

Queensland



RETAIL SHOP LEASES ACT 1994

Act No. 47 of 1994

Queensland



RETAIL SHOP LEASES ACT 1994

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	8
2	Commencement	8
PART 2—OBJECT OF ACT AND ITS ACHIEVEMENT		
3	Object of Act	8
4	How object of Act to be achieved	8
PART 3—INTERPRETATION		
<i>Division 1—Standard definitions</i>		
5	Definitions	9
<i>Division 2—Extended definitions</i>		
6	Meaning of “common areas”	13
7	Meaning of “outgoings”	14
8	Meaning of “retail shopping centre”	15
9	Meaning of “turnover”	16
PART 4—OPERATION OF ACT AND FORMER ACT		
10	Act binds all persons	17
11	Application of Act—when lease entered into	17
12	Application of Act—where lease entered into	17
13	Application of Act to leases—general	17
14	Continued application of certain provisions of former Act to existing retail shop leases	18
15	Application of Act—if premises become or cease to be retail shop after commencement of lease	19
16	Application of Act to existing leases in exempt enterprises	20
17	Application of Act to leases of service stations	20

18	Act's provisions implied in leases	20
19	Contracting out of Act prohibited	20
20	Act prevails over inconsistent leases	21
	PART 5—PRELIMINARY DISCLOSURES ABOUT LEASES	
21	Application of Part	21
22	Lessor to give lease and disclosure statement to prospective lessee	21
23	Lessor to give lessee certified copy of lease	22
	PART 6—MINIMUM LEASE STANDARDS	
	<i>Division 1—Preliminary</i>	
24	Lessee's obligations to pay rent and outgoings	22
	<i>Division 2—Turnover rent</i>	
25	Requirements if rent a percentage of turnover	23
	<i>Division 3—Confidentiality of turnover information</i>	
26	Lessor not to disclose turnover information	23
	<i>Division 4—Rent review</i>	
27	Rent may be reviewed on only 1 basis	25
28	Rent review on basis of current market rent	26
29	Matters to be considered by specialist retail valuers	26
30	Valuer may require information from lessor	27
31	Requirements of determination	27
32	Valuer to give determination to lessor and lessee	27
33	Effect of determination	28
34	Parties to share cost of determination	28
35	Confidentiality of lease information	28
36	Certain rent review provisions of leases void	28
	<i>Division 5—Lessor's outgoings and other payments</i>	
37	Requirements when lessee to pay lessor's outgoings	29
38	Lessee's liability to pay proportion of lessor's apportionable outgoings	31
39	Payment of key money and amount for goodwill prohibited	31
	<i>Division 6—Other payments for retail shops in retail shopping centres</i>	
40	Sinking fund for major maintenance and repairs	32
41	Promotion and advertising	33

Division 7—Implied provisions for compensation

42 Compensation provisions implied in certain leases 33

43 When compensation is payable 34

44 Amount of compensation 35

Division 8—Lease dealings

45 Lessee’s right to deal with lease and business assets 35

46 Options to renew leases 36

Division 9—General

47 Lessee’s right to independent legal advice 37

48 Lessee’s liability for costs associated with preparation etc. of lease 38

49 Lessee’s right to join or form commercial associations 38

50 Retail tenancy disputes about assignments of leases 38

PART 7—RETAIL SHOP LEASE TRADING HOURS

51 Definitions 39

52 Requirements for resolution 40

53 Trading hours 41

PART 8—RETAIL TENANCY DISPUTE RESOLUTION

Division 1—Preliminary

54 Parties’ rights under this Part preserved 41

Division 2—Mediation of retail tenancy disputes

55 Lodgment of retail tenancy disputes 42

56 Chief executive to act on dispute notice 42

57 Limited right of representation 42

58 Conference to be held in private 43

59 Parties attendance at conference not compellable 43

60 Parties to mediation conference 43

61 Mediation agreements 43

62 No official record of mediation conference 43

Division 3—Reference of retail tenancy disputes to tribunal

63 Reference of dispute—by mediator 44

64 Reference of dispute—by party 44

65 Chief executive to refer dispute to tribunal 45

Division 4—Retail tenancy disputes hearings**Subdivision 1—Directions hearings**

66	Chairperson may hold directions hearing	45
----	---	----

Subdivision 2—Tribunal's hearing

67	Presiding member	46
68	Venues	46
69	Hearing to be held in private	46
70	Appearances before tribunal	46
71	Limited right of representation	47
72	Procedure	47
73	Amendment of dispute	47
74	Questions to be decided by majority of tribunal	48
75	Tribunals to keep records of proceedings	48
76	Powers of tribunal	48
77	Inspection of documents	48
78	Offences—hearings	49
79	Self incrimination	49
80	False or misleading information	50
81	False or misleading documents	50
82	Contempt of tribunal	50

Division 5—Provisions about tribunal orders

83	Tribunals' orders	51
84	Enforcement of certain tribunal orders	52
85	Orders requiring payments	52
86	Orders of tribunal to be complied with	53
87	Tribunal's order final and binding	53
88	Restricted right to question tribunal's hearing and order	54

Division 6—Renewal of retail tenancy disputes

89	Application to renew dispute	54
90	Renewal of dispute	54

Division 7—General

91	Parties to pay own costs	55
----	------------------------------------	----

92	Allowance to witness	55
93	Withdrawal of disputes	55
94	Exclusion of other jurisdictions	55
PART 9—ADMINISTRATION		
<i>Division 1—Mediators</i>		
95	Mediators	56
96	Mediators' function	56
97	Mediators' jurisdiction	56
98	Duration of appointment	57
99	Conditions of appointment	58
100	Removal from office	58
101	Annual reports	58
<i>Division 2—Retail shop leases tribunals</i>		
<i>Subdivision 1—Tribunal panel and members</i>		
102	Appointment of members of tribunal panel	58
103	Duration of appointment	59
104	Conditions of appointment	59
105	Removal from office	59
<i>Subdivision 2—Composition, functions, jurisdiction and powers of tribunals</i>		
106	Composition of retail shop lease tribunals	59
107	Chairperson	60
108	Tribunals' function	60
109	Tribunals' jurisdiction	60
110	Tribunals' general powers	61
111	Transfer of hearings between tribunals and courts	61
<i>Subdivision 3—Annual reports</i>		
112	Reports on discharge of tribunals' function	62
<i>Division 3—Confidentiality, privilege and immunity</i>		
113	Mediators and tribunal members to maintain secrecy	62
114	Ordinary protection and immunity allowed	63
115	Admissions made during dispute resolution process	63

Division 4—General

116	Register	63
117	Delegations	64
118	Chief executive may approve forms	64
119	Chief executive's responsibility	64

PART 10—MISCELLANEOUS

120	Evidentiary provisions	65
121	Regulations	65
122	Review of Act	65

PART 11—REPEALS AND CONSEQUENTIAL AMENDMENTS

123	Acts repealed	66
124	Act amended	66

PART 12—SAVINGS AND TRANSITIONAL PROVISIONS

125	Definition	66
126	Transitional regulations	66
127	References of disputes to mediator	67
128	References of disputes to tribunal	67
129	Expiry of Part	67

SCHEDULE	68
-----------------------	----

ACT AMENDED

VALUERS REGISTRATION ACT 1992	68
-------------------------------------	----

Queensland



Retail Shop Leases Act 1994

Act No. 47 of 1994

An Act about retail shop leases

[Assented to 14 September 1994]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Retail Shop Leases Act 1994*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—OBJECT OF ACT AND ITS ACHIEVEMENT

Object of Act

3. The object of this Act is to promote efficiency and equity in the conduct of certain retail businesses in Queensland.

How object of Act to be achieved

4. The object of this Act is to be achieved through—
 - (a) mandatory minimum standards for retail shop leases; and
 - (b) a low cost dispute resolution process for retail tenancy disputes.

PART 3—INTERPRETATION

Division 1—Standard definitions

Definitions

5. In this Act—

“agreement” includes an oral agreement.

“apportionable outgoings” of a lessor means the lessor’s outgoings other than specific outgoings.

“approved accounting standards” means the standards set out in the statements of accounting and auditing standards issued by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia.

“approved agent” means—

- (a) for the mediation of a retail tenancy dispute—an agent approved by the mediator; or
- (b) for the hearing of a retail tenancy dispute by a tribunal—an agent approved by the tribunal.

“approved auditor” means—

- (a) a person registered, or taken to be registered, as an auditor under the Corporations Law; or
- (b) a person who is a member of, and holds a practising certificate issued by, the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia.

“approved form” means a form approved by the chief executive.

“arbitration” means arbitration conducted—

- (a) under the *Commercial Arbitration Act 1990*; or
- (b) if a retail shop lease provides for the manner of arbitration—
 - (i) under the lease; and

(ii) to the extent that the lease is inadequate—under the *Commercial Arbitration Act 1990*.

“attendance notice” see section 76(1)(c) (Powers of tribunal).

“base rent” means rent, or the part of rent, that is a specified amount of money (whether or not the amount is subject to change).

“building” includes any structure.

“chairperson” means the chairperson of a tribunal.

“common areas” see section 6 (Meaning of “common areas”).

“conviction” includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

“disclosure statement” see section 22(1)(b) (Lessor to give lease and disclosure statement to prospective lessee).

“dispute notice” see section 55 (Lodgment of retail tenancy disputes).

“dispute resolution process” means the process of mediation and hearing of a retail tenancy dispute under Part 8 (Retail tenancy dispute resolution), and includes all steps taken in making arrangements for a mediation conference or tribunal hearing or in the follow-up of a mediation conference or tribunal hearing.

“effective rent basis”, for the determination of rent under a retail shop lease, means the determination of the rent taking into account all associated advantages and disadvantages under arrangements made between the lessor and lessee that reflect the net consideration passing to the lessor from the lessee under the lease and associated arrangements.

“enforcement order” see section 83(2)(a) (Tribunals’ orders).

“existing retail shop lease” means—

- (a) a retail shop lease entered into or renewed before the commencement of this section; or
- (b) a retail shop lease entered into, or renewed, under an option under an agreement that was entered into before the commencement of this section; or
- (c) a retail shop lease entered into under an agreement for lease that

was entered into before the commencement of this section; or

- (d) an assignment of a retail shop lease mentioned in paragraph (a), (b) or (c).

“former Act” means the *Retail Shop Leases Act 1984*.

“key money” means—

- (a) an amount to be paid to, or at the direction of, a lessor by way of a premium, non-repayable bond or otherwise, for the granting, renewing or assigning of a lease; or
- (b) any benefit to be conferred on, or at the direction of a lessor for the granting, renewing or assigning of a lease.

“lease” means an agreement under which a person gives or agrees to give to someone else for valuable consideration a right to occupy premises whether or not the right is—

- (a) an exclusive right to occupy the premises; or
- (b) for a term or by way of a periodic tenancy or tenancy at will.

“leased building” means the building (other than a building in a retail shopping centre) in which a leased shop is situated.

“leased shop” means the retail shop leased, or to be leased, under a retail shop lease.

“lessee” in relation to a retail tenancy dispute includes the former lessee.

“lessor” means the person who, under a lease, is or would be entitled to the rent payable for the leased premises regardless of the person’s interest in the premises, and includes—

- (a) the lessor’s agent; and
- (b) in relation to a retail tenancy dispute—the former lessor.

“maintenance amounts” see section 40(1) (Sinking fund for major maintenance and repairs).

“mediation” means the process under Part 8 (Retail tenancy dispute resolution), Division 2 (Mediation of retail tenancy disputes) under which the parties to a retail tenancy dispute use a mediator to help them resolve the dispute by negotiated agreement without adjudication.

“mediation agreement” see section 61 (Mediation agreements).

“mediation conference” means a conference conducted by a mediator under Part 8 (Retail tenancy dispute resolution), Division 2 (Mediation of retail tenancy disputes) between the parties to a retail tenancy dispute.

“mediator” means a mediator appointed under this Act.

“original order” see section 89(1) (Application to renew dispute).

“outgoings”, of a lessor, see section 7 (Meaning of “outgoings”).

“payment order” see section 83(2)(b) (Tribunals’ orders).

“promotion amounts” see section 41(1)(a) (Promotion and advertising).

“public corporation” means a public corporation within the meaning of paragraph (a) of the definition “public corporation” under the Corporations Law.

“renewed retail tenancy dispute” means a retail tenancy dispute that is renewed under section 90 (Renewal of dispute).

“retail business” means a business prescribed by regulation as a retail business.

“retail shop” means premises that are—

- (a) situated in a retail shopping centre; or
- (b) used wholly or predominantly for the carrying on of 1 or more retail businesses.

“retail shop lease” means a lease of a retail shop, other than a lease of—

- (a) a retail shop with a floor area of more than 1 000 m² by a public corporation or a public corporation’s subsidiary; or
- (b) premises in a theme or amusement park; or
- (c) premises at a flea market, including an arts and crafts market; or
- (d) a temporary retail stall at—
 - (i) an agricultural or trade show; or
 - (ii) a carnival, festival or cultural event; or
- (e) another type of premises prescribed by regulation.

“retail shopping centre” see section 8 (Meaning of “retail shopping

centre”).

“retail tenancy dispute” means any dispute under or about a retail shop lease, or about the use or occupation of a leased shop under a retail shop lease, regardless of when the lease was entered into.

“specialist retail valuer” means a person whose name is recorded on the list of specialist retail valuers kept under the *Valuers Registration Act 1992*.

“specific outgoings” means lessor’s outgoings that are attributable to a lessee because of the lessee’s direct use of the service or facility incurring the outgoing.

Example—

If a lessor is billed for all electricity used in a retail shopping centre and charges lessees for their metered use of electricity, the charges are specific outgoings.

“subsidiary” of a public corporation means a subsidiary of the corporation under the Corporations Law.

“tribunal” means a retail shop lease tribunal established under this Act.

“tribunal member” means a member of a tribunal.

“tribunal panel” means the panel of retail shop lease tribunal members mentioned in section 102 (Appointment of members of tribunal panel).

“tribunal panel member” means a member of the tribunal panel.

“turnover” see section 9 (Meaning of “turnover”).

Division 2—Extended definitions

Meaning of “common areas”

6.(1) **“Common areas”** of a retail shopping centre are areas in or adjacent to the centre that are used, or intended for use—

- (a) by the public; or
- (b) in common by the lessees of premises in the centre in relation to the conduct of businesses in premises in the centre.

(2) **“Common areas”** include—

- (a) stairways, escalators and elevators; and
- (b) malls and walkways; and
- (c) parking areas; and
- (d) toilets and rest rooms; and
- (e) gardens and fountains; and
- (f) information, entertainment, community and leisure facilities.

(3) However, **“common areas”** do not include leased areas.

Meaning of **“outgoings”**

7.(1) A lessor’s **“outgoings”** for a retail shopping centre or leased building are—

- (a) the lessor’s reasonable expenses directly attributable to the operation, maintenance or repair of—
 - (i) the centre or building; and
 - (ii) areas used in association with the centre or building; and
- (b) charges, levies, premiums, rates or taxes payable by the lessor because the lessor is the owner or occupier of—
 - (i) the centre or building; or
 - (ii) the land on which the centre or building is situated.

(2) However, lessor’s **“outgoings”** do not include—

- (a) land tax payable on the land on which the centre or building is situated; and
- (b) expenditure of a capital nature, including the amortisation of capital costs; and
- (c) contributions to a depreciation or sinking fund; and
- (d) insurance premiums for loss of profits; and
- (e) lessor’s contributions to merchants’ associations and centre promotion funds; and

- (f) payment of interest and charges on amounts borrowed by the lessor; and
- (g) another item prescribed by regulation.

Examples of subsection (2)(b)—

1. Costs and expenses of or incidental to the building or extension of, or major improvement of a structural nature to, the centre or building or area used in association with the centre or building, are expenditure of a capital nature.
2. Replacement costs of major items of plant and equipment in the centre or building are expenditures of a capital nature.

Meaning of “retail shopping centre”

8.(1) A “retail shopping centre” is a cluster of premises—

- (a) 5 or more of which are used wholly or predominantly for carrying on retail businesses; and
- (b) for which 1 person is, or would be if the premises were leased, the head lessor.

(2) However, a building with more than 1 storey is not a “retail shopping centre” except to the extent that a storey of the building contains, or adjoining storeys of the building each contain, a group of premises complying with subsection (1)(a) and (b).

Examples of subsection (2)—

1. In a multistorey building owned by 1 person, the ground floor contains 5 retail businesses. All other floors of the building are used solely for commercial purposes, eg. premises used by legal or accounting firms or financial advisory services. Only the ground floor of the building is a retail shopping centre.
2. In a multistorey building owned by 1 person, the ground and first floors each contain 5 retail businesses. All other floors of the building are used solely for commercial purposes. The ground and first floors of the building collectively are a retail shopping centre.
3. Each floor of a 5 storey building owned by 1 person contains 5 or more retail businesses. The building is a retail shopping centre.

(3) To remove any doubt, if a retail business is conducted in premises situated in a building separated from a retail shopping centre only by the centre’s common areas, the “retail shopping centre” includes the premises.

Example of subsection (3)—

A fast food shop is conducted from a building in a retail shopping centre's car park. The shop is part of the retail shopping centre.

Meaning of “turnover”

9.(1) “Turnover” of a business carried on in a leased shop is the gross sales of the business for any particular period.

(2) However, **“turnover”** of a business does not include the following amounts—

- (a) the net amount of discounts reasonably and properly allowed to customers in the usual course of business;
- (b) losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business;
- (c) amounts of uncollected credit accounts written off by the lessee;
- (d) cash or credit refunds allowed on sales that have previously been included as gross receipts if the goods sold are returned and the sales cancelled;
- (e) fees for services refunded in whole or part if the fees have previously been included as gross receipts;
- (f) amounts of instalments refunded to customers for cancelled lay-by transactions;
- (g) taxes imposed on the purchase price or cost of hire of goods or services at the point of sale or hire;
- (h) delivery charges;
- (i) the value of goods exchanged between 2 or more of the lessee's shops if the exchange is made solely for the convenient conduct of the lessee's business and not for concluding a sale made at or from the leased shop;
- (j) the value of goods returned to shippers, wholesalers or manufacturers;
- (k) amounts received from the sale of the lessee's fixtures and fittings from the leased shop;

- (l) amounts received from lottery sales made on a commission basis (other than commission on the sales).

PART 4—OPERATION OF ACT AND FORMER ACT

Act binds all persons

10. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Application of Act—when lease entered into

11. A retail shop lease is entered into on whichever is the earlier of the following dates—

- (a) the date the lease becomes binding on the lessor and lessee;
- (b) the date the lessee enters into possession of the leased shop.

Application of Act—where lease entered into

12. This Act applies to all retail shop leases of premises in Queensland—

- (a) regardless of where the lease is entered into; and
- (b) even though the lease purports to be governed by a law other than Queensland law.

Application of Act to leases—general

13.(1) This Act applies to all retail shop leases whether entered into or renewed before or after the commencement of this section.

(2) However, this Part (other than section 14 (Continued application of certain provisions of former Act to existing retail shop leases)), Part 5 (Preliminary disclosures about leases) and Part 6 (Minimum lease standards) do not apply to existing retail shop leases.

(3) Subsection (1) has effect subject to the following sections—

- section 15 (Application of Act—if premises become or cease to be retail shop after commencement of lease)
- section 16 (Application of Act to existing leases in exempt enterprises)
- section 17 (Application of Act to leases of service stations)
- section 21 (Application of Part)
- section 42 (Compensation provisions implied in certain leases)
- section 45(3) (Lessee's right to deal with lease and business assets)
- section 46(9) (Options to renew leases)
- Part 7 (Retail shop lease trading hours).

Continued application of certain provisions of former Act to existing retail shop leases

14.(1) The following provisions of the former Act continue to apply (to the extent that they applied immediately before the commencement of this section) to an existing retail shop lease as if this Act had not been enacted—

- Part 1 (Preliminary), other than section 5A (Exemptions)
- Part 2 (Prohibited conditions and provisions)
- Part 3 (Implied condition), other than the following sections—
 - section 10B (Designation of specialist retail valuers)
 - section 10C (Appeal by aggrieved valuer)
 - section 15A (Documents and information to be given to lessee)
- section 56 (Offences generally and penalty)
- section 57 (Proceedings for offences)
- section 58 (Evidentiary provision)
- Schedules 1 and 2.

(2) For the purposes of applying a provision of the former Act to an

existing retail shop lease, a reference in the provision to—

- (a) a specialist retail valuer is a reference to a specialist retail valuer under the *Valuers Registration Act 1992*; and
- (b) the registrar is a reference to the chief executive; and
- (c) a mediator is a reference to a mediator under this Act; and
- (d) a Retail Shop Leases Tribunal or Tribunal is a reference to a tribunal under this Act.

Application of Act—if premises become or cease to be retail shop after commencement of lease

15.(1) This Act does not apply to—

- (a) a lease of premises that become a retail shop after the commencement of the lease; or
- (b) an assignment of the lease; or
- (c) a renewal of the lease under an option under the lease.

Example of subsection (1)(a)—

On 1 April 1995 a person enters into a 3 year lease for the conduct of a business from premises that are not in a retail shopping centre. On 1 September 1995, the business is prescribed by regulation as a retail business. Under the subsection, this Act does not apply to the lease even though the premises have become a retail shop.

(2) This Act continues to apply to—

- (a) a lease of premises that cease to be a retail shop after the commencement of the lease; or
- (b) an assignment of the lease; or
- (c) a renewal of the lease under an option under the lease.

Example of subsection (2)(a)—

On 1 April 1995 a person enters into a 3 year lease for the conduct of a business from premises in a retail shopping centre. On 1 September 1995, the business ceases to be a retail shop because the cluster of premises in which the leased premises are situated cease to be a retail shopping centre. Under the subsection, this Act continues to apply to the lease even though the premises are no longer a retail shop.

Application of Act to existing leases in exempt enterprises

16.(1) This Act does not apply to leases—

- (a) entered into before the commencement of this section between the owner of an exempt enterprise under the former Act and a tenant of premises in the enterprise; and
- (b) to which the former Act did not apply because of the exemption of the enterprise from the provisions of the former Act.

(2) However, Part 8 (Retail tenancy dispute resolution), Division 2 (Mediation of retail tenancy disputes) applies to a lease mentioned in subsection (1) if the lease would be a retail shop lease if entered into after the commencement of this section.

Application of Act to leases of service stations

17.(1) This Act does not apply to a retail shop lease for the carrying on of the business of a service station if the *Petroleum Retail Marketing Franchise Act 1980* (Cwlth) applies to the carrying on of the business under a franchise agreement within the meaning of that Act.

(2) This Act (other than Part 6 (Minimum lease standards)) applies to a retail shop lease (whether entered into or renewed before or after the commencement of this section) for the carrying on of the business of a service station if the *Petroleum Retail Marketing Franchise Act 1980* (Cwlth) does not apply to the carrying on of the business under a franchise agreement within the meaning of that Act.

Act's provisions implied in leases

18. If, under this Act, a duty is imposed or an entitlement is conferred on a lessor or lessee under a retail shop lease, the duty or entitlement is taken to be included in the lease.

Contracting out of Act prohibited

19. A provision of a retail shop lease is void if it purports to exclude the application of a provision of this Act that applies to the lease.

Act prevails over inconsistent leases

20. If a provision of this Act is inconsistent with a provision of a retail shop lease, the provision of this Act prevails and the provision of the lease is void to the extent of the inconsistency.

PART 5—PRELIMINARY DISCLOSURES ABOUT LEASES**Application of Part**

21. This Part does not apply to—

- (a) a retail shop lease for a periodic tenancy or tenancy at will; or
- (b) a retail shop lease entered into or renewed under an option under a retail shop lease; or
- (c) an assignment of a retail shop lease.

Lessor to give lease and disclosure statement to prospective lessee

22.(1) At least 7 days before a prospective lessee of a retail shop enters into a retail shop lease, the lessor must give to the person—

- (a) a draft of the lease; and
- (b) a statement (the “**disclosure statement**”) containing the particulars prescribed by regulation.

(2) The disclosure statement must be in the approved form.

(3) If a lessor does not comply with subsection (1)—

- (a) the lessee may terminate the lease by giving written notice to the lessor within 2 months after the lessee enters into the lease; and
- (b) the lessor is liable to pay to the lessee the reasonable compensation decided by way of the dispute resolution process for loss or damage suffered by the lessee because of the failure.

(4) The termination of a lease under subsection (3)(a) does not affect any

right, privilege or liability acquired, accrued or incurred under the lease for any period before the termination.

Lessor to give lessee certified copy of lease

23. Within 30 days after a retail shop lease is signed by the parties, the lessor must give the lessee a certified copy of the signed lease.

Maximum penalty—40 penalty units.

PART 6—MINIMUM LEASE STANDARDS

Division 1—Preliminary

Lessee's obligations to pay rent and outgoings

24.(1) A retail shop lease must not contain a provision requiring the lessee to make any payment other than for rent and, if specified in the lease, the lessor's outgoings or the specified part of the lessor's outgoings for the retail shopping centre or leased building in which the leased shop is situated.

(2) Subsection (1) applies whether the provision requires payment to be made—

- (a) to the lessor or someone else; or
- (b) by the lessee or someone else.

Example of subsections (1) and (2)—

A provision of a retail shop lease requiring a lessee to pay the lessor's land tax or to reimburse the lessor for land tax (regardless of by whom, or to whom, the payment is to be made) is void under section 20.

(3) Subsection (1) has effect subject to the following sections—

- section 34 (Parties to share cost of determination)
- section 39(2) (Payment of key money and amount for goodwill prohibited)
- section 40 (Sinking fund for major maintenance and repairs)

- section 41 (Promotion and advertising)
- section 48(2) (Lessee's liability for costs associated with preparation etc. of lease).

Division 2—Turnover rent

Requirements if rent a percentage of turnover

25.(1) This section applies if, under a retail shop lease, the rent is or may be calculated either in whole or part as a percentage of the turnover of the lessee's business carried on, or to be carried on, in or from the leased shop.

(2) The lease must specify the formula to be used to calculate the rent.

(3) During the term of the lease, the lessee must give to the lessor—

- (a) at the end of each month or at the other times agreed between the parties, a certificate specifying with reasonable accuracy the turnover of the business; and
- (b) at the end of each year or at the other times agreed between the parties, and at the termination of the lease, a statement of the turnover of the business prepared by an approved auditor.

(4) If the lessee complies with subsection (3), the lessee is taken to have fully complied with any obligation under the lease to give the lessor the turnover of the lessee's business.

Division 3—Confidentiality of turnover information

Lessor not to disclose turnover information

26.(1) A lessor must not, whether directly or indirectly, disclose to anyone else information obtained by the lessor about the turnover of the lessee's business (whether under the lease or under section 25 (Requirements if rent a percentage of turnover)) without the lessee's agreement.

Maximum penalty—60 penalty units.

(2) However, the lessor may disclose information—

- (a) in a document giving the aggregate turnover of businesses, or a class of business, in the retail shopping centre in which the leased shop is situated if the disclosure is made in a way that does not disclose information about the turnover of an individual lessee's business; or
 - (b) specifying the turnover of the lessee's business to—
 - (i) a prospective purchaser or mortgagee of the retail shopping centre in which the leased shop is situated; or
 - (ii) a professional adviser to, or properly appointed agent of, a prospective purchaser or mortgagee mentioned in subparagraph (i); or
 - (iii) the lessor's professional advisers; or
 - (iv) a court under a court order; or
 - (v) a mediator or tribunal under this Act; or
 - (vi) a specialist retail valuer under section 30 (Valuer may require information from lessor).
- (3)** A person who is given information under subsection (2)(b)(i) or (ii)—
- (a) may use the information only to enable the prospective purchaser or mortgagee to make a decision whether to purchase the lessor's interest in, or to obtain financial accommodation on the security of, the retail shopping centre; and
 - (b) must not, whether directly or indirectly, disclose the information to anyone else without the lessee's agreement.

Maximum penalty—60 penalty units.

- (4)** A person who is given information under subsection (2)(b)(iii)—
- (a) may use the information only to determine the lessee's rent on the basis of the turnover of the lessee's business carried on in the leased shop or to advise the lessor on the centre's trading performance; and
 - (b) must not, whether directly or indirectly, disclose the information to anyone else without the lessee's agreement.

Maximum penalty—60 penalty units.

(5) If a person discloses information in contravention of subsection (1), (3) or (4) and the lessee suffers loss or damage because of the disclosure, the lessee is entitled to the reasonable compensation for the loss or damage agreed between the lessor and lessee or, failing agreement, decided by way of the dispute resolution process.

(6) An agreement under the lease about the disclosure of turnover information or the amount of compensation is not an agreement for the purposes of subsection (1), (3)(b), (4)(b) or (5).

Division 4—Rent review

Rent may be reviewed on only 1 basis

27.(1) If, under a retail shop lease, the rent payable under the lease or any renewal or extension of the lease is to be reviewed during the term of the lease or under an option to renew or extend the lease, the lease must state the timing of the reviews and the basis on which the reviews are to be made.

(2) The reviews must be made using only 1 basis for each rent review.

(3) The basis for a rent review must be—

- (a) an independently published index of prices, costs or wages; or
- (b) a fixed percentage of the base rent; or
- (c) a fixed actual amount; or
- (d) the current market rent of the leased shop; or
- (e) another basis prescribed by regulation.

(4) If the rent is determined as a base rent plus an amount equal to a percentage of the turnover of the lessee's business above a stated amount, the review of the base rent must be made in accordance with subsections (2) and (3).

(5) If, under a retail shop lease, the rent is to be reviewed during the term of the lease or any renewal or extension of the lease using more than 1 basis

for a rent review, the rent payable for the rental period after the timing of the review is the same as the rent payable before the timing of the review.

Rent review on basis of current market rent

28.(1) This section applies if—

- (a) rent under a retail shop lease is to be reviewed on the basis of the current market rent of the leased shop; and
- (b) the lessor and lessee cannot agree on the current market rent within 1 month after the review date.

(2) The current market rent is to be determined by a specialist retail valuer agreed by the lessor and lessee, or failing agreement, nominated by the chief executive.

(3) The valuer may carry out the determination only if the valuer is independent of the interests of the lessor and lessee.

Matters to be considered by specialist retail valuers

29. In making a determination of the current market rent, the specialist retail valuer—

- (a) must determine the rent—
 - (i) on the basis of the rent that would be reasonably expected to be paid for the retail shop if it were unoccupied and offered for leasing for the use for which the shop may be used under the lease or a substantially similar use; and
 - (ii) on the basis of gross rent less lessor's outgoings payable by the lessee under the lease; and
 - (iii) on an effective rent basis; and
- (b) must not have regard to the value of the goodwill of the lessee's business or the lessee's fixtures and fittings in the retail shop; and
- (c) must have regard to—
 - (i) submissions from the lessor and lessee about the market

rent of the shop; and

- (ii) the other matters prescribed by regulation.

Valuer may require information from lessor

30.(1) The specialist retail valuer may, by written notice, require the lessor to give the valuer any relevant information about leases in the retail shopping centre in which the shop is situated.

(2) If the lessor does not give the information to the valuer within 14 days after the notice is given to the lessor, a retail tenancy dispute under the retail shop lease exists between the lessor and the valuer.¹

(3) This section has effect despite the provisions of the retail shop lease.

Requirements of determination

31. The specialist retail valuer's determination of the current market rent must be in writing, identify the location of the leased shop and specify the matters taken into consideration by the valuer in making it.

Valuer to give determination to lessor and lessee

32. The specialist retail valuer must give the valuer's determination to the lessor and lessee—

- (a) within 1 month after the valuer is asked to make the determination; or
- (b) if a retail tenancy dispute exists under section 30 (Valuer may require information from lessor) and a dispute notice has been lodged under section 55 (Lodgment of retail tenancy disputes)—the later day agreed under a mediation agreement or fixed by a tribunal.

¹ The lessor or valuer may lodge notice of the dispute under section 55 (Lodgment of retail tenancy disputes).

Effect of determination

33. The current market rent of the leased shop determined by the specialist retail valuer is the current market rent of the shop and the rent payable under the lease for the rental period under the review.

Parties to share cost of determination

34. The lessor and lessee must each pay $\frac{1}{2}$ of the specialist retail valuer's fee for the determination to the valuer.

Confidentiality of lease information

35.(1) A specialist retail valuer who obtains information under section 30 (Valuer may require information from lessor) must not—

- (a) use the information for any purpose other than to determine the current market rent for the leased shop; and
- (b) whether directly or indirectly, disclose the information to anyone else without the agreement of the lessor and lessee.

Maximum penalty—60 penalty units.

(2) However, subsection (1)(b) does not prevent the valuer from disclosing information in a way that does not identify a particular lease when specifying the matters taken into consideration by the valuer in making the determination.

(3) If the valuer discloses information in contravention of subsection (1) and the lessor or lessee suffers loss or damage because of the disclosure, the lessor or lessee is entitled to be paid by the valuer the reasonable compensation for the loss or damage agreed between the lessor or lessee and the valuer or, failing agreement, decided by way of the dispute resolution process.

Certain rent review provisions of leases void

36. A provision of a retail shop lease is void to the extent that it—

- (a) requires the lessee to appoint someone to determine the current market rent of the leased shop other than in accordance with this

Act; or

- (b) requires the lessee to pay for a determination of current market rent by a specialist retail valuer other than under section 34 (Parties to share cost of determination); or
- (c) requires the determination of the current market rent of the leased shop to be made other than in accordance with this Act; or
- (d) reserves, or has the effect of reserving, to a party a discretion to apply 1 of 2 or more methods of calculating the rent of the leased shop on a particular review of the rent; or
- (e) provides for the rent of the leased shop to change on a particular review of the rent in accordance with whichever of 2 or more methods of calculating the change would result in the higher or highest rent.

Division 5—Lessor's outgoings and other payments

Requirements when lessee to pay lessor's outgoings

37.(1) In this section—

“**outgoings**” include maintenance and promotion amounts.

(2) If, under a retail shop lease, the lessee is required to pay all or part of the lessor's outgoings for the retail shopping centre or leased building in which the leased shop is situated—

- (a) the lease must specify—
 - (i) the outgoings payable by the lessee; and
 - (ii) how the outgoings will be determined and apportioned to the lessee; and
 - (iii) how the outgoings may be recovered by the lessor from the lessee; and
- (b) the lessor must give to the lessee an annual estimate in the approved form of the lessor's outgoings—
 - (i) at least 1 month before the start of the period to which the estimate relates; or

- (ii) if the lessee enters into the lease during the period to which the estimate relates or within 1 month before the start of the period—when the lessee enters into the lease; and
- (c) the lessor must give the lessee an audited annual statement in the approved form of the outgoings within 3 months after the end of the period to which the outgoings relate.

Maximum penalty—60 penalty units.

(3) The outgoings shown in the annual estimate and statement must be itemised so that the amount shown for each item is not more than 5% of the total outgoings shown in the estimate or statement.

(4) However, the amount shown for an item may be more than 5% of the total outgoings if the item relates to—

- (a) a charge, levy, rate or tax payable under an Act; or
- (b) a particular outgoing that cannot be broken up to comply with the subsection (3).

(5) The audited annual statement must—

- (a) be prepared by an approved auditor in accordance with the approved accounting standards;² and
- (b) contain the auditor's opinion on whether the statement presents fairly the lessor's outgoings for the accounting period to which it relates in accordance with the lessor's financial records and this Act; and
- (c) compare the annual estimates of the lessor's outgoings with the amount actually spent by the lessor for the outgoings during the period; and
- (d) compare the total amount actually spent by the lessor for outgoings during the period with the total amounts actually paid by lessees to the lessor during the period.

(6) If a person becomes the owner of a retail shopping centre or building containing 1 or more retail shops, the first estimate and statement of outgoings given by the person may be made for a period less than 1 year.

² The standards, among other things, deal with the integrity, objectivity and independence of the auditor—see paragraph 16 of the AUS1 standards.

Lessee's liability to pay proportion of lessor's apportionable outgoings

38.(1) In this section—

“**apportionable outgoings**” include maintenance amounts.

(2) The proportion of a lessor's apportionable outgoings for a retail shopping centre or leased building payable by a lessee under a retail shop lease who is enjoying or sharing the benefit of the outgoing must not be more than the proportion that the area of the lessee's leased shop bears to the total area of all premises in the centre or building that are—

- (a) leased to or occupied by lessees who enjoy or share the benefit resulting from the outgoing (whether or not they are lessees under retail shop leases); or
- (b) available for lease to or occupation by lessees who would, if leased or occupied, enjoy or share the benefit resulting from the outgoing (whether or not they would be lessees under retail shop leases).

Payment of key money and amount for goodwill prohibited

39.(1) A person must not, as lessor or for the lessor, under or in relation to a retail shop lease, seek or accept the payment of key money or any amount for the goodwill of the lessee's business carried on in or from the leased shop.

Maximum penalty—100 penalty units.

(2) However, subsection (1) does not prevent a lessor from—

- (a) recovering from the lessee the lessor's costs reasonably incurred in investigating a proposed assignee of the lessee under a retail shop lease; or
- (b) recovering from the lessee the lessor's reasonable expenses of and incidental to an assignment of a retail shop lease and any necessary consents to the assignment; or
- (c) receiving payment of rent in advance if the amount paid is not more than the rent payable for 1 rental period under the lease; or
- (d) getting a repayable bond from the lessee to secure the lessee's obligations under the lease; or

- (e) receiving from the purchaser of the lessor's business conducted in a retail shop payment for the goodwill of the business or the plant, equipment, fixtures or fittings in the retail shop; or
- (f) receiving payment from the lessee for amounts spent by the lessor for fitting out the leased shop; or
- (g) seeking and accepting payment for the grant of a franchise in relation to the grant of a retail shop lease.

(3) If an amount is paid to, or a benefit accepted by, a person in contravention of subsection (1), the person who paid or conferred the benefit may recover the amount or value of the benefit as a debt.

Division 6—Other payments for retail shops in retail shopping centres

Sinking fund for major maintenance and repairs

40.(1) This section applies if a lessee under a retail shop lease is required to pay amounts (“**maintenance amounts**”) into a sinking fund for major maintenance of, or repairs to, the buildings, plant and equipment of, and areas used in association with, the retail shopping centre in which the leased shop is situated.

(2) The lessor may keep only 1 sinking fund for the purposes mentioned in subsection (1) for the retail shopping centre.

(3) The lessor must pay maintenance amounts paid by the lessee for the credit of the sinking fund into an interest bearing account kept by the lessor.

Maximum penalty—100 penalty units.

(4) The lessor must only apply amounts standing to the credit of the sinking fund and interest earned on the fund for a purpose mentioned in subsection (1).

Maximum penalty—100 penalty units.

(5) The lessor is liable to pay into the sinking fund any deficiency attributable to a failure by the lessor or any predecessor in title of the lessor to comply with subsection (4).

(6) The total payments into the sinking fund of all lessees of retail shops in the retail shopping centre for any year must not be more than 5% of the

total of the lessor's estimated outgoings for the centre for the year.

(7) The lessor must not seek or accept payments of maintenance amounts from lessees of retail shops in the retail shopping centre that would result in the amount standing to the credit of the sinking fund being more than \$100 000.

Maximum penalty for subsection (7)—100 penalty units.

Promotion and advertising

41.(1) This section applies if—

- (a) a lessee under a retail shop lease is required to pay amounts for promotion and advertising of the retail shopping centre (“**promotion amounts**”) in which the leased shop is situated to the lessor or an entity to which the lessee is required under the lease to be a member; and
- (b) under the lease, the promotion amounts are not treated as part of the lessor's outgoings.

(2) The lessor must only apply promotion amounts for promotion and advertising directly attributable to the centre.

Maximum penalty—100 penalty units.

(3) To remove any doubt, subsection (2) does not prevent the lessor from applying promotion amounts for joint promotions and advertising with other retail shopping centres.

Division 7—Implied provisions for compensation

Compensation provisions implied in certain leases

42. A retail shop lease (other than a lease for a periodic tenancy or tenancy at will) is taken to include sections 43 (When compensation is payable) and 44 (Amount of compensation).

When compensation is payable

43.(1) The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee because the lessor, or a person acting under the lessor's authority—

- (a) relocates the lessee's business to other premises during the term of the lease or of any renewal of it; or
- (b) substantially restricts the lessee's access to the leased shop; or
- (c) takes action (other than action under a lawful requirement) that substantially restricts, or alters—
 - (i) access by customers to the leased shop; or
 - (ii) the flow of potential customers past the shop; or
- (d) causes significant disruption to the lessee's trading in the leased shop or does not take all reasonable steps to prevent or stop significant disruption within the lessor's control; or
- (e) does not have rectified as soon as is practicable—
 - (i) any breakdown of plant or equipment under the lessor's care or maintenance; or
 - (ii) any defect in the retail shopping centre or leased building containing the leased shop, other than a defect due to a condition that would have been reasonably apparent to the lessee when the lessee entered into the lease or, for a lessee by way of assignment of the lease, when the lessee accepted the assignment; or
- (f) neglects to clean, maintain or repaint the retail shopping centre or leased building containing the leased shop or the part of the centre or building that, under the lease, is the lessor's responsibility; or
- (g) causes the lessee to vacate the leased shop before the end of the lease or renewal of it because of the extension, refurbishment or demolition of the retail shopping centre or leased building containing the shop.

(2) The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee because—

- (a) the lessee entered into the lease, or a renewal of it, on the basis of

a false or misleading statement or misrepresentation made by the lessor or any person acting under the lessor's authority; or

- (b) the leased shop was not available to the lessee for trading on the date specified in the disclosure statement given to the lessee under section 22 (Lessor to give lease and disclosure statement to prospective lessee) because of the default of the lessor or anyone acting under the lessor's authority.

(3) However, the lessee is not entitled to compensation under subsection (1) or (2) merely because the lessor has prevented the lessee from extending, as permitted by the *Trading (Allowable Hours) Act 1990*, the hours during which the lessee keeps the leased shop open for trading.

Amount of compensation

44.(1) If the lessor and lessee cannot agree on the amount of compensation, the compensation payable to the lessee is to be decided by way of the dispute resolution process.

(2) An agreement under the lease about compensation payable under section 43 (When compensation is payable) is void to the extent that it limits the amount of compensation payable under the section.

Division 8—Lease dealings

Lessee's right to deal with lease and business assets

45.(1) A lessor under a retail shop lease must not obstruct or hinder the lessee in dealing with the lease or other assets of the business carried on in the leased shop by way of security.

Maximum penalty—40 penalty units.

(2) However, a lessee under a retail shop lease is not entitled to deal with the lease or other assets of the business carried on in or from the leased shop by way of security without the lessor and the prospective secured creditor entering into an agreement about—

- (a) the times when the creditor or the creditor's agents may enter the leased shop, before or after the end of the lease; and

- (b) the times by or when, and the way in which, the creditor, must or may remove fixtures, fittings or equipment subject to the security before or after the end of the lease; and
- (c) the disposal of fixtures, fittings or equipment that are not removed under the agreement; and
- (d) the right of the creditor to enter into possession, or to place someone else in possession, of the leased shop if the lessee defaults under the security; and
- (e) making good any damage caused to the leased shop because of the creditor exercising the creditor's rights under the security; and
- (f) matters incidental to the matters mentioned in paragraphs (a) to (e).

(3) Despite sections 19 (Contracting out of Act prohibited) and 20 (Act prevails over inconsistent leases), this section does not apply to a retail shop lease if the lease declares that this section does not apply to it.

Options to renew leases

46.(1) This section applies if a retail shop lease (the “**existing lease**”) does not provide for an option on the lessee's part to renew the lease.

(2) The lessee may, by written notice given to the lessor, ask the lessor to renew the existing lease for a specified period.

(3) The notice must be given at least 2 months, but not longer than 1 year, before the end of the existing lease.

(4) On receiving the notice the lessor must, by written notice given to the lessee, inform the lessee—

- (a) whether or not the lessor offers the lessee the option to renew the existing lease; and
- (b) if the lessor offers the lessee the option to renew the existing lease—the period of the renewal and the proposed conditions of the proposed renewed lease.

(5) The notice must be given within whichever is the later of—

- (a) 1 month after the lessor's receipt of the lessee's notice under subsection (2); or

(b) 6 months before the end of the existing lease.

(6) If the lessor offers the lessee the option to renew the existing lease and the lessee wishes to accept the offer, the lessee must, by written notice given to the lessor, accept the offer within 1 month after the lessee's receiving the offer.

(7) On giving the acceptance of the offer, the lessee is entitled to be granted a renewal of the existing lease on the conditions stated in the lessor's offer to renew the lease if—

- (a) there exists no unremedied default on the lessee's part when the acceptance is given; and
- (b) no default happens during the balance of the lease's term, other than a default—
 - (i) that the lessor waives; or
 - (ii) for which the lessee is granted relief by the court under section 124 of the *Property Law Act 1974* (Restriction on and relief against forfeiture).

(8) If the lessor fails to give notice under subsection (4) and there is no agreement between the lessor and lessee about the lessee's holding over, the lessee is entitled to occupy the leased shop for the term of 6 months from the end of the existing lease on the same conditions as the existing lease (other than the term of the existing lease and the lessee's entitlement under this section).

(9) An agreement under the lease about the lessee's holding over is not an agreement for the purposes of subsection (8).

(10) This section does not apply to a retail shop lease for a periodic tenancy or a tenancy at will.

Division 9—General

Lessee's right to independent legal advice

47.(1) A lessee or prospective lessee under a retail shop lease must not be compelled to use, or pay for (in whole or part), the services of a lawyer nominated by the lessor.

(2) If a person is compelled to use the services of a lawyer in contravention of subsection (1), the lessor is liable to pay to the person the amount paid by the person for the services.

Lessee's liability for costs associated with preparation etc. of lease

48.(1) A lessee under a retail shop lease is not liable to pay any amount for the lessor's legal or other expenses in relation to the preparation of the lease.

(2) However, subsection (1) does not prevent a lessee under a retail shop lease from being required to pay for—

- (a) survey fees associated with the registration of the lease; or
- (b) the reasonable expenses incurred by the lessor in obtaining the consent of the lessor's mortgagee to the lease; or
- (c) stamp duty on the lease; or
- (d) registration of the lease.

Lessee's right to join or form commercial associations

49. A lessor must not include in a retail shop lease a provision preventing or restricting the lessee from—

- (a) joining any chamber of commerce, retail trade association or other commercial association; or
- (b) forming or joining a lessees' association to promote a retail shopping centre or for another purpose of mutual interest to lessees.

Maximum penalty—40 penalty units.

Retail tenancy disputes about assignments of leases

50.(1) A retail tenancy dispute exists between a lessor and lessee under a retail shop lease if—

- (a) under the lease, the lessee may assign the lease only with the lessor's consent; and

- (b) the lessee has given the lessor full particulars of a proposed assignment of the lease and asked the lessor, in writing, to consent to it; and
- (c) the lessor has not given an answer to the lessee within 1 month after the request and the particulars are given to the lessor.

(2) A retail tenancy dispute also exists between a lessor and lessee under a retail shop lease if, in relation to consenting to an assignment of a retail shop lease, the lessor—

- (a) purports or seeks to impose on the prospective assignee as lessee, an obligation that is not the lessee's obligation under the lease; or
- (b) purports or seeks to withdraw from the prospective assignee a right conferred on the lessee under the lease; or
- (c) purports or seeks to impose, as a condition for consenting to the assignment, a condition that the lessee considers unreasonable.

(3) To remove any doubt, this section does not limit the circumstances in which a retail tenancy dispute may exist between a lessor and lessee under a retail shop lease.

PART 7—RETAIL SHOP LEASE TRADING HOURS

Definitions

51. In this Part—

“**core trading hours**”, for a retail shopping centre, means hours not outside the allowable trading hours under the *Trading (Allowable Hours) Act 1990* that—

- (a) are stated in a resolution passed by the eligible lessees of the centre under section 52 (Requirements for resolution) as the hours retail shops in the centre may be required to open for trading; or
- (b) until a resolution is passed—
 - (i) for existing leases—the lessees of the centre were required,

immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, to keep the retail shops open for trading; or

- (ii) for other leases—the lessees of the centre are required by the lessor to keep the retail shops open for trading.

“eligible lessee”, for a retail shopping centre, means a lessee of a retail shop in the centre (whether or not the lessee is a lessee under a retail shop lease).

“eligible shop”, for a retail shopping centre, means a retail shop in the centre (whether or not the shop is leased under a retail shop lease).

“existing lease” means a retail shop lease current at the commencement of the *Trading (Allowable Hours) Amendment Act 1994*.

Requirements for resolution

52. A resolution is passed by the eligible lessees of a retail shopping centre if—

- (a) the resolution is put to a vote of the eligible lessees by 1 or more of the lessees or the lessor; and
- (b) at least 7 days before the vote is taken, each eligible lessee is given a written notice that includes—
 - (i) the terms of the resolution; and
 - (ii) information about how and when the vote is to be taken; and
- (c) voting is by secret ballot on the basis of 1 vote for each eligible shop in the centre; and
- (d) each eligible lessee is allowed to vote on that basis; and
- (e) the resolution is supported by the lessees of at least 75% of the eligible shops; and
- (f) each person who casts a vote may scrutinise the counting of votes.

Trading hours

53.(1) A lessor must not require a lessee under an existing lease to extend the hours that, immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, the lessee was required to keep the retail shop open for trading.

Maximum penalty—100 penalty units.

(2) However, a retail shop lease may include a condition requiring the lessee to keep the premises open for trading in the core trading hours for the retail shopping centre.

(3) A condition of a retail shop lease that purports to impose on the lessee an obligation to open the premises for trading outside the core trading hours for the retail shopping centre is void.

(4) However, if the term is in an existing lease, it is void only to the extent that it requires the lessee to open the premises for trading outside the core trading hours for the retail shopping centre.

(5) A lessee under a retail shop lease (the “**first lessee**”) is not liable under the first lessee’s lease for any additional outgoings of the lessor only because an eligible lessee’s shop is open for trading outside the core trading hours when the first lessee’s shop is not open for trading.

(6) Subsection (5) applies despite any condition in the first lessee’s lease.

PART 8—RETAIL TENANCY DISPUTE RESOLUTION

Division 1—Preliminary

Parties’ rights under this Part preserved

54. To remove any doubt, if a provision of a retail shop lease requires or permits a dispute under or about the lease to be referred to arbitration or be heard by any court or tribunal, the provision does not limit a party’s rights under this Part.

Division 2—Mediation of retail tenancy disputes

Lodgment of retail tenancy disputes

55.(1) A party to a retail tenancy dispute that is within a mediator’s jurisdiction under section 97 (Mediators’ jurisdiction) may lodge notice of the dispute with the chief executive.

(2) The notice (“**dispute notice**”) must be in the approved form and accompanied by the fee prescribed by regulation.

Chief executive to act on dispute notice

56.(1) Within 7 days after the dispute notice is lodged, the chief executive must—

- (a) nominate a mediator to mediate the retail tenancy dispute; and
- (b) give written notice to the parties to the dispute of—
 - (i) the mediator nominated to mediate the dispute; and
 - (ii) the time, date and place of the mediation conference to be conducted by the mediator.

(2) The notice under subsection (1)(b) must be given at least 7 days before the mediation conference.

Limited right of representation

57. At the mediation conference, each party to the retail tenancy dispute—

- (a) must conduct the party’s own case; and
- (b) may be represented by an approved agent only if—
 - (i) the party is a corporation; or
 - (ii) the mediator is satisfied an agent should be permitted to represent the party.

Conference to be held in private

58. The mediation conference is not open to the public.

Parties attendance at conference not compellable

59. A party to the retail tenancy dispute cannot be compelled to attend the mediation conference.

Parties to mediation conference

60.(1) The mediator may allow a person to take part in the mediation conference if the mediator is satisfied the person has a sufficient interest in the resolution of the retail tenancy dispute.

(2) However, the person does not become a party to the dispute.

Mediation agreements

61.(1) This section applies if the parties to the retail tenancy dispute reach an agreement on the solution of the dispute.

(2) The agreement (the “**mediation agreement**”) must be put into writing and signed by or for the parties.

(3) The mediator must give a copy of the signed agreement to the chief executive as soon as practicable after it is signed.

No official record of mediation conference

62.(1) A person must not make an official record of anything said at a mediation conference.

Maximum penalty—40 penalty units.

(2) However, the mediator may make notes of the mediation conference the mediator considers appropriate.

Division 3—Reference of retail tenancy disputes to tribunal**Reference of dispute—by mediator**

63.(1) This section applies if—

- (a) a retail tenancy dispute is within a tribunal’s jurisdiction³ and—
 - (i) the parties cannot reach a mediated solution to the dispute; or
 - (ii) a party to the dispute does not attend the mediation conference for the dispute; or
 - (iii) the dispute is not settled within 4 months after the dispute notice is lodged; and
- (b) the retail shop lease has not ended (whether by expiry, surrender or termination) more than 4 months before the dispute notice was lodged.

(2) The mediator must, by written notice given to the chief executive, promptly refer the dispute to the chief executive.

Reference of dispute—by party

64.(1) In this section—

“**mediation agreement**” includes a mediation agreement under section 26 (Mediation agreements) of the former Act.

(2) A party to a retail tenancy dispute may, by notice given to the chief executive in the approved form, refer the dispute to the chief executive if—

- (a) any of the following provisions apply—
 - (i) the party claims that another party to a mediation agreement has not complied with the agreement within the time specified in it or, if no time is specified, within 2 months after the agreement is signed;
 - (ii) a mediator refuses to refer the dispute to the chief executive because the mediator is of the opinion that the dispute is not within a tribunal’s jurisdiction;

³ See section 109 (Tribunals’ jurisdiction)

- (iii) a court has ordered that a proceeding started in the court for the dispute be removed to a tribunal;⁴ and
- (b) the retail shop lease has not ended (whether by expiry, surrender or termination) more than 4 months before the dispute notice was lodged.

Chief executive to refer dispute to tribunal

65. Within 14 days after a retail tenancy dispute is referred to the chief executive, the chief executive must—

- (a) appoint a tribunal from the tribunal panel to hear the dispute; and
- (b) give written notice to the tribunal panel members of their appointment to hear the dispute; and
- (c) give written notice to the parties to the dispute of the appointment and composition of the tribunal to hear the dispute.

Division 4—Retail tenancy disputes hearings

Subdivision 1—Directions hearings

Chairperson may hold directions hearing

66.(1) Before the retail tenancy dispute is heard by the tribunal, the chairperson may decide to hold a directions hearing.

(2) If the chairperson decides to hold a directions hearing, the chairperson must give reasonable written notice to the parties to the dispute of the time, date and place of the directions hearing.

(3) The provisions of this Division (other than section 71(2) and (3) (Limited right of representation)) about the conduct of, and procedure at, a tribunal's hearing of a retail tenancy dispute and the tribunal's powers at the hearing apply, with the necessary changes, to the directions hearing.

(4) At the directions hearing—

⁴ See section 111(1) (Transfer of hearings between tribunals and courts).

- (a) the tribunal is constituted by the chairperson; and
- (b) the tribunal may make the decisions and give the directions it considers appropriate.

(5) Without limiting subsection (4), the tribunal may make decisions and give directions about—

- (a) questions of law; and
- (b) the tribunal's jurisdiction; and
- (c) discovery and inspection of documents; and
- (d) the parties' representation at the dispute hearing.

Subdivision 2—Tribunal's hearing

Presiding member

67. The chairperson is to preside at the tribunal's hearing of the retail tenancy dispute.

Venues

68. The tribunal may sit at the times and places the chairperson decides.

Hearing to be held in private

69.(1) The tribunal's hearing of the retail tenancy dispute is not open to the public.

(2) However, a person may attend the tribunal's hearing with the agreement of the tribunal and the parties to the dispute.

Appearances before tribunal

70. The following persons are entitled to appear at the tribunal's hearing of the retail tenancy dispute—

- (a) the parties to the dispute;
- (b) a person granted leave to appear by the tribunal.

Limited right of representation

71.(1) At the tribunal's hearing of the retail tenancy dispute, a party to the dispute may be represented by an approved agent.

(2) However, a party to the dispute may not be represented at the tribunal's hearing by a lawyer or professional advocate without the other party's agreement if the dispute—

- (a) does not involve the payment of an amount; or
- (b) involves the payment of an amount less than the prescribed amount within the meaning of the *Small Claims Tribunals Act 1973*.

(3) In addition, if, at a directions hearing for the dispute, the tribunal made a decision about a party's representation at the tribunal's hearing, the party may not be represented at the hearing by anyone else without the other party's agreement.

Procedure

72.(1) When conducting the hearing, the tribunal must—

- (a) observe natural justice; and
- (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.

(2) In conducting the hearing, the tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself of any matter in the way it considers appropriate; and
- (c) may decide the procedures to be followed for the hearing.

(3) However, the tribunal must comply with this subdivision and any procedural rules prescribed by regulation.

Amendment of dispute

73.(1) The tribunal may at any stage of the hearing of the retail tenancy

dispute amend the particulars of the dispute in the way it considers appropriate—

- (a) if asked by the party who lodged the dispute notice; or
- (b) on its own initiative if the parties to the dispute agree.

(2) For this Act, the amended dispute is taken to be the dispute.

Questions to be decided by majority of tribunal

74.(1) A question before the tribunal must be decided by a majority of the tribunal members.

(2) However, a question of law must be decided by the chairperson.

Tribunals to keep records of proceedings

75.(1) The tribunal must keep a record of its proceedings.

(2) The record may be kept in the way the tribunal considers appropriate.

Powers of tribunal

76.(1) At the hearing, the tribunal may—

- (a) require a person to give evidence on oath and, for that purpose, the chairperson may administer an oath; and
- (b) proceed in the absence of a party to the retail tenancy dispute; and
- (c) by written notice (“**attendance notice**”), require a person to attend the hearing at a specified time, date and place—
 - (i) to give evidence; or
 - (ii) to produce a specified document or thing.

(2) The tribunal may adjourn the hearing from time to time.

Inspection of documents

77.(1) If a document or thing is produced to the tribunal at the hearing, the tribunal may—

- (a) inspect the document or thing; and
- (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the hearing.

(2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the hearing.

(3) While it keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time, date and place the tribunal decides.

Offences—hearings

78.(1) A person served with an attendance notice must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson until excused from further attendance.

Maximum penalty—40 penalty units.

(2) A person appearing as a witness at the hearing must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a tribunal member; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—40 penalty units.

Self incrimination

79. It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

False or misleading information

80.(1) A person must not—

- (a) state anything to the tribunal that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the tribunal anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—40 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states the statement made was false or misleading to the person's knowledge.

False or misleading documents

81.(1) A person must not give to the tribunal a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the tribunal, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the tribunal if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

Contempt of tribunal

82. A person must not—

- (a) insult the tribunal or a tribunal member; or
- (b) deliberately interrupt the tribunal's hearing of the retail tenancy

dispute; or

- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the tribunal is conducting the hearing; or
- (d) do anything that would be contempt of court if the tribunal were a Judge acting judicially.

Maximum penalty—100 penalty units.

Division 5—Provisions about tribunal orders

Tribunals' orders

83.(1) The tribunal may make the orders the tribunal considers to be just to resolve the retail tenancy dispute.

(2) Without limiting subsection (1), the tribunal may make any 1 or more of the following orders—

- (a) an order for a party to the dispute to do, or not to do, anything (an **“enforcement order”**);
- (b) an order requiring a party to the dispute to pay an amount (including an amount of compensation) to a specified person (a **“payment order”**);
- (c) an order that a party to the dispute is not required to pay an amount to a specified person;
- (d) an order setting aside the mediation agreement between the parties to the dispute;
- (e) an order that an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased building in which the leased shop is situated was or was not reasonably incurred in, or directly attributable to, the operations, maintenance or repair of the centre or building;
- (f) if the dispute is about the payment of compensation by the lessor to the lessee under the retail shop lease and the lease contains provision for the amount of compensation payable or a formula to calculate the amount of compensation payable—an order that the amount of compensation payable under the lease is

reasonable;

- (g) an order giving effect to a settlement agreed on by the parties to the dispute.

(3) An order may specify a time for compliance with it.

(4) If the person against whom the order is made is not present when the order is made, the chief executive must serve a copy of the order on the person as soon as practicable after it is made.

Enforcement of certain tribunal orders

84.(1) This section applies if the tribunal makes an enforcement order.

(2) The person in whose favour the order is made may enforce the order by—

(a) filing in the Supreme Court's registry—

- (i) a copy of the order certified by the chief executive to be a true copy; and
- (ii) the person's affidavit about the failure of the person against whom the order is made to comply with the order; and

(b) serving a copy of each of the documents mentioned in paragraph (a) on the person against whom the order was made.

(3) If the registrar of the Supreme Court is satisfied there has been, and still exists, a failure to comply with the order, the registrar must endorse a certificate of noncompliance on the copy of the order.

(4) The endorsed order is taken to be a properly entered order of the Supreme Court and may be enforced accordingly.

(5) A court fee is not payable for the filing or endorsement of the order.

Orders requiring payments

85.(1) In this section—

“**appropriate court**” for an order to which this section applies means the court having jurisdiction to order the payment of the amount required to be paid by the order.

(2) This section applies if the tribunal makes a payment order.

(3) The order may be made to take effect immediately or on the failure of a party to comply with another order made by the tribunal.

(4) The person to whom payment is to be made under the order may enforce the order—

(a) by filing in the appropriate court's registry nearest the place where the person ordered to make the payment lives or carries on business—

(i) a copy of the order certified by the chief executive to be a true copy; and

(ii) the person's affidavit about the failure to pay the amount under the order; and

(b) by serving a copy of each of the documents mentioned in paragraph (a) on the person against whom the order was made.

(5) If the registrar of the court is satisfied there has been, and still exists, a failure to comply with the order, the registrar must endorse a certificate of noncompliance on the copy of the order.

(6) The endorsed order is taken to be a properly entered judgment of the court and may be enforced accordingly.

(7) A court fee is not payable for the filing or endorsement of the order.

Orders of tribunal to be complied with

86. A person must not, without reasonable excuse, fail to comply with the tribunal's order.

Maximum penalty—100 penalty units.

Tribunal's order final and binding

87. The tribunal's order is final and binding on each party to the retail tenancy dispute, whether or not the party has appeared or been represented at the tribunal's hearing.

Restricted right to question tribunal's hearing and order

88. The tribunal's hearing of the retail tenancy dispute and the tribunal's order must not be questioned in a proceeding other than a proceeding based solely on either or both of the following grounds—

- (a) the tribunal had or has no jurisdiction, or has exceeded its jurisdiction, in the hearing or in making the order;
- (b) there has been a denial of natural justice.

Division 6—Renewal of retail tenancy disputes**Application to renew dispute**

89. (1) This section applies if—

- (a) a tribunal makes an order for a retail tenancy dispute (the “**original order**”); and
- (b) the order is not complied with.

(2) The person in whose favour the original order is made may apply to renew the dispute.

(3) The application must be made to the chief executive in the approved form.

Renewal of dispute

90. Within 14 days after the application is properly made, the chief executive must renew the retail tenancy dispute by—

- (a) appointing a tribunal from the tribunal panel to hear the renewed dispute; and
- (b) giving written notice to the tribunal panel members of their appointment to hear the renewed dispute; and
- (c) giving written notice to the parties of—
 - (i) the renewal of the dispute; and
 - (ii) the appointment and composition of the tribunal to hear the dispute.

Division 7—General**Parties to pay own costs**

91. Each party to a retail tenancy dispute must bear the party's own costs of the tribunal's hearing of the dispute.

Allowance to witness

92. A witness who appears before a tribunal in the conduct of the hearing of a retail tenancy dispute is entitled to the allowance prescribed by regulation for attendance at the hearing or, if no allowance is prescribed, the reasonable allowance decided by the chairperson.

Withdrawal of disputes

93.(1) A person may, by written notice given to the chief executive, withdraw a retail tenancy dispute lodged by the person.

(2) The notice may be given before or after a mediator or tribunal has started mediating or hearing the dispute.

(3) If the chief executive has nominated a mediator or appointed a tribunal for the dispute, the chief executive must advise the mediator or tribunal of the withdrawal as soon as practicable after receipt of the notice.

Exclusion of other jurisdictions

94.(1) On and after the lodgment of a dispute notice for a retail tenancy dispute, the dispute must not be referred to arbitration or heard by any court.

(2) Subsection (1) does not apply if—

- (a)** the dispute is withdrawn;⁵ or
- (b)** a proceeding about the issue in dispute was started in a court before the dispute notice was lodged and the proceeding has not been removed to a tribunal;⁶ or

⁵ See section 93 (Withdrawal of disputes).

⁶ See section 111(1) (Transfer of hearings between tribunals and courts).

- (c) an application for an order in the nature of an injunction about the issue in dispute is made to a court; or
- (d) a mediator or tribunal refuses to mediate or hear the dispute because the mediator or tribunal is of the opinion the dispute is not within the jurisdiction of a mediator or tribunal; or
- (e) the mediator cannot reach a solution to the dispute and a tribunal does not have jurisdiction to hear the dispute.

(3) For subsection (2)(b), a proceeding is taken to have been started before a court if the lessor has—

- (a) served on the lessee a notice under section 124 of the *Property Law Act 1974* (Restriction on and relief against forfeiture); or
- (b) given to the lessee a notice under section 131 of the *Property Law Act 1974* (Form and contents of notice).

PART 9—ADMINISTRATION

Division 1—Mediators

Mediators

95. The Minister may appoint the number of persons the Minister considers necessary to be mediators.

Mediators' function

96. A mediator's function is to seek to resolve, by mediation, retail tenancy disputes within a mediator's jurisdiction.

Mediators' jurisdiction

97.(1) A mediator has jurisdiction to mediate retail tenancy disputes, other than a retail tenancy dispute—

- (a) about an issue between the parties that—

- (i) is the subject of arbitration; or
 - (ii) has been the subject of an award (interim or final) in an arbitration proceeding; or
 - (iii) is before, or has been decided by, a court; or
- (b) about—
- (i) arrears of rent under a retail shop lease; or
 - (ii) the amount of rent payable under a retail shop lease; or
 - (iii) the amount of a lessor's outgoings under a retail shop lease; or
- (c) under a retail shop lease for the carrying on of the business of a service station if the *Petroleum Retail Marketing Franchise Act 1980* (Cwlth) applies to the carrying on of the business under a franchise agreement within the meaning of that Act.

(2) For subsection (1)(a)(i), a retail tenancy dispute is only the subject of arbitration if the arbitration proceeding has started.

(3) However, a mediator has jurisdiction to mediate a retail tenancy dispute about—

- (a) the procedure for the determination of rent payable under a retail shop lease, but not the actual amount of the rent; or
- (b) the basis on which lessor's outgoings are payable by, and the procedure for charging lessor's outgoings to, a lessee under a retail shop lease, but not the actual amount of the outgoings; or
- (c) whether an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased building in which a leased shop is situated was reasonably incurred in, or directly attributable to, the operations, maintenance or repair of the centre or building.

Duration of appointment

98.(1) A mediator must be appointed for a term not longer than 3 years.

(2) A mediator may resign by signed notice of resignation given to the Minister.

Conditions of appointment

99.(1) A mediator who is not a member of the public service is to be paid the remuneration and allowances decided by the Governor in Council.

(2) A mediator holds office on the conditions not provided in this Act as are decided by the Minister.

Removal from office

100. The Minister may remove a mediator from office, by written notice given to the mediator, if the Minister is satisfied the mediator—

- (a) is incapable of properly discharging the functions of a mediator;
or
- (b) is unfit to hold the office.

Annual reports

101.(1) Within 2 months after the end of each financial year, a mediator must report to the chief executive on the mediator's discharge of the function in the year.

(2) The report must include details of all matters that—

- (a) the mediator becomes aware of during the discharge of the mediator's function; and
- (b) significantly affect relationships between lessors and lessees under retail shop leases.

Division 2—Retail shop leases tribunals***Subdivision 1—Tribunal panel and members*****Appointment of members of tribunal panel**

102. The Governor in Council may appoint as members of a panel of retail shop lease tribunal members (the “**tribunal panel**”)—

- (a) a person who—

- (i) has been a Supreme or District Court Judge; or
 - (ii) is a lawyer of at least 5 years' standing; and
- (b) the number of representatives of lessors and lessees under retail shop leases the Governor in Council considers necessary.

Duration of appointment

103.(1) A tribunal panel member must be appointed for a term not longer than 3 years.

(2) A tribunal panel member may resign by signed notice of resignation given to the Minister.

Conditions of appointment

104.(1) A tribunal panel member is to be paid the remuneration and allowances decided by the Governor in Council.

(2) A tribunal panel member holds office on the conditions not provided in this Act as are decided by the Governor in Council.

Removal from office

105. The Governor in Council may remove a tribunal panel member from office, by written notice given to the member, if the member—

- (a) is incapable of properly discharging the functions of a tribunal member; or
- (b) is unfit to hold the office.

Subdivision 2—Composition, functions, jurisdiction and powers of tribunals

Composition of retail shop lease tribunals

106. A tribunal is to consist of the following tribunal members—

- (a) the person appointed under section 102(a) (Appointment of members of tribunal panel); and

- (b) a representative of lessors under retail shop leases; and
- (c) a representative of lessees under retail shop leases.

Chairperson

107. The tribunal member mentioned in section 106(a) (Composition of retail shop lease tribunals) is the chairperson of each tribunal.

Tribunals' function

108. A tribunal's function is to hear retail tenancy disputes that—

- (a) are within a tribunal's jurisdiction; and
- (b) it is appointed to hear.

Tribunals' jurisdiction

109.(1) A tribunal has jurisdiction to hear retail tenancy disputes, other than a retail tenancy dispute—

- (a) about an issue between the parties that—
 - (i) is the subject of arbitration; or
 - (ii) has been the subject of an award (interim or final) in an arbitration proceeding; or
 - (iii) is before, or has been decided by, a court; or
- (b) about—
 - (i) arrears of rent under a retail shop lease; or
 - (ii) the amount of rent payable under a retail shop lease; or
 - (iii) the amount of a lessor's outgoings under a retail shop lease; or
- (c) if the amount, value or damages in dispute is more than the monetary limit of a District Court within the meaning of section 66 of the *District Courts Act 1967* (District Courts' civil jurisdiction); or
- (d) under a retail shop lease for the carrying on of the business of a

service station.

(2) For subsection (1)(a)(i), a retail tenancy dispute is only the subject of arbitration if the arbitration proceeding has started.

(3) However, a tribunal has jurisdiction to hear a retail tenancy dispute about—

- (a) the procedure for the determination of rent payable under a retail shop lease, but not the actual amount of the rent; or
- (b) the basis on which lessor's outgoings are payable by, and the procedure for charging lessor's outgoings to, a lessee under a retail shop lease, but not the actual amount of the outgoings; or
- (c) whether an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased building in which a leased shop is situated was reasonably incurred in, or directly attributable to, the operations, maintenance or repair of the centre or building.

Tribunals' general powers

110.(1) A tribunal may do all things necessary or convenient to be done for, or in relation to, the performance of its function.

(2) Without limiting subsection (1), a tribunal has the powers conferred on it by this Act.

(3) Without limiting subsection (1), a tribunal may make, or cause to be made, the investigations it considers necessary for its hearings, including, for example, investigations about current market management costs and fees for the retail shopping industry.

Transfer of hearings between tribunals and courts

111.(1) If a proceeding about a retail tenancy dispute is started in a court and a tribunal has jurisdiction to hear the dispute, the court may, on the application of a party, order that the proceeding be removed to a tribunal.

(2) If a tribunal is of the opinion that a retail tenancy dispute being, or about to be, heard by the tribunal should be heard by a court, the tribunal may order that the dispute be removed, in whole or part, to a court.

Subdivision 3—Annual reports**Reports on discharge of tribunals' function**

112.(1) Within 2 months after the end of each financial year, the chairperson must give a report to the chief executive on each tribunal's discharge of its function throughout the year.

(2) The report must include details of all matters that—

- (a) the chairperson becomes aware of during the discharge of the tribunals' function; and
- (b) significantly affect relationships between lessors and lessees under retail shop leases.

Division 3—Confidentiality, privilege and immunity**Mediators and tribunal members to maintain secrecy**

113.(1) A mediator or tribunal member must not disclose information coming to the knowledge of the mediator or member during the dispute resolution process.

Maximum penalty—100 penalty units.

(2) However, a mediator or tribunal member may disclose information—

- (a) with the agreement of all parties to the dispute resolution process; or
- (b) for statistical purposes without revealing the identity of any person about whom the information is relevant; or
- (c) for an inquiry or proceeding about an offence or other misconduct that happens during the dispute resolution process; or
- (d) under a requirement under an Act.

Ordinary protection and immunity allowed

114.(1) A mediator or tribunal member has, in the performance of the mediator's or member's function, the same protection and immunity as a Supreme Court Judge carrying out the functions of a Judge.

(2) A person who is—

- (a)** a party, or the party's agent, appearing at a dispute resolution process for a retail tenancy dispute; or
- (b)** a witness attending a hearing of a retail tenancy dispute by a tribunal;

has the same protection and immunity the person would have if the dispute were in the Supreme Court.

(3) A document produced at, or used for, a dispute resolution process has the same protection during the process it would have if produced before the Supreme Court.

Admissions made during dispute resolution process

115.(1) Evidence of anything said in a mediation conference for a retail tenancy dispute is not admissible in any proceeding before any court or a tribunal.

(2) Evidence of anything said in a tribunal's hearing of a retail tenancy dispute is not admissible in any proceeding before any court.

*Division 4—General***Register**

116.(1) The chief executive must keep a register of mediators, tribunal panel members and retail tenancy disputes.

(2) The register of retail tenancy disputes must contain the following details for each dispute—

- (a)** the date the dispute notice was lodged;
- (b)** the names of the parties;

- (c) the subject matter of the dispute;
- (d) the results of the mediation process;
- (e) the results of the tribunal's hearing, including any tribunal order.

(3) The chief executive must—

- (a) keep the register open for inspection by members of the public during office hours on business days at the department's head office; and
- (b) permit a person to take extracts from the register or, on payment of the appropriate fee by a person, give the person a copy of the register or part of it.

(4) The fee for a copy of the register or part of it is the amount that the chief executive considers to be reasonable is not more than the reasonable cost of making the copy.

Delegations

117.(1) The Minister may delegate the Minister's powers under this Act to an officer of the public service.

(2) The chief executive may delegate the chief executive's powers under this Act to an officer of the public service.

Chief executive may approve forms

118. The chief executive may approve forms for use under this Act.

Chief executive's responsibility

119. For the efficient and proper administration of this Act, the chief executive—

- (a) is responsible for ensuring lessors and lessees under retail shop leases are advised about the practices and procedures of the department, mediators and tribunals; and
- (b) may advise lessors and lessees under retail shop leases about potential retail tenancy disputes.

PART 10—MISCELLANEOUS

Evidentiary provisions

120.(1) This section applies to a proceeding for an offence against this Act.

(2) A signature purporting to be that of the chief executive is evidence of the signature it purports to be.

(3) A certificate purporting to be signed by the chief executive about a tribunal's order is evidence of the matters stated in it.

(4) A document purporting to be a copy of a notice required or authorised by this Act to be given is evidence of the particulars in the original notice of which it purports to be a copy.

Regulations

121.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about—

- (a) the fees payable under this Act; and
- (b) the practices and procedures of the dispute resolution process; and
- (c) the enforcement of tribunal orders.

(3) A regulation may create offences and prescribe penalties of not more than 50 penalty units for the offences.

Review of Act

122.(1) The Minister must carry out reviews of the operation of this Act to decide whether its provisions remain appropriate.

(2) A review must be carried out within 5 years after the commencement of this Act and afterwards at intervals of not more than 5 years after the previous review.

(3) The Minister must prepare a report on each review and table a copy of the report in the Legislative Assembly as soon as practicable after it is prepared.

PART 11—REPEALS AND CONSEQUENTIAL AMENDMENTS

Acts repealed

123. The following Acts are repealed—

- Retail Shop Leases Act 1984 No. 18
- Retail Shop Leases Act Amendment Act 1985 No. 33
- Retail Shop Leases Act Amendment Act 1988 No. 43
- Retail Shop Leases Act Amendment Act 1989 No. 117
- Retail Shop Leases Act Amendment Act 1990 No. 7.

Act amended

124. The Act mentioned in the Schedule is amended as specified in the Schedule.

PART 12—SAVINGS AND TRANSITIONAL PROVISIONS

Definition

125. In this Part—

“**commencing day**” means the day on which this Part commences.

Transitional regulations

126.(1) The Governor in Council may make regulations about any matter for which—

- (a) it is necessary or convenient to facilitate the transition from the operation of the former Act to the operation of this Act; and
- (b) this Act does not make provision or enough provision.

(2) A regulation may be given retrospective operation to a date not earlier than the commencing day.

References of disputes to mediator

127.(1) If, before the commencing day, a reference of a retail tenancy dispute was started under the former Act but a notice of hearing of the reference was not given under the former Act, a dispute notice is taken to have been lodged.

(2) If, before the commencing day, a reference of a retail tenancy dispute was started under the former Act and a notice of hearing of the reference was given under the former Act, a hearing of the reference may be started, continued or finished as if the former Act had not been repealed.

References of disputes to tribunal

128.(1) If, before the commencing day, a retail tenancy dispute has been referred to a tribunal, a hearing of the dispute may be started, continued or finished as if the former Act had not been repealed.

(2) Sections 63 (Reference of dispute—by mediator) and 64 (Reference of dispute—by party) apply to a retail tenancy dispute that—

- (a) before the commencing day was referred to a mediator under the former Act; and
- (b) after the commencing day would have been required to have been referred to a tribunal under the former Act had this Act not been enacted.

Expiry of Part

129. This Part expires 6 months after the commencing day.

SCHEDULE**ACT AMENDED**

section 124

VALUERS REGISTRATION ACT 1992**1. Section 3—***insert—*

‘**“specialist retail valuer”** means a person whose name is recorded on the list of specialist retail valuers kept under section 42A (List of specialist retail valuers).’.

2. Part 3, heading—*omit, insert—***‘PART 3—REGISTRATION***‘Division 1—Registered valuers’.***3. After section 42—***insert—**‘Division 2—Specialist retail valuers***‘List of specialist retail valuers**

‘42A.(1) The Board must keep a list of specialist retail valuers.

‘(2) The list must be kept separate from the register.

SCHEDULE (continued)

‘Valuers may apply to be recorded as specialist retail valuers

‘**42B.(1)** An individual who is a registered valuer may apply to the Board to be recorded as a specialist retail valuer.

‘(2) The application must be in the form approved by the Board and accompanied by the fee prescribed by regulation.

‘Grant of application

‘**42C.(1)** If the Board is satisfied the applicant has enough experience in retail rental valuation, it must—

- (a) approve the application and record the applicant’s name on the list of specialist retail valuers; and
- (b) give written notice to the applicant of the recording of the applicant’s name on the list.

‘(2) However, the Board may limit the applicant’s authority to make determinations of current market rents under this Act to particular areas of the State.

‘(3) If the Board limits the applicant’s authority, the Board must—

- (a) specify the limitation and the reasons for the limitation in its notice to the applicant under subsection (1)(b); and
- (b) note the limitation on the list.

‘Refusal of application

‘**42D.** If the Board is not satisfied the applicant has enough experience in retail rental valuation it must—

- (a) refuse the application; and
- (b) give written notice to the applicant of the refusal and the grounds on which the Board decided the applicant does not have the experience.

SCHEDULE (continued)

‘Failure to decide application

‘42E. If the Board fails to decide an application within the time mentioned in section 42C (Board to decide applications), the failure is taken to be a decision to refuse the application at the end of the time.

‘Inspection of list

‘42F.(1) The Board must—

- (a) keep the list of specialist retail valuers open for inspection by members of the public during office hours on business days at the Board’s office; and
- (b) permit a person to take extracts from the list or, on payment of the appropriate fee by a person, give the person a copy of the list or part of it.

‘(2) The fee for a copy of the list or part of it is the amount that—

- (a) the Board considers to be reasonable; and
- (b) is not more than the reasonable cost of making the copy.

‘Removal of name from list

‘42G.(1) If the Board removes a specialist retail valuer’s name from the register, the Board must also remove the person’s name from the list of specialist retail valuers.

‘(2) The person ceases to be a specialist retail valuer on removal of the person’s name from the list.

‘Disciplinary charges against specialist retail valuers

‘42H.(1) This section applies if the Board suspects on reasonable grounds that a specialist retail valuer has—

- (a) knowingly contravened section 28(3) (Rent review on basis of current market rent) of the *Retail Shop Leases Act 1994*; or
- (b) contravened section 29 (Matters to be considered by specialist

SCHEDULE (continued)

retail valuers) or 32 (Valuer to give determination to lessor and lessee) of the *Retail Shop Leases Act 1994*.

‘(2) Part 4 (Complaints and Discipline), applies to the contravention as if the valuer had contravened a prescribed code of professional conduct.’.

4. Section 61(1)—

insert—

- ‘(d) a refusal by the Board of the person’s application to be recorded as a specialist retail valuer; or
- (e) a decision by the Board to limit the person’s authority as a specialist retail valuer to particular areas of the State; or
- (f) a decision by the Board to remove the person’s name from the list of specialist retail valuers.’.

5. Section 61(3)—

insert—

- ‘(d) if the appeal is made under subsection (1)(d)—
 - (i) allow the appeal and order the Board to record the person as a specialist retail valuer; or
 - (ii) dismiss the appeal; or
- (e) if the appeal is made under subsection (1)(e)—
 - (i) allow the appeal and order the Board to record the person as a specialist retail valuer—
 - (A) without limit on the person’s authority to particular areas of the State; or
 - (B) with a substituted limit on the person’s authority to particular areas of the State; or
 - (ii) dismiss the appeal; or
- (f) if the appeal is made under subsection (1)(f)—

SCHEDULE (continued)

- (i) allow the appeal and order the Board to restore the person's name and other particulars to the list of specialist retail valuers; or
- (ii) dismiss the appeal.'.

6. After section 66—

insert—

'Specialist retail valuers

'67.(1) In this section—

"valuers' list" means the list of specialist retail valuers kept under the *Retail Shop Leases Act 1984*.

(2) The valuers' list subsisting immediately before the commencement of this section is taken to be the list of specialist retail valuers kept under this Act.

(3) A person whose name is included on the valuers' list immediately before the commencement of this section is taken to be recorded on the list of specialist retail valuers kept under this Act.

(4) This section expires on the day it commences.'.