



Landlords' disclosure obligations clarified



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Grant Levy provides an update on an important decision that affects the rights and responsibilities of landlords.

In *Melbourne Central Custodian Pty Ltd v Sonwon Pty Ltd*, a tenant at Melbourne Central Shopping Centre sought compensation at the Victorian Civil and Administrative Tribunal (VCAT) for a change in the tenancy mix at the centre, following the departure of the anchor tenant (Daimaru) and a subsequent redevelopment of the centre.

Section 26(2) of the *Retail Tenancies Reform Act 1998 (Vic)* (the Act), which applies to retail leases in Victoria entered into between 1 July 1998 and 30 April 2003, provides that a tenant is entitled to compensation if the actual tenancy mix is significantly different from the tenancy mix as set out in the Disclosure Statement.

However, section 26(4) of the Act states that compensation is not payable if the Disclosure Statement states that a change in the tenancy mix was likely to occur in the future.

In this case, the landlord's Disclosure Statement stated that a change in the tenancy mix would occur. The tenant asserted that this was insufficient and that, in order to avoid liability, the landlord needed to provide details of the change in the tenancy mix that would occur in the future.

The landlord asserted that the tenant's claim had no prospect of success and made application to VCAT to strike out that part of the tenant's claim.

VCAT found in favour of the landlord.

In agreeing with the landlord that it was not required to pay compensation if the Disclosure Statement contained a simple statement that tenancy mix would change in the future, VCAT relied on the prescribed Disclosure Statement, which is contained in a schedule to the Act. Disclosure Statement contains a section which reads: *The tenancy mix will/will not/may change over the term of the lease.*

VCAT found that the wording of the Disclosure Statement showed that Parliament intended simple statement that the tenancy mix may change was sufficient to avoid compensation.

The current retail legislation in Victoria – *The Retail Leases Act 2003 (Vic)* – which applies retail leases commenced after 1 May 2003, does not contain a compensation provision relating change in tenancy mix. [ⓘ](#)

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