></p> <p>The landlord's obligations run with the reversion s118 <i>Property Law Act 1974</i> (QLD). Where:</p> <ul style="list-style-type: none"> <li>▪ the obligations are ones which touch and concern the land; and</li> <li>▪ the landlord had power to bind the reversionary estate expectant</li> </ul>	<p>S119, s46 <i>Real Property Act 1886</i> (SA)</p> <p><i>Landlord and Tenant Act 1936</i>(SA)</p> <p>s119 <i>Real Property Act 1886</i> (SA)</p> <p><b>Unregistered Lease</b></p> <p>Yes, if the lease is for less than a year. A registered assignee of a reversion takes subject to unregistered short leases, but <i>not</i> subject to any options to renew or purchase.</p> <p><b>Generally</b></p> <p>Common law position may be intact except in commercial tenancies (see <i>Landlord and Tenant Act 1936</i>(SA))?</p> <p>Registered assignee of a reversion, however, may be subject to all covenants and conditions in the lease required to be performed by the landlord. However this section is expressed as being relevant only to the bringing of land under the Act. S46 <i>Real Property Act 1886</i> (SA)</p>	<p>s11 <i>Conveyancing and Law of Property Act 1884</i> (TAS)</p> <p><b>Unregistered Lease</b></p> <p>Yes. There is no registration exception to the general rule (opposite).</p> <p><b>Generally</b></p> <p>The landlord's obligations are annexed and incident to and shall go with the reversion. S11 <i>Conveyancing and Law of Property Act 1884</i> (TAS)</p> <p>Where:</p> <ul style="list-style-type: none"> <li>▪ the obligation relates to the subject matter of the lease [this is believed to have the same meaning as 'touching and concerning the land']; and</li> <li>▪ the landlord had power to bind the reversionary estate expectant under the lease; and</li> <li>▪ the lease was granted on or after 1</li> </ul>	<p>s11(3) <i>Transfer of Land Act 1958</i> (VIC)</p> <p>s142 <i>Property Law Act 1958</i> (VIC)</p> <p><b>Unregistered Lease</b></p> <p>No. Apparently the registered assignee of the reversion is not bound by an unregistered lease.</p> <p>Every folio of the Register for leasehold land is subject to the rights and powers of the lessor or other proprietor of the reversion immediately expectant on the term. S11(3) <i>Transfer of Land Act 1958</i> (VIC)</p> <p>This is presumably subject to the exception for lessees in possession (the leases of whom need not be registered) under s42.</p> <p><b>Generally</b></p> <p>The landlord's obligations are annexed and incident to and shall go with the reversion. S142 <i>Property Law Act 1958</i> (VIC)</p> <p>Where:</p> <ul style="list-style-type: none"> <li>▪ the obligation</li> </ul>	<p>S70 <i>Transfer of Land Act 1893</i> (WA)</p> <p>s78 <i>Property Law Act 1969</i> (WA)</p> <p><b>Unregistered Lease</b></p> <p>No. Apparently the registered assignee of the reversion is not bound by an unregistered lease.</p> <p>The registered proprietor in possession of freehold land is seized of the reversion of a lease which is mentioned as an encumbrance on the certificate of title. In that case the registered proprietor has all powers, rights, remedies, and entitlements and is subject to all covenants and conditions as though they were the original lessor. S70 <i>Transfer of Land Act 1893</i> (WA)</p> <p>May be subject to the short leases exception, if it can be said to exist.</p> <p><b>Generally</b></p> <p>The landlord's obligations are annexed and incident to and shall go with the reversion. S78 <i>Property Law Act</i></p>
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		<p>(Property) Act 2006 (ACT)</p> <p>Where:</p> <ul style="list-style-type: none"> <li>the obligation relates to the subject matter of the lease [this is believed to have the same meaning as 'touching and concerning the land']; and</li> <li>the landlord had power to bind the reversionary estate expectant under the lease; and</li> <li>the lease was granted on or after 26 June 1986; or</li> <li>the lease was granted before 26 June 1986 but the breach was committed on or after that date,</li> <li>then it may be enforced by or against the assignee of the reversion.</li> </ul>	<p>explicitly annexed to the reversion and run with the reversion are the right to be paid rent and the benefit of every condition of re-entry or forfeiture of lease: s117 <i>Conveyancing Act 1919</i> (NSW).</p> <p>There is some overlap between the ambit of the <i>Conveyancing Act</i> and the <i>Real Property Act</i> (the former being the later) but even so, under s51 <i>Real Property Act 1900</i> (NSW), on registration of a transfer the transferee is subject to the same liabilities as the original transferee would have been. This includes a transfer of reversion: <i>Measures v McFadyen</i> (1910) 11 CLR 723.</p> <p>Registered leases with an option to purchase run with the land as well: s53(3) <i>Real Property Act 1900</i> (NSW).</p>	<ul style="list-style-type: none"> <li>was granted on or after 1 December 2000; or</li> <li>the lease was granted before 1 December 2000 but the breach was committed on or after that date,</li> <li>then it may be enforced by or against the assignee of the reversion.</li> </ul>	<p>under the lease; and</p> <ul style="list-style-type: none"> <li>the lease was granted on or after 1 December 1975; or</li> <li>the lease was granted before 1 December 1975 but the breach was committed on or after that date,</li> <li>then it may be enforced by or against the assignee of the reversion.</li> </ul>		<p>January 1884;</p> <ul style="list-style-type: none"> <li>then it may be enforced by or against the assignee of the reversion.</li> <li>See also s102 of Land Titles Act 1980 (TAS)</li> </ul>	<p>relates to the subject matter of the lease [this is believed to have the same meaning as 'touching and concerning the land']; and</p> <ul style="list-style-type: none"> <li>the landlord had power to bind the reversionary estate expectant under the lease;</li> <li>then it may be enforced by or against the assignee of the reversion.</li> </ul>	<p>1969 (WA)</p> <p>Where:</p> <ul style="list-style-type: none"> <li>the obligation relates to the subject matter of the lease [this is believed to have the same meaning as 'touching and concerning the land']; and</li> <li>the landlord had power to bind the reversionary estate expectant under the lease; and</li> <li>the lease was granted on or after 1 August 1969;</li> <li>then it may be enforced by or against the assignee of the reversion.</li> </ul>
Can a landlord recover land tax from a tenant?	As a matter of principle, a landlord should be able to claim land	s8 <i>Land Tax Act 2004</i> (ACT) s70 <i>Leases (Commercial and</i>	S31, s32, s46(1), s46(2) <i>Land Tax Management Act 1956</i> (NSW)	There is no land tax in the Northern Territory.	S22, s44A <i>Land Tax Act 1915</i> (QLD) s89(1) <i>Residential</i>	S124 <i>Real Property Act 1886</i> (SA) <i>Land Tax Act</i>	S10(1) <i>Land Tax Act 2000</i> s3 <i>Landlord and Tenant Act 1935</i>	S10, s45, s99(1), s98(6) <i>Land Tax Act 2005</i> (VIC) s50 <i>Retail Leases</i>	S7 <i>Land Tax Assessment Act 2002</i> (WA) s48 <i>Residential</i>

	tax from a tenant	<i>Retail) Act 2001 (ACT)</i> Schedule 1 <i>Residential Tenancies Act 1987 (ACT)</i> Yes, other than in residential tenancies.	<i>s26 Retail Leases Act 1994 (NSW)</i> <i>s19 Residential Tenancies Act 1987 (NSW)</i> Yes, in some cases. Further, the Commissioner may claim it from the lessee in the case of default		<i>Tenancies Act 1994 (QLD)</i> <i>s24 Retail Shop Leases Act 1994 (QLD).</i> No. However, the Commissioner can claim it in the event of default.	1936 (SA) <i>s62B(1)-(2) Landlord and Tenant Act 1936 (SA)</i> <i>s30 Retail and Commercial Leases Act 1995 (SA)</i> <i>s73 Residential Tenancies Act 1995 (SA)</i> Not directly. Land tax is the responsibility of the registered proprietor of the property.	(TAS) Not directly. Land tax is the responsibility of the registered proprietor of the property.	<i>Act 2003 (VIC)</i> No. However, the Commissioner may claim it from the lessee in the case of default.	<i>Tenancies Act 1987 (WA)</i> <i>s12(1g) Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA)</i> Yes, for limited amounts under retail leases.
Can a landlord recover outgoings from a tenant? <i>Outgoings are taken to include the following: council rates; water rates; management fees; security; strata or other levies; and cleaning.</i>	For commercial/retail properties outgoings should be recoverable	Schedule 1 <i>Residential Tenancies Act 1987 (ACT)</i> <i>s70 Leases (Commercial and Retail) Act 2001 (ACT).</i> Yes, under a commercial/retail lease, provided certain conditions are met. Yes, under a residential lease, with some exceptions	<i>s22 Retail Leases Act 1994</i> <i>s19 Residential Tenancies Act 1987 (NSW)</i> Yes, under a retail lease, if they are specified as being recoverable under the lease. No, under a residential lease, the landlord is responsible for most of the outgoings.	<i>S39 Business Tenancies (Fair Dealings) Act 2003 (NT)</i> <i>s117 and s118 Residential Tenancies Act 1999 (NT)</i> Yes, under a retail lease, if specified under the lease, and provided the landlord notifies the tenant of an estimate of the outgoings and a written expenditure statement. Yes, under a residential lease, the landlord may recover the outgoings from the tenant, so long as the lease provides, and the landlord is genuinely liable for the outgoings.	<i>Ss37-39 Retail Shop Leases Act 1994 (QLD)</i> <i>s89 Residential Tenancies Act 1994 (QLD)</i> Yes, under a retail lease, if the lease meets certain conditions. Not under a residential lease.	<i>S26 Retail and Commercial Leases Act 1995 (SA)</i> <i>s73 Residential Tenancies Act 1995 (SA).</i> Yes, under a retail lease, if the lease meets certain conditions. No, under a residential tenancy agreement, other than water rates in some cases.	<i>S3 Landlord and Tenant Act 1935 (TAS)</i> <i>s17 Residential Tenancy Act 1997 (TAS)</i> Yes, in the case of leases generally, if the parties incorporate the words " That the said [ <i>lessee</i> ] covenants with the said [ <i>lessor</i> ] to pay rent and to pay taxes" into the lease. Not under a residential tenancy agreement, other than water consumption tax.	<i>Ss39-49 Retail Leases Act 2003 (VIC)</i> <i>ss 52-56 Residential Tenancies Act 1997 (VIC).</i> Yes, under a retail lease, if the lease meets certain conditions. Yes, some, under a residential tenancy agreement.	<i>S12 Commercial Tenancies (Retail Shops) Agreements Act 1985 (WA).</i> <i>S38 Residential Tenancies Act 1987 (WA)</i> Yes, under a retail lease, if the lease meets certain conditions. Yes, other than council tax and water tax, under a residential tenancy agreement.

Can a landlord recover from a tenant the legal costs that the landlord has incurred?	Yes	s102 <i>Leases (Commercial and Retail) Act 2001</i> (ACT) Yes	s40(3) <i>Retail Leases Act 1994</i> (NSW) Yes	s53 <i>Business Tenancies (Fair Dealings) Act 2003</i> (NT) Yes	s40(2) <i>Retail Shop Leases Act 1994</i> (QLD) Yes	s44(3) and s14(1)(b) <i>Retail and Commercial Leases Act 1995</i> (SA) Yes	No legislation on subject	s23(3)(a) and (b) <i>Retail Leases Act 2003</i> (VIC) Yes	s9(2)(b) and (c) <i>Commercial Tenancies (Retail Shops) Agreements Act 1985</i> (WA) Yes
In what circumstances will a court grant relief for loss of an option?	Where a term of a lease purports to make the grant of an option conditional on the tenant's performance of some obligation, the landlord must give the tenant notice that the tenant is in breach of that obligation. If no notice is given, the option will <i>not</i> be lost	No legislation on subject	s133E, s 133F(2) and (4)(a) <i>Conveyancing Act 1919</i> (NSW) Where a term of a lease purports to make the grant of an option conditional on the tenant's performance of some obligation, the landlord must give the tenant notice that the tenant is in breach of that obligation. If no notice is given, the option will <i>not</i> be lost: s133E.	s143 <i>Law of Property Act 2000</i> (NT) Where a term of a lease purports to make the grant of an option conditional on the tenant's performance of some obligation, the landlord must give the tenant notice that the tenant is in breach of that obligation. If no notice is given, the option will <i>not</i> be lost: s143(1).	s128 <i>Property Law Act 1974</i> (QLD) Where a term of a lease purports to make the grant of an option conditional on the tenant's performance of some obligation, the landlord must give the tenant notice that the tenant is in breach of that obligation. If no notice is given, the option will <i>not</i> be lost: s128(1).	s20M <i>Retail and Commercial Leases Act 1995</i> (SA) Generally, no legislative protection. However, in a retail tenancy situation, if a landlord makes threats to a tenant to prevent the exercise of an option, then the court may impose a maximum penalty of \$10,000.	No legislation on subject	No legislation on subject	No legislation on subject
Is it possible to lease to yourself?	Yes, A can lease to A	s208 <i>Civil Law (Property) Act</i> (ACT) Yes, A can lease to A	s24, s7 and s44 <i>Conveyancing Act 1919</i> (NSW) Yes, A can lease to A	s13(1) <i>Law of Property Act 2000</i> (NT) Only if A leases to A+B	s14 <i>Property Law Act 1974</i> (QLD) Yes, A can lease to A	s40(3) and s7 <i>Law of Property Act 1936</i> (SA) Yes, A can lease to A	s 62(2) and s2, <i>Conveyancing and Law of Property Act 1884</i> (TAS) Yes, A can lease to A.	s72(3), s18 and s19A <i>Property Law Act 1958</i> (VIC) Yes, A can lease to A.	s39 and s44, <i>Property Law Act 1969</i> (WA) Yes, A can lease to A.
Is there a limit on the damages that a landlord can recover for breach of a tenant's covenant to repair?	Yes, to the amount by which the breach diminishes the value of the reversion.	No legislation on subject	s133A <i>Conveyancing Act 1919</i> (NSW) Yes, to the amount by which the breach diminishes the value of the reversion.	No legislation on subject	s112(1) <i>Property Law Act 1974</i> (QLD) Yes, to the amount by which the breach diminishes the value of the reversion.	s40 <i>Retail and Commercial Leases Act 1995</i> (SA) No limit permitted in a retail lease.	No legislation on subject	s57(2) <i>Retail Leases Act 2003</i> (VIC) No limit permitted in a retail lease.	No legislation on subject
Can a landlord assign his/her right to receive	Yes The landlord's rights under the	s400 <i>Civil Law (Property) Act 2006</i> (ACT)	s117 <i>Conveyancing Act 1919</i> (NSW)	s130 <i>Law of Property Act 2000</i> (NT)	s117 <i>Property Law Act 1974</i> (QLD)	s50 <i>Landlord and Tenant Act 1936</i> (SA)	s10 <i>Conveyancing and Law of</i>	s140 <i>Property Law Act 1958</i> (VIC)	s77 <i>Property Law Act 1969</i> (WA) Yes

rent separately from the land over which the lease exists?	lease attach to the reversion, despite any severance	Yes The landlord's rights under the lease attach to the reversion, despite any severance: s400	Yes The landlord's rights under the lease attach to the reversion, despite any severance: s117	Yes The landlord's rights under the lease attach to the reversion, despite any severance: s130	Yes The landlord's rights under the lease attach to the reversion, despite any severance: s117	Yes The landlord's rights under the lease attach to the reversion, despite any severance: s50	Property Act 1884 (TAS) Yes The landlord's rights under the lease attach to the reversion, despite any severance: s10	Yes The landlord's rights under the lease attach to the reversion, despite any severance: s140	The landlord's rights under the lease attach to the reversion, despite any severance: s77
When a registered lease expires by effluxion of time, is there anything required to remove it as an encumbrance on the title?  <i>At the end of the last day of the term of a fixed term lease, the lease expires without the necessity of any further act. If a lessee remains in possession after the expiration of the term, they are merely a tenant at will or under sufferance. so the expired lease cannot be said to encumber the title, as it does not represent a legal interest. however, it can be removed from the title in the following ways:</i>	The encumbrance either falls from the title the next time there is a dealing or is automatically removed from the title after ninety days has passed, whichever comes first. All documentation relevant to the expired lease (such as transfers or variations) is removed simultaneously.	The encumbrance falls from the title the next time there is a dealing.	The encumbrance falls from the title the next time there is a dealing. If you want to remove it as an encumbrance from the title without any other dealing, you can make a request using form 11R, for a fee.	The encumbrance falls from the title the next time there is a dealing.	It is possible to lodge a request to remove a lease from an indefeasible title, making a declaration that any option of renewal has not been exercised. There is no charge.	Expired leases and underleases which are registered on the Torrens Automated Title System are automatically removed from the title after ninety days has passed. In that ninety days an extension for lease can still be issued. All documentation relevant to the expired lease (such as transfers or variations) is removed simultaneously.	The encumbrance falls from the title the next time there is a dealing. Or you can write a letter to the Land Titles Office and they will remove it free of charge.	A s106C form is required to remove a determined or expired encumbrance. There is a fee.	The encumbrance falls from the title the next time there is a dealing. Alternatively both lessor and lessee may sign a surrender form (even though the lease has been determined) and pay a fee.