



# **Retail Shop Leases Act 1994**

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Queensland

# Retail Shop Leases Act 1994

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# Retail Shop Leases Act 1994

## An Act about retail shop leases

### Part 1 Preliminary

#### 1 Short title

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

### Part 2 Object of Act and its achievement

#### 3 Object of Act

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

#### 4 How main object of Act to be achieved

The main 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

#### 5 Definitions

The dictionary in the schedule defines particular words used in this Act.

### Division 2 Key concepts

#### 5A Meaning of *retail shop lease*

- (1) A *retail shop lease* is a lease of a retail shop.
- (2) However, a *retail shop lease* does not include a lease of any of the following—
  - (a) a retail shop with a floor area of more than 1,000m<sup>2</sup>;
  - (b) a retail shop within the South Bank corporation area if the lease is entered into or granted by the South Bank Corporation and is either—
    - (i) a perpetual lease; or
    - (ii) another lease for a term, including renewal options, of at least 100 years;
  - (c) 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;
  - (d) premises in a theme or amusement park;
  - (e) premises at a flea market, including an arts and crafts market;
  - (f) a temporary retail stall at—
    - (i) an agricultural or trade show; or
    - (ii) a carnival, festival or cultural event;

- 
- (g) premises that, if the premises were not leased, would be premises within a common area of a retail shopping centre, but only if the premises are used for 1 or more of the following—
- (i) an information, entertainment, community or leisure facility;
  - (ii) telecommunication equipment;
  - (iii) an automatic teller machine;
  - (iv) a vending machine;
  - (v) an advertisement display;
  - (vi) storage;
  - (vii) parking.
- (3) Also, a **retail shop lease** does not include a lease of premises located in a retail shopping centre if—
- (a) the premises are not used wholly or predominantly for carrying on a retail business; and
  - (b) at the time the lease is entered into, either—
    - (i) if the premises are located on a level of a multi-level building—the retail area of the level is 25% or less of the total lettable area of the level; or
    - (ii) if the premises are located in a single level building—the retail area of the building is 25% or less of the total lettable area of the building.

*Examples for paragraph (b)—*

- 1 A lease of premises for an accounting practice on level 4 of a retail shopping centre is not a retail shop lease if, at the time the lease is entered into, 75% of the total lettable area of level 4 is used wholly for professional or commercial offices.
- 2 A lease of premises for a medical centre in a stand-alone single level building within the parking area of a retail shopping centre is not a retail shop lease if, at the time the lease is entered into, 80% of the total lettable area of the building is used wholly for providing medical services.

[s 5B]

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- (4) The ***retail area***, for a level or building in a retail shopping centre, is the area of the level or building comprising premises used wholly or predominantly for carrying on retail businesses.
- (5) The ***total lettable area***, for a level or building in a retail shopping centre, is the total area of all the premises of the level or building that are—
  - (a) leased or occupied; or
  - (b) available for lease or occupation.

### **5B Meaning of *retail shop***

***Retail shop*** means premises that are—

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

### **5C Meaning of *retail business***

***Retail business*** means a business prescribed by regulation as a retail business.

### **5D Meaning of *retail shopping centre***

A ***retail shopping centre*** is a cluster of premises having all of the following attributes—

- (a) 5 or more of the premises are used wholly or predominantly for carrying on retail businesses;
- (b) all the premises—
  - (i) are owned by the 1 person; or
  - (ii) have the 1 lessor or head lessor, or, if the premises were leased, would have the 1 lessor or head lessor; or

- 
- (iii) comprise lots within a single community titles scheme under the *Body Corporate and Community Management Act 1997*;
  - (c) all the premises are located in—
    - (i) 1 building; or
    - (ii) 2 or more buildings if—
      - (A) the buildings are adjoining; or
      - (B) if the premises are owned by the 1 person—the buildings are separated by common areas or other areas owned by the owner or a road; or
      - (C) if the premises are not owned by the 1 person—the buildings are separated by common areas or a road;
  - (d) the cluster of premises is promoted, or generally regarded, as constituting a shopping centre, shopping mall, shopping court or shopping arcade.

## 6 Meaning of *common areas*

- (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.

## 7 Meaning of *outgoings*

- (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 the centre or building and areas (*associated 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; and
  - (c) an amount mentioned in section 24A(2).
- (2) An outgoing mentioned in subsection (1) may be either an apportionable outgoing or a specific outgoing and the sum of the apportionable outgoings and specific outgoings is the lessor's outgoings.
- (3) 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) payment of an excess in relation to a claim on the lessor's insurance policy for the centre or building or associated areas; and



- 
- (f) lessor's contributions to merchants' associations and centre promotion funds; and
  - (g) payment of interest and charges on amounts borrowed by the lessor.

*Examples for subsection (3)(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 associated areas, 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.

## 9 Meaning of *turnover*

- (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 carried on in a leased shop 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, including GST, imposed on the purchase price or cost of hire of goods or services at the point of sale or hire;
  - (h) delivery charges;

[s 9A]

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- (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 sales made on a commission basis (other than commission on the sales).

*Examples of sales made on a commission basis—*

lottery sales, postage stamp sales, public transport ticket sales, telephone card sales

## **Division 3                      Notes**

### **9A        Notes in text**

A note in the text of this Act is part of this Act.

## **Part 4                              Operation of Act and former Act**

### **Division 1                      General application of Act and former Act**

#### **10        Act binds all persons**

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.

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## **11 Application of Act—when lease entered into**

A retail shop lease is entered into on the earliest of the following dates—

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

## **12 Application of Act—where lease entered into**

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.

## **13 Application of Act to leases—general**

This Act applies in relation to all retail shop leases whether entered into, or renewed, before or after 28 October 1994, subject to the following provisions—

- (a) section 14;
- (b) section 19(1);
- (c) section 20;
- (d) section 20A;
- (e) section 20B;
- (f) section 20C;
- (g) section 21;
- (h) section 42;
- (i) section 45(3);

- (j) section 46AB;
- (k) part 7.

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

- (1) In relation to a lease of premises that become a retail shop only after the commencement of the lease, this Act does not apply to—
- (a) the lease; or
  - (b) an assignment of the lease; or
  - (c) a renewal of the lease under an option under the lease.

*Example for subsection (1)(a)—*

On 1 April 2016 a person enters into a 3-year lease for carrying on a business that is not a retail business from premises that are not in a retail shopping centre. Accordingly, the premises are not a retail shop as defined in the schedule. However, on 1 September 2016, the business is prescribed by regulation as a retail business. Under this subsection, this Act does not apply to the lease even though the premises become a retail shop on this second date.

- (2) In relation to a lease of premises that cease to be a retail shop after the commencement of the lease, this Act continues to apply to—
- (a) the lease; or
  - (b) an assignment of the lease; or
  - (c) a renewal of the lease under an option under the lease.

*Example for subsection (2)(a)—*

On 1 April 2016 a person enters into a 3-year lease for the conduct of a business that is not a retail business from premises in a retail shopping centre. On 1 September 2016, the cluster of premises in which the leased premises are situated ceases to be a retail shopping centre and the business is still not a retail business. Under this subsection, this Act continues to apply to the lease even though the premises are no longer a retail shop.

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## **Division 2                      Relationship of Act to retail shop leases**

### **15            Act's provisions implied in leases**

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.

### **16            Contracting out of Act prohibited**

A provision of 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.

### **17            Act prevails over inconsistent leases**

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.

## **Division 3                      Particular retail shop leases**

### **18            Definition for div 3**

In this division—

*former Act lease* means—

- (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 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).

## **19 Application of Act and former Act to former Act leases**

- (1) The following provisions do not apply in relation to former Act leases—
  - (a) part 4, other than this section;
  - (b) part 5;
  - (c) part 6;
  - (d) section 120.
- (2) The following provisions of the former Act (to the extent that they applied immediately before 28 October 1994) continue to apply to a former Act lease as if this Act had not been enacted—
  - (a) part 1, other than section 5A;
  - (b) part 2;
  - (c) part 3, other than the following sections—
    - (i) section 10B;
    - (ii) section 10C;
    - (iii) section 15A;
  - (d) section 56;
  - (e) section 57;
  - (f) section 58;
  - (g) schedules 1 and 2.
- (3) For the purposes of applying a provision of the former Act in relation to a former Act lease, a reference in the provision to—
  - (a) a specialist retail valuer is taken to be a reference to a specialist retail valuer under the *Valuers Registration Act 1992*; and

- (b) the registrar is taken to be a reference to the chief executive; and
- (c) a mediator is taken to be a reference to a mediator under this Act; and
- (d) a retail shop leases tribunal or tribunal is taken to be a reference to QCAT.

## 20 **Application of Act, s 27—timing and bases of rent reviews**

- (1) Section 27, as in force immediately before 30 April 1999, continues to apply, as if the 1999 amendment Act had not been enacted, in relation to—
  - (a) a retail shop lease entered into on or after 28 October 1994 but before 30 April 1999; and
  - (b) any extension or renewal of a lease mentioned in paragraph (a).

*Note—*

Part 6 does not apply to a former Act lease—see section 19(1)(c).

- (2) Section 27, as in force immediately before 1 July 2000, continues to apply, as if the 2000 amendment Act had not been enacted, in relation to—
  - (a) a retail shop lease entered into on or after 30 April 1999 but before 1 July 2000; and
  - (b) any extension or renewal of a lease mentioned in paragraph (a).

*Note—*

In relation to a retail shop lease entered into before 3 April 2006 and any extension or renewal of the lease, section 27 (as in force on 1 July 2000) continues to apply as if the *Retail Shop Leases Amendment Act 2006* had not been enacted—see section 129.

- (3) In this section—

***1999 amendment Act*** means the *Retail Shop Leases Amendment Act 1999*.

**2000 amendment Act** means the *Retail Shop Leases Amendment Act 2000*.

## **20A Application of Act to short term retail shop leases**

- (1) Only the following provisions apply in relation to a short term retail shop lease entered into on or after 3 April 2006—
  - (a) part 1;
  - (b) part 2;
  - (c) part 3;
  - (d) part 7;
  - (e) part 12 to the extent it is relevant to parts 1, 2, 3 or 7.

- (2) In this section—

***right to extend***, a lease, does not include a holding over by the lessee with the lessor's consent.

***short term retail shop lease*** means a retail shop lease for which the sum of the following periods is not more than 6 months—

- (a) the lease's original term;
- (b) any periods for which the lessee has a right to extend the lease.

## **20B Application of Act to particular government leases**

- (1) Despite section 10, sections 22A, 22D and 46 do not apply in relation to a government lease.

- (2) In this section—

***government lease*** means a retail shop lease for which the State, Commonwealth, another State or a local government is the lessee or prospective lessee.



## **20C Application of Act to leases of service stations**

- (1) This Act does not apply to a retail shop lease for the carrying on of the business of a service station if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.
- (2) This Act (other than part 6) applies to a retail shop lease for the carrying on of the business of a service station, regardless of when the lease was entered into, if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) does not apply to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.

# **Part 5 Preliminary disclosures about leases**

## **Division 1 Preliminary**

### **21 Application of pt 5**

This part does not apply to a retail shop lease for a periodic tenancy or tenancy at will.

## **Division 2 Disclosure for entering into or renewing lease**

### **21A Application of div 2**

This division does not apply to an assignment of a retail shop lease.

## **21B Lessor's disclosure obligation to prospective lessee**

- (1) At least 7 days before a prospective lessee of a retail shop enters into a retail shop lease (the *prescribed disclosure date*), the lessor must give the prospective lessee—
  - (a) a draft of the lease; and
  - (b) a disclosure statement.
- (2) However, for the purposes of complying with subsection (1) in relation to a disclosure statement, it is sufficient if, after the prescribed disclosure date but before the prospective lessee enters into the lease—
  - (a) the lessor gives the prospective lessee the disclosure statement; and
  - (b) the prospective lessee gives the lessor—
    - (i) a waiver notice; and
    - (ii) unless the prospective lessee is a major lessee—a legal advice report for the lease under section 22D which states the lawyer has given the prospective lessee advice about the legal meaning and effect of the waiver.
- (3) Also, this section does not apply to a renewal of a retail shop lease under an option.
- (4) In this section—

*waiver notice*, for a prospective retail shop lease, means a written notice signed by the prospective lessee stating that the prospective lessee agrees to waive the lessor's obligation to give a disclosure statement for the lease by the prescribed disclosure date.

## **21C Sublessor's disclosure obligation to sublessee**

- (1) For the purposes of complying with section 21B in relation to a sublease of a retail shop lease, a prospective sublessor may request a disclosure statement (a *head lessor disclosure statement*) from the lessor.

- (2) On request by the prospective sublessor under subsection (1)—
  - (a) the lessor must, within 28 days of receiving the request, give the prospective sublessor a head lessor disclosure statement that is updated to the date it is given; and
  - (b) the prospective sublessor must pay the lessor's reasonable expenses incurred for preparation of the head lessor disclosure statement.
- (3) In applying section 21B in relation to the sublease—
  - (a) a reference to a prospective lessee is taken to be a reference to a prospective sublessee; and
  - (b) a reference to a lessor is taken to be a reference to a prospective sublessor; and
  - (c) a reference to giving a disclosure statement is taken to be a reference to giving both of the following documents—
    - (i) a head lessor disclosure statement that is updated to a date no more than 2 months before the date the statement is given to the prospective sublessee;
    - (ii) a written statement detailing any matters of which the prospective sublessor is aware, or could reasonably be aware, that affect the information in the head lessor disclosure statement.

## **21D Franchisor's disclosure obligation to franchisee**

- (1) This section applies if—
  - (a) a person (the *franchisor*) is the lessee of a retail shop; and
  - (b) the franchisor proposes to grant a licence (the *licence*) to another person (the *franchisee*) to occupy and use, for the carrying on of a business, all or part of the retail shop; and

*Note—*

If the franchisor proposes to grant a sublease, see section 21C.

- (c) the business mentioned in paragraph (b) is to be carried on under a name or mark identifying, commonly associated with or controlled by the franchisor or an entity connected with the franchisor.
- (2) For the purposes of complying with section 21B in relation to the licence, the franchisor may request a disclosure statement (a ***head lessor disclosure statement***) from the lessor.
  - (3) On request by the franchisor under subsection (2)—
    - (a) the lessor must, within 28 days of receiving the request, give the franchisor a head lessor disclosure statement that is updated to the date it is given; and
    - (b) the franchisor must pay the lessor's reasonable expenses incurred for preparation of the head lessor disclosure statement.
  - (4) In applying section 21B in relation to the licence—
    - (a) a reference to a prospective lessee is taken to be a reference to a franchisee; and
    - (b) a reference to a lessor is taken to be a reference to a franchisor; and
    - (c) a reference to giving a disclosure statement is taken to be a reference to giving both of the following documents—
      - (i) a head lessor disclosure statement that is updated to a date no more than 2 months before the date the statement is given to the franchisee;
      - (ii) a written statement detailing any matters of which the franchisor is aware, or could reasonably be aware, that affect the information in the head lessor disclosure statement.

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## **21E Lessor's disclosure obligation to lessee for renewal**

- (1) This section applies in relation to a renewal of a retail shop lease under an option.
- (2) The lessor must give the lessee a current disclosure statement within 7 days after the day on which the lessor receives the lessee's notice exercising the option to renew (the *renewal notice*).
- (3) However, subsection (2) does not apply if, at the time the renewal notice is given to the lessor, the lessee gives the lessor a waiver notice.
- (4) Within 14 days of receiving the current disclosure statement, the lessee may, whether or not the renewed lease period has commenced, give the lessor a written notice stating that the renewal notice is withdrawn.
- (5) In this section—  
*current disclosure statement*, in relation to a lessor and lessee, means—
  - (a) in any case—a disclosure statement that is updated to the date it is given; or
  - (b) if a disclosure statement was given by the lessor to the lessee during the term of the lease—a written statement that updates the details of the disclosure statement to the date it is given.

*waiver notice*, for a renewal of a retail shop lease, means a written notice signed by the lessee stating that the lessee agrees to waive the lessor's obligation to give a disclosure statement for the lease.

## **21F Lessor's failure to comply with disclosure obligation**

- (1) A lessee may terminate a retail shop lease by giving written notice to a lessor within 6 months after the lessee enters into the lease if—
  - (a) the lessor does not comply with section 21B or 21E; or

- (b) a disclosure statement when given to the lessee under section 21B or 21E is a defective statement.
- (2) For the purposes of this section, a disclosure statement is a ***defective statement*** if it—
    - (a) is incomplete in a material particular; or
    - (b) contains information that is false or misleading in a material particular.
  - (3) However, a disclosure statement is not a defective statement merely because—
    - (a) it omits information that is irrelevant to the lease; or
    - (b) its layout does not comply with that of the approved form.
  - (4) The lessee can not terminate the lease under subsection (1) because a disclosure statement is a defective statement if—
    - (a) the lessor acted honestly and reasonably in giving the disclosure statement; and
    - (b) the lessee is in substantially as good a position as the lessee would be if the disclosure statement were not a defective statement.
  - (5) 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 noncompliance or defective statement.
  - (6) Termination of the lease under subsection (1) does not affect any right, privilege or liability acquired, accrued or incurred under the lease for any period before the termination.
  - (7) In this section—  
***disclosure statement*** includes—
    - (a) a statement mentioned in section 21C(3)(c)(ii) or 21D(4)(c)(ii); and
    - (b) a written statement given under section 21E that updates the details of an earlier disclosure statement.

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**22 Lessor to give lessee the lease document or a certified copy of lease**

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.

**22A Prospective lessee's disclosure obligation to lessor**

At least 7 days before a prospective lessee, other than a prospective franchisee, enters into a retail shop lease, the prospective lessee must give the lessor a disclosure statement.

**Division 3 Disclosure for entering into assignment of lease**

**22AA Application of div 3**

This division applies only to an assignment of a retail shop lease.

**22B Assignor's and prospective assignee's disclosure obligations to each other**

- (1) An assignor of a retail shop lease for a leased shop must give a prospective assignee a disclosure statement and a copy of the current lease at least 7 days before the earlier of the following (the *prescribed disclosure date*)—
  - (a) if the assignment is related to an agreement for sale to the assignee of the assignor's business carried on in the leased shop—the day on which the assignee enters into the agreement;
  - (b) the day the lessor is asked to consent to the assignment.
- (1A) However, for the purposes of complying with subsection (1) it is sufficient if, after the prescribed disclosure date but before the day mentioned in subsection (1)(a) or (b)—

- (a) the assignor gives the prospective assignee a disclosure statement and a copy of the current lease; and
  - (b) the prospective assignee gives the assignor a waiver notice.
- (1B) If the prospective assignee is not a major lessee, a waiver notice given by the prospective assignee is valid and effective even if a lawyer has not given the prospective assignee advice about the legal meaning and effect of the waiver.
- (2) The prospective assignee must give a disclosure statement to the assignor before the lessor is asked to consent to the assignment.
  - (3) The assignor must give the lessor a copy of the disclosure statement given to the assignee under subsection (1) or (1A) on the day the lessor is asked to consent to the assignment.
  - (4) In this section—  
*waiver notice*, for a prospective assignment of a retail shop lease, means a written notice signed by the prospective assignee stating—
    - (a) the prospective assignee agrees to waive the assignor's obligation to give a disclosure statement for the lease and a copy of the current lease by the prescribed disclosure date; and
    - (b) if the prospective assignee is not a major lessee—a lawyer has given the prospective assignee advice about the legal meaning and effect of the waiver.

## **22C Lessor's and prospective assignee's disclosure obligations to each other**

- (1) At least 7 days before an assignment of a retail shop lease is entered into (the *prescribed disclosure date*), the lessor must give the prospective assignee a disclosure statement and a copy of the lease.
- (2) However, for the purposes of complying with subsection (1) in relation to a disclosure statement, it is sufficient if, after the



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prescribed disclosure date but before the prospective assignee enters into the assignment—

- (a) the lessor gives the prospective assignee the disclosure statement; and
  - (b) the prospective assignee gives the lessor—
    - (i) a waiver notice; and
    - (ii) unless the prospective assignee is a major lessee—a legal advice report for the lease under section 22D which states the lawyer has given the prospective assignee advice about the legal meaning and effect of the waiver.
- (3) The prospective assignee must give a disclosure statement to the lessor before the assignment is entered into.
- (4) In this section—

*waiver notice*, for an assignment of a retail shop lease, means a written notice signed by the prospective assignee stating that the prospective assignee agrees to waive the lessor's obligation to give a disclosure statement for the lease by the prescribed disclosure date.

## Division 4                      General provisions

### 22D      Financial and legal advice reports

- (1) A prospective lessee, other than a prospective franchisee, of a retail shop who is not a major lessee must, before entering into the lease, give the lessor—
  - (a) a financial advice report; and
  - (b) a legal advice report.
- (2) A prospective assignee of a retail shop lease who is not a major lessee must, before entering into the assignment, give the lessor—
  - (a) a financial advice report; and

- (b) a legal advice report.

## **22E Effect of failure to comply with sections 22A–22D**

- (1) This section applies if a person (the *disclosing person*) fails to give another person (the *receiving person*) a document under sections 22A to 22D and the relevant lease or assignment is entered into.
- (2) A retail tenancy dispute exists between the persons, and the receiving person, within the relevant period, may apply, as provided under the QCAT Act, to QCAT for an order that the disclosing person give the document to the receiving person.
- (3) In this section—  
*relevant period* means—
  - (a) for section 22A or 22D(1)—within 2 months after the lease is entered into; or
  - (b) for section 22B, 22C or 22D(2)—within 2 months after the assignment is entered into.

# **Part 6 Minimum lease standards**

## **Division 1 Preliminary**

### **24 Lessee’s obligations to make particular payments**

- (1) A retail shop lease must not contain a provision requiring the lessee to make any payment other than for the following—
  - (a) rent;
  - (b) if specified in the lease, the following—
    - (i) 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;

- (ii) damages for breach of a term of the lease;
  - (iii) an indemnity given by the lessee to the lessor for loss or damage suffered by the lessor as a result of the actions or omissions of the lessee or a person acting for the lessee;
  - (iv) subject to subsection (3), interest on arrears of rent or outgoings;
- (c) the lessor's reasonable legal or other expenses incurred in responding to a request by the lessee for—
- (i) a variation of the lease, including, for example, a rent concession; or
  - (ii) the lessor's consent to the lessee entering into a sublease or licence with another person in relation to the leased shop.
- (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 17.

- (3) A retail shop lease may contain a provision requiring the lessee to make a payment for interest on arrears of rent or outgoings only if the interest rate, or the way in which the interest rate is to be calculated, is stated in the lease.
- (4) Subsection (1) has effect subject to the following sections—
- section 24A
  - section 34
  - section 39(2)
  - section 40
  - section 41

- section 48.

## **24A GST payments**

- (1) Nothing in this Act prevents a lessor from requiring a lessee to pay an amount (the ***GST amount***) that is directly or indirectly attributable to GST payable for a supply made by the lessor to the lessee under the lease.
- (2) If a lease provides that the GST amount is to be paid by the lessee to the lessor as an outgoing item, the GST amount is a specific outgoing.

## **Division 2 Turnover rent**

### **25 Requirements if rent a percentage of turnover**

- (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.

## **Division 3 Confidentiality of turnover information**

### **26 Lessor not to disclose turnover information**

- (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 without the lessee's agreement.  
Maximum penalty—60 penalty units.
- (2) However, the lessor may disclose information—

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- (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 under this Act or QCAT; or
  - (vi) a specialist retail valuer under section 30.
- (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**

### **Subdivision 1        Timing and bases of rent reviews**

#### **27            Timing and bases of rent reviews**

- (1) If a retail shop lease provides for a review of the rent payable under the lease 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 each review is to be made.
- (2) The rent may not be reviewed more than once in each year of the lease.
- (3) Subsection (2) does not apply to the first year of the lease.
- (4) The rent may be reviewed using different bases during the term of the lease, but each review must be made using only 1 basis.
- (5) The basis for a rent review must be a single basis consisting of 1 of the following—
  - (a) the current market rent of the leased shop;

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- (b) an independently published index of prices, costs or wages;
  - (c) a fixed percentage of the base rent;
  - (d) a fixed actual amount;
  - (e) if the rent is determined as a base rent plus an amount equal to a percentage of the turnover of the lessee's business—the average rental paid over the previous year, or the stated number of previous years, of the lease;
  - (f) another basis prescribed by regulation;
  - (g) a single basis formed by a combination of 2 or more bases mentioned in paragraphs (b) to (f).
- (6) If the rent is determined as a base rent plus an amount equal to a percentage of the turnover of the lessee's business the review of the base rent must be made in accordance with subsections (4) and (5).
- (7) 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, the rent payable for the rental period after the timing of an invalid review is—
- (a) for an invalid review mentioned in subsection (11), definition *invalid review*, paragraph (a)—the same as the rent payable before the timing of the review; or
  - (b) for an invalid review mentioned in subsection (11), definition *invalid review*, paragraph (b)—the rent worked out on 1 of the bases, chosen by the lessee, on which the review was made; or
  - (c) for an invalid review mentioned in subsection (11), definition *invalid review*, paragraph (c)—the rent worked out on 1 of the bases, chosen by the lessee, on which the review was to be made under the void provision.
- (8) Subsections (2) to (7) do not apply if—
- (a) the lessee is a major lessee; and

- (b) before the lessee enters into the lease, the lessee gives the lessor a written notice stating the lessee agrees that subsections (2) to (7) do not apply in relation to the lease; and
  - (c) the lease provides for the timing and basis for each review of the lease.
- (9) To remove any doubt, it is declared that neither of the following is a rent review—
- (a) an adjustment of the rent merely to enable the lessor to recover GST from the lessee;
  - (b) a rent concession.
- (10) Nothing in this section prevents a retail shop lease limiting the amount by which the rent payable under the lease may be increased.
- (11) In this section—
- invalid review***, of rent under the lease, means—
- (a) a review in a year of the lease, other than the first year, in which the rent is to be reviewed under the lease more than once; or
  - (b) a review made under the lease using more than 1 basis; or
  - (c) a review under a provision of a lease that is void under section 36(1)(d) or (e).

***year***, of the lease, means a period of 12 months starting on—

- (a) the day the lease is entered into; or
- (b) an anniversary of the day the lease was entered into; or
- (c) if, for a particular 12 month period, there is not an anniversary of the day the lease was entered into—the last day of the month corresponding to the month the lease was entered into.

*Note*—

Paragraph (c) deals with a lease entered into on the last day of February in a leap year.



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## Subdivision 2 Current market rent

### 27A Lessee may require early determination of current market rent

- (1) This section applies if a retail shop lease provides for an option on the lessee's part to renew or extend the lease at the current market rent of the leased shop.
- (1A) However, this section does not apply if—
  - (a) the lessee is a major lessee; and
  - (b) before the lessee enters into the lease, the lessee gives the lessor a written notice stating that the lessee agrees that this subdivision does not apply in relation to the lease; and
  - (c) the lease provides for the timing and basis for each review of the lease.
- (2) Unless the current market rent has already been agreed between the lessor and lessee, the lessee may, by written notice given to the lessor in the early determination period, ask for the current market rent to be determined.
- (3) Sections 28(2) and (3) and 28A to 35 apply to the determination.
- (4) The current market rent must be determined as at the date the request is made under subsection (2).
- (5) The rent payable under the renewal or extension is the current market rent determined under this section.
- (6) Despite any other provision of this Act or the lease, the last day on which the option mentioned in subsection (1) may be exercised is the day that is 21 days after the lessee receives written notice of the current market rent determined under this section.
- (7) In this section—

*early determination period* means—

  - (a) for a lease of not more than 1 year, the period—

[s 28]

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- (i) starting 3 months before the option expiry day; and
  - (ii) ending 1 month before the option expiry day; or
- (b) for a lease of more than 1 year, the period—
- (i) starting 6 months before the option expiry day; and
  - (ii) ending 3 months before the option expiry day.

*option expiry day* means the last day on which the option to renew or extend the lease may, under the lease, be exercised.

## **28 Rent review on basis of current market rent**

- (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 can not 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, appointed 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.

## **28A Parties' submissions to specialist retail valuer**

- (1) This section applies if the current market rent under a retail shop lease is to be determined by a specialist retail valuer under section 28.
- (2) The valuer must advise the lessor and lessee that the lessor and lessee may give the valuer a submission about the current market rent of the leased shop by a stated date decided by the valuer (the *submission date*).
- (3) The submission date must be not less than 14 days after the valuer is agreed to or appointed under section 28.
- (4) If the lessor or lessee does not give a submission to the valuer by the submission date, the lessor or lessee is taken to have

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not made a submission for the purposes of this section or section 29(1)(c)(ii).

- (5) A lessor or lessee who gives a submission to the valuer must also give a copy of it to the other party by the submission date.
- (6) A lessor or lessee who receives a copy of a submission may give the valuer a written response to it.
- (7) The response must be given by a stated date decided by the valuer (the *response date*) that is reasonable in the circumstances.
- (8) If the lessor or lessee does not give a response to the valuer by the response date, the lessor or lessee is taken to have not made a response for the purposes of this section or section 29(1)(c)(ii).

## **29 Matters to be considered by specialist retail valuers**

- (1) 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 same or a substantially similar use for which the shop may be used under the lease; and
    - (ii) on the basis of gross rent less lessor's outgoing 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) the terms and conditions of the lease; and
    - (ii) submissions and responses from the lessor and lessee about the market rent of the shop; and

(iii) the other matters prescribed by regulation.

(2) In this section—

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

### **30 Valuer may require information from lessor**

- (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, the valuer, within 7 days after the lessor fails to give the information, must give the lessee written notice of the lessor's failure.
- (3) If the lessee is given a notice under subsection (2), a retail tenancy dispute exists between the lessor and the lessee.
- (4) This section has effect despite the provisions of the retail shop lease.

### **31 Requirements of determination**

- (1) The specialist retail valuer's determination of the current market rent must—
  - (a) be in writing; and
  - (b) identify the location of the leased shop; and
  - (c) state the matters taken into consideration in making the determination; and
  - (d) state detailed reasons for the determination.
- (2) The determination must also state—
  - (a) whether the current market rent includes GST; and

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- (b) if the rent includes GST, the GST amount.

### **32 Valuer to give determination to lessor and lessee**

The specialist retail valuer must give the valuer's determination to the lessor and lessee within 1 month after the latest of the following—

- (a) the valuer is asked to make the determination;
- (b) the submission date under section 28A(2);
- (c) if a submission is made to the valuer under section 28A—the response date under section 28A(7);
- (d) if the lessor is required to give the valuer information (*lease information*) under section 30—the lessor gives the lease information to the valuer;
- (e) if a retail tenancy dispute under section 30 proceeds to mediation or QCAT under part 8—the lessor gives the lease information to the valuer as required by or under a mediation agreement made under the part, or order made by QCAT.

### **33 Effect of determination**

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.

### **34 Parties to share cost of determination**

The lessor and lessee must each pay to the specialist retail valuer one-half of the valuer's fee for determining the current market rent of the retail shop under this subdivision.

### **35 Confidentiality of lease information**

- (1) A specialist retail valuer who obtains information under section 28A or 30 must not—

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- (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.

### **Subdivision 3 Other provisions about rent review**

#### **36 Certain rent review provisions of leases void**

- (1) 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; 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.
- (2) However, if, under a retail shop lease, a major lessee gives a notice under section 27(8), 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 because of those provisions.

### **36A Ratchet rent provision void**

- (1) Subsection (2) applies if a retail shop lease provides a basis for rent review under which the rent may be varied, including by a decrease, but the lease includes a ratchet rent provision.
- (2) The ratchet rent provision is void.
- (3) However, if, under a retail shop lease, a major lessee gives a notice under section 27(8), a ratchet rent provision that would otherwise be void is not void.
- (4) In this section—

***ratchet rent provision*** means any provision of a retail shop lease to the extent that it—

- (a) prevents, or enables the lessor or another person to prevent, the rent decreasing under a rent review; or
- (b) limits or specifies, or allows the limitation or specification of, the amount by which the rent may decrease under a rent review; or
- (c) prevents, or allows the avoidance of, the rent review by the lessor or another person for a purpose mentioned in paragraph (a) or (b).

## **Division 5                      Lessor's outgoings and other payments**

### **36B    Definitions for div 5**

In this division—

*apportionable outgoings*, for a retail shop lease, includes maintenance amounts and promotion amounts to the extent the amounts are treated as part of the lessor's outgoings under the lease.

*audited annual statement* see section 38B(1).

*maintenance amounts* see section 40(1).

*outgoings estimate* see section 38A(1).

*promotion amounts* see section 41(1)(a).

### **37        Lessee's liability to pay amount for outgoings**

- (1) A lessee under a retail shop lease is not liable to pay an amount to the lessor for outgoings unless the lease specifies—
  - (a) the outgoings payable by the lessee; and
  - (b) how the outgoings will be determined and apportioned to the lessee; and
  - (c) how the outgoings may be recovered by the lessor from the lessee.
- (2) In this section—

*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.

### **38        Lessee's liability to pay proportion of lessor's apportionable outgoings**

- (1) 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 owned by the lessor and—

- (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).

(2) In this section—

***prescribed purpose*** means 1 or more of the following purposes—

- (a) information, entertainment, community or leisure facilities;
- (b) telecommunication equipment;
- (c) automatic teller machines;
- (d) vending machines;
- (e) advertisement displays;
- (f) seating, tables and other furniture;
- (g) trade out areas;
- (h) storage;
- (i) parking.

***total area***, of all premises in a retail shopping centre or leased building, does not include areas of premises that, if the areas were not leased or licensed, would be areas within a common area of the centre or building but only if the areas are used for a prescribed purpose.

### **38A Annual estimate of apportionable outgoings**

- (1) The lessor under a retail shop lease must give the lessee an annual estimate in the approved form of the lessor's apportionable outgoings and the proportion of those outgoings for which the lessee will be liable under the lease (the *outgoings estimate*).
- (2) The lessor must give the outgoings estimate—
  - (a) at least 1 month before the start of the period to which the estimate relates; or
  - (b) 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.
- (3) If the shop is in a retail shopping centre, the outgoings estimate must also 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.
- (4) The outgoings shown in the outgoings estimate must be itemised so that the amount shown for each item is not more than 5% of the total outgoings shown in the estimate.
- (5) 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) an outgoing that can not be further itemised to comply with subsection (4).
- (6) If a person becomes the owner of a retail shopping centre, or building containing a retail shop, the first outgoings estimate given by the person may be made for a period of less than 1 year.

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### **38B Audited annual statement of outgoings**

- (1) The lessor under a retail shop lease must give the lessee a statement in the approved form of the lessor's apportionable outgoings (the *audited annual statement*).
- (2) The audited annual statement must be given to the lessee within 3 months after the end of the period to which the outgoings relate.
- (3) The audited annual statement must—
  - (a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and
  - (b) contain the auditor's opinion on whether the statement presents fairly the lessor's apportionable 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 apportionable 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 apportionable outgoings during the period with the total amounts actually paid by lessees to the lessor during the period.
- (4) The outgoings shown in the audited annual statement must be itemised so that the amount shown for each item is not more than 5% of the total outgoings shown in the statement.
- (5) 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) an outgoing that can not be further itemised to comply with subsection (4).
- (6) If the retail shop is in a retail shopping centre, the audited annual statement must also include the total management fees paid by the lessee broken down into fees paid by the lessee

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towards the administration costs of running the centre and any other fees paid to a centre management entity.

- (7) The audited annual statement may relate to more than 1 lessee as long as each lessee to which it relates is able to find out from the statement information that is relevant to the lessee.
- (8) If a person becomes the owner of a retail shopping centre, or building containing a retail shop, the first audited annual statement given by the person may be made for a period of less than 1 year.

### **38C Lessor does not give outgoings estimate or audited annual statement**

- (1) This section applies if a lessor does not give the lessee an outgoings estimate or an audited annual statement.
- (2) The lessee may withhold payments in relation to apportionable outgoings until the lessor gives the outgoings estimate or audited annual statement to the lessee.

### **39 Payment of key money and amount for goodwill prohibited**

- (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

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- (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**

### **40                      Sinking fund for major maintenance and repairs**

- (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—
- (a) the buildings, plant and equipment of, and areas used in association with, the retail shopping centre in which the leased shop is situated; or
  - (b) the building in which the leased shop is situated and the plant and equipment of, and areas used in association with, the building; or
  - (c) the leased shop and the plant and equipment of, and areas used in association with, the leased shop.

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- (2) The lessor may keep only 1 sinking fund for the purposes mentioned in subsection (1).
- (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.
- (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).
- (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 by all lessees of the retail shops to which the fund relates for any year must not be more than 5% of the total of the lessor's estimated outgoings for the retail shops for the year.
- (7) The lessor must not seek or accept payments of maintenance amounts from a lessee of a retail shop that would result in the amount standing to the credit of the sinking fund being more than \$100,000.

#### **40A Marketing plan for promotion and advertising**

- (1) This section applies if a retail shop lease requires the lessee to pay amounts to the lessor for promotion and advertising.
- (2) At least 1 month before the start of each accounting period of the lessor, the lessor must 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.

*Example—*

The lessor may publish the lessor's marketing plan on a website accessible to the lessee.

#### **41 Promotion and advertising**

- (1) This section applies if—

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- (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.
- (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.
- (4) The lessor must make available to the lessee a written statement of the lessor's expenditure for promotion amounts (the *audited annual statement*) within 3 months after the end of the period to which the statement relates.
- (5) The audited annual statement must—
- (a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and
- (b) contain the auditor's opinion on whether the statement presents fairly the lessor's expenditure during the accounting period for promotion amounts.
- (6) 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.

## **Division 7                      Implied provisions for compensation**

### **41A      Definition for div 7**

In this division—

*lessee* includes an assignee of the lease.

## **42 Compensation provisions implied in particular leases**

- (1) A retail shop lease is taken to include sections 43, 43AA, 43AB, 43AC, 43AD, 43A and 44.
- (2) However, subsection (1) does not apply to a lease for—
  - (a) a periodic tenancy, other than a periodic tenancy created by the lessee holding over under the lease or with the lessor's consent; or
  - (b) a tenancy at will, other than a tenancy at will created by the lessee holding over under the lease or with the lessor's consent.

## **43 When compensation is payable by lessor—business disturbance**

- (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) substantially restricts the lessee's access to the leased shop; or
  - (b) 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
  - (c) 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
  - (d) does not have rectified as soon as is practicable—
    - (i) any breakdown of plant or equipment under the lessor's care or maintenance; or



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- (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
  - (e) 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
  - (f) 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 lessee must give the lessor written notice of the loss or damage mentioned in subsection (1) as soon as practicable after it is suffered.
- (3) If the lessee fails to give the lessor the notice, the failure does not affect any right of the lessee to compensation but must be considered when deciding the amount of compensation payable under section 44.

#### **43AA When compensation is payable by lessor—false or misleading statements etc.**

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, including a renewal or assignment of the lease, 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 under section 21B or 22C because of a default of the lessor or anyone acting under the lessor's authority.

**43AB No liability for compensation—emergency responses and statutory compliance**

The lessor is not liable to pay compensation under section 43(1) for loss or damage suffered because the lessor, or a person acting under the lessor's authority, takes action—

- (a) as a reasonable response to an emergency; or
- (b) in compliance with any duty imposed under an Act or resulting from a requirement imposed by an entity acting under the authority of an Act.

**43AC No liability for compensation—trading hours**

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.

**43AD Lessor's liability for relocation or demolition**

- (1) This section applies if the lessor causes the lessee to vacate the leased shop in the circumstances mentioned in section 43(1)(f).
- (2) The lessor is not liable to pay compensation under section 43(1) to the extent the lessee is otherwise entitled to payment of relocation costs under section 46G or reasonable compensation under section 46K.

**43A When compensation is payable by other parties**

- (1) This section applies if a following person (the *disclosing person*), or a person acting under the authority of the disclosing person, makes a false or misleading statement or

representation in a disclosure statement given to someone else (the *affected person*) under section 22A, 22B or 22C—

- (a) the lessee under a retail shop lease;
  - (b) the assignor or assignee of a retail shop lease.
- (2) The disclosing person is liable to pay to the affected person reasonable compensation for loss or damage suffered by the affected person because of the false or misleading statement or representation.

#### **44 Amount of compensation**

If parties cannot agree on the amount of compensation payable under this division, the amount is to be decided by way of the dispute resolution process.

#### **44A Limitation of compensation amount**

- (1) 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.
- (2) However, a provision of a retail shop lease may limit a claim for compensation for an anticipated disturbance that occurs within 1 year from the date the lease is entered into if, before the lease is entered into, the lessor gives the lessee a written notice.
- (3) The notice must include the following particulars—
  - (a) a specific description of the nature of the anticipated disturbance on the lessee;
  - (b) a statement assessing the likelihood of the anticipated disturbance occurring, including an indication of the basis on which the assessment was reached;
  - (c) a statement of the timing, duration and effect of the anticipated disturbance, so far as they can be predicted.

- (4) A notice that includes a general statement to the effect that an anticipated disturbance may occur without setting out the particulars referred to in subsection (3) is not a notice for the purpose of subsection (2).
- (5) In this section—  
*anticipated disturbance* means an action or omission in relation to which a lessor is liable to pay the lessee compensation under section 43(1)(a) to (e).

## **Division 8                      Lease dealings**

### **45            Lessee's right to deal with lease and business assets**

- (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.
- (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 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

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- (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 16 and 17, this section does not apply to a retail shop lease if the lease declares that this section does not apply to it.

#### **46 Lessor's notice about when option to renew or extend must be exercised**

- (1) This section applies if a retail shop lease provides for an option on the lessee's part to renew or extend the lease.
- (2) At least 2 months, but not longer than 6 months, before the option date, the lessor must give the lessee written notice of the option date.
- (3) In this section—

*option date*, for a retail shop lease, means the date under the lease by which the lessee must exercise an option to renew or extend the lease.

#### **46AA Renewing lease if no option or other agreement**

- (1) This section applies if a retail shop lease—
  - (a) does not provide for an option on the lessee's part to renew or extend the lease; and
  - (b) is not the subject of an agreement for its renewal or extension.
- (2) The lessor must, by written notice given to the lessee within the notice period—
  - (a) offer the lessee a renewal or extension of the lease on terms, including terms about rent, stated in the notice; or
  - (b) tell the lessee that the lessor does not intend to offer the lessee a renewal or extension of the lease.

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- (3) An offer made under subsection (2)(a) can not be revoked—
  - (a) until 1 month after it is made; or
  - (b) if the lessee accepts the offer within 1 month after it is made.
- (4) If the lessor does not comply with subsection (2), the term of the lease is extended until 6 months after the lessor gives the notice (the *extended period*).
- (4A) However, subsection (4) applies only if the lessee, by written notice given to the lessor before the lease would otherwise expire, asks for the extension.
- (5) The lessee may terminate the lease before the extended period ends by giving at least 1 month's written notice of termination to the lessor.
- (6) In this section—

*notice period* means the period that is—

  - (a) for a lease of not more than 1 year—at least 3 months, but not longer than 6 months, before the lease is to end; or
  - (b) for a lease of more than 1 year—at least 6 months, but not longer than 1 year, before the lease is to end.

## **Division 8A                      Provisions about unconscionable conduct**

### **46AB Application of div 8A**

This division applies only in relation to a retail shop lease entered into on or after 24 June 2001.

### **46A Unconscionable conduct**

- (1) A lessor must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.

- (2) A lessee must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.
- (3) For this section, a person is not to be taken to engage in unconscionable conduct in connection with a retail shop lease only because the person—
  - (a) starts legal proceedings relating to the lease; or
  - (b) refers to arbitration a dispute or claim relating to the lease; or
  - (c) fails to issue or renew the lease.
- (4) This section does not apply to conduct that occurred before the commencement of this section.

**46B Matters QCAT may consider in deciding if a party's conduct is unconscionable**

- (1) In deciding whether a party to a retail tenancy dispute has engaged in unconscionable conduct in connection with the retail shop lease, QCAT may have regard to the following matters—
  - (a) the relative strengths of the bargaining positions of each of the parties;
  - (b) whether, as a result of conduct engaged in by the party, the other party was required to comply with conditions that were not reasonably necessary for the protection of the other party's legitimate interests;
  - (c) whether the other party was able to understand any documents relating to the lease;
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the other party or a person acting for the other party by the party or a person acting for the party in relation to the lease;
  - (e) the amount for which, and the circumstances under which, the other party could have acquired an identical or equivalent lease from a person other than the party;

- (f) the extent to which the party's conduct towards the other party was consistent with the party's conduct in similar transactions between the party and parties like the other party;
  - (g) the requirements of any applicable industry code;
  - (h) the requirements of any other industry code, if the other party acted on the reasonable belief that the party would comply with the code;
  - (i) the extent to which the party unreasonably failed to disclose to the other party—
    - (i) any intended conduct of the party that might affect the other party's interests; and
    - (ii) any risks to the other party arising from the party's intended conduct (being risks that the party should have foreseen would not be apparent to the other party);
  - (j) the extent to which the party was willing to negotiate the terms and conditions of any lease with the other party;
  - (k) the extent to which the party and the other party acted in good faith.
- (2) QCAT may also have regard to circumstances existing before the commencement of section 46A.
- (3) Subsections (1) and (2) do not limit the matters to which QCAT may have regard in making its decision.
- (4) However, QCAT must not have regard to the following—
- (a) any circumstances that were not reasonably foreseeable at the time of the alleged contravention of section 46A(1) or (2);
  - (b) conduct engaged in before the commencement of section 46A.
- (5) In this section—



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*applicable industry code* has the meaning given under the *Competition and Consumer Act 2010* (Cwlth), section 51ACA.

*industry code* has the meaning given under the *Competition and Consumer Act 2010* (Cwlth), section 51ACA.

## Division 9            General

### Subdivision 1       Relocating lessee's business

#### 46C    Requirements for relocation of lessee's business

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.

#### 46D    Lessor's relocation notices

- (1) If, under the retail shop lease, the lessor requires the lessee's business to be relocated, the lessor must give the lessee a written notice under this section (a *relocation notice*).
- (2) A relocation notice must state each of the following—
  - (a) sufficient details of the proposed refurbishment, redevelopment or extension to indicate a genuine proposal that—
    - (i) is to be carried out within a reasonably practicable time after the lessee's business is relocated; and
    - (ii) can not be carried out practicably without vacant possession of the leased shop;
  - (b) details of the reasonably comparable alternative retail shop to be made available to the lessee;
  - (c) the day by which the lessee must vacate the leased shop (the *relocation day*).

- (3) The relocation notice must be given at least 3 months before the relocation day.
- (4) If the leased shop is within a retail shopping centre, the alternative retail shop detailed in the relocation notice under subsection (2)(b) must be situated within the centre.

#### **46E Termination notice by lessee or deemed acceptance**

- (1) Within 1 month after receiving the relocation notice, the lessee may give the lessor a written notice terminating the lease.
- (2) If the lessee gives notice under subsection (1), the lease terminates—
  - (a) on the day agreed between the lessor and lessee; or
  - (b) if there is no agreement—3 months after the relocation notice is given.
- (3) If the lessee does not give notice under subsection (1), the lessee is taken to have accepted the lessor's offer of a lease of the alternative retail shop mentioned in the relocation notice, or an alternative retail shop agreed between the lessor and lessee, on the terms and conditions—
  - (a) agreed between the lessor and lessee; or
  - (b) if there is no agreement—as provided under section 46F.

#### **46F Terms and conditions of new lease**

- (1) Unless the lessor and lessee agree otherwise, the terms and conditions of the lease mentioned in section 46E(3) (the *new lease*) are the same as the terms and conditions of the existing lease.
- (2) However—
  - (a) the term of the new lease is taken to be the same as the remaining term of the existing lease; and

- 
- (b) the rent for the alternative retail shop is taken to be the same as the rent for the existing leased shop, adjusted to take into account the difference in the commercial values of the shops when the lessee's business is relocated.

*Note—*

This section and section 46G do not prevent the lessee from accepting other arrangements when the details of the relocation are negotiated.

## **46G Lessee's entitlement to relocation costs**

- (1) The lessee is entitled to payment by the lessor of the lessee's reasonable costs of relocation, including, but not limited to—
- (a) the costs of the following—
- (i) dismantling and reinstalling any fixtures and fittings;
  - (ii) modifying or replacing any fixtures and fittings to the standard existing immediately before the relocation; and
- (b) legal costs.
- (2) If the lessor and lessee can not agree on the amount to which the lessee is entitled under subsection (1), the amount must be decided under the dispute resolution process.

## **Subdivision 2 Demolishing building in which lessee's business is situated**

### **46H Provisions implied in retail shop lease**

A retail shop lease is taken to include sections 46I to 46K if the lease provides for its termination by the lessor if the building in which the leased shop is situated is to be demolished, requiring vacant possession of the leased shop.

#### **46I How lessor terminates the lease**

- (1) The lessor terminates the lease by giving the lessee a written notice (a *lessor's termination notice*) under this section.
- (2) A lessor's termination notice must state—
  - (a) sufficient details of the proposed demolition to indicate a genuine proposal to demolish the building within a reasonably practicable time after the lease is terminated; and
  - (b) the day on which the lease terminates (the *termination day*).
- (3) The notice must be given at least 6 months before the termination day.

#### **46J Termination by lessee**

- (1) If the lessor gives the lessee a lessor's termination notice, the lessee may terminate the lease earlier than the termination day by giving the lessor written notice of an earlier termination day (the *lessee's termination notice*).
- (2) The lessee's termination notice must be given at least 1 month before the earlier termination day.

#### **46K Compensation payable by lessor**

- (1) The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee—
  - (a) because of the early termination of the lease, if the demolition is not carried out, or is not carried out within a reasonably practicable time after the termination day; and
  - (b) for the fit out of the retail shop to the extent the fit out was not provided by the lessor, whether or not the demolition is carried out.
- (2) However, subsection (1)(a) does not apply if the lessor proves that when the lessor's termination notice was given there was

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a genuine proposal to demolish the building within a reasonably practicable time after the termination day.

- (3) The amount of the compensation payable is the amount—
  - (a) agreed between the lessor and lessee; or
  - (b) if there is no agreement, decided under the dispute resolution process.
- (4) In this section—

*fit out* includes the provision or installation of finishes, fixtures, fittings, equipment and services.

### **Subdivision 3      Other general provisions**

#### **47      Lessee’s right to independent legal advice**

- (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.

#### **48      Liability for costs associated with lease**

- (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 following—
  - (a) preparing, renewing or extending the lease;
  - (b) obtaining the consent of a mortgagee of the lessor;
  - (c) the lessor’s compliance with this Act.
- (2) However, subsection (1) does not prevent a lessee under a retail shop lease from being required to pay for the following—
  - (a) survey fees associated with the registration of the lease;

- (b) registration of the lease.
- (3) Also, subsection (1) does not prevent the prospective lessee from being required to pay for the prospective lessor's reasonable legal or other expenses incurred for preparation of a final lease if—
  - (a) the prospective lessor and prospective lessee agree to the terms of a proposed retail shop lease; and
  - (b) the prospective lessee gives the prospective lessor a written notice to prepare a final lease and the final lease is prepared; and
  - (c) the prospective lessee does not sign the final lease; and
  - (d) the prospective lessor gives the prospective lessee a copy of the prospective lessor's invoice for expenses for the preparation of the final lease.
- (4) In this section—

*final lease* means a lease to be signed by the parties to give effect to the agreed terms of a proposed retail shop lease.

#### **49 Lessee's right to join or form commercial associations**

A provision of a retail shop lease is void to the extent that it has the effect of 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.

#### **50 Retail tenancy disputes between lessors and lessees about assignments of leases**

- (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.

### **50A Release of assignor and any guarantor from lease**

- (1) This section applies to the assignment of a retail shop lease if—
- (a) the assignor of the lease has complied with section 22B or any order mentioned in section 22E(2) imposed on the assignor; and
  - (b) the disclosure statement given by the assignor under section 22B or an order is not a defective statement.
- (2) When the assignment is entered into, the assignor and any guarantor of the assignor are released from any liability under the lease resulting from a default by the assignee.
- (3) In this section—

[s 50B]

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*defective statement*, for a disclosure statement, means a statement that—

- (a) is incomplete in a material particular; or
- (b) contains information that is false or misleading in a material particular.

## **50B Refurbishment and refitting**

A provision of a retail shop lease requiring the lessee to refurbish or refit the leased shop is void unless the lease gives general details of the nature, extent and timing of the refurbishment or refitting required.

# **Part 7 Retail shop lease trading hours**

## **51 Definitions**

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 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 greatest number of 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*.

## 52 Requirements for resolution

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) votes are cast by eligible lessees representing at least 50% of the number of eligible shops; and
- (f) the resolution is supported by at least 75% of the eligible lessees who voted; and
- (g) each person who casts a vote may scrutinise the counting of votes.

## **53 Trading hours**

- (1) A provision of a retail shop lease that purports to impose on the lessee an obligation to open the leased shop for trading outside the core trading hours for the retail shopping centre is void.
- (2) However, a provision of a retail shop lease that permits the lessee to open the leased shop for trading outside the core trading hours for the retail shopping centre by written agreement between the lessee and the lessor is not void under subsection (1).
- (3) For an existing lease, a provision mentioned in subsection (1) is void only to the extent that it requires the lessee to open the leased shop for trading outside the core trading hours for the centre.
- (4) Also, for an existing lease, the lessor must not require the lessee to extend the hours that, immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, the lessee was required to keep the leased shop open for trading.

Maximum penalty—100 penalty units.

## **53A Outgoings for trading outside core trading hours**

- (1) 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 that are incurred only because an eligible lessee's shop is open for trading outside the core trading hours at a time when the first lessee's shop is not open for trading.
- (2) This section applies despite any provision of the first lessee's lease.

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## **Part 8                      Retail tenancy dispute    resolution**

### **Division 1                      Preliminary**

#### **54                      Parties' rights under this part preserved**

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**

#### **55                      Lodgement of retail tenancy disputes**

- (1) A party to a retail tenancy dispute that is within a mediator's jurisdiction under section 97 may lodge notice of the dispute with the commissioner.
- (2) The notice (*dispute notice*) must be in the approved form and accompanied by the fee prescribed by regulation.

#### **56                      Commissioner to act on dispute notice**

- (1) As soon as practicable after the dispute notice is lodged, the commissioner 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 mediation conference date must be at least 7 days after the notice is given.

**56A Person may apply to be joined as a party**

- (1) A person may apply to the commissioner to be joined as a party to a mediation of a retail tenancy dispute under this part.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the fee prescribed by regulation.
- (3) The commissioner may join the person as a party to the mediation only with the consent of each of the other parties to the dispute.

**57 Limited right of representation**

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 agent approved by the mediator only if—
  - (i) the party is a corporation; or
  - (ii) the mediator is satisfied an agent should be permitted to represent the party.

**58 Conference to be held in private**

The mediation conference is not open to the public.

**59 Parties attendance at conference not compellable**

A party to the retail tenancy dispute can not be compelled to attend the mediation conference.

**60 Mediator may allow interested person to take part in mediation conference**

- (1) The mediator may allow a person to take part in the mediation conference if—

- 
- (a) the mediator is satisfied the person has an interest in the resolution of the retail tenancy dispute; and
  - (b) each of the other parties to the dispute consents.
- (2) However, the person does not become a party to the dispute.

## **61 Mediation agreements**

- (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.

## **61A Notifying outcome of mediation**

The mediator must, as soon as practicable after the mediation ends—

- (a) give each party to the retail tenancy dispute—
  - (i) if the parties have entered into a mediation agreement under section 61—a copy of the signed mediation agreement; or
  - (ii) otherwise—a notice about the outcome of the mediation; and
- (b) notify the commissioner of the outcome of the mediation.

## **62 No official record of mediation conference**

- (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 and applications to QCAT**

### **63            Reference of dispute—by mediator**

- (1) This section applies if—
  - (a) a retail tenancy dispute is within QCAT’s jurisdiction and—
    - (i) the parties can not 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

*Note—*

See section 103 for QCAT’s jurisdiction.

- (b) the retail shop lease has not ended (whether by expiry, surrender or termination) more than 1 year before the dispute notice was lodged.
- (2) The mediator must—
  - (a) refer the dispute, as provided under the QCAT Act, to QCAT; and
  - (b) give the commissioner written notice of the referral.
- (3) The party who lodged the notice of the dispute under section 55 is the applicant in the proceeding before QCAT for the dispute.

### **64            Application to QCAT—by party**

- (1) A party to a retail tenancy dispute may apply, as provided under the QCAT Act, to QCAT for an order to resolve the dispute if—
  - (a) any of the following provisions apply—

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- (i) the party claims that another party to a mediation agreement has not complied with the agreement within the time stated in it or, if no time is stated, within 2 months after the agreement is signed;
  - (ii) a mediator refuses to refer the dispute to QCAT because the mediator is of the opinion that the dispute is not within QCAT's jurisdiction;
  - (iii) a court has ordered that a proceeding started in the court for the dispute be removed to QCAT or another tribunal; and
- (b) the retail shop lease has not ended (whether by expiry, surrender or termination) more than 1 year before the dispute notice was lodged.
- (2) In this section—

*mediation agreement* includes a mediation agreement under section 26 of the former Act.

## Division 4                      Provision about QCAT orders

### 83                      QCAT orders

- (1) Subject to subsection (3), QCAT may make the orders, including declaratory orders, QCAT considers to be just to resolve a retail tenancy dispute.
- (2) Without limiting subsection (1), QCAT 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;
  - (b) an order requiring a party to the dispute to pay an amount (including an amount of compensation) to a specified person;
  - (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;
  - (h) an order mentioned in section 22E(2);
  - (i) with consent of the parties to the dispute—an order to rectify the lease;
  - (j) if QCAT finds that, in making a determination of current market rent, a specialist retail valuer did not comply with section 29—an order that the determination be set aside and a further determination, in compliance with the section, be made.
- (3) If QCAT finds a party to the dispute engaged in unconscionable conduct in connection with the retail shop lease, QCAT may only make 1 of the following orders based on the unconscionable conduct—
- (a) an order requiring the party who engaged in the unconscionable conduct to pay an amount to a stated person;
  - (b) an order that the party who engaged in the unconscionable conduct is not required to pay any amount to any person.



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## Division 5                      General

### 91            **Withdrawal of disputes**

- (1) A person may, by written notice given to the commissioner, withdraw a dispute notice lodged by the person for a retail tenancy dispute, unless—
  - (a) a mediator has referred the dispute to QCAT under section 63(2); or
  - (b) the person has made an application about the dispute to QCAT as mentioned in section 64.

*Note—*

The QCAT Act, section 46 provides for the withdrawal of referrals and applications mentioned in paragraphs (a) and (b).

- (2) The notice may be given before or after a mediator has started mediating the dispute.
- (3) The commissioner must, as soon as practicable after receiving the notice, advise the following persons of the withdrawal—
  - (a) all other parties to the dispute;
  - (b) if the commissioner has nominated a mediator for the dispute—the mediator.

### 94            **Exclusion of other jurisdictions**

- (1) On and after the lodgement 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 notice of the dispute is withdrawn under section 91 or the referral of, or application for, the dispute is withdrawn under the QCAT Act; 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, or transferred, to QCAT; or

- (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 QCAT refuses to mediate or hear the dispute because the mediator or QCAT is of the opinion the dispute is not within the jurisdiction of a mediator or QCAT; or
  - (e) the mediator has given a notice about the outcome of the mediation under section 61A(a)(ii) because the dispute was not resolved, and QCAT 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*; or
  - (b) given to the lessee a notice under section 131 of the *Property Law Act 1974*.
- (4) If an application for an order mentioned in subsection (2)(c) is made to a court, the QCAT proceeding for the dispute ends only if the court—
- (a) grants the application; and
  - (b) makes an order that is inconsistent with allowing the QCAT proceeding to continue.

## **Part 9 Administration**

### **Division 1 Mediators**

#### **95 Mediators**

- (1) The commissioner may appoint an appropriately qualified person as a mediator for the term decided by the commissioner.

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- (2) A mediator is to be paid the remuneration and allowances decided by the commissioner.
  - (3) A mediator holds office on the terms and conditions, not provided for by this Act, decided by the commissioner.
  - (4) A mediator is appointed under this Act and not the *Public Service Act 2008*.

## 96 Mediators' function

A mediator's function is to seek to resolve, by mediation under this Act or the *Small Business Commissioner Act 2022*, the following disputes within a mediator's jurisdiction—

- (a) a retail tenancy dispute;
- (b) a small business dispute.

## 97 Mediators' jurisdiction

- (1) A mediator has jurisdiction to mediate a retail tenancy dispute or small business dispute, other than a 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) the amount of rent payable under a retail shop lease or other lease the subject of a small business dispute; or
    - (ii) the amount of a lessor's outgoings under a retail shop lease or other lease the subject of a small business dispute; or
  - (c) under a retail shop lease for the carrying on of the business of a service station, if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006*

- (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation; or
- (d) if the amount, value or damages in dispute is more than the monetary limit within the meaning of the *District Court of Queensland Act 1967*, section 68.
- (2) For subsection (1)(a)(i), a retail tenancy dispute or small business 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 or small business dispute about—
- (a) the procedure for the determination of rent payable under a 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 lease, but not the actual amount of the outgoings; or
- (c) for a retail shop lease—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.

## 98 Resignation

A mediator may resign by signed notice given to the commissioner.

## 100 Removal from office

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

- (a) is incapable of properly discharging the functions of a mediator; or

- (b) is unfit to hold the office.

## 101 Annual reports

- (1) Within 2 months after the end of each financial year, a mediator must report to the commissioner 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 Provisions for QCAT proceedings

### 102 Constitution of QCAT

- (1) Subject to subsection (2), for a proceeding for a retail shop lease dispute, QCAT is to be constituted by the following persons who are QCAT members—
  - (a) a legally qualified member;
  - (b) a person representing lessors under retail shop leases;
  - (c) a person representing lessees under retail shop leases.
- (2) If the amount, value or damages in dispute is less than the QCAT prescribed amount, QCAT may be constituted by—
  - (a) a legally qualified member; or
  - (b) a QCAT adjudicator.
- (3) In this section—

*legally qualified member* means a person who is a legally qualified member under the QCAT Act.

*QCAT adjudicator* means an adjudicator under the QCAT Act.

***QCAT member*** means a member under the QCAT Act.

***QCAT prescribed amount*** means the prescribed amount under the QCAT Act.

### **103 QCAT's jurisdiction**

- (1) QCAT 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 interim or final award in an arbitration proceeding; or
    - (iii) is before, or has been decided by, a court; or
  - (b) about—
    - (i) the amount of rent payable under a retail shop lease; or
    - (ii) 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 within the meaning of the *District Court of Queensland Act 1967*, section 68; or
  - (d) under a retail shop lease for the carrying on of the business of a service station, if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.
- (2) However, QCAT 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 the lessor's outgoings are payable by, and the procedure for charging the lessor's outgoings to,

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

## **Division 3                      Confidentiality, privilege and immunity**

### **113      Mediators and former tribunal members to maintain secrecy**

- (1) A mediator or former tribunal member must not disclose information coming to the knowledge of the mediator or member during the dispute resolution process or the hearing of a matter under part 8, division 4 as in force before the commencement.

Maximum penalty—100 penalty units.

- (2) However, a mediator or former 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.
- (3) In this section—

*commencement* means the commencement of this subsection.

*dispute resolution process* includes a mediation process under the *Small Business Commissioner Act 2022*.

*former tribunal member* means a member of a tribunal established under this Act before the commencement.

#### **114 Ordinary protection and immunity allowed**

- (1) A mediator has, in the performance of the mediator'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 party, or the party's agent, appearing at a mediation process for a retail tenancy dispute or small business dispute 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 mediation process has the same protection during the process it would have if produced before the Supreme Court.
- (4) In this section—

*mediation process* includes a mediation process under the *Small Business Commissioner Act 2022*.

#### **115 Admissions made during mediation conference**

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

## **Part 10 Miscellaneous**

#### **118 Delegations**

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



- (2) The chief executive may delegate the chief executive's functions or powers under this Act to an appropriately qualified public service officer.

### **119 Approval of forms**

- (1) The chief executive may approve forms for use under this Act.
- (2) The commissioner may approve forms for use under part 8.

### **120 Evidentiary provisions**

- (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 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.

### **121 Regulation-making power**

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

### **122 Review of Act**

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

- (2) Each review must be carried out within 7 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 12 Transitional provisions

### Division 1 Provision for Act No. 4 of 2006

#### 129 Application of Act

- (1) Subject to subsection (2), this Act, as in force immediately before the commencement, continues to apply to a retail shop lease entered into before the commencement, and any extension or renewal of the lease, as if the 2006 Act had not been enacted.
- (2) On and from the commencement, sections 63, 64, 66, 70A, 71, 82A, 83, 88A, 91, 91A, 106 and 109, as amended or inserted by the 2006 Act, apply to a lease entered into before the commencement and any extension or renewal of the lease.
- (3) This section does not affect the operation of section 8 of the 2006 Act.

*Note—*

The provisions inserted by section 8 of the 2006 Act include relevant provisions for the application of the provisions of this Act mentioned in the section.

- (4) In this section—

**2006 Act** means the *Retail Shop Leases Amendment Act 2006*.

**commencement** means the commencement of this section.

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**Division 2**                      **Provision for Criminal Code and  
Other Legislation Amendment Act  
2011**

**134**      **Transitional provision for s 36A**

Section 36A applies to a retail shop lease entered into after the commencement of this section.

**135**      **Transitional provision for amendment of ss 43 and 44**

The amendment of sections 43 and 44 by the *Criminal Code and Other Legislation Amendment Act 2011* applies to a retail shop lease assigned or entered into after the commencement of this section.

**Division 3**                      **Provisions for Retail Shop Leases  
Amendment Act 2016**

**136**      **Definitions for div 3**

In this division—

*amendment Act* means the *Retail Shop Leases Amendment Act 2016*.

*former*, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the amendment Act.

*new*, in relation to a provision, means the provision as in force after the amendment of the provision under the amendment Act.

**137 Proposed retail shop leases before commencement—when lease entered into**

- (1) This section applies in relation to a proposed retail shop lease if, immediately before the commencement, the prospective lessee and prospective lessor—
  - (a) have not, under the Act as then in force, entered into the proposed lease; but
  - (b) would have entered into the proposed lease under new section 11 if it had been in force.
- (2) On and after the commencement, former section 11 continues to apply in relation to the proposed lease.

**139 Proposed retail shop leases before commencement—lessor’s disclosure obligation**

- (1) This section applies in relation to a proposed retail shop lease if—
  - (a) the disclosure period under former section 22 for the proposed lease ends before the commencement; and
  - (b) the proposed lease is entered into on or after the commencement.
- (2) On and after the commencement, former section 22 continues to apply in relation to the proposed lease.

**140 Proposed retail shop leases before commencement—prospective lessee’s disclosure obligation**

- (1) This section applies in relation to a proposed retail shop lease if—
  - (a) a prospective lessee complies with former section 22A for the proposed lease before the commencement; and
  - (b) the proposed lease is entered into on or after the commencement.

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- (2) The prospective lessee is taken to have complied with new section 22A.

**141 Proposed assignment of retail shop leases before commencement—assignor’s disclosure obligation to prospective assignee**

- (1) This section applies in relation to a proposed assignment of a retail shop lease if—
- (a) the disclosure period under former section 22B(1) for the proposed assignment of the lease ends before the commencement; and
  - (b) the proposed assignment is entered into on or after the commencement.
- (2) On and after the commencement, the assignor and assignee are taken to have complied with new section 22B in relation to the proposed assignment.
- (3) In this section—
- disclosure period*, for an assignment of a retail shop lease, means the period ending 7 days before an assignor of a retail shop lease asks the lessor to consent to the assignment.

**143 Timing and bases of rent reviews of proposed retail shop leases—major lessees**

- (1) This section applies in relation to a proposed retail shop lease if—
- (a) a major lessee gives notice under former section 27(8)(b) for the proposed lease before the commencement; and
  - (b) the proposed lease is entered into on or after the commencement.
- (2) The notice is taken to be notice under new section 27(8)(b).

**144 Early determination of current market rent of proposed retail shop leases—major lessees**

- (1) This section applies in relation to a proposed retail shop lease if—
  - (a) a major lessee gives notice under former section 27A(1A)(b) for the proposed lease before the commencement; and
  - (b) the proposed lease is entered into on or after the commencement.
- (2) The notice is taken to be notice under new section 27A(1A)(b).

**145 Current market rent determinations of specialist retail valuers agreed to or nominated before commencement**

- (1) This section applies in relation to a retail shop lease if, before the commencement, a specialist retail valuer is agreed to or nominated under former section 28.
- (2) On and after the commencement, former sections 28A and 29 continue to apply.

**146 Certain rent review provisions and ratchet rent provisions—major lessee**

- (1) This section applies in relation to a retail shop lease if, before the commencement, a major lessee gives a lessor a notice under former section 27(8)(b).
- (2) New sections 36(2) and 36A(3) do not apply.

**147 Annual estimate of apportionable outgoings**

- (1) This section applies in relation to a retail shop lease entered into within 1 month after the commencement.
- (2) 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.

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**148 Marketing plans for promotion and advertising**

- (1) This section applies if, within 1 month after the commencement, an accounting period for a retail shop lease mentioned in new section 40A starts.
- (2) It is sufficient compliance with new section 40A if the lessor gives the marketing plan within 1 month after the accounting period starts.

**149 Termination by lessee**

- (1) This section applies if, before the commencement, a lessor gives a lessee a lessor's termination notice for a retail shop lease under former section 46I.
- (2) On and after the commencement, former section 46J continues to apply in relation to the lease.

**150 Lessee's liability for costs associated with preparation of lease before commencement**

New section 48(3) 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.

**151 Release of assignor for particular assignments of leases**

- (1) This section applies in relation to an assignment of a retail shop lease if—
  - (a) before the commencement, the assignor had complied with former section 22B or any order mentioned in former section 22E(2) that was imposed on the assignor; and
  - (b) the disclosure statement given under that section or in compliance with that order by the assignor is not a defective statement under former section 50A; and
  - (c) the assignment is entered into on or after the commencement.

- (2) On and after the commencement, new section 50A applies in relation to the assignment and lease.

### **152 Particular leases in a retail shopping centre**

- (1) This section applies in relation to a lease of premises in a retail shopping centre if—
- (a) immediately before the commencement, the lease was a retail shop lease; and
  - (b) but for subsection (2), the lease would not be a retail shop lease under new section 5A(3).
- (2) Despite new section 5A(3), on and after the commencement, the lease continues to be a retail shop lease under this Act.

## **Division 4                      Provision for Court and Civil Legislation Amendment Act 2017**

### **154 Particular leases continue to be retail shop leases**

- (1) This section applies in relation to a lease if—
- (a) immediately before the commencement, the lease was a retail shop lease; and
  - (b) but for subsection (2), the lease would not be a retail shop lease because of section 5A(2)(a) or (c).
- (2) Despite section 5A(2)(a) or (c), the lease is, and has always been, a retail shop lease.
- (3) In this section—

***commencement*** means the commencement of the *Retail Shop Leases Amendment Act 2016*, section 5.



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## Division 5                      **Transitional provision for Justice and Other Legislation Amendment Act 2020**

### 155      **Existing mediators**

- (1) This section applies to a person who, immediately before the commencement, held an appointment as a mediator under former section 95.
- (2) The person's appointment continues in force under new section 95 from the commencement—
  - (a) according to its terms and conditions; and
  - (b) for the remaining term of the appointment under former section 95.
- (3) In this section—

*former section 95* means section 95 as in force from time to time before the commencement.

*new section 95* means section 95 as in force from the commencement.

## Division 6                      **Transitional provisions for Small Business Commissioner Act 2022**

### 156      **Existing mediators**

- (1) This section applies if, immediately before the commencement, a person held office as a mediator under section 95, as in force immediately before the commencement.
- (2) On the commencement, the person—
  - (a) is taken to have been appointed by the commissioner under section 95; and

- (b) continues to hold office on the terms and conditions that applied in relation to the person immediately before the commencement.

## 157 Existing dispute resolution proceedings

- (1) This section applies if—
  - (a) before the commencement, a party to a retail tenancy dispute lodged a dispute notice under section 55; and
  - (b) on the commencement, the retail tenancy dispute has not been resolved.
- (2) Part 8 continues to apply in relation to the retail tenancy dispute as if the *Small Business Commissioner Act 2022* had not commenced.
- (3) For subsection (2), a reference in part 8 to a mediator includes a reference to a mediator appointed, or taken to have been appointed under section 156, by the commissioner.
- (4) In this section—

***resolved***, in relation to a retail tenancy dispute, means—

  - (a) a mediation agreement has been signed by or for the parties to the dispute under section 61; or
  - (b) an order has been made about the dispute by QCAT under section 83; or
  - (c) the dispute notice for the dispute has been withdrawn under section 91.

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# Schedule Dictionary

## section 5

**agreement** includes an oral agreement.

**apportionable outgoings**, for part 6, division 5, see section 36B.

**apportionable outgoings** of a lessor means the lessor's outgoings other than specific outgoings.

**approved form** means a form approved by the chief executive.

**arbitration** means arbitration conducted—

- (a) under the *Commercial Arbitration Act 2013*; or
- (b) if a retail shop lease or lease the subject of a small business dispute 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 2013*.

**audited annual statement**, for part 6, division 5, see section 38B(1).

**Australian lawyer** see the *Legal Profession Act 2007*, schedule 2.

**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.

**centre management entity**, for a retail shopping centre, means an entity that manages the centre.

**commissioner** means the small business commissioner appointed under the *Small Business Commissioner Act 2022*, part 2.

**common areas** see section 6.

**demolish**, a building, includes carry out substantial repair, renovation or reconstruction of the building that can not practicably be carried out without vacant possession of 1 or more leased shops in the building.

**disclosure statement**, for part 5, means a statement in the approved form containing the particulars prescribed under a regulation.

**dispute notice** see section 55.

**dispute resolution process** means—

- (a) a mediation process; or
- (b) the hearing, by QCAT, of a retail tenancy dispute under the QCAT Act.

**entered into**, for an assignment of a lease, means the lessor has consented to the assignment.

**financial advice report** means a report—

- (a) in the approved form; and
- (b) containing the particulars prescribed under a regulation; and
- (c) signed by a person who is a qualified accountant.

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

**former Act lease**, for part 4, division 3, see section 18.

**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.

**lawyer** means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

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**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.

**legal advice report** means a report—

- (a) in the approved form; and
- (b) signed by a lawyer; and
- (c) stating that the lawyer has given the prospective lessee of a retail shop, or the prospective assignee of a retail shop lease, seeking the report, advice about the legal meaning and effect of—
  - (i) the terms and conditions of the proposed lease, or the lease the subject of the proposed assignment; and
  - (ii) the disclosure statement given to the person under part 5; and
  - (iii) a waiver notice to be given by the person; and
- (d) containing the other particulars prescribed under a regulation.

**lessee**—

- (a) in relation to a retail tenancy dispute or lease the subject of a small business dispute, includes the former lessee; and
- (b) for part 6, division 7, includes—
  - (i) a lessee who is holding over under the lease or with the lessor's consent; and

- (ii) a sublessee or franchisee entitled to occupy the retail shop under the lease or with the lessor's consent; and
- (c) for part 6, division 9, subdivisions 1 and 2, does not include a lessee, sublessee or franchisee mentioned in paragraph (b).

**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) a person acting under the lessor's authority; and
- (b) in relation to a retail tenancy dispute or lease the subject of a small business dispute—the former lessor.

**lessor's termination notice** see section 46I(1).

**listed corporation** means a listed corporation under the Corporations Act.

**maintenance amounts**, for part 6, division 5, see section 36B.

**major lessee** means the lessee of 5 or more retail shops in Australia.

**mediation** means the process under part 8, division 2 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 conference** means a conference conducted by a mediator under part 8, division 2 between the parties to a retail tenancy dispute.

**mediation process**—

- (a) means the process of mediation of a retail tenancy dispute under part 8; and
- (b) includes all steps taken in making arrangements for a mediation conference or in the follow-up of the mediation conference.

**mediator** means a mediator appointed under this Act.

**outgoings estimate**, for part 6, division 5, see section 38A(1).

**outgoings**, of a lessor, see section 7.

**promotion amounts**, for part 6, division 5, see section 36B.

**prospective franchisee** means a franchisee who is to be granted a franchise licence under section 21D(1)(b) and is to carry on a retail business in the way mentioned in section 21D(1)(c).

**qualified accountant** means a qualified accountant under the Corporations Act.

**registered auditor** means an entity registered as an auditor under the Corporations Act.

**relocation day** see section 46D(2).

**relocation notice** see section 46D(1).

**retail business** see section 5C.

**retail shop** see section 5B.

**retail shop lease** see section 5A.

**retail shopping centre** see section 5D.

**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.

**small business dispute** means a small business dispute under the *Small Business Commissioner Act 2022*.

**South Bank corporation area** means the corporation area as defined under the *South Bank Corporation Act 1989*.

**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**, of a lessor, means the following—

- (a) the lessor's outgoings that are attributable to a lessee because of the lessee's direct use of the services or facilities incurring the outgoings;

(b) an amount mentioned in section 24A(2).

*subsidiary*, of a listed corporation, means a subsidiary of the corporation under the Corporations Act.

*termination day* see section 46I(2).

*turnover* see section 9.