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fact sheet

for property managers

May 2020

The New Commonwealth National Lease

The Department of Finance initially released its own leasing template for use by Commonwealth tenants in the form of the Commonwealth National Lease (CNL) in 2011. The CNL was updated in 2019. This update also saw the introduction of the CNL User Guide, which provides an explanation on the terms of the CNL, how to complete the CNL and highlights the policies relevant to a Commonwealth tenant.

The [CNL](#) and the accompanying [User Guide](#) are part of a broader suite of documents for use by Commonwealth tenants.

These are:

- memoranda of understanding for an 'assignment' and for a 'sublease' of Commonwealth leased property between non corporate Commonwealth entities
- [divestment guide](#)
- [deed of surrender of lease](#)
- [deed of assignment](#)
- [sublease](#).

Documents and other resources are available on the Finance website at www.finance.gov.au/property-management-framework.

With the changes, the CNL remains a document for use by Commonwealth tenants, mainly for office accommodation where the premises are part of a larger office or retail building that is not subdivided.¹

What are the main changes?

The form of the document has changed. The prior CNL was a self-contained document and had extensive guidance notes and optional clauses beneath each clause. Those guidance notes and optional clauses have mostly been relocated in the User Guide.

There are also extra optional clauses in the User Guide, for example, new storage clauses.

These changes address current challenges, such as combustible cladding, and provide a more transparent approach to lease negotiations.

Some of the bigger changes are:

- **Combustible cladding**
New combustible cladding clauses include a landlord warranty and sets out the steps to be taken if combustible cladding is found in the building. The tenant may elect to vacate the premises while combustible cladding is being removed where there is a health and safety risk to users of the premises, and the landlord must pay the 'Relocation Expenses' of the tenant.

¹ The CNL will require amendment when it is used for a building that is subdivided and has common property. This is because the parties' rights and obligations regarding access, capital and structural works and building services will change

- **Rent abatement**
There are new limitations around a tenant's right to an abatement of rent for a 'Services Failure' that did not appear in the prior CNL which are likely to make the clauses more acceptable to a landlord.
- **Landlord as trustee**
There are new warranties that apply where the landlord is a trustee. The warranties appeared as optional clauses in the prior CNL but they appear in the new CNL as a standard.
- **Self-help remedies**
Some tenant self-help remedies have been removed. These clauses allowed the tenant to remedy a landlord's failure to pay rates or carry out certain repairs and recover the cost from the landlord as a reimbursement or by way of set off. Other remedies remain available to the tenant where the landlord fails to meet its lease obligations, such as action for breach.
- **Landlord's negligence and unfitness**
Clause 29.1 from the prior CNL does not appear in the new version. Clause 29.1 specifically allowed the tenant to seek redress where it suffers loss or damage due to the landlord's negligence or arising from structural faults or defects in the building or the premises which made the premises unfit for use by the tenant. However, there remains robust obligations on the landlord to ensure the premises are fit for use.

Some of the smaller changes are:

- **Option to renew**
The timeframes have changed for serving the option notice to renew the lease for the option term. There are now 2 default timeframes suggested, depending on the term of the lease.
- **Conditions for access**
The landlord can now impose reasonable conditions on a tenant's access to the common areas. The landlord can do this where it intends to carry out works to the common areas or the building which were not foreseeable at the commencement of the lease, and those works are either necessary for the landlord to comply with its obligations or required by law or for safety reasons.
- **Tenant's alterations**
There is a new obligation regarding any tenant's works which require the tenant to provide the landlord with certifications following completion of the works. The tenant should diarise this new requirement.
- **Communications equipment**
The communications equipment clause from the prior CNL does not appear in the new version. However, there is a variation of that clause in the User Guide. If the tenant needs to install communications equipment, consider whether the optional clause needs to be added to the lease.
- **Market review**
There were 3 market review clauses in the prior CNL. There is now one simpler market rent review process set out at Schedule 4 in the new CNL, which may be used for a market review at the start of an option lease or for a mid-term market review.
- **Registration fees**
The prior CNL provided that the landlord is required to pay all lease registration fees. The new CNL provides that the tenant pays registration fees. Therefore, the cost of registration will need to be factored into the tenant's overall costs of the lease.
- **Service of notices**
The new CNL provides for the service of notices via hand, post or by email. The tenant should consider whether service of notices via email is suitable.

What hasn't changed in the new CNL?

Many of the clauses and concepts in the new CNL remain familiar, for example:

- **Gross rent**
The preferred position of a gross rent with no outgoings remains. There are optional outgoings clauses in the User Guide.
- **Metering**
The landlord is still required to separately meter services to the premises. The tenant still pays for separately metered services, except for the cost of the services used in operating the building services.
- **Landlord to maintain building and land**
There remains a high standard imposed on the landlord to maintain the building, building services and the land, and ensure that the premises are fit for use and occupation by the tenant, and to help the tenant comply with its work health and safety obligations.
- **Make good**
The standard make good approach of 'no make good' also remains. The tenant can choose to remove or not remove its fittings and alterations, but if it does it must repair any damage caused by that removal where that damage is material and which if remained, would disadvantage the landlord.
- **Dealings with the lease, eg assignment**
The new CNL retains the flexibility of the prior CNL in allowing the tenant to assign, sublease, part with possession or deal with its interest in the lease to another Commonwealth entity without landlord consent.
- **Expert determination**
There remains the option to refer disputes to an expert for determination. To aid this, the clauses in the prior CNL which require the parties to act cooperatively and reasonably remain, as do the clauses requiring a party to not unreasonably withhold or delay its consent where approval is requested.
- **Insurance and indemnity**
The insurance and indemnity clauses are largely the same. However, the insurance clause in the new CNL now includes a provision to acknowledge that the tenant insures through Comcover.

Other comments

The CNL is not mandatory but its use is encouraged. It represents the Commonwealth's preferred risk position.

It is not a one-size-fits-all document. Therefore, Commonwealth tenants will need to tailor the lease to their particular circumstances.

Use of the User Guide can help manage costs as it explains the basic function and purpose of the lease clauses in their standard wording.

AGS has prepared a table of material changes. Please contact [Helen Moran](#) or [Teresa Miraglia](#) for a copy.

More information

If you require further information about combustible cladding in property acquisition issues, please contact:

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