

Retail Shop Leases Amendment Bill 2015

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP

Title of the Bill

Retail Shop Leases Amendment Bill 2015

Objectives of the amendments

The Retail Shop Leases Amendment Bill 2015 (the Bill) was introduced on 13 October 2015.

On 4 February 2016, the Education, Tourism and Small Business Committee (Committee) tabled its Report on the Bill. While the Committee recommends passage of the Bill, recommendations 4 to 6 of the Committee Report sought a response in relation to issues raised by the Queensland Law Society on the drafting and operation of certain provisions of the Bill.

The proposed amendments are largely to omit provisions from the Bill in response to the issues raised by the Queensland Law Society that are the subject of recommendations 4 and 6 of the Committee Report to allow for further consideration and consultation on these provisions. One amendment is to include a clarifying note.

Achievement of the Objectives

Amendments to the Bill are required to achieve the objectives.

Alternative Ways of Achieving Policy Objectives

The policy objectives can only be achieved through amendment of the Bill.

Estimated Cost for Government Implementation

The State Government will not incur additional costs as a result of these amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles.

Consultation

The amendments arise from the recommendations of the Committee in response to the Queensland Law Society's submission to the Committee.

NOTES ON PROVISIONS

Amendment 1, to clause 9 of the Bill, omits proposed new section 11A (Application of Act—when assignment entered into).

Amendment 2, to clause 15 of the Bill, clarifies that new section 21D (Franchisor's disclosure obligation to franchisee) applies if a franchisor proposes to grant a franchisee a licence to occupy for leased premises that are a retail shop. The amendment also inserts a note in new section 21D (Franchisor's disclosure obligation to franchisee) to provide a cross reference to new section 21C (Sublessor's disclosure obligation to sublessee) which applies if the franchisor proposes to grant a sublease.

Amendment 3, to clause 15 of the Bill, is a minor amendment consequential to amendment 2.

Amendment 4, to clause 15 of the Bill, is a minor amendment consequential to amendment 2.

Amendment 5, to clause 15 of the Bill, omits proposed new section 21(5)-(9) which provides for a new lessor objection procedure and disputed termination provisions.

Amendments 6 and 7 are amendments for renumbering as a consequence of the omission in amendment 5.

Amendment 8, to clause 16 of the Bill, amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) to provide that the assignor must give the assignee a copy of the current lease for the leased shop at the time the assignor disclosure is given.

Amendment 9, to clause 16 of the Bill, amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) to insert a shortened description "prescribed disclosure date" for use in subsequent provisions of the Bill.

Amendment 10, to clause 16 of the Bill, amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) to provide that a prospective assignee may waive the 7 day assignor disclosure period by giving the assignor a waiver notice that, if the prospective assignee is not a major lessee (i.e. is not a lessee of 5 or more retail shops in Australia) includes a signed statement by the assignee that they have received legal advice about the legal meaning and effect of the waiver. The assignor is entitled to rely on

the assignee's waiver notice even if the assignee has not obtained legal advice on the waiver.

Amendment 11, to clause 16 of the Bill amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) to renumber as a consequence of the insertion in amendment 10.

Amendment 12, to clause 16 of the Bill amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) as a consequence of the insertion in amendment 10 and amends the provisions of new section 22B(3) to provide that the assignor must give the lessor a copy of the disclosure statement given to the assignee under section 22B(1A) on the day the lessor is asked to consent to the assignment.

Amendment 13, to clause 16 of the Bill amends section 22B (Assignor's and prospective assignee's disclosure obligations to each other) to insert a definition of "waiver notice" for the purposes of section 22B.

Amendment 14, to clause 60 of the Bill, omits new proposed section 138 (Proposed assignment of retail shop leases—when assignment entered into) as a consequence of the omission in amendment 1.

Amendment 15, to clause 60 of the Bill, omits new proposed section 142 (Proposed assignment of retail shop leases before commencement—prospective assignee's disclosure obligation to lessor) as a consequence of the omission in amendment 1.

Amendment 16, to clause 61 of the Bill, retains the existing definition 'entered into' as a consequence of the omission in amendment 1.