

API Annual General Meeting

Members are encouraged to participate in the Institute's Annual General Meeting by voting on the motions included in the documentation issued. National Council urges all Members who are eligible to vote to consider the documentation and vote accordingly.

It is important to note that all votes must be at National Office by 4.00pm Friday 23 May.



CONTACT DETAILS

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Commonwealth of Australia Sale & Leaseback Rent Review Clause

A Member is seeking information from other Members concerning the application of the Rent review Clause included in the sale and Leaseback of property held by the Commonwealth of Australia.

Could any Members please advise if they have had any experience in the interpretation of this clause and whether the methodology has been accepted as common practice. Members are asked to contact the National Director at gwarner@api.org.au with any information that may assist with this request.

During the late 1990's the Commonwealth of Australia sold and leased back property with the following rent review clause.

4.3 Market rent Review

(1) When does this clause apply?

This clause applies if "Applicable" appears in Item 9C.

(2) When is the Rent reviewed?

On each Market Review Date, the Rent will be reviewed following the procedure in clause 4.3.

(3) Special definitions for this clause

In this clause:

- (a) "Rent Period" means the period starting on a Market Review Date and ending on the earlier of:
 - (i) the day before the next Rent Review Date; or
 - (ii) the end of the Term; and
- (b) "Specialised Premises" means premises with specialised improvements (including design) that may assist the Tenant in carrying out the Permitted Use but offer limited utility to the general market.

(4) Landlord may notify new Rent

- (a) The Landlord may notify the Tenant, not more than 3 months before a Market Review Date but not later than the next Rent Review Date (the "Landlord's Notice"), of the rent that the Landlord considers to be the current market rental value for the relevant Rent Period.
- (b) If the Landlord does not give the Landlord's Notice in that time, the Rent during the relevant Rent Period will not change.

(5) If Rent not agreed Valuer to determine

- (a) The Tenant may by notice (the "Dispute Notice") served on the Landlord within 30 days of service of the Landlord's Notice dispute the rent proposed in the Landlord's Notice. If the Tenant does not do so then the rent in the Landlord's Notice becomes the Rent for the Rent Period.
- (b) If the rent is in dispute the parties will, within 60 days of service of the Dispute Notice, appoint a Valuer.
- (c) If the parties cannot agree on that Valuer within that time, either party may request the President of the Institute to promptly appoint a Valuer.

(6) How determination works

- (a) The appointed Valuer must determine the current market rental value at the particular Market Review Date acting as an expert and not as an arbitrator and give a written determination with reasons, within 42 days of appointment.
- (b) The Valuer's determination is final and binding.
- (c) The Valuer's costs must be paid by the Landlord and the Tenant equally, either party may pay the Valuer's costs and recover one half from the other party.
- (d) A party may make a written or verbal submission to the Valuer within 21 days of appointment.

(7) Determination of Market Rental Value

- (a) In determining the new Rent pursuant to clause 4.3(6) the Valuer must take into account:
 - (i) the current market rental value at the Market Review Date:
 - (A) for comparable premises in the locality where the Land and Building are situated if the Valuer does not consider the Land and Building to be Specialised Premises; or
 - (B) if the Valuer considers the Land and Building to be Specialised Premises then for the best non-specialised use which is widely evidenced in the market place;
 - (ii) any submission given to the Valuer by a party under clause 4.3(6)(d).
- (b) In determining the new Rent pursuant to clause 4.3(6), the Valuer must exclude from the determination the value, if any, of:
 - (i) the adverse effect on the condition of the Land or Building from any breach of this Lease by the Tenant;
 - (ii) any fittings and other improvement or alteration installed in or made to the Land or Building which have been paid for by the Tenant during the Term or are owned by the Tenant and Tenant's Property;
 - (iii) any increase in value in the Land or Building as a result of:
 - (A) any alterations to the Structure; or
 - (B) voluntary improvements (other than to the Structure) which are agreed to by the Tenant before they are made to the Land or Building by the Landlord to the extent of the Tenant's contribution;
 - (iv) goodwill occasioned by the Tenant, its sub-lessees or their respective predecessors in title;
 - (v) areas outside the Land;



- (vi) any naming or signage rights which the Tenant may have for the Building; and
- (vii) any amount of GST on a supply calculated under clause 6A.

4.4 Procedure for payment of new Market Rent

(1) What Rent is payable until the new Market Rent begins

Until the new Rent is determined, the Tenant must pay the Rent payable before the Market Review Date.

(2) When new Market Rent begins

Any variation in Rent takes effect from the Market Review Date, and within 28 days of agreement on the new Rent or its determination, the Tenant must pay any shortfall.

(3) Market Rent not to decrease

If the new Rent determined under clause 4.3 would be less than the Rent payable immediately prior to the Market Review Date (ignoring any rent free periods or periods of reduced rent), then the Rent remains unchanged.

4.5 Amount in consideration of the special value of the Building

- (1) The Tenant will pay to the Landlord the amount in Item 6B on the dates in Item 6B.
- (2) Notwithstanding anything else in this Lease the amount payable under clause 4.5(1) is fixed for the Term of the Lease and will not be reviewed on a Rent Review Date. ■

Great Expectations- the Australasian Property Institute Conference Registration Brochure

The API - PINZ Australasian Property Conference Registration Brochure is now available on the API National website. [Click here to download.](#)

Registering for Earlybird closes 23 May 2008, save over \$150.

The conference will be held in New Zealand at the Christchurch Convention Centre on 26 and 27 June 2008.

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26th & 27th June 2008, Convention Centre, Christchurch