



The Pharmacy
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Rental & Leasing Information Session

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Dave Halvorsen



David holds a Master of Property (Valuation) Degree, and a Bachelor of Pharmacy Degree, as well as extension studies in Law & Accounting from Curtin University. David is a provisional member of the Australian Property Institute.

After starting his career in community pharmacy in 1998 David has worked in a range of pharmacy businesses throughout Perth and Western Australia. David entered into pharmacy ownership in 2009.

As a small business owner David is acutely aware of the importance of having a balanced, well-structured lease and how difficult the negotiation and lease management process can be, particularly for small business owners negotiating against seasoned leasing agents acting on behalf of landlords.

Following his Master of Property (Valuation) Degree, David gained experience working within some of WA's top tier Leasing and Property Valuation Firms, including Lease Equity and Opteon Property Group.

In addition to providing Lease Advisory and Negotiation services, David is involved with Jarot Business Assessments and assists Business Valuations through identifying underlying business performance, core profitability factors, and assessing future risk for a range of diverse businesses throughout Australia.

When managing a lease scenario, along with relevant property and leasing market information, it is crucial that internal and external business-related influencers are thoroughly considered in order to effectively strategize and negotiate a lease that is in the best interests of the business and sustain its' future success.

David's personal experience in owning, managing and advising business, coupled with a passion for property has lead David to successfully consult with small to medium sized business owners, as well as large national and international brands on leasing strategy and negotiation since 2013.

Active in the Perth business community, David presents to business industry groups, local governments and other SME groups on how to effectively manage leasing circumstances to balance the interest of landlords and tenants, as this underpins a healthy local economy and is fundamental to sustain vibrant local communities.





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Tom Meagher



Tom has over 25 years' legal and business experience including:

- Being an owner and Director of his former firm, Murfett Legal;
- Previously working for major local and international law firms;
- Being the national Operations Manager for a Financial Advisory IT-platform provider;
- Previously being the WA Legal Technology Group Manager for a National Law Firm;
- Owning and managing an IT Consultancy Business; and
- Being a Director and In-house Counsel for a Public company.



He is also a regular publisher of articles, and one of Australia's leading presenters of legal seminars to and for various professional bodies, associations and government authorities on a wide range of business law and professional development-training topics; including:

WA Department of Commerce • Chartered Accountants Australia and New Zealand • Law Society of WA • Innovation Centre of WA • LegalWise CLE • The Tax Institute • Institute of Public Accountants • Governance Institute of Australia • National Electrical & Communications Association (WA) • Australian Hotels Association (WA) • Small Business Development Corporation • Australian Institute of Conveyancers (WA) • CPA Australia • Mortgage & Finance Association of Australia • Pharmacy Guild of Australia • City Insolvency Discussion Group • Australian Institute of Business Brokers (AIBB) • Forum for Directors of Indigenous Organisations (FDIO) • Stirling Business Centre • Institute of Certified Bookkeepers • Western Suburbs Business Association • Business Foundations Inc. • WA Business Assist • WA Reckon Partners • WA Indian Docs Inc.





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Disclaimer

This seminar is not legal advice and must not be relied on as such.

The information presented in this seminar is intended only as a guide, as to the topic and the matters discussed.

If you have a matter which relates to this seminar or you require legal advice, careful review and analysis of your matter's particular facts, information, documents and laws are required before proper legal advice can be given or applied to that matter.





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Today's Agenda

- Understanding Leasing, & The Commercial Tenancy Act
- Negotiating, & The 2019 Pharmacy Rental Report
- Lease Assignment & The PPSR
- Introduction to LeaseMap (New)





Understanding Leasing

- **The Commercial Tenancy (Retail Shops) Agreements Act**
 - Aside from a Residential Tenancy lease, which is an entirely different form and type of lease and has a different set of laws that apply, a “Commercial Lease” is essentially any lease for the purposes of commerce or business (as opposed to domestic or retail use) that is not subject to the *Commercial Tenancy (Retail Shops) Agreement Act 1985 (WA) and its regulations*.
 - These types of leases are commonly referred to as ‘Retail Shop Leases’ or, for the purposes of this seminar, RTA Leases.
 - The Act requires a landlord to provide to a tenant the following documents when a RTA Lease is being considered:
 - a Disclosure Statement
 - a Tenant Guide (note: must be attached to the front of the lease and included with the disclosure statement)
 - the proposed RTA Lease agreement; and
 - an operating expenses budget.
 - Commercial leases are more commonly used in industrial, warehousing or an office building with no retail activity*.
 - The most common differentiator is the ‘use’ of the premises, and if any form of buying and selling to the public is to take place at this premises.
 - ❖ **FYI - Pharmacies almost always are Retail Shop Leases.**

Continued...





Understanding Leasing

- The Commercial Tenancy (Retail Shops) Agreements Act cont'd

The RTA Act generally applies to leases:

1. for premises with a lettable area of 1000 m² or less; and that are
 - a) used to carry on a business and are in a retail shopping centre (or a group of premises, of which five or more use for the sale of goods by retail or specified businesses:*
 - b) not in a retail shopping centre but that are used (or predominantly used) for the sale of goods by retail; or
 - c) *used for the conducting of a 'specified business':

In WA that those specified businesses are the following:

 - i. dry cleaning
 - ii. hairdressing
 - iii. beauty therapy and treatments
 - iv. shoe repair (which may include key cutting and engraving); and
 - v. sale or rental of *videos tapes, DVDs*, electronic games and other similar amusements.



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Understanding Leasing

The Commercial Tenancy (Retail Shops) Agreements

Act cont'd

Tenant Guide (Form 4)

Big tip: read this if you've never lease Retail Premises before!

- *What Is a Retail Shop Lease?*
- *Information You Should Have before Entering the Lease*
- *Permitted Use of the Retail Shop*
- *Term of the Retail Shop Lease*
- *Rent*
- *Rent Review*
- *Contribution to the Landlord's Operating Expenses or Outgoings*
- *Sinking Funds*
- *Other Funds and Reserves*
- *Fit out and Refurbishment Legal Fees Trading Hours*
- *Void Clauses*
- *Disruption – Compensation by the Landlord*
- *Unconscionable Conduct and Misleading and Deceptive Conduct*
- *Assignment and Subleasing*
- *Default or Breach of Lease*
- *Dispute between Tenant and Landlord*
- *Keep Records.*



continued...





Understanding Leasing

- The Commercial Tenancy (Retail Shops) Agreements Act cont'd

Disclosure Statement (Form 1)

- A tenant is entitled to receive a completed and signed **Disclosure Statement** at *least 7 days* before 'entering' into a Retail Shops Lease. A Disclosure Statement is a prescribed document which is to set out certain information such as:
 - the term of the lease including any option to renew and the dates by which they must be exercised;
 - an estimated breakdown of the costs payable under the lease including itemised details of the outgoings payable and the tenant's proportion;
 - a plan showing the tenancy and estimate dimension;
 - other important details including the permitted use and if the tenant has the exclusivity
 - about its business operated from the premises, trading hours, any fit out works and landlord's works

continued...





Understanding Leasing

- The Commercial Tenancy (Retail Shops) Agreements Act cont'd

Rent reviews

- *Must be pre-agreed/described as to the method a mechanism of rent review e.g. CPI, fixed %, turnover-rent**, or market rent review. (Note: cannot have a 'ratchet rent – review clause' like in commercial leases).*
 - **Note: in Western Australia, turnover rent provisions breach the ownership restrictions in the *Pharmacy Act 2010*.
- Also with **market rent reviews**, if the current market rent value is lower than currently charged, the landlord can't require the tenant to pay a higher rent than the outcome of the market rent review.
 - Also such market valuation reviews are no longer to include in their assessment: the goodwill of business, business stock, fixtures and fittings paid for by the tenant or improvement work completed by the tenant.

continued...





Understanding Leasing

The Commercial Tenancy (Retail Shops) Agreements Act cont'd

Term and options to renew

- All RTA Leases that are for more than 6 months *must have a minimum term of lease 5 years*, which can be a combination of smaller options (e.g. 2+3 years).
- Also as a result of last major changes to the RTA Act in 2013: now *the landlord* must provide notice of the expiry date of the option, 6 to 12 months prior to such otherwise can possibly extend the option rather than such usually lapsing (as it would do so automatically with a commercial lease).

Refurbishment requirements

- These must be clearly and objectively specified in detailed, otherwise they may be voided for uncertainty.

Redevelopment/relocation

- A landlord's relocation provision in the lease must be in the prescribed form set out in the RTA Act's regulations; otherwise the landlord will need to make an application to the State Administrative Tribunal for approval else will be voided.

Recoverable and Non-Recoverable Costs

- A landlord cannot recover its legal costs about a new lease, an option lease or a renewal of a lease. The lease related costs that are prohibited from recovery includes lease preparation costs, negotiation, obtaining mortgagee's consent or the landlord' cost in complying with the Act.
- Note: The landlord may still claim legal expenses related to an assignment or sublease, including the costs of investigating a proposed assignee or sublessee.

NOTE: Provision specific to Pharmacies

- **Also with the lease agreements for pharmacies, they must have a clause that *gives the pharmacist unrestricted access to the leased premises at all times* in order that they are to be able to dispense emergency prescriptions.**

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Negotiating Your Lease

- 1) **Understand your business**
 - a) General factors
 - b) Where you want to get to
 - c) Define your important priorities

- 2) **Lease Strategy Preparation**
 - a) Ideal Lease = business success
 - b) Assess the local rental market
 - c) Create multiple options
 - d) Negotiate to your advantage





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2019 Pharmacy Rental Report





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PART ONE

General Leasing Information

PART TWO

Rental / Leasing Benchmarks

PART THREE

Negotiations – Best Practice





2019 Pharmacy Rental Report

PHARMACY RENT & OUTGOINGS PER SQUARE METRE BY STATE & LOCATION¹⁹

TABLE7: Rent & Outgoings per square metre per annum – FY2018

2018				
STATE	LOCATION	LOW RANGE	AVERAGE	HIGH RANGE
VC	Metropolitan	\$690	\$816	\$942
VC	Rural	\$217	\$287	\$358
QLD	Metropolitan	\$614	\$764	\$914
QLD	Rural	\$5	\$437	\$870
NSW	Metropolitan	\$823	\$1,155	\$1,486
NSW	Rural	\$214	\$433	\$652
Australia Wide		\$592	\$667	\$742

TABLE8: Rent & Outgoings per square metre per annum – FY2017

2017				
STATE	LOCATION	LOW RANGE	AVERAGE	HIGH RANGE
VC	Metropolitan	\$726	\$805	\$884
VC	Rural	\$238	\$284	\$330
QLD	Metropolitan	\$662	\$950	\$1,238
QLD	Rural	\$403	\$613	\$823
NSW	Metropolitan	\$1,007	\$1,179	\$1,351
NSW	Rural	\$301	\$429	\$557
Australia Wide		\$671	\$732	\$792

¹⁹East Coast only.

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2019 Pharmacy Rental Report

PHARMACY RENT & OUTGOINGS PER SQUARE METRE BY SHOPPING CENTRE TYPE²⁰

TABLE 9: Rent & Outgoings psm by Shopping Centre Type – FY2018

2018			
SHOPPING CENTRE TYPE	LOW RANGE	AVERAGE	HIGH RANGE
Isolated	\$64	\$318	\$571
Strip	\$232	\$430	\$629
Neighbourhood	\$418	\$511	\$605
Sub-Regional & Community	\$532	\$653	\$774
Regional	\$444	\$636	\$827
Major Regional	\$998	\$1,356	\$1,715
Medical Centre	\$630	\$1,055	\$1,481
All Locations	\$592	\$667	\$742

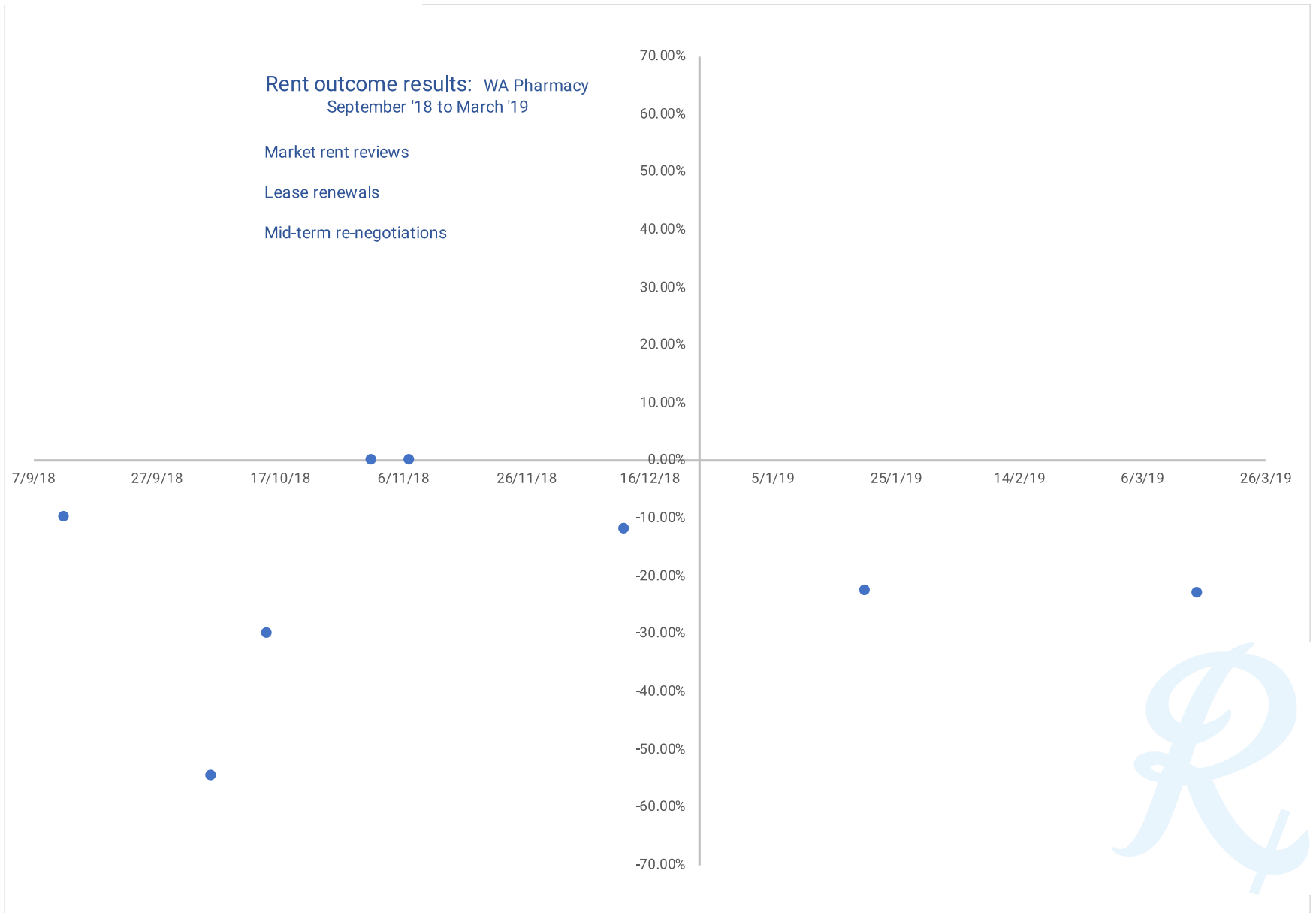
TABLE 10: Rent & Outgoings psm by Shopping Centre Type – FY2017

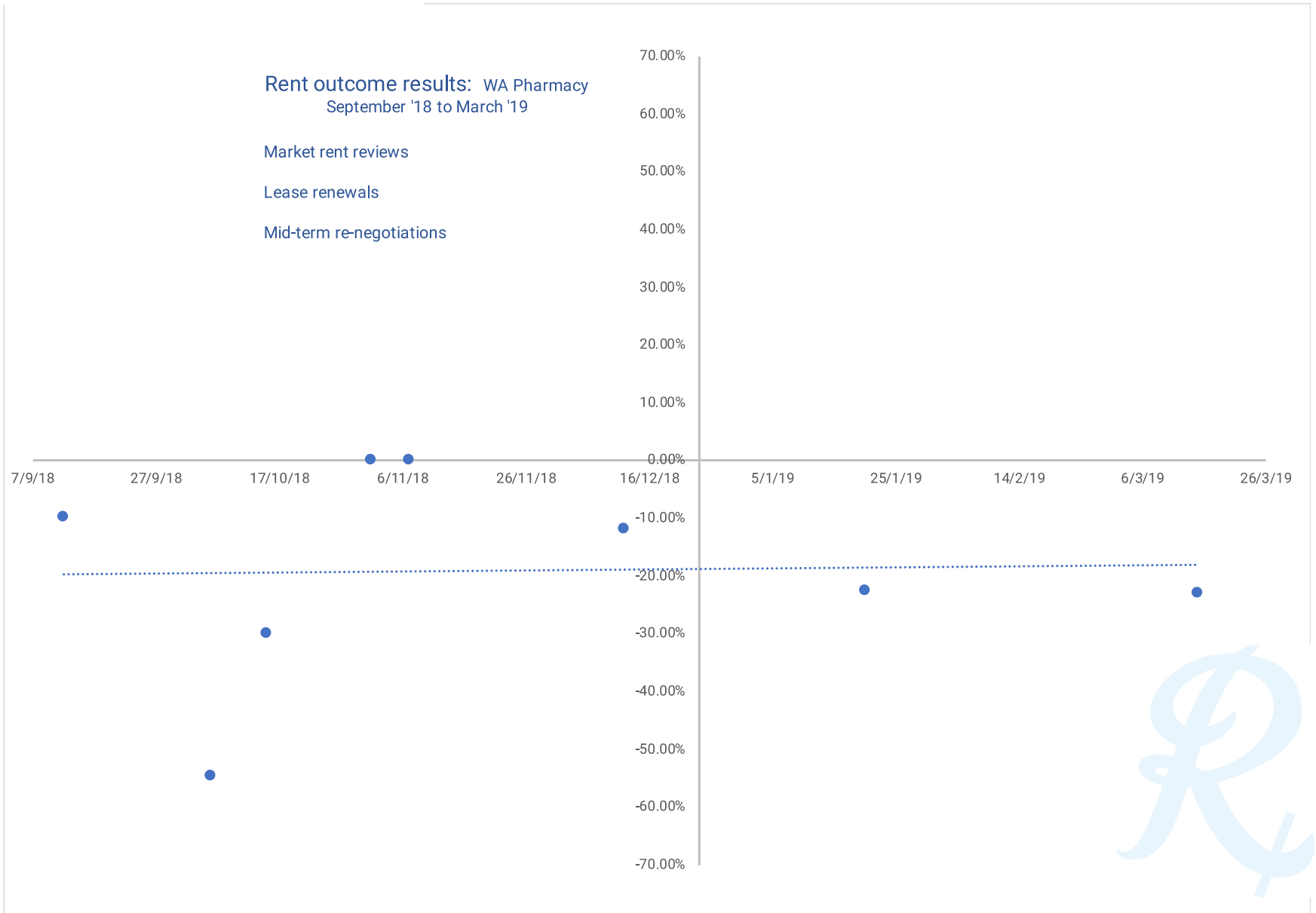
2017			
SHOPPING CENTRE TYPE	LOW RANGE	AVERAGE	HIGH RANGE
Isolated	\$144	\$359	\$574
Strip	\$324	\$451	\$578
Neighbourhood	\$462	\$524	\$585
Sub-Regional & Community	\$566	\$639	\$712
Regional	\$660	\$820	\$981
Major Regional	\$1,193	\$1,512	\$1,830
Medical Centre	\$779	\$1,045	\$1,311
All Locations	\$671	\$732	\$792

²⁰ Data is based upon East em Australia

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Lease Assignment

Assignment under the RTA Act

It's probably best explained by starting with what statutory rights/protections and limited obligations/reduced risks that outgoing tenant and its guarantor (i.e. assignor and its guarantor) face under the RTA Act:

10. Assignment and sub-leasing

1. *Notwithstanding any other written law, a retail shop lease shall be taken to grant to the tenant a right to assign the lease, subject only to a right of the landlord to withhold consent to an assignment on reasonable grounds.*
2. *Where a tenant under a retail shop lease has in writing requested the landlord to consent to —*
 - a. *an assignment of the lease; or*
 - b. *where the lease provides for a sub-lease of the premises by consent, a sub-lease of the premises, and the landlord fails to give notice in writing of consent or withholding of consent to the tenant within 28 days after receiving the request, the landlord shall be taken to have consented to the assignment or sub-lease, as the case may be.*

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Lease Assignment

Assignment under the RTA Act cont'd

3. A provision in a retail shop lease to the effect that the landlord may withhold consent to an assignment of the lease by a tenant unless the tenant or a guarantor of the tenant, agrees to pay any moneys that are payable under the lease by the person to whom it is proposed to assign the lease is void.
4. A provision in a retail shop lease to the effect that the landlord or a person claiming through the landlord may recover from the assignor or from a guarantor of the assignor, any moneys that are payable under the lease by the tenant to whom the lease has been assigned is void.
5. In this section —

“assignor” means a tenant who assigns a lease in accordance with this section;

“guarantor” means a person who has guaranteed the performance by a tenant of the tenant’s obligations under a retail shop lease or a person who has indemnified a landlord against any loss the landlord may incur as a result of the failure by a tenant to comply with those obligations;

“moneys payable under the lease” includes moneys recoverable by action under the lease.





Lease Assignment

Obligations of the Assignor (Seller) under the lease

First step: ***always read the assignment of lease clause!***

The assignment clause often sets out:

- ✓ a *process for obtaining the landlord's consent* to an assignment, which may include a specific minimum timeframe that the landlord will need, in order to consider the tenant's application.
- ✓ the *information the tenant needs to provide* to the landlord about the proposed assignee. For example, the lease may require the assignee to compile statements of assets and liabilities (prepared by the assignee or the assignee's accountant), business references, personal references etc.
- ✓ the *criteria a proposed assignee needs to meet* before the landlord will consent to the assignment. For example, the lease may provide:
 - that the proposed assignee must have equal or greater financial means as compared to the existing tenant. This type of clause is often included to give landlords comfort that an assignee will have similar capacity to meet the financial and other obligations under the lease as the tenant
 - the assignee must only use the premises for the 'permitted use' listed in the lease. So if the permitted use listed in the lease is a pharmacy, and the assignee intends to use it for some other retail purposes (just unregulated goods), the proposed assignment will not meet the lease requirements.

continued...





Lease Assignment

Obligations of the Assignor (Seller) under the lease cont'd

- the form of security for performance the assignee will need to provide, if consent to the assignment is given. For example, a lease may require:
 - a registerable security interest (i.e. a GSA registered on the PPSR)
 - a bank guarantee from the assignee
 - a security deposit from the assignee
 - personal guarantees from individuals related to the assignee, such as the directors of the assignee if the assignee is a company; and/or
 - a guarantee by a company related to the assignee, such as the parent company of the assignee.

As a preliminary step, tenants should ask the assignee to commence compiling the financial information and references required under the lease assignment clause.

Conditions to be satisfied

- ✓ Prior Notice
- ✓ No breach of Lease
- ✓ Assignee is respectable, responsible and solvent
- ✓ Assignee financially and otherwise capable of performing tenant's obligations
- ✓ Assignee's use of the premises
- ✓ Enter into covenant in form required by the landlord
- ✓ Provision of guarantees or security reasonably required by the landlord
- ✓ Release landlord from claims by assignor
- ✓ Pay landlord's costs
- ✓ Landlord's right to require a surrender of lease (alternative to assignment)
- ✓ Such other conditions as the landlord imposes.





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**You cannot sublet
without the
landlord's **consent.****

Lease Assignment

Assignees obligations and risks to watch for under a RTA Lease

- Variation(s) of Lease.
- Prior Defaults – effect on assignee.
- Release of Assignor's Guarantors.
- Guard against expansion of liability.
- Liability of Guarantors.
- Security Deposits.
- Improvements to the Premises.
- ***Make-good and deliver-up requirements!***





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Pharmacy Lease Register



What is LeaseMap?

How does it work?

What does it look like?

How to participate?





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