

Retail Shop Leases Amendment Bill 2015

Explanatory Notes

Short title

Retail Shop Leases Amendment Bill 2015

Policy objectives and the reasons for them

The Bill gives effect to outcomes from the statutory review of the *Retail Shop Leases Act 1994* (the Act).

The Act provides a framework for addressing imbalance in negotiating power and access to information between major shopping centre landlords and small retail tenants through mandatory minimum standards for retail shop leases and a low cost dispute resolution process for retail tenancy disputes.

In accordance with section 122 of the Act, a statutory review of the operation of the Act has been conducted to decide whether the Act's provisions remain appropriate for the Queensland retail sector.

The review included considerable stakeholder consultation, including public consultation through the release of a discussion paper in late 2011 and an options paper in May 2013.

In June 2013, a reference group was established comprising key retail sector and professional stakeholders to consider the options paper and submissions, and make recommendations to assist in deciding the outcomes of the review.

The reference group was tasked with identifying areas of stakeholder consensus, difference and compromise. The group also provided industry and technical input, including from the perspective of retail businesses operating in Queensland and nationally.

The reference group comprised representatives from the National Retail Association, the Australian Retailers Association, the Australian Property Institute, Lease 1, the Property Council of Australia (Qld), the Shopping Centre Council of Australia, the Queensland Newsagents Federation, the Pharmacy Guild of Australia (Qld), the Queensland Law Society, the Large Law Firm Group and the Chamber of Commerce & Industry Queensland.

Key objectives of the review were to identify opportunities to: improve the Act's efficiency and effectiveness; reduce red tape and compliance costs for retail lessees and lessors; continue to address imbalance in access to information and negotiating power, without unduly interfering with commercial arrangements or outcomes; and align with key eastern seaboard States, where appropriate, to enhance operational efficiency and legal certainty for stakeholders operating across jurisdictions.

Key guiding considerations for the reference group were: the need for balance between safeguarding retail tenant interests, while ensuring that government regulation does not unnecessarily interfere with commercial arrangements; and identifying opportunities for reducing the regulatory and compliance burden on business. The group also considered alternatives to regulation, including leaving matters to commercial negotiation and education or industry-driven initiatives, where appropriate.

The reference group had regard to key findings and recommendations in the Productivity Commission 2008 Report *The Market for Retail Tenancy Leases in Australia*. These included that States and Territories should introduce greater self-regulation in the retail tenancies market; remove unnecessarily prescriptive elements of retail tenancy legislation that unduly restrict commercial negotiations; and move towards a more consistent national framework for regulation of retail tenancies.

The reference group's final report detailing the recommendations and outcomes of the reference group process was completed in December 2013.

The report on the statutory review of the Act (incorporating the reference's group's final report) was tabled on 24 November 2014 upon the introduction of the Retail Shop Leases Amendment Bill 2014, which lapsed upon the calling of the 31 January 2015 general State election.

The Bill provides for the amendments to the Act following the statutory review and subsequent consultation with the reference group and legal stakeholders during drafting.

The amendments reduce the regulatory burden for the Queensland retail sector, while continuing to safeguard the interests of retail lessees. Some proposed amendments would align with the position in other States to enhance operational efficiency and legal certainty for lessors and lessees operating across those jurisdictions.

In these explanatory notes, the terms lessor and lessee from the Act are used in place of landlord and tenant, respectively.

Achievement of policy objectives

The Bill provides for a range of amendments:

- excluding certain leases from the operation of the Act where its application cannot be justified;
- clarifying the application of the disclosure provisions in Part 5 of the Act for key lease categories;
- enhancing protection for lessees, including prospective purchasers of retail businesses and the release from liability for assignors and their guarantors on assignment of lease where the assignor has complied with its disclosure obligation;
- providing for exclusions from lessor's liability for compensation to the lessee for business disruption in certain circumstances;
- providing for liability as to certain legal costs related to a retail shop lease; and

- simplifying procedural requirements and clarifying the operation of various provisions.

Significant amendments included in the Bill are described below.

Leases excluded from operation of Act

- The definition of retail shop lease under the Act provides that 1000m² plus retail tenancies are excluded under the Act only if the lessee is a listed corporation or a listed corporation's subsidiary. The Bill extends this exclusion to all leases with a floor area greater than 1000m² on the basis that these lessees are predominantly sophisticated businesses not requiring the protection of the Act.
- The Bill excludes from the operation of the Act certain leases of premises not used wholly or predominantly for carrying on a retail business (non-retail lease). A non-retail lease in a multi-level building is excluded where, at the time the lease is entered into, 25% or less of the total lettable area of the level on which the leased premises are located is used for retail business purposes. A non-retail lease in a single-level building is excluded where, at the time the lease is entered into, 25% or less of the total lettable area of the building in which the leased premises are located is used for retail business purposes (non-retail lease exclusion).
- The Bill also excludes from the Act retail shop leases for a business conducted from the premises and operated by the lessee on behalf of the lessor.
- The definition of retail shop lease in the Act currently excludes premises within a common area of a retail shopping centre if the premises are used for 'information, entertainment, community or leisure facilities'. The Bill clarifies that automatic teller machines and vending machines are excluded for the purposes of the Act.

Enhanced Lessee Protection

The Bill includes measures to enhance lessee protection:

- requiring lessor disclosure to an existing lessee on renewal of a lease under an option;
- facilitating appropriate disclosure to franchisees;
- ensuring that a lessee is only liable to refurbish the leased shop during the lease term where the lease gives sufficient details of the nature, extent and timing of the required refurbishment;
- requiring a lessor's annual estimate and audited statement of outgoings to provide a breakdown of centre management fees;
- requiring the lessor to make available to the lessee a marketing plan detailing the lessor's proposed advertising/promotion expenditure;
- providing for the release of the assignor lessee to include the assignor lessee's guarantors;
- making the lessor liable for mortgagee consent costs; and

- enhancing protection for prospective purchasers of retail businesses through assignor disclosure.

Amendments benefitting lessors

The Bill includes the following measures which benefit lessors:

- exclusion of all leases with a floor area greater than 1000m² and the non-retail precinct exclusion;
- clarification about when a lessor disclosure statement cannot be taken to be defective;
- provision for lessor recovery of lease preparation costs where the lessee has negotiated, but does not proceed with, the final lease after instructing for it to be prepared; and
- provision for lessor's liability for compensation for business disruption to not apply where the lessor's action is a reasonable response to an emergency; and flexibility for a lease to limit a lessee's compensation claim for some specific business disturbances notified by the lessor.

General improvements, red tape reduction and clarifications

The Bill also:

- clarifies excluded areas for the purposes of apportioning lessor's outgoings;
- clarifies the accounting and reporting obligations by lessors to lessees for promotion/advertising and sinking fund contributions;
- simplifies procedural requirements by:
 - providing flexibility for lessee waiver of the lessor disclosure period; and
 - simplifying waiver of the lessor disclosure period and implied rent provisions by a lessee with five or more retail shops in Australia;
- excludes unnecessary procedural requirements where the State, the Commonwealth or a local government is lessee of premises situated in a retail shopping centre;
- clarifies the operation of various definitions and provisions;
- provides for reasonable required timeframes under the Act;
- clarifies and improves the efficiency of the current market rent determination process;
- clarifies and streamlines the jurisdiction of the Queensland Civil and Administrative Tribunal (QCAT) in retail shop lease matters; and
- removes unnecessary offences.

Alternative ways of achieving policy objectives

A detailed options paper was released for stakeholder consultation in May 2013. It explored over 120 options raised through public consultation on the 2011 discussion

paper. The results of public consultation on these options were considered by the reference group and in deciding the outcomes of the statutory review.

Estimated cost for government implementation

The State Government will not incur additional costs as a result of amendments in the Bill.

Consistency with fundamental legislative principles

The Bill is consistent with the fundamental legislative principles.

Consultation

Considerable public and targeted industry stakeholder consultation has been undertaken, including public release of a discussion paper and comprehensive options paper, followed by a key stakeholder reference group process.

Written submissions in response to the discussion paper were received from 33 retail sector and associated professional stakeholders and over 25 formal submissions were received in response to the options paper.

The reference group comprised representatives from a balanced cross-section of 11 retailer, lessor, industry and legal stakeholder bodies. The Bill is largely based on the report of the reference group and subsequent consultation with the reference group and other legal stakeholders during the drafting of the Bill.

Consistency with legislation of other jurisdictions

One of the objectives of the review was to identify opportunities to align with key eastern seaboard States, where appropriate, to enhance operational efficiency and legal certainty for stakeholders operating across jurisdictions.

The discussion paper and options paper for the review document the position in other jurisdictions for issues and options considered as part of the review.

A number of proposals included in the Bill will align with the position in other eastern seaboard states.

Notes on provisions

Clause 1 provides the Act may be cited as the *Retail Shop Leases Amendment Act 2015*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Clause 3 provides that the Act amends the *Retail Shop Leases Act 1994*.

Clause 4 inserts a new heading, Division 2 Key concepts.

Clause 5 inserts new section 5A (Meaning of *retail shop lease*). This provision relocates the existing definition of *retail shop lease* from the Schedule and also amends to the definition *retail shop lease* to exclude: all retail shops with a floor area of more than 1000m²; and premises used wholly or predominantly for the carrying on of a business by a lessee for a lessor as the lessor's employee or agent.

The definition of *retail shop lease* is also amended to clarify that leases for automatic teller machines, vending machines and advertisement displays in common areas of a shopping centre are excluded for the purposes of the Act.

New section 5A(3) also excludes from the definition *retail shop lease* leases of premises located in a retail shopping centre where: the premises are not used wholly or predominantly for carrying on a retail business; and at the time the lease is entered into: 25% or less of the total lettable area of (where the leased premises are located in a multi-level building) the level; or (where the leased premises are located in a single level building) the building, is used for retail business purposes.

Clause 5 also inserts new section 5B (Meaning of *retail shop*) which relocates the existing definition of *retail shop* from the Schedule; and new section 5C (Meaning of *retail business*) which relocates the existing definition of *retail business* from the Schedule.

Clause 6 amends section 7 (Meaning of *outgoings*) which defines lessor outgoings for a retail shopping centre or leased building. *Clause 6(1)* is an amendment of a drafting nature. *Clause 6(2)* provides that lessor's outgoings do not include a payment of an excess in relation to a claim on the lessor's insurance policy for the centre or building or associated areas. *Clause 6(3)* omits the provision for exclusion of an item from the definition of lessor's *outgoings* by regulation. *Clause 6(4)* provides for renumbering of paragraphs in section 7(3).

Clause 7 amends section 8 (Meaning of retail shopping centre). *Clause 7(1)* and *7(2)* provide for an amendment of a drafting nature. *Clause 7(3)* relocates and renumbers section 8 as section 5D.

Clause 8 inserts a new heading, Division 1 General application of Act and former Act, in Part 4 of the Act.

Clause 9 replaces section 11 (Application of Act - when lease entered into). Section 11 provides that a retail shop lease is entered into on the earliest of (a) the first date by

which the lease is signed by all of the parties; (b) the date the lessee enters into possession of the retail shop under the lease; and (c) the date the lessee first pays rent under the lease, other than as a deposit to secure the premises for the lease.

The clause also inserts a new section 11A (Application of Act - when assignment entered into). Section 11A provides that an assignment is entered into on the earlier of (a) the first date by which a deed of assignment is signed by the lessor, assignor and assignee; and (b) the date the assignee, with the consent of the lessor, enters into possession of the retail shop under the assigned lease.

Clause 10 replaces sections 13-17 with sections 13-14.

Replacement section 13 (Application of Act to leases-general) provides generally that the Act applies to retail shop leases whether entered into, or renewed, before or after 28 October 1994, subject to the listed provisions.

Replacement section 14 (Application of Act-if premises become or cease to be a retail shop after commencement of lease) provides that: the Act does not apply in relation to a lease of premises that become a retail shop only after the commencement of the lease; and the Act continues to apply in relation to a lease of premises that cease to be a retail shop after the commencement of the lease.

The clause also inserts new heading, Division 2 Relationship of Act to retail shop leases, after section 14.

Clause 11 renumbers section 18 (Act's provisions implied in leases) as section 15.

Clause 12 clarifies that a retail shop lease, or another agreement entered into for a retail shop lease, is void if it purports to exclude the application of a provision of this Act that applies to the lease and renumbers section 19 (Contracting out of Act prohibited) as section 16.

Clause 13 renumbers section 20 (Act prevails over inconsistent leases) as section 17.

Clause 14 inserts new Division 3 Particular retail shop leases (sections 18-20C) in Part 4.

Section 18 (Definition for div 3) defines a *former Act lease* for division 3 as (a) a retail shop lease entered into or renewed before 28 October 1994; or (b) a retail shop lease entered into, or renewed, under an option under an agreement that was entered into before 28 October 1994; or (c) a retail shop lease entered into under an agreement for lease entered into before 28 October 1994; or (d) an assignment of a retail shop lease mentioned in paragraph (a), (b) or (c).

Section 19 (Application of Act and former Act to former Act leases) lists the provisions of the Act that do not apply to former Act leases and the provisions of the *Retail Shop Leases Act 1984* (former Act) that continue to apply to former Act leases and updates references for the purposes of applying the former Act to a former Act lease.

Section 20 (Application of Act, s 27-timing and bases of rent reviews) provides for: how section 27, as in force immediately before 30 April 1999, applies for retail shop leases entered into on or after 28 October 1994 but before 30 April 1999 and to extensions or renewals of those leases; and how section 27, as in force immediately before 1 July 2000, continues to apply for retail shop leases entered into on or after 30 April 1999 but before 1 July 2000 and to extensions or renewals of those leases.

Section 20A (Application of Act to short term retail shop leases) provides for the provisions which apply in relation to a short term retail shop lease entered into on or after 3 April 2006.

Section 20B (Application of Act to particular government leases) provides that, despite section 10, sections 22A, 22D and 46 do not apply in relation to a government lease.

Section 20C (Application of Act to leases of service stations) provides as for existing section 17 with updated references to the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth).

Clause 15 replaces section 21-22A and inserts a heading, Division 1 Preliminary, in part 5.

Section 21 provides that part 5 does not apply to a retail shop lease for a periodic tenancy or tenancy at will.

The clause inserts the heading, Division 2 Disclosure for entering into or renewing lease, after section 21.

Section 21A (Application of div 2) provides that the division does not apply to an assignment of a retail shop lease.

Section 21B (Lessor's disclosure obligation to prospective lessee) provides that, at least 7 days before a prospective lessee of a retail shop enters into a retail shop lease, the lessor must give the prospective lessee a draft of the lease and a disclosure statement. If the prospective lessee gives the lessor a waiver notice; and, if the prospective lessee is not a major lessee, a legal advice report, it is sufficient if the lessor gives the prospective lessee the disclosure statement before the prospective lessee enters into the lease.

Section 21C (Sublessor's disclosure obligation to sublessee) provides for compliance with section 21B by a prospective sublessor in relation to the sublease of a retail shop lease. The prospective sublessor may request a disclosure statement from the head lessor. The head lessor must, within 28 days of receiving the prospective sublessor's request, give the prospective sublessor a lessor disclosure statement. The prospective sublessor must pay the head lessor's reasonable expenses incurred for preparation of the disclosure statement.

Section 21D (Franchisor's disclosure obligation to franchisee) provides for compliance with section 21B by a franchisor who is the lessee of a leased shop; and who proposes to grant to a franchisee a licence or other similar contractual right to

occupy and to use all or part of the leased shop wholly or predominantly for the carrying on of a retail business. The franchisor may request a disclosure statement from the head lessor. The head lessor must, within 28 days of receiving the franchisor's request, give the franchisor a lessor disclosure statement. The franchisor must pay the head lessor's reasonable expenses incurred for preparation of the disclosure statement.

Section 21E (Lessor's disclosure obligation to lessee for renewal) provides for a new requirement for lessor disclosure on renewal of a retail shop lease under an option. It provides for a current disclosure statement to be given within 7 days after the day on which the lessor receives the renewing lessee's notice exercising the option to renew. If the lessee gives the lessor a waiver notice, it is sufficient if the lessor gives the prospective lessee the disclosure statement before the prospective lessee enters into the lease. Within 14 days of receiving the current disclosure statement, the lessee may give the lessor a notice to advise the lessor that the lessee's notice exercising the option is withdrawn.

Section 21F (Lessor's failure to comply with disclosure obligation) provides that a lessee may terminate a lease within 6 months of entering into a lease if the lessor does not comply with section 21B or 21E, or the disclosure statement given to the lessee under section 21B or 21E is a defective statement. The section clarifies that a disclosure statement is a *defective statement* if it is incomplete in a material particular; or contains information that is false or misleading in a material particular. The section also clarifies that a disclosure statement is not a defective statement merely because it omits information that is irrelevant to the lease, or its layout does not comply with that of the approved form. The section provides 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 non-compliance or defective statement. The section makes new provision for the giving of notice of termination by the lessee, an objection procedure for the lessor and for disputed terminations to be a retail shop lease dispute.

Section 22 (Lessor to give lessee lease document or certified copy of lease) provides that within 30 days after a retail shop lease is signed by the parties, the lessor must give the lessee the signed lease document or a certified copy of the signed lease.

Section 22A (Prospective lessee's disclosure obligation to lessor) provides that a prospective lessee (other than a prospective franchisee) must at least 7 days before the prospective lessee enters into a retail shop lease give the lessor a disclosure statement.

The clause also inserts a new heading, Division 3 Disclosure for entering into assignment of lease, and inserts new section 22AA (Application of div 3) which provides that the division applies only to the assignment of a retail shop lease.

Clause 16 amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) to provide that an assignor of a retail shop lease must give the prospective lessee a disclosure statement at least 7 days before the earliest of the following: (a) if the assignment of lease is related to an agreement for the sale of the assignor's business carried on in the leased shop to the assignee, the day on which the assignee enters into the agreement; or (b) the day the lessor is asked to consent to the assignment. The clause also inserts a new section 22B(1A) which provides that the

assignor must give the lessor a copy of the disclosure statement given to the assignee under section 22B(1) on the day the lessor is asked to consent to the assignment.

Clause 17 replaces section 22C (Lessor's and prospective assignee's disclosure obligations to each other) and requires the lessor to give the prospective assignee a disclosure statement at least 7 days before the assignment of the retail shop lease is entered into. If the prospective assignee gives the lessor a waiver notice and (if the prospective assignee is not a major lessee) a legal advice report, it is sufficient if the lessor gives the prospective assignee the disclosure statement before the prospective assignee enters into the assignment. The section also provides that the prospective assignee must give a disclosure statement to the lessor before the assignment is entered into.

Clause 18 inserts a new part 5 division 4 heading, Division 4 General provisions, after section 22C.

Clause 19 amends section 22D (Financial and legal advice reports) to clarify that the provision does not apply to a prospective franchisee.

Clause 20 omits section 23 (Lessor to give lessee certified copy of lease) which has been replaced in this Bill as section 22.

Clause 21 amends section 24 (Lessee's obligation to make particular payments) to update a cross reference.

Clause 22 amends section 25 (Requirements if rent is a percentage of turnover) to omit subsections (3) and (4) and remove the requirement for the lessee under a turnover lease to give the lessor monthly turnover certificates and an annual audited statement of turnover.

Clause 23 amends section 26 (Lessor not to disclose turnover information) as a consequence of the amendment to section 25.

Clause 24 amends section 27 (Timing and bases of rent review) to simplify the drafting of subsection (1). The clause also amends subsection (8) which provides for when the implied rent review provisions in subsections 27(2)-(7) do not apply for a major lessee. The amendment replaces the requirement for a notice by the major lessee under subsection (8) to state that the lessee has received appropriate financial and legal advice about the lease with the requirement that the notice state that the lessee agrees that subsection (2)-(7) do not apply to the lease.

Clause 25 amends section 27A (Lessee may require early determination of current market rent). The clause amends subsection (1A) which provides for when the section does not apply for a major lessee. The amendment replaces the requirement for a notice by the major lessee stating the lessee has received appropriate financial and legal advice about the lease with the requirement that the notice state that the lessee agrees that subdivision 2 does not apply in relation to the lease.

Clause 26 changes the reference in section 28 (Rent review on basis of current market rent) from a specialist retail valuer (SRV) being nominated to being appointed.

Clause 27 replaces section 28A (Parties' submissions to specialist retail valuer) to: specify a minimum timeframe for making submissions to the SRV; provide the lessor

or lessee is taken not to have made a submission if the lessor or lessee does not give a submission to the SRV by the date stated by the SRV for making submissions (the submission date). In relation to responses to the submissions of other lease parties, the SRV can decide a date that is reasonable in the circumstances by which the lessee or lessor who does not give a response to the SRV is taken to have not made a response (the response date).

Clause 28 amends section 29 (Matters to be considered by specialist retail valuers) to provide that the basis for current market rent determination is the rent that would be reasonably expected to be paid for the retail shop if it were unoccupied and offered for leasing for the same or a substantially similar use for which the shop may be used under the lease. The clause adds that the SRV must have regard to responses of the lessor and lessee. The clause also includes an amendment of a drafting nature to the definition of *effective rent basis* for the purposes of the section.

Clause 29 amends section 32 (Valuer to give determination to lessor and lessee) which provides that the SRV must give the SRV's determination to the lessee and lessor within 1 month of the latest of stated events or times. The clause amends paragraph (b) to state the submission date in new section 28A; and amends paragraph (c) to state the response date in new section 28A for when a submission is made to the SRV.

Clause 30 amends section 36 (Certain rent review provisions of leases void) to provide that a provision of the lease that would otherwise be void to a particular extent because of subsection (1)(d) or (e) is not void to that extent if, under a retail shop lease, a major lessee gives a notice under section 27(8).

Clause 31 amends section 36A (Ratchet rent provision void) to provide that a ratchet rent provision that would otherwise be void is not void if, under a retail shop lease, a major lessee gives a notice under section 27(8).

Clause 32 inserts new section 36B which defines terms for division 5. The defined terms include clarification that, for the division, *apportionable outgoings* for a retail shop lease include promotion amounts and maintenance amounts to the extent the amounts are treated as part of the lessor's outgoings under the lease.

The clause also replaces section 37 (Requirements when lessee to pay lessor's outgoings), which provides for what a lease must specify if the lessee under a retail shop lease is to be liable to pay an amount to the lessor for outgoings. The clause also clarifies that for the purposes of section 37, *outgoings*, for a retail shop lease, includes promotion amounts and maintenance amounts to the extent the amounts are treated as part of the lessor's outgoings under the lease.

Clause 33 amends section 38 (Lessee's liability to pay proportion of lessor's apportionable outgoings) to exclude from the total area of a shopping centre or leased building taken into account in determining the apportionable outgoings for a leased shop, areas within a common area of the centre or building used for a prescribed purpose. Section 38 is also amended to clarify that the total area taken into account in determining the apportionable outgoings for a leased shop is the total area of the shopping centre or leased building owned by the lessor.

The clause also inserts new sections 38A-38C.

Section 38A (Annual estimate of apportionable outgoings) provides for: the lessor under a retail shop lease to give the lessee an annual estimate of the lessor's apportionable outgoings and the proportion of those outgoings for which the lessee will be liable under the lease; the timing for the giving of the estimate; the itemisation of the estimate; and for the estimate to include a breakdown of the estimated fees to be paid by the lessee towards the administration costs of running the centre and any other fees to be paid to a centre management entity.

Section 38B (Audited annual statement of outgoings) provides that the lessor under a retail shop lease must give the lessee a statement of the lessor's apportionable outgoings (the audited annual statement). The section specifies the timeframe for providing the audited annual statement and the requirements for the statement, including a new provision that the statement may relate to more than one lessee as long as each lessee is able to ascertain from the statement the information relevant to that lessee.

Section 38C (Lessor does not give outgoings estimate or audited annual statement) provides that the lessee may withhold payments in relation to apportionable outgoings until the lessor gives the lessee the outgoings estimate under section 38A or audited annual statement under section 38B.

Clause 34 amends section 40 (Sinking fund for major maintenance and repairs) to omit penalties for breach of subsections (3), (4) and (7).

Clause 35 inserts new section 40A (Marketing plan for promotion and advertising) which provides that, if a retail shop lease requires the lessee to pay amounts to the lessor for promotion and advertising, the lessor must at least 1 month before the start of each accounting period of the lessor, make available to the lessee a marketing plan that gives details of the lessor's proposed spending on promotion and advertising during that accounting period.

Clause 36 amends section 41 (Promotion and advertising) to provide that if all or part of a promotion amount paid for a period by the lessee is not spent during the period, the lessor must carry forward the unspent promotion amount to be applied towards spending on promotion and advertising of the centre. The clause also inserts a new requirement for an audited annual statement of the lessor's expenditure on promotion amounts to be made available to the lessee.

Clause 37 inserts new section 41A which defines *lessee* for part 6 division 7 to include an assignee of the lease.

Clause 38 amends section 42 (Compensation provisions implied in particular leases) to provide under subsection (1) that a lease is taken to include (in addition to section 43) sections 43AA, 43AB, 43AC and 43AD; and to clarify that subsection (1) does not apply to a periodic tenancy, other than a periodic tenancy created by the lessee holding over under the lease or with the lessor's consent.

Clause 39 amends the heading of section 43 (When compensation is payable by lessor) and provides that the lessee must give the lessor written notice of the loss or damage mentioned in subsection (1) as soon as practicable after it is suffered; and that the lessee's failure to give the lessor the notice does not affect any right of the lessee to compensation but must be considered when deciding the amount of compensation under section 44.

Clause 40 inserts new sections 43AA- 43AD.

New section 43AA (When compensation is payable by lessor-false or misleading statements etc.) replaces existing subsection 43(2) and provides for the circumstances when the lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee in relation to a false or misleading statement or misrepresentation, or the leased shop not being available to the lessee for trading on the date specified in the disclosure statement under section 21B or 22C.

New section 43AB (No liability for compensation-emergency responses and statutory compliance) provides that the lessor is not liable to pay compensation under section 43(1) for action taken as a reasonable response to an emergency or acting in compliance with a statutory duty.

New section 43AC (No liability for compensation-trading hours) replaces existing subsection 43(3) and provides that the lessor is not liable to pay compensation under section 43(1) or 43AA 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.

New section 43AD (Lessor's liability for relocation or demolition) clarifies that the lessor is not liable to pay compensation under section 43(1)(f) to the extent the lessee is otherwise entitled to payment of relocation costs under section 46G or reasonable compensation under section 46K.

Clause 41 amends section 44 (Amount of compensation) to omit subsection (2) which provides that an agreement under the lease or an assignment of the lease about compensation payable under this division is void to the extent it limits the amount. This provision is relocated to new section 44A(1) by the Bill.

Clause 42 inserts new section 44A which provides that an agreement under a retail shop lease or under an assignment of a retail shop lease about compensation payable under this division is void to the extent it limits the amount of compensation. It provides for an exception to this provision for compensation for an anticipated disturbance that occurs within 1 year of the date the lease is entered into if the lessor gives the lessee a written notice including stated particulars of the anticipated disturbance in relation to which a lessor is liable to pay the lessee compensation under section 43(1)(a) to (e).

Clause 43 amends section 45 (Lessee's right to deal with lease and business assets). The amendments clarify a provision, remove a penalty and update cross references.

Clause 44 amends section 46 (Lessor's notice about when option to renew or extend must be exercised) to omit a penalty and clarifies the definition of *option date*.

Clause 45 inserts new section 46AB which provides that part 6, division 8A applies only in relation to a retail shop lease entered into on or after 24 June 2001.

Clause 46 amends the heading of and replaces section 46C (Provisions implied in retail shop lease) to clarify that a retail shop lease that provides for the relocation of the lessee's business during the term of the lease is taken to include sections 46D to 46G, and accord with current drafting practice.

Clause 47 amends the heading of section 46D (How lessor takes relocation action) and subsection (1) to accord with current drafting practice. The amendment provides that, if the leased shop the subject of a relocation notice is within a retail shopping centre, the relocation notice must state details of a reasonably comparable alternative retail shop within the centre to be made available to the lessee.

Clause 48 amends section 46J (Termination by lessee), which applies where the building in which the leased shop is located is to be demolished. Section 46J provides that, if the lessor gives the lessee a lessor's termination notice under section 46I, the lessee may terminate the lease earlier than the termination day by giving the lessor written notice of an earlier termination day. The amendment changes the notice requirement for the lessee's termination notice from at least 7 days before the earlier termination day to at least 1 month before the earlier termination day.

Clause 49 replaces section 48 (Lessee's liability for costs associated with preparation etc. of lease) and provides that the lessor is responsible for the costs of obtaining the consent of the lessor's mortgage, and the lessor's compliance with the Act. The amendment includes a new provision that a prospective lessee will be liable for the lessor's reasonable legal and other expenses in for preparation of a final lease if the lessee gives notice agreeing to preparation of the final lease for signature and then does not proceed. The clause also removes redundant references.

Clause 50 replaces section 49 (Lessee's right to join or form commercial associations) and it omits the existing penalty and makes void a provision of a retail shop lease to the extent that it has the effect of preventing or restricting the joining or forming of stated associations.

Clause 51 replaces section 50A. New section 50A (Release of assignor and any guarantor from lease) provides that, subject to the pre-conditions in section 50A(1), when an assignment of a retail shop lease is entered into, the assignor and any guarantor of the assignor are released from any liability under the lease arising from any default by the assignee. The pre-conditions in section 50A(1) are that the assignor has complied with section 22B, or an order under section 22E(2) imposed on the assignor; and the assignor's disclosure statement is not a defective statement.

The clause also inserts new section 50B (Refurbishment and refitting) which provides that a provision of a retail shop lease requiring the lessee to refurbish or refit the retail shop is void unless the lease gives general details of the nature, extent and timing of the refurbishment or refitting required.

Clause 52 amends section 51 (Definitions), the definition of *core trading hours* in the circumstances of paragraph (b)(ii) to state that core trading hours are the hours that the greatest number of lessees of a centre are required by the lessor to keep retail shops open for trading.

Clause 53 replaces section 53 (Trading hours) which makes requirements in leases for lessees to trade outside core trading hours for a retail shopping centre void. It provides that a condition of a retail shop lease that permits rather than requires the lessee to open the retail shop for trading outside the core trading hours for the centre is not void. It also preserves an offence for a lessor to require a lessee under a lease existing at the at the commencement of the *Trading (Allowable Hours) Act 1994* to extend trading hours that immediately before the commencement of that Act the lessee was required to keep the retail shop open for trading.

Clause 54 inserts new section 53A which provides that a lessee of a retail shop (first lessee) is not liable for additional outgoings that are incurred by the lessor at the time that the shop of an eligible lessee (as defined in section 51) is open for trading hours outside core trading hours when the first lessee's shop is not open for trading.

Clause 55 is an amendment of a drafting nature.

Clause 56, in relation to section 97 (Mediator's jurisdiction), removes the limitation on a mediator's jurisdiction in relation to disputes about arrears of rent and updates the reference in section 103(1)(d) to the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006 (Cwlth)*.

Clause 57 in relation to section 103 (QCAT's jurisdiction), removes the limitation on QCAT's jurisdiction in relation to disputes about arrears of rent and updates the reference in section 103(1)(d) to the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006 (Cwlth)*.

Clause 58 omits obsolete transitional provisions in part 12, divisions 1, 2 and 4.

Clause 59 renumbers part 12, divisions 3 and 5 as divisions 1 and 2.

Clause 60 inserts division 3 (Provisions for Retail Shop Leases Amendment Act 2015) in part 12 (Transitional provisions)

New section 136 (Definitions for div 3) provides definitions for the division of *amendment Act*, and in relation to a provision, *former* and *new*.

New section 137 (Proposed retail shop leases before commencement—when lease entered into) provides for the circumstances in which former section 11 continues to apply for determining when a leases is entered into.

New section 138 (Proposed assignment of retail shop leases—when assignment entered into) provides for the circumstances in which the former schedule definition of *entered into* continues to apply to for deciding whether the proposed assignment has been entered into.

New section 139 (Proposed retail shop leases before commencement—lessor’s disclosure obligation) provides for the circumstances in which former section 22 continues to apply in relation to a lessor’s disclosure obligation in relation to a proposed lease.

New section 140 (Proposed retail shop leases before commencement—prospective lessee’s disclosure obligation) provides for the circumstances in which a prospective lessee, having complied with former section 22A, is taken to have complied with new section 22A.

New section 141 (Proposed assignment of retail shop leases before commencement—assignor’s disclosure obligation to prospective assignee) provides for the circumstances in which former section 22B continues to apply in relation to an assignor’s disclosure obligations for a proposed assignment of a retail shop lease.

New section 142 (Proposed assignment of retail shop leases before commencement—prospective assignee’s disclosure obligation to lessor) provides for the circumstances in which a prospective lessee, having complied with former section 22C, is taken to have complied with new section 22C(3).

New section 143 (Timing and bases of rent reviews of proposed retail shop leases—major lessees) provides for the circumstances in which notice given by a major lessee under section 27(8)(b) is taken to be notice under new section 27(8)(b).

New section 144 (Early determination of current market rent of proposed retail shop leases—major lessees) provides for the circumstances in which notice given by a major lessee under section 27A(1A)(b) is taken to be notice under new section 27A(1A)(b).

New section 145 (Current market rent determinations of specialist retail valuers agreed to or nominated before commencement) provides that if, before the commencement, a specialist retail valuer is agreed to or nominated under former section 28, former sections 28A and 29 continue to apply.

New section 146 (Certain rent review provisions and ratchet rent provisions—major lessee) provides that new sections 36(2) and 36A(3) do not apply if, before the commencement, a major lessee gives a lessor a notice under former section 27(8)(b).

New section 147 (Annual estimate of apportionable outgoings) provides that, in relation to a retail shop lease entered into within 1 month after the commencement, it is sufficient compliance with new section 38A(2) if the lessor gives the outgoings estimate within 1 month after the lease is entered into.

New section 148 (Marketing plans for promotion and advertising) provides that if, within 1 month after the commencement, an accounting period for a retail shop lease mentioned in new section 40A starts, it is sufficient compliance with new section 40A if the lessor gives the marketing plan within 1 month after the accounting period starts.

New section 149 (Termination by lessee) provides that former section 46J continues to apply in relation to a lease, if before the commencement, the lessor gives the lessee a lessor's termination notice under former section 46I.

New section 150 (Lessee's liability for costs associated with preparation of lease before commencement) provides that section 48(3), as amended by the amending Act, applies to a retail shop lease, or a proposed retail shop lease, whether or not the lessee and lessor, or prospective lessee and lessor, enter into the lease.

New section 151 (Release of assignor for particular assignments of leases) provides for the circumstances in which new section 50A applies where an assignor has complied with their disclosure obligations before commencement and the assignment is entered into after the commencement.

New section 152 (Particular leases in a retail shopping centre) provides that a lease of premises in a retail shopping centre that was a retail shop lease before commencement and to which new section 5A(3) applies, continues to be a retail shop lease.

New section 153 (Transitional regulation-making power) provides for a transitional regulation making power for making provisions of a saving or transitional nature for which it is necessary to make provision to allow or facilitate the change from the operation of the unamended Act to the operation of the amended Act.

Clause 61 omits redundant definitions, inserts new definitions and amends existing definitions.