

Construction works and business disturbance

Construction work or disturbances caused by a lessor in a commercial tenancy can impact a tenant's viability, and disputes may arise over downturn in trade, quiet enjoyment, and compensation.

Quiet enjoyment

Case law supports a tenant's right to quiet enjoyment. Tenants are entitled to occupy the commercial premises without interruption from the lessor. Examples that breach a tenant's right to quiet enjoyment may include:

- a lessor's failure to address complaints about noise pollution caused by renovations
- failure to prevent excessive noise from a neighbouring property owned by the lessor
- failure to give proper notice before entering the premises
- unauthorised entry into the premises

Disturbances the lessor cannot not foresee or that are out of the lessor's control (e.g. an emergency, construction in adjacent buildings or roadworks) may not be a breach of the tenants right to quiet enjoyment.

Notice for retail tenants

In certain situations, the lessor is entitled to limit a claim for compensation by providing the tenant with a written notice of an anticipated disturbance, explaining:

- what kind of work will be done
- how long it will take and
- how it will affect the tenant's business

The lessor must compensate the tenant if the work is likely to cause significant disruption.

A clause in a retail lease that goes against provisions of the *Retail Shop Leases Act 1994* (RSL Act) is prohibited (Section 16 of the Act).

Two perspectives

Balancing interests during building improvement works can be complex. While tenants may see benefits in premises upgrades in the long term, there is often a short-term downturn in trade. Lessors may invest significantly in improvements to increase amenity and appeal to customers, but during construction the amenity and appeal may be diminished. **Negotiation becomes a key tool in finding a solution that works for both tenants and lessors.**

For commercial (non-retail shop) leases, the specific requirements related to works carried out by the lessor, will vary depending on the lease agreement.

Compensation

Section 43 of the RSL Act details when compensation for loss or damage is payable for business disruption or false or misleading statements.

Under the *RSL Act*, failing to give the lessor written notice of the loss or damage as soon as practicable after the business disturbance, won't affect any right to compensation but can impact the amount of compensation paid.

Compensation can be available to a sublessee or a franchisee of the tenant, or where the lease term has ended but the tenant still rents the retail shop one month at a time (a periodic tenancy).

Amount of compensation

In retail shop lease disputes, if the tenant and lessor cannot agree on the amount of compensation, the details are negotiated at mediation.

For a dispute in a non-retail shop lease, the parties can agree to mediation through the QSBC. But if they can't agree to mediate or want to get specific orders or decisions, they should get legal advice to work out which court is responsible for handling the case.

Top tips

- When making an application for mediation specify the amount of compensation being sought.
- A QSBC mediator can mediate disputes up to \$750,000 in value.

Loss of foot traffic

A decline in foot traffic may not in itself breach the lease and might be caused by a combination of factors, making it difficult to pinpoint a single cause. Factors may include:

- changes in consumer habits
- local competition
- reputational damage
- negative reviews online

Flood and cyclone help

The impact of natural disasters may involve repairs to buildings by lessors. The Queensland Legal Assistance Forum has published a [fact sheet for flooding on leased premises](#).

Communicate the issue

If faced with disturbance, the tenant can write to the lessor about the issue, referencing the relevant provisions in the lease, the RSL Act or under common law. Following legal advice can ensure a tenant does not inadvertently waive their rights. To increase the likelihood of a positive response:

- Be clear, polite, and specific
- Include any suggestions that might minimise further disruptions
- Include supporting photos or video evidence
- Explain the urgency for the business and set a reasonable timeframe for a response and action

Resolving disputes

Consider the following steps:

- Look at the terms in the lease
- Seek legal advice from a lawyer experienced in commercial property law
- Find information on how the RSL Act or the right to quiet enjoyment applies
- Investigate ways to minimise the disruption or attract more customers
- Negotiate commercially sensible solutions
- Make an [application for mediation](#)

QCAT considers disputes between a tenant and lessor related to retail shop leases **if the dispute is not resolved after mediation**.

More information

Contact the QSBC by submitting an [online enquiry](#) or calling 1300 312 344.

This information provides general guidance only. It does not constitute legal advice. We recommend you seek independent legal advice which considers your individual circumstances and applicable laws.