

Retail Leases Act 1994 No 46

[1994-46]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Conveyancers Licensing Act 2003 No 3](#) (not commenced)
 - [Retail Leases Amendment Act 2004 No 84](#) (not commenced — Sch 1 [6] and [10] to commence on 1.1.2005; Sch 1 [1]-[5] [7]-[9] and [11] to commence on 1.7.2005)

Authorisation

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Retail Leases Act 1994 No 46



New South Wales

An Act to make provision with respect to the leasing of certain retail shops and the rights and obligations of lessors and lessees of those shops, and for other purposes.

Part 1 Preliminary

Note—

This Act applies to leases of retail shops, with certain limitations. To understand those limitations:

- * see the definition of **retail shop** in section 3 for the shops to which this Act applies,
- * see section 5 for the retail shops that are excluded from the operation of this Act,
- * see section 6 for the leases that are excluded from the operation of this Act.

1 Name of Act

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

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

assignor's disclosure statement means a statement referred to in section 41.

exercise of a function includes the performance of a duty.

function includes a power, authority or duty.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth and includes notional GST of the kind for which payments may be made under section 5 of the *Intergovernmental Agreement Implementation (GST) Act 2000* by a person who is a State entity within the meaning of that Act.

key-money means any money paid to or at the direction of a lessor or lessor's agent, by way of a premium, non-repayable bond or otherwise, or any benefit that is conferred on or at the direction of a lessor or lessor's agent, in connection with the granting, renewal,

extension or assignment of a lease (and a reference in this Act to the payment of key-money includes a reference to the conferral of any such benefit).

lawyer means a barrister or solicitor.

lessee means the person who has the right to occupy a retail shop under a retail shop lease, and includes a sublessee and a lessee's or sublessee's heirs, executors, administrators and assigns.

lessee's disclosure statement means a statement referred to in section 11A.

lessor means the person who grants or proposes to grant the right to occupy a retail shop under a retail shop lease, and includes a sublessor and a lessor's or sublessor's heirs, executors, administrators and assigns.

lessor's disclosure statement means a statement referred to in section 11.

licensed conveyancer means the holder of a licence under the [Conveyancers Licensing Act 1995](#).

outgoings means a lessor's outgoings on account of any of the following:

- (a) the expenses directly attributable to the operation, maintenance or repair of the building in which the retail shop is located or (in the case of a retail shop in a retail shopping centre) of any building in the retail shopping centre or any areas used in association with any such building,
- (b) rates, taxes, levies, premiums or charges payable by the lessor because the lessor is the owner or occupier of any such building or the land on which it is erected or is the supplier of a taxable supply (within the meaning of the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth) in respect of any such building or land.

party means the lessor or the lessee under a retail shop lease.

Registrar means the Registrar of Retail Tenancy Disputes referred to in Part 8.

retail shop means premises that:

- (a) are used wholly or predominantly for the carrying on of one or more of the businesses specified in Schedule 1 (whether or not in a retail shopping centre), or
- (b) are used for the carrying on of any business (whether or not a business specified in Schedule 1) in a retail shopping centre.

Note—

Section 5 limits the retail shops to which this Act applies.

retail shop lease or **lease** means any agreement under which a person grants or agrees

to grant to another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop:

- (a) whether or not the right is a right of exclusive occupation, and
- (b) whether the agreement is express or implied, and
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing.

Note—

Section 6 limits the retail shop leases to which this Act applies.

retail shopping centre means a cluster of premises that has all of the following attributes:

- (a) at least 5 of the premises are used wholly or predominantly for the carrying on of one or more of the businesses specified in Schedule 1,
- (b) the premises are all owned by the same person, or have (or would if leased have) the same lessor or the same head lessor, or comprise lots within a single strata plan under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*,
- (c) the premises are located in the one building or in 2 or more buildings that are either adjoining or separated only by common areas or other areas owned by the owner of the retail shops,
- (d) the cluster of premises is promoted as, or generally regarded as constituting, a shopping centre, shopping mall, shopping court or shopping arcade.

specialist retail valuer means:

- (a) for the purposes of a valuation relating to a retail shop in a retail shopping centre, a valuer having not less than 5 years' experience in valuing retail shops located in regional and sub-regional shopping centres, or
- (b) for the purposes of a valuation relating to any other retail shop, a valuer having not less than 5 years' experience in valuing retail shops.

Note—

Part 9 contains other provisions that affect the interpretation of this Act.

4 Notes

Notes included in this Act except where occurring in Schedule 2 are explanatory notes and do not form part of this Act.

5 Certain retail shops excluded from the operation of this Act

This Act does not apply to any of the following retail shops:

- (a) shops that have a lettable area of 1,000 square metres or more,
- (b) shops that are used wholly or predominantly for the carrying on of a business by the lessee on behalf of the lessor,
- (c) any shop within premises where the principal business carried on on those premises is the operation of a cinema, bowling alley or skating rink and the shop is operated by the person who operates the cinema, bowling alley or skating rink,
- (d) any premises in an office tower that forms part of a retail shopping centre,
- (e) premises of a class or description prescribed by the regulations as exempt from this Act.

6 Leases to which Act does not apply

(1) This Act does not apply to any of the following leases of retail shops:

- (a) leases for a term of less than 6 months without any right for the lessee to extend the lease (whether by means of an option to extend or renew the lease or otherwise), and for this purpose a provision for holding over by the lessee at the end of the term of the lease is not considered to confer a right on the lessee to extend the lease if it operates effectively at the discretion of the lessor,
- (b) leases for a term of 25 years or more (with the term of a lease taken to include any term for which the lease may be extended or renewed at the option of the lessee),
- (c) leases entered into before the commencement of this section,
- (d) leases entered into under an option granted or agreement made before the commencement of this section,
- (e) any other lease of a class or description prescribed by the regulations as exempt from this Act.

(2) This Act does not apply to any lease referred to in this section that is assigned to another person after the commencement of this section.

Note—

Part 9A provides for certain exemptions regarding Sydney (Kingsford-Smith) Airport.

7 This Act overrides leases

This Act operates despite the provisions of a lease. A provision of a lease is void to the

extent that the provision is inconsistent with a provision of this Act. A provision of any agreement or arrangement between the parties to a lease is void to the extent that the provision would be void if it were in the lease.

8 When the lease is entered into

- (1) For the purposes of this Act, a retail shop lease is considered to have been entered into when a person enters into possession of the retail shop as lessee under the lease or begins to pay rent as lessee under the lease (whichever happens first).
- (2) However, if both parties execute the lease before the lessee enters into possession under the lease or begins to pay rent under the lease, the lease is considered to have been entered into as soon as both parties have executed the lease.

Note—

Therefore, if the lessee starts to pay rent as lessee or enters into possession as lessee, the lease is considered to have been entered into even if neither party has executed the lease at that time. Money paid in advance (purportedly as rent) as a deposit to secure premises for a proposed lease does not constitute rent paid as lessee under the lease.

Part 2 Before the lease is entered into

9 Copy of lease to be provided at negotiation stage

A person must not, as lessor or on behalf of the lessor, offer to enter into a retail shop lease, invite an offer to enter into a retail shop lease or indicate by written or broadcast advertisement that a retail shop is for lease, unless:

- (a) the person has in his or her possession a copy of the proposed retail shop lease (in written form, but not necessarily including particulars of the lessee, the rent or the term of the lease) for the purpose of making the lease available for inspection by a prospective lessee, and
- (b) the person makes a copy of the proposed lease available to any prospective lessee as soon as the person enters into negotiations with the prospective lessee concerning the lease.

Maximum penalty: 50 penalty units.

10 Right to compensation for pre-lease misrepresentations

- (1) A party to a retail shop lease is liable to pay another party to the lease (***the injured party***) reasonable compensation for damage suffered by the injured party that is attributable to the injured party's entering into the lease as a result of a false or misleading statement or representation made by the party, or any person acting under the party's authority, with knowledge that it was false or misleading.
- (2) The giving of a lessor's disclosure statement to a prospective lessee under a retail

shop lease is considered to be the making of a representation by the lessor to the lessee as to the information in the disclosure statement.

- (2A) The making of a representation by a prospective lessee in a lessee's disclosure statement given to a prospective lessor under a retail shop lease that the prospective lessee has sought independent advice, or as to statements or representations relied on by the prospective lessee in entering the lease, is considered to be the making of a representation by a lessee to the lessor.
- (3) This section extends to apply to a statement or representation made before the commencement of this section.

11 Lessee to be given disclosure statement

- (1) At least 7 days before a retail shop lease is entered into, the lessee must be given a disclosure statement for the lease. A disclosure statement is a statement in writing that contains the information, and is accompanied by the material, that is contained in or required to complete or accompany the form of disclosure statement set out in Part 1 of the form contained in Schedule 2 (but only to the extent that is relevant to the lease concerned). The layout of the disclosure statement need not comply with that of the form set out in Part 1 of the form contained in Schedule 2. However, a lessor's disclosure statement is complete for the purposes of this section only if it has attached to it a form to be completed by the lessee as set out in Part 2 of the form contained in Schedule 2.

Note—

Because the disclosure statement need only include information relevant to the lease, if the retail shop is not in a retail shopping centre the disclosure statement need not include information that is relevant only to shops in retail shopping centres.

- (2) If a lessee was not given a disclosure statement as required by subsection (1) or if the disclosure statement that was given to the lessee was incomplete or contained information that at the time it was given was materially false or misleading, the lessee may terminate the lease by notice in writing to the lessor at any time within 6 months after the lease was entered into, unless subsection (3) prevents termination.
- (3) The lessee cannot terminate the lease under this section on the ground that the disclosure statement is incomplete or contains information that is materially false or misleading if:
 - (a) the lessor has acted honestly and reasonably and ought reasonably to be excused for the failure concerned, and
 - (b) the lessee is in substantially as good a position as the lessee would have been if the failure had not occurred.
- (4) If a lease is entered into by way of the renewal of a lease, a written statement (a **lessor's disclosure update**) that updates the provisions of an earlier disclosure

statement given to the lessee is, in conjunction with that earlier disclosure statement, considered to be a disclosure statement given for the purposes of this section at the time the lessor's disclosure update is given.

- (5) The termination of a lease under this section does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the lease in respect of any period before its termination.
- (6) A lessor under a retail shop lease is guilty of an offence if subsection (1) is not complied with in relation to the lease.

Maximum penalty: 50 penalty units.

11A Lessee's disclosure statement

- (1) Not later than 7 days after receiving a lessor's disclosure statement, or within such further period as may be agreed with the prospective lessor, the lessor must be given a lessee's disclosure statement. A lessee's disclosure statement is a statement in writing that contains the information that is contained in or required to complete the form of lessee's disclosure statement set out in Part 2 of the form contained in Schedule 2 (but only to the extent that it is relevant to the lease concerned). The layout of the lessee's disclosure statement need not comply with that of the form set out in Part 2 of the form contained in Schedule 2.
- (2) If a lease is entered into by way of the renewal of a lease, a written statement (a **lessee's disclosure update**) that updates the provisions of an earlier lessee's disclosure statement given to the lessor is, in conjunction with that earlier lessee's disclosure statement, considered to be the lessee's disclosure statement given for the purposes of this section at the time the lessee's disclosure update is given.
- (3) A lessee under a retail shop lease is guilty of an offence if subsection (1) is not complied with in relation to the lease.

Maximum penalty: 50 penalty units.

- (4) The regulations may prescribe additional matters to be included in the form of lessee's disclosure statement for the purposes of this section.

12 Lessee not required to pay undisclosed contributions

A provision of a retail shop lease that requires the lessee to pay or contribute towards the cost of any finishes, fixtures, fittings, equipment or services is void unless the liability to make the payment or contribution was disclosed in a disclosure statement given to the lessee in accordance with this Part.

13 Lease preparation costs

- (1) If the lessee is liable to pay any amount to the lessor in respect of legal or other

expenses incurred by the lessor in connection with the preparation of a retail shop lease, the lessor must provide the lessee with a copy of any account presented to the lessor in respect of those expenses and the lessee is not required to make any such payment until the lessor has complied with this requirement.

- (2) Despite any provision of the lease or other agreement, the lessee is not liable to pay more than a reasonable sum in respect of any legal or other expenses incurred in connection with the preparation of the lease by the lessor.
- (3) This section does not preclude any right the lessor may have to recover a reasonable sum in respect of any legal or other expenses incurred in connection with the preparation of a lease by the lessor from a person who enters into and then withdraws from negotiations with the lessor in respect of the lease.

14 Key-money prohibited

- (1) A person must not, as lessor or on behalf of the lessor, seek or accept the payment of key-money in connection with the granting of a retail shop lease and any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money in connection with the granting of the lease.
- (2) If a person contravenes this section:
 - (a) the person is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
 - (b) (whether or not the person is convicted of an offence under paragraph (a)) the lessee is entitled to recover from the lessor as a debt any payment made or the value of any benefit conferred by the lessee and accepted by or on behalf of the lessor in contravention of this section.
- (3) This section does not prevent a lessor:
 - (a) from requiring payment by the lessee of a reasonable sum in respect of any legal or other expenses incurred in connection with the preparation and entering into of the lease, or
 - (b) from receiving payment of rent in advance, or
 - (c) from securing performance of the lessee's obligations under the lease by requiring the provision of a bond or security deposit or a guarantee from the lessee or any other person (such as a requirement that the directors of a company that is the lessee guarantee performance of the company's obligations under the lease), or
 - (d) from seeking and accepting payment for goodwill of a business from a purchaser of the business, but only to the extent that the goodwill is attributable to the conduct of the business by the lessor, or

- (e) from seeking and accepting payment for plant, equipment, fixtures or fittings that are sold by the lessor to the lessee in connection with the granting of the lease, or
- (f) from seeking and accepting payment for the grant of a franchise in connection with the granting of the lease.

15 Lease documentation

- (1) A retail shop lease is taken to include provision to the following effect:
 - (a) If the lease is not to be registered, the lessor must provide the lessee with an executed copy of the stamped lease within 1 month after the lease is returned to the lessor or the lessor's lawyer or agent following payment of stamp duty on the lease.
 - (b) If the lease is to be registered, the lessor must lodge the lease for registration within 1 month after the lease is returned to the lessor or the lessor's lawyer or agent following payment of stamp duty on the lease and the lessor must provide the lessee with an executed copy of the stamped and registered lease within 1 month after the lease is returned to the lessor or the lessor's lawyer or agent following registration of the lease.
 - (c) The periods specified in paragraphs (a) and (b) are to be extended for delays attributable to the need to obtain any consent from a head lessor or mortgagee.
 - (d) In paragraphs (a) and (b), **registered** means registered under the [Real Property Act 1900](#).
- (2) This section does not affect the operation of the [Stamp Duties Act 1920](#) or the [Real Property Act 1900](#).

16 Minimum 5 year term

- (1) The term for which a retail shop lease is entered into, together with any further term or terms provided for by any agreement or option for the acquisition by the lessee of a further term as an extension or renewal of the lease, must not be less than 5 years. An agreement or option is not taken into account if it was entered into or conferred after the lease was entered into.
- (2) If a lease is entered into in contravention of this section, the validity of the lease is not thereby affected but the term of the lease is extended by such period as may be necessary to prevent the lease contravening this section.

Note—

For example, if a lease is entered into for a term of 3 years, its term is extended by 2 years to 5 years. If a lease is entered into for a term of 2 years with an option for a further 1 year after that initial 2 years, the term of the lease is extended to 4 years (with the option for a further 1 year after that initial 4 years).

- (3) This section does not apply to a lease if a lawyer, or a licensed conveyancer, not

acting for the lessor certifies in writing that he or she has, at the request of the prospective lessee, explained the effect of subsections (1) and (2) to the prospective lessee and that the giving of the certificate will result in this section not applying to the lease.

- (4) This section does not apply to a lease that results from the renewal of an earlier lease pursuant to an option conferred on the lessee, so long as there was no break in the entitlement of the lessee to possession of the retail shop and the option was granted by that earlier lease or by an agreement entered into before or at the same time as that earlier lease was entered into.

Note—

Because of subsection (4), a lease will not be required to be for 5 years if it is a renewal of an earlier lease (because the minimum 5 year term requirement applied to the earlier lease and the availability of the renewal will have been taken into account in determining the term of that earlier lease).

- (5) This section does not apply to a lease to the extent that its application would be inconsistent with the terms of any head lease under which the lessor holds the retail shop.

Part 3 Rent and outgoings

17 Payment of rent when lessor's fitout not completed

- (1) This section applies to a retail shop lease if:
- (a) the liability of the lessee to pay rent under the lease commences on the lessee entering into possession of the retail shop (whether or not the lessee is required to enter into possession by a specified date), and
 - (b) the lessor has fitout obligations under the lease (that is, the lessor is required to provide any finishes, fixtures, fittings, equipment or services before the lessee enters into possession of the shop).
- (2) A retail shop lease to which this section applies is taken to provide that:
- (a) the lessee is not liable to pay rent, or any other amount payable under the lease by the lessee (such as an amount payable in respect of outgoings), in respect of any period before the lessor has substantially complied with the lessor's fitout obligations, and
 - (b) the lessor is not entitled to deny the lessee possession of the retail shop merely because the lessor has not complied with the lessor's fitout obligations under the lease.

18 Restrictions on adjustment of base rent

- (1) In this section:

base rent means rent, or that component of rent, which comprises a specified amount of money (whether or not there is provision for the amount to change).

Note—

Turnover rent (rent determined by reference to the lessee's turnover) is not base rent because turnover rent is not a specified amount of money (it varies according to the lessee's turnover).

- (2) A retail shop lease must not provide for a change to base rent less than 12 months after the lease is entered into and must not provide for a change to that rent less than 12 months after any previous change to that rent. This subsection does not apply to a change to base rent by a specified amount or specified percentage.

Note—

For example, subsection (2) prevents a lease providing for an increase to current market rent more than once in 12 months. It does not prevent a lease providing for the rent to increase by \$100 every 6 months. Nor does it prevent a lease providing for the rent to be increased to current market rent after 12 months and then to be increased by 2% every 6 months after that.

- (3) A provision of a retail shop lease is void to the extent that it:
- (a) reserves or has the effect of reserving to one party a discretion as to which of 2 or more methods of calculating a change to base rent is to apply on a particular occasion of a change to that rent, or
 - (b) provides for a method of calculating a change to the base rent but reserves or has the effect of reserving to one party a discretion as to whether or not the base rent is to be changed in accordance with that method on a particular occasion, or
 - (c) provides for base rent to change on a particular occasion in accordance with whichever of 2 or more methods of calculating the change would result in the higher or highest rent.
- (4) If a retail shop lease provides for a change to base rent in a way that has the potential to cause that rent to decrease (such as a provision for the rent to change to current market rent), a provision of the lease is void to the extent that it:
- (a) prevents or enables the lessor or any other person to prevent base rent decreasing pursuant to the change, or
 - (b) limits or specifies, or allows the limitation or specification of, the amount by which the base rent is to decrease.

19 Reviews to current market rent

- (1) A retail shop lease that provides for rent to be changed to current market rent is taken to include provision to the following effect:
- (a) The current market rent is the rent that would reasonably be expected to be paid for the shop, determined on an effective rent basis, having regard to the following

matters:

- (i) the provisions of the lease,
- (ii) the rent that would reasonably be expected to be paid for the shop if it were unoccupied and offered for renting for the same or a substantially similar use to which the shop may be put under the lease,
- (iii) the gross rent, less the lessor's outgoings payable by the lessee,
- (iv) rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops.

The current market rent is not to take into account the value of goodwill created by the lessee's occupation or the value of the lessee's fixtures and fittings on the retail shop premises.

- (b) If the lessor and the lessee do not agree as to what the actual amount of that rent is to be, the amount of the rent is to be determined by valuation carried out by a specialist retail valuer appointed by agreement between the parties to the lease, or failing agreement, appointed by the person for the time being holding or acting in the office of President of the Australian Property Institute (NSW) or President of the Real Estate Institute (NSW).

Note—

The parties may agree to appoint a specialist retail valuer nominated by the President of the Australian Property Institute (NSW) or the President of the Real Estate Institute (NSW), or nominated by some other person of the parties' choice.

- (c) The matters set out in paragraph (a) are to be taken into account by a specialist retail valuer appointed under paragraph (b) in determining the amount of the rent.
- (d) The lessor must, not later than 14 days after a request by a specialist retail valuer appointed under paragraph (b), supply the valuer with relevant information about leases for retail shops situated in the same building or retail shopping centre to assist the valuer to determine the current market rent.
- (e) A valuation for the purposes of paragraph (b) is to be in writing, to contain detailed reasons for the specialist retail valuer's determination and to specify the matters to which the valuer had regard for the purposes of making his or her determination.
- (f) The parties to the lease are to pay the costs of a valuation by a specialist retail valuer appointed under paragraph (b) in equal shares.

Note—

The procedure provided by this section can be avoided if the parties can come to an agreement as to what the rent is to be.

- (2) A specialist retail valuer must make a valuation of a current market rent for the purposes referred to in this section not later than 1 month after accepting the appointment to make the valuation.
- (3) A specialist retail valuer may apply to the Tribunal under Part 8 for an order that a lessor comply with a request referred to in subsection (1) (d) to supply relevant information about leases for retail shops situated in the same building or retail shopping centre to assist the valuer to determine the rent.

19A Information supplied to valuer

- (1) A specialist retail valuer who is supplied with information by a lessor or a lessee for the purpose of determining under section 19 the amount of rent under a retail shop lease must not:
 - (a) use or permit the use of the information for any purpose other than to determine the current market rent for the lease concerned, or
 - (b) communicate or divulge that information to any other person or permit that information to be communicated or divulged to any other person.

Maximum penalty: 50 penalty units.

- (2) This section does not prevent the specialist retail valuer using or communicating or divulging that information, or permitting any other person to do so, in the following circumstances:
 - (a) in accordance with a consent of both the lessor and the lessee,
 - (b) to a court or tribunal,
 - (c) in a way that does not disclose information identifying a particular lease or lessee, or relating to a lessee's business, for the purpose of specifying the matters taken into consideration in making the determination concerned.
- (3) A specialist retail valuer who contravenes this section is liable to pay to the lessor or lessee concerned compensation for any loss or damage suffered by the lessor or lessee as a result of the information being so used or communicated or divulged. The amount of the compensation is to be the amount agreed between the valuer and the person seeking compensation or, in the event of a failure to agree, as determined by the Tribunal under Part 8.

20 Turnover rent

- (1) For the purposes of any provision of a retail shop lease that relates to the determination of rent or a component of rent by reference to turnover, **turnover** does not include any of the following:

- (a) the amount of losses incurred in the resale or disposal of merchandise reasonably and properly purchased from customers as trade-ins in the usual course of business,
 - (b) the amount of deposits and instalments received on account of lay-bys, hire purchase or credit sales, and which are refunded to customers,
 - (c) the amount of a refund on a transaction when the proceeds of the transaction have been included as part of turnover,
 - (d) the amount of any service, finance or interest charges payable to any financier in connection with provision of credit to customers (other than commissions on credit or store cards),
 - (e) the price of merchandise exchanged between shops of the lessee if the exchange is made solely for the convenient operation of the business of the lessee and not for the purpose of concluding a sale made at or from the shop to which the lease relates,
 - (f) the price of merchandise returns to shippers, wholesalers or manufacturers,
 - (g) the proceeds of sale of the lessee's fixtures and fittings after their use in the conduct of business at or from the retail shop to which the lease relates,
 - (h) the amount of discounts allowed to customers in the normal course of business,
 - (i) the amount of uncollected credit accounts that are written off,
 - (j) the amount paid or payable by the lessee as GST,
 - (k) the amount of delivery charges,
 - (l) the amount received from the sale of lottery tickets and similar tickets (other than commission on those sales).
- (2) The lease is taken to provide for any underpayment or overpayment of rent (resulting from actual turnover differing from projected or presumed turnover) to be adjusted within 1 month after the lessee requests the lessor in writing for such an adjustment and provides the lessor with such information as the lessor may reasonably require to make the adjustment.
- (3) The lessee may make a request for such an adjustment only once in the first 12 months of the lease term and thereafter only at intervals of not less than 12 months following the first request for an adjustment under the lease. This subsection does not prevent the lease providing for, or the parties otherwise agreeing to, more frequent adjustments than are provided for by this section.
- (4) For the purposes of this section, the concept of "turnover" includes gross takings,

gross receipts, gross income and similar concepts.

21 Special rent—cost of fitout

Nothing in this Act prevents a retail shop lease from providing for the payment of a special rent (in addition to any other rent) to cover the cost of fitout, fixtures, fittings and equipment installed or provided by the lessor at the lessor's expense.

22 Recovery of outgoings from lessee

- (1) The lessee under a retail shop lease is not liable to pay any amount to the lessor in respect of any outgoings except in accordance with provisions of the lease that specify:
 - (a) the outgoings that are to be regarded as recoverable, and
 - (b) how the amount of those outgoings will be determined and how they will be apportioned to the lessee, and
 - (c) how those outgoings or any part of them may be recovered by the lessor from the lessee.
- (2) In this Part, the expression ***outgoings to which the lessee contributes*** refers to any outgoings in respect of which the lessee is liable under the lease to make any payment to the lessor.
- (3) Costs associated with the advertising or promotion of a retail shop or retail shopping centre, or of any business carried on there, are not outgoings for the purposes of this section.

22A Recovery by lessor of GST

- (1) An agreement that was made between a lessor and a lessee before the date of commencement of this section (whether or not the agreement is contained in a lease), to the extent to which it provides for the payment by or recovery from the lessee of the amount of any GST payable in respect of the lease, is valid and is taken at all relevant times to have been validly made.
- (2) This section has effect despite any other provision of this Act.

23 Capital costs not recoverable from lessee

A provision in a retail shop lease is void to the extent that it requires the lessee to pay any amount in respect of the capital costs of the building in which the retail shop is located or (in the case of a retail shop in a retail shopping centre) of any building in the retail shopping centre or any areas used in association with any such building.

24 Depreciation not recoverable from lessee

A provision in a retail shop lease is void to the extent that it requires the lessee to pay any amount in respect of depreciation.

24A Interest and charges incurred by lessor on borrowings not recoverable from lessee

A provision in a retail shop lease is void to the extent that it requires the lessee to pay an amount in respect of interest or other charges incurred by the lessor in respect of amounts borrowed by the lessor.

24B Rent and other costs associated with other land not recoverable from lessee

(1) A provision in a retail shop lease is void to the extent that it requires the lessee to pay an amount in respect of rent and other costs associated with unrelated land.

(2) In this section:

unrelated land means land other than:

- (a) land on which the building or retail shopping centre of which the retail shop forms part is situated, or
- (b) land of the lessor used by or for the benefit of the lessees conducting business in that building or retail shopping centre or in connection with trading in that building or retail shopping centre.

25 Sinking fund for major repairs and maintenance

If a retail shop lease provides for the establishment of a sinking fund to fund provision for major items of repair or maintenance, the lease is taken to include provision to the following effect:

- (a) Any amount paid by the lessee in respect of the lessor's outgoings on account of those major items of repair or maintenance is to be paid into the sinking fund.
- (b) So much of the balance standing to the credit of the sinking fund as remains unexpended from time to time for any purpose for which the sinking fund was established is to be held by the lessor in an account bearing interest.
- (c) Amounts paid by the lessee for credit of the sinking fund, and the net interest earned by the lessor on the sinking fund, must not be applied by the lessor for any purpose other than payment of any outgoings for which the sinking fund was established.
- (d) The lessor is liable to contribute to the sinking fund any deficiency attributable to a failure by the lessor or any predecessor in title of the lessor to comply with paragraph (c).

Note—

The effect of paragraph (d) will be that a purchaser of the shop from the lessor will have to ensure that the

sinking fund has been properly administered and maintained by the previous lessor because the incoming lessor will be liable for any shortfall.

- (e) The major items of repair or maintenance for which contribution to the sinking fund may be required by the lessee are limited to repair or maintenance of a building, or plant and equipment of a building, in which the retail shop is situated or, in the case of a retail shopping centre, to the buildings, plant and equipment and areas used in association with the retail shopping centre in which the retail shop is situated.
- (f) The lessee is not liable to contribute an amount to the sinking fund that is greater than the maximum amount permitted under the Act.
- (g) The lessor must keep full and accurate accounts of all money received or held by the lessor in respect of the sinking fund.
- (h) The lessor must give the lessee, not later than 3 months after the end of each accounting period of the lessor during the term of the lease, a sinking fund statement containing details of expenditure during the period from the fund on items for which the lessee is required to contribute. The lessor must also provide with the statement a report on the statement prepared by a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (i) A sinking fund statement provided by a lessor to a lessee is to be prepared in accordance with the relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.

25A Limits on sinking funds

- (1) This section applies to the lessor under a retail shop lease that provides for the establishment of a sinking fund to fund provision for major items of repair or maintenance.
- (2) The lessor must not establish more than one sinking fund at any one time in respect of retail shop leases for retail shops situated in the same building or retail shopping centre.
- (3) The lessor must not require or accept contributions to the sinking fund in respect of any retail shop situated in a retail shopping centre that total an amount that exceeds 5% of the total of the lessor's estimated outgoings for the year concerned in respect of the retail shopping centre.
- (4) The lessor must not require or accept contributions by a lessee to the sinking fund if the amount outstanding to the credit of the sinking fund is more than \$250,000.

Maximum penalty: 50 penalty units.

25B Sinking fund repayment

- (1) This section applies to the lessor under a retail shop lease of a retail shop that provides for the establishment of a sinking fund to fund provision for major items of repair or maintenance.
- (2) If the building or retail shopping centre in which the retail shop is located is destroyed or demolished or, in the case of a retail shopping centre, the retail shopping centre ceases to operate, the lessor must repay to each lessee liable to contribute to the sinking fund the amount payable to the lessee.
- (3) The amount payable to the lessee is that proportion of the total amount outstanding to the credit of the sinking fund that is equal to the proportion that the lettable area of the lessee's retail shop bears to the total lettable area of all the shops in respect of which contributions are required to be made to the fund.
- (4) In this section:

lessor and **lessee** mean the persons who were the lessor and lessee, respectively, under a retail shop lease immediately before the destruction or demolition of the building, or immediately before the retail shopping centre ceased to operate.

26 Limit on recovery of land tax

- (1) A provision of a retail shop lease which requires the lessee to pay money to the lessor in respect of outgoings attributable to land tax payable by the lessor is taken to include provision that the liability of the lessee is not to exceed the amount of that liability had the amount of land tax payable by the lessor been assessed on the basis that:
 - (a) the land concerned was the only land owned by the lessor, and
 - (b) the land concerned was not subject to a special trust (within the meaning of the [Land Tax Management Act 1956](#)), and
 - (c) the lessor was not a company classified under section 29 of that Act as a non-concessional company.
- (2) The **land concerned** is the land on which the building or retail shopping centre of which the retail shop forms part is situated, together with all the other land of the lessor used or available for use by or for the benefit of the lessees conducting business in that building or retail shopping centre or in connection with trading in that building or retail shopping centre. In the case of a shop comprising a strata lot under the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#), the **land concerned** is the strata lot.

27 Estimates and expenditure statement of outgoings to be provided by lessor

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written estimate of the outgoings to which the lessee contributes under the lease, itemising those outgoings under the item descriptions used in the list of outgoings in the form of lessor's disclosure statement set out in Part 1 of the form contained in Schedule 2.
- (b) The estimate of outgoings must be given to the lessee in respect of each accounting period of the lessor during the term of the lease and must be given before the lease is entered into and thereafter during the term of the lease at least 1 month before the commencement of the accounting period concerned.
- (c) The lessor must make a written expenditure statement available for examination by the lessee detailing all expenditure by the lessor on account of outgoings to which the lessee contributes, itemising those outgoings under the item descriptions used in the list of outgoings in the form of lessor's disclosure statement set out in Part 1 of the form contained in Schedule 2.
- (d) The expenditure statement must be made available at least twice in each of the lessor's accounting periods during the term of the lease (once in relation to expenditure during the first 6 months of each such accounting period and once in relation to expenditure during the second 6 months of each such accounting period), and in each case must be made available within 1 month after the end of the 6 month period to which it relates.

28 Lessor to provide statement and report on outgoings

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an **outgoings statement**) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of outgoings to which the lessee is required to contribute.
- (b) If the shop is in a retail shopping centre, the outgoings statement must include a statement of the current gross lettable area of the shopping centre and details of any material change in that gross lettable area during the period to which the outgoings statement relates.
- (c) The outgoings statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.
- (d) The outgoings statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.

- (e) The outgoings statement is to be accompanied by a report (an **auditor's report**) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (f) The auditor's report is to include a statement by the auditor as to whether or not the outgoings statement correctly states the expenditure by the lessor during the accounting period concerned in respect of outgoings to which the lessee is required to contribute, and as to whether or not the total amount of estimated outgoings for that period (as shown in the estimate of outgoings given to the lessee) exceeded the total actual expenditure by the lessor in respect of those outgoings during that period.
- (g) The outgoings statement may be a composite statement (that is, it may relate to more than one lessee) so long as each lessee to which it relates is able to ascertain from the statement the information required by paragraph (a) that is relevant to that lessee.
- (h) The outgoings statement need not be accompanied by an auditor's report if the statement does not relate to any outgoings other than land tax, water, sewerage and drainage rates and charges, local council rates and charges and insurance, and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the lessor as referred to in paragraph (a).

29 Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred

A retail shop lease is taken to include provision to the following effect:

- (a) There is to be an adjustment between the lessor and the lessee for each accounting period of the lessor to take account of any under-payment or over-payment by the lessee in respect of outgoings during the period. The adjustment is to take place within 1 month after the lessor gives the lessee the outgoings statement referred to in section 28 for the period concerned and must in any event take place within 4 months after the end of that period.
- (b) The adjustment is to be calculated on the basis of the difference between the total amount of outgoings in respect of which the lessee contributed (that is, the estimated total expenditure by the lessor on outgoings during the period concerned) and the total amount actually expended by the lessor in respect of those outgoings during that period, but taking into account only expenditure properly and reasonably incurred by the lessor in payment of those outgoings.
- (c) Contribution by the lessee towards, and expenditure by the lessor in respect of, repairs and maintenance is not to be taken into account for the purposes of the adjustment to the extent that the contribution is, and the expenditure is in respect of, contributions required to be paid into a sinking fund as referred to in section 25.

30 Non-specific outgoings contribution limited by ratio of lettable area

- (1) A lessee under a retail shop lease in a retail shopping centre is not liable to contribute towards a non-specific outgoing of the lessor (that is, an outgoing not specifically referable to any particular shop in the retail shopping centre) unless the shop is one of the shops to which the outgoing is referable, and is not liable to contribute an amount in excess of an amount calculated by multiplying the total amount of that outgoing by the ratio of the lettable area of the shop to the total of the lettable areas of all the retail shops to which the outgoing is referable.
- (2) An outgoing is **referable** to a retail shop if the shop is one of the shops that enjoys or shares the benefit resulting from the outgoing.
- (3) An outgoing on account of GST payable by the lessor in respect of rent payable under a lease is not a non-specific outgoing of the lessor for the purposes of this section.

Note—

This section prevents a lessee being required to make up for any shortfall in outgoings recouped by the lessor that is attributable to vacant shops or concessions allowed to other lessees.

31 Reviews to current market rent

- (1) A retail shop lease that provides an option to renew or extend the lease at current market rent is taken to include provision to the following effect:
 - (a) The current market rent is the rent that would reasonably be expected to be paid for the shop, determined on an effective rent basis, having regard to the following matters:
 - (i) the provisions of the lease,
 - (ii) the rent that would reasonably be expected to be paid for the shop if it were unoccupied and offered for renting for the same or a substantially similar use to which the shop may be put under the lease,
 - (iii) the gross rent, less the lessor's outgoings payable by the lessee,
 - (iv) rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops.

The current market rent is not to take into account the value of goodwill created by the lessee's occupation or the value of the lessee's fixtures and fittings on the retail shop premises.

- (b) If the lessor and the lessee do not agree as to what the actual amount of that rent is to be, the amount of the rent is to be determined by valuation carried out by a specialist retail valuer appointed by agreement between the parties to the lease, or failing agreement, appointed by the person for the time being holding or acting

in the office of President of the Australian Property Institute (NSW) or President of the Real Estate Institute (NSW).

Note—

The parties may agree to appoint a specialist retail valuer nominated by the President of the Australian Property Institute (NSW) or the President of the Real Estate Institute (NSW), or nominated by some other person of the parties' choice.

- (c) The matters set out in paragraph (a) are to be taken into account by a specialist retail valuer appointed under paragraph (b) in determining the amount of the rent.
- (d) The lessor must, not later than 14 days after a request by a specialist retail valuer appointed under paragraph (b), supply the valuer with relevant information about leases for retail shops situated in the same building or retail shopping centre to assist the valuer to determine the current market rent.
- (e) A valuation for the purposes of paragraph (b) is to be in writing and to contain detailed reasons for the specialist retail valuer's determination and to specify the matters to which the valuer had regard for the purposes of making his or her determination.
- (f) The parties to the lease are to pay the costs of a valuation by a specialist retail valuer appointed under paragraph (b) in equal shares.

Note—

The procedure provided by this section can be avoided if the parties can come to an agreement as to what the rent is to be.

- (2) A specialist retail valuer must make a valuation of a current market rent for the purposes referred to in this section not later than 1 month after accepting the appointment to make the valuation.
- (3) A specialist retail valuer may apply to the Tribunal under Part 8 for an order that a lessor comply with a request referred to in subsection (1) (d) to supply relevant information about leases for retail shops situated in the same building or retail shopping centre to assist the valuer to determine the rent.

31A Information supplied to valuer

- (1) A specialist retail valuer who is supplied with information by a lessor or a lessee for the purpose of determining under section 31 the amount of rent under a retail shop lease must not:
 - (a) use or permit the use of the information for any purpose other than to determine the current market rent for the lease concerned, or
 - (b) communicate or divulge that information to any other person or permit that information to be communicated or divulged to any other person.

Maximum penalty: 50 penalty units.

- (2) This section does not prevent the specialist retail valuer using or communicating or divulging that information, or permitting any other person to do so, in the following circumstances:
 - (a) in accordance with a consent of both the lessor and the lessee,
 - (b) to a court or tribunal,
 - (c) in a way that does not disclose information identifying a particular lease or lessee, or relating to a lessee's business, for the purpose of specifying the matters taken into consideration in making the determination concerned.
- (3) A specialist retail valuer who contravenes this section is liable to pay to the lessor or lessee concerned compensation for any loss or damage suffered by the lessor or lessee as a result of the information being so used or communicated or divulged. The amount of the compensation is to be the amount agreed between the valuer and the person seeking compensation or, in the event of a failure to agree, as determined by the Tribunal.

32 Opportunity for lessee to have current market rent determined early

- (1) A retail shop lease which provides an option to renew or extend the lease at current market rent is taken to include provision to the following effect:
 - (a) The lessee is entitled to request a determination of the current market rent at any time within the period that begins 6 months before and ends 3 months before the last day on which the option may be exercised under the lease, but may not make such a request if the lessor and the lessee have already agreed as to what the actual amount of that rent is to be.
 - (b) The lessee makes such a request by giving notice in writing of the request to the lessor.
 - (c) If the lessee makes such a request, the amount of the current market rent is to be determined (as at the time of the request) in accordance with the provisions of section 31, and the period within which the lessee must exercise the option is varied so that the last day on which the option may be exercised is 21 days after the determination of rent is made and notified to the lessee in writing or the last day of the term of the lease, whichever is the earlier.
 - (d) The parties agree that the amount of rent determined under paragraph (c) is the current market rent for the purposes of the exercise of the option (even though it may be a determination of the current market rent as at some earlier time).
 - (e) The parties to the lease are to pay the costs of the determination of current market rent in equal shares.

- (2) If the term of the lease is 12 months or less, the periods of 6 months and 3 months in this section are shortened to 3 months and 30 days respectively.

Part 4 Alterations and other interference with the shop

33 Lessee to be given notice of alterations and refurbishment

A retail shop lease is taken to provide that the lessor must not commence to carry out any alteration or refurbishment of the building or retail shopping centre of which the retail shop forms part which is likely to adversely affect the business of the lessee unless:

- (a) the lessor has notified the lessee in writing of the proposed alteration or refurbishment at least 2 months before it is commenced, or
- (b) the alteration or refurbishment is necessitated by an emergency and the lessor has given the lessee the maximum period of notice that is reasonably practicable in the circumstances.

34 Lessee to be compensated for disturbance

(1) A retail shop lease is taken to provide that if the lessor:

- (a) inhibits access of the lessee to the shop in any substantial manner, or
- (b) takes any action that would inhibit or alter, to a substantial extent, the flow of customers to the shop, or
- (c) unreasonably takes any action that causes significant disruption of, or has a significant adverse effect on, trading of the lessee in the shop, or
- (d) fails to take all reasonable steps to prevent or put a stop to anything that causes significant disruption of, or which has a significant adverse effect on, trading of the lessee in the shop and that is attributable to causes within the lessor's control, or
- (e) fails to rectify any breakdown of plant or equipment under the lessor's care or maintenance, or
- (f) in the case of a shop within a retail shopping centre, fails to adequately clean, maintain or repair the retail shopping centre (including common areas),

and the lessor does not rectify the matter as soon as reasonably practicable after being requested in writing by the lessee to do so, the lessor is liable to pay the lessee reasonable compensation for any loss or damage (other than nominal damage) suffered by the lessee as a consequence.

- (2) In determining whether a lessor has acted unreasonably for the purposes of subsection (1) (c), due consideration is to be given to whether the lessor has acted in accordance with recognised shopping centre management practices.

- (3) A retail shop lease may include a provision preventing or limiting a claim for compensation under the provisions implied by this section in respect of any particular occurrence if the likelihood of the occurrence was specifically drawn to the attention of the lessee in writing before the lease was entered into.

Note—

A disclosure statement is an appropriate means of specifically drawing the attention of the lessee to the likelihood of an occurrence.

- (4) The provisions implied by this section do not apply to any action taken by the lessor:
- (a) as a reasonable response to an emergency situation, or
 - (b) in compliance with any duty imposed by or under an Act or resulting from a requirement imposed by a public or local authority acting under the authority of an Act.

34A Relocation

If a retail shop lease contains provision that enables the business of the lessee to be relocated, the lease is taken to include provision to the following effect:

- (a) The lessee's business cannot be required to be relocated unless and until the lessor has provided the lessee with details of a proposed refurbishment, redevelopment or extension sufficient to indicate a genuine proposal that is to be carried out within a reasonably practicable time after relocation of the lessee's business and that cannot be carried out practicably without vacant possession of the lessee's shop.
- (b) The lessee's business cannot be required to be relocated unless the lessor has given the lessee at least 3 months written notice of relocation and that notice gives details of an alternative shop to be made available to the lessee within the retail shopping centre. Such a notice is referred to as a **relocation notice**.
- (c) The lessee is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease except that the term of the new lease is to be for the remainder of the term of the existing lease. The rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation.

Note—

Paragraph (c) only specifies the minimum entitlements that the lessee can insist on. It does not prevent the lessee from accepting other arrangements offered by the lessor when the details of a relocation are being negotiated.

- (d) If a relocation notice is given to the lessee, the lessee may terminate the lease within 1 month after the relocation notice is given by giving written notice of termination to the lessor, in which case the lease is terminated 3 months after the relocation notice was given unless the parties agree that it is to terminate at some other time.

- (e) If the lessee does not give a notice of termination as referred to in paragraph (d), the lessee is taken to have accepted the offer of a lease as referred to in paragraph (c), unless the parties have agreed to a lease on some other terms.
- (f) The lessee is entitled to payment by the lessor of the lessee's reasonable costs of the relocation, including (but without being limited to) costs incurred by the lessee in dismantling and reinstalling any fixtures and fittings, and legal costs, in connection with the relocation.

Note—

This section does not prevent the parties negotiating a new 5 year lease for the purpose of relocating the lessee. Paragraph (f) only specifies the minimum entitlements that the lessee can insist on and the parties can come to some other arrangement for the payment or sharing of the lessee's relocation costs when the details of a relocation are being negotiated.

35 Demolition

- (1) If a retail shop lease provides for termination of the lease on the grounds of proposed demolition of the building of which the retail shop forms part, the lease is taken to include provision to the following effect:
 - (a) The lease cannot be terminated on that ground unless and until the lessor has provided the lessee with details of the proposed demolition sufficient to indicate a genuine proposal to demolish that building within a reasonably practicable time after the lease is to be terminated.
 - (b) The lease cannot be terminated by the lessor on that ground without at least 6 months written notice of termination.
 - (c) If notice of termination on that ground is given to the lessee, the lessee may terminate the lease by giving the lessor not less than 7 days written notice of termination at any time within 6 months before the termination date notified by the lessor.
- (2) If the lease is for a term of 12 months or less, the period of 6 months in subsection (1) (b) and (c) is shortened in each case to 3 months.
- (3) If a retail shop lease is terminated on such a ground and demolition of the building is not carried out within a reasonably practicable time after the termination date notified by the lessor, the lessor is liable to pay the lessee reasonable compensation for damage suffered by the lessee as a consequence of the early termination of the lease, unless the lessor establishes that at the time notice of termination was given by the lessor there was a genuine proposal to demolish the premises within that time.
- (3A) If a retail shop lease is terminated on such a ground, the lessor is liable to pay the lessee compensation for the fitout of the retail shop if the lessee is required under the lease to fit out the retail shop, whether or not the demolition of the building is carried

out.

- (4) For the purposes of this section, **demolition** of the building of which a retail shop forms part includes any substantial repair, renovation or reconstruction of the building that cannot be carried out practicably without vacant possession of the shop.

36 Damaged premises

- (1) A retail shop lease is taken to provide for the following if the shop or the building of which the shop forms part is damaged:
- (a) The lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings or other charges, that is attributable to any period during which the shop cannot be used under the lease or is inaccessible due to that damage.
 - (b) If the shop is still useable under the lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage.
 - (c) If the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee may terminate the lease by giving not less than 7 days notice in writing to the other and no compensation is payable in respect of that termination.
 - (d) If the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor in writing to do so, the lessee may terminate the lease by giving not less than 7 days notice in writing of termination to the lessor.
 - (e) Paragraphs (a)–(d) do not affect any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which those paragraphs apply.
- (2) A retail shop lease must not contain any provision the effect of which is to limit any liability of a party to the lease to pay compensation to another party to the lease in respect of damage to the shop or the building of which the shop forms part.
- (3) Nothing in this section prevents the parties to a lease from terminating the lease by agreement if the shop or the building of which it forms part is damaged or destroyed.

37 Employment restriction

A retail shop lease must not contain any provision which limits or has the effect of limiting the lessee's right to employ persons of the lessee's own choosing, but this section does not prevent the lease containing any one or more of the following provisions:

- (a) a provision specifying minimum standards of competence and behaviour for persons employed in the shop or other persons (such as contractors) doing work in the shop,

- (b) a provision prohibiting work from being carried out on specified items of the lessor's property,
- (c) a provision requiring the lessee to comply with the requirements of any industrial award, industrial agreement or enterprise agreement (such as a construction site agreement) affecting any retail shopping centre in which the shop is situated.

38 Refurbishment and refitting

Provision in a retail shop lease requiring the lessee to refurbish or refit the shop is void unless it gives such details of the required refurbishment or refitting as may be necessary to indicate generally the nature, extent and timing of the required refurbishment or refitting.

Part 5 Assignment and termination

39 Grounds on which consent to assignment can be withheld

- (1) The lessor is entitled to withhold consent to the assignment of a retail shop lease in any of the following circumstances (and is not entitled to withhold that consent in any other circumstances):
 - (a) if the proposed assignee proposes to change the use to which the shop is put,
 - (b) if the proposed assignee has financial resources or retailing skills that are inferior to those of the proposed assignor,
 - (c) if the lessee has not complied with section 41 (Procedure for obtaining consent to assignment),
 - (d) the circumstances set out in section 80E.
- (2) This section does not preclude any right of the lessor to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the consent, so long as the lessor has substantiated those expenses to the lessee at the request of the lessee.

40 Key-money on assignment prohibited

- (1) A person must not, as lessor or on behalf of the lessor, seek or accept the payment of key-money in connection with the granting of consent to the assignment of a retail shop lease and any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money in connection with the granting of consent to the assignment of the lease.
- (2) If a person contravenes this section:
 - (a) the person is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and

(b) (whether or not the person is convicted of an offence under paragraph (a)) the lessee is entitled to recover from the lessor as a debt any payment made or the value of any benefit conferred by the lessee and accepted by or on behalf of the lessor in contravention of this section.

(3) This section does not preclude any right of the lessor to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such a consent. The lessee is entitled to have those expenses substantiated by the lessor before making such a payment.

Note—

This section and section 39 do not prevent the lessor and a proposed assignee entering into a new lease of the retail shop as an alternative to an assignment of the existing lease.

41 Procedure for obtaining consent to assignment

A retail shop lease is taken to include the following provisions:

- (a) A request for the lessor's consent to an assignment of the lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial standing and business experience of the proposed assignee. The lessee may provide the lessor with a copy of a statement in writing that contains the information that is contained in or required to complete the form set out in Schedule 2A that has been provided to the proposed assignee. The statement may be provided if the assignment is in connection with the lease of a retail shop that will continue to be an ongoing business. The layout of the statement need not comply with that of the form set out in Schedule 2A.
- (b) Before requesting the consent of the lessor to a proposed assignment of the lease, the lessee must furnish the proposed assignee with a copy of any disclosure statement given to the lessee in respect of the lease, together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the lessee (being changes of which the lessee is aware or could reasonably be expected to be aware). The lessee may provide the proposed assignee with a copy of a statement in writing that contains the information that is contained in or required to complete the form set out in Schedule 2A. The statement may be provided if the assignment is in connection with the lease of a retail shop that will continue to be an ongoing business. The layout of the statement need not comply with that of the form set out in Schedule 2A.
- (c) For the purpose of enabling the lessee to comply with paragraph (b), the lessee is entitled to request the lessor to provide the lessee with a copy of the disclosure statement concerned and, if the lessor is unable or unwilling to comply with such a request within 14 days after it is made, paragraph (b) does not apply to the lessee.
- (d) The lessor must deal expeditiously with a request for consent and is taken to have

consented to the assignment if the lessee has complied with paragraphs (a) and (b) and the lessor has not within 42 days after the request was made given notice in writing to the lessee either consenting or withholding consent.

41A Protection of assignors and guarantors

- (1) A person who assigns a retail shop lease in connection with the lease of a retail shop that will continue to be an ongoing business, or a guarantor or covenantor of the person, is not liable to pay to the lessor any money in respect of amounts payable by the person to whom the lease is assigned if the former lessee gave:
 - (a) the lessor a copy of the assignor's disclosure statement as referred to in section 41 (a), and
 - (b) the proposed assignee a copy of the assignor's disclosure statement as referred to in section 41 (b).
- (2) This section does not apply to a former lessee, guarantor or covenantor or a lessor if the assignor's disclosure statement contains information that is materially false or misleading or incomplete.

42 Lessor may reserve right to refuse sublease, mortgage

A retail shop lease may contain a provision which allows the lessor to refuse in the lessor's absolute discretion:

- (a) consent to the grant of a sublease, licence or concession in respect of the whole or any part of the shop, or
- (b) consent to the lessee parting with possession of the whole or any part of the shop, or
- (c) consent to the lessee mortgaging or otherwise charging or encumbering the lessee's estate or interest in the lease.

43 Application of [Conveyancing Act 1919](#)

Section 133B (Covenants against assigning) of the [Conveyancing Act 1919](#) does not apply to a retail shop lease to the extent that the section is inconsistent with this Act (or any conditions implied in a lease by this Act).

44 Notice to lessee of lessor's intentions at end of lease

- (1) Not less than 6 months and not more than 12 months before the expiry of a lease, the lessor must by written notification to the lessee either:
 - (a) offer the lessee a renewal or extension of the lease on terms specified in the notification (including terms as to rent), or
 - (b) inform the lessee that the lessor does not propose to offer the lessee a renewal or

extension of the lease.

Note—

A notice under paragraph (b) may include other information as to the lessor's intentions (for example, that the lessor intends to allow the lessee to remain in possession of the shop as a periodic tenant under any provisions of the lease as to holding over, or as a tenant at will). Because such a statement is only a statement of intention, a lessee should be aware that it may not of itself bind the lessor.

- (2) An offer made for the purposes of subsection (1) (a) is not capable of revocation for 1 month after it is made.

Note—

This allows the lessee 1 month to decide whether to accept the offer. The lessor may agree to hold the offer open for longer than 1 month. The parties may also negotiate a new lease.

- (3) If the lessor fails to give a notification to the lessee as required by this section, the term of the lease is extended until the end of 6 months after the lessor gives the notification required by this section, but only if the lessee requests that extension by notice in writing to the lessor given before the lease would otherwise have expired.
- (4) During any extension of the lease under subsection (3), the lessee may terminate the lease by giving not less than 1 month's notice of termination in writing to the lessor.
- (5) This section does not apply to a lease containing an option to renew or extend the lease or that is the subject of an agreement for the renewal or extension of the lease.
- (6) If a retail shop lease is for a term of 12 months or less, the periods of 12 months and 6 months in this section are shortened to 6 months and 3 months respectively.

45 Key-money for renewal or extension prohibited

- (1) A person must not, as lessor or on behalf of the lessor, seek or accept the payment of key-money in connection with the renewal or extension of a retail shop lease and any provision of a retail shop lease is void to the extent that it requires or has the effect of requiring the payment of key-money in connection with the renewal or extension of the lease.
- (2) If a person contravenes this section:
- (a) the person is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
 - (b) (whether or not the person is convicted of an offence under paragraph (a)) the lessee is entitled to recover from the lessor as a debt any payment made or the value of any benefit conferred by the lessee and accepted by or on behalf of the lessor in contravention of this section.
- (3) This section does not prevent a lessor:

- (a) from requiring payment by the lessee of a reasonable sum in respect of any legal or other expenses incurred in connection with the renewal or extension of the lease, or
- (b) from receiving payment of rent in advance, or
- (c) from securing performance of the lessee's obligations under the renewed or extended lease by requiring the provision of a bond or security deposit or a guarantee from the lessee or any other person, or
- (d) from seeking and accepting payment for the grant of a franchise in connection with the renewal or extension of the lease.

Part 6 Miscellaneous

46 Trading hours

A provision in a retail shop lease is void to the extent that it would operate to require the lessee to trade at a time when trading would be unlawful.

47 Security deposits

- (1) A retail shop lease is taken to include provision to the following effect:
 - (a) Money paid by the lessee to the lessor as security for the performance of the lessee's obligations under the lease must be held by the lessor on behalf of the lessee in an account bearing interest.
 - (b) The lessor must account to the lessee for interest earned on such a deposit but the lessor is entitled to retain any such interest and deal with it as money paid by the lessee to the lessor to form part of the security deposit concerned.
 - (c) The lessor is not entitled to unreasonably refuse to accept a guarantee from a bank, building society or credit union in satisfaction of any requirement to provide security in the form of a deposit, bond or third party guarantee for the performance of the lessee's obligations under the lease.
- (2) This section does not prevent the lessor appropriating security moneys in accordance with any lawful entitlement to do so.

48 Independent legal advice

- (1) The lessee or a prospective lessee under a retail shop lease must not be compelled to use the services of a lawyer or licensed conveyancer nominated by the lessor.
- (2) If the lessee or a prospective lessee is compelled to use the services of a lawyer or licensed conveyancer in contravention of this section, the lessor is liable to pay to the lessee the amount of any fees paid by the lessee to that lawyer or licensed

conveyancer for those services.

- (3) If a prospective lessee is compelled to use the services of a lawyer or licensed conveyancer in contravention of this section for the purpose of the provision of a certificate referred to in section 16 (Minimum 5 year term), any certificate so provided is invalid for the purposes of section 16 if the lessee establishes that even though the certificate was given he or she did not understand the effect of section 16 (1) and (2) or did not understand that the giving of the certificate would result in section 16 not applying.

Part 7 Additional requirements for retail shopping centres

49 Part applies only to retail shopping centres

This Part applies only to retail shop leases of shops in retail shopping centres and (in respect of those leases) applies in addition to the other provisions of this Act.

50 Confidentiality of turnover information

If a retail shop lease requires the lessee to provide information to the lessor concerning the turnover of the business of the lessee, the lessor must not divulge or communicate to any person any information so provided by the lessee, but this does not prevent the lessor communicating or divulging any such information:

- (a) with the consent of the lessee, or
- (b) in a document giving aggregate turnover information about a retail shopping centre in a manner that does not disclose information relating to the turnover of an individual lessee's business, or
- (c) to a court or arbitrator or for the purposes of any mediation or valuation for the purposes of this Act or the lease, or
- (d) in compliance with a requirement made by or under an Act, or
- (e) to the lessor's professional advisers (such as legal or financial advisers), or to the proper officer of any financial institution for the purpose in good faith of enabling the lessor to obtain financial accommodation, or
- (f) in good faith to a prospective purchaser of the retail shop or the building of which it forms part.

Maximum penalty: 20 penalty units.

51 Statistical information to be made available to lessee

If a retail shop lease requires the lessee to pay any amount in respect of outgoings on account of expenditure incurred in obtaining statistical information (such as "traffic

counts”), the lease is taken to include provision that the lessor must make any information so obtained by the lessor available to the lessee.

52 Advertising and promotion requirements

A provision in a retail shop lease is void to the extent that it requires the lessee to undertake any advertising or promotion of the lessee’s business. This section does not apply to a provision in a lease that requires any payment to the lessor for advertising and promotion costs incurred or to be incurred by the lessor.

Note—

This does not prevent a lessee deciding to make an additional contribution towards advertising and promotion. It is good leasing practice for a lessor to require all lessees in the shopping centre to contribute towards advertising and promotion costs for the centre.

53 Marketing plan for advertising and promotion

If a retail shop lease requires the lessee to pay any amount to the lessor in respect of advertising and promotion costs, the lease is taken to include provision to the following effect:

- (a) The lessor must, at least 1 month before the start of each accounting period of the lessor, make available to the lessee a marketing plan that gives details of the lessor’s proposed expenditure on advertising and promotion during that accounting period.
- (b) If such a payment relates to an opening promotion, the lessor must, at least 1 month before that opening promotion, make available to the lessee details of the proposed expenditure on that promotion.

54 6-monthly advertising and promotion expenditure statement to be made available to lessees

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must make a written statement available for examination by a lessee detailing all expenditure by the lessor on account of advertising and promotion costs to which the lessee is required to contribute under the lease.
- (b) The lessor must make the statement available at least twice in each of the lessor’s accounting periods during the term of the lease (once in relation to expenditure during the first 6 months of each such accounting period and once in relation to expenditure during the second 6 months of each such accounting period).
- (c) The statement must be made available within 1 month after the end of the 6 month period to which it relates.

55 Lessor to provide statement and report on advertising and promotion expenditure

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an **advertising statement**) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of advertising or promotion costs to which the lessee is required to contribute under the lease.
- (b) The advertising statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.
- (c) The advertising statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (d) The advertising statement is to be accompanied by a report (an **auditor's report**) on the statement prepared by a registered company auditor (within the meaning of the [Corporations Act 2001](#) of the Commonwealth).
- (e) The auditor's report is to include a statement by the auditor as to whether or not the advertising statement correctly states the expenditure by the lessor during the accounting period concerned in respect of advertising or promotion costs to which the lessee is required to contribute.

56 Unexpended advertising and promotion contributions to be carried forward

A retail shop lease is taken to include provision that any amount contributed by a lessee in the shopping centre under a retail shop lease in respect of advertising or promotion costs of the lessor and which is not spent for the purpose for which it was contributed must be carried forward by the lessor, to be applied towards future expenditure on advertising or promotion of the centre.

57 (Repealed)

58 Termination for inadequate sales prohibited

A retail shop lease must not contain a provision that permits or otherwise provides for the termination of the lease on the ground that the lessee or the business of the lessee has failed to achieve specified sales or turnover performance.

59 Geographical restrictions

- (1) A lease must not contain a provision which has the effect of preventing or restricting the lessee from carrying on business outside the retail shopping centre, either during the term of or after the expiry of the lease.
- (2) This section does not operate to prevent a lease or other agreement from containing a provision that prevents the use of the name of the retail shopping centre in connection with a business carried on outside the shopping centre.

60 Tenants association

A lease must not contain a provision which has the effect of preventing or restricting the lessee from joining, forming or taking part in any activities of any tenants association or other similar body.

Note—

This section does not prevent a lessor from encouraging lessees to become involved in marketing advisory panels.

61 Trading hours

- (1) A lease of a retail shop is taken to include provision to the effect that a lessor is not entitled to change the core trading hours of the retail shopping centre of which the shop forms part except with the approval in writing of the lessees of a majority of the retail shops in the shopping centre (whether or not those retail shops are retail shops to which this Act applies). The initial fixing of trading hours in a new shopping centre is not a change to core trading hours and is not affected by this subsection.
- (2) Subsection (1) does not operate to permit a lessor to ignore the requirements of any other agreement, arrangement or understanding that prevents or restricts a change to core trading hours by the lessor in a retail shopping centre.

Note—

An example of how subsection (2) operates is where another agreement requires a 75% majority of lessees to be in favour of a change to core trading hours before the lessor can make the change. Subsection (2) requires that the other agreement be complied with also, so that a 75% majority must be obtained and not merely the 50% majority required by subsection (1).

- (3) This section does not prevent a lease providing for the action that may be taken by a lessor in the event of a lessee not trading in accordance with core trading hours, including provisions:
 - (a) enabling the lessor, as a condition of granting consent to a lessee trading outside core trading hours, to require the lessee to pay, or pay a contribution towards, the costs of opening the retail shopping centre during those extended trading hours, or
 - (b) requiring a lessee who trades outside core trading hours to make specified payments or additional payments in respect of advertising and promotional costs for the shopping centre.
- (4) The **core trading hours** of a retail shopping centre are the times when retail shops in the shopping centre are required to be open for business, whether the requirement is imposed by or under a lease or by or under some other agreement, arrangement or understanding between lessors and the lessees.

62 Special provision for strata shopping centres

If a retail shop lease applies in respect of a shop that comprises the whole or part of a strata lot under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, sections 50-56 and 61 apply in respect of the lease as if:

- (a) references in those sections to a retail shop lease (or a provision of the lease) included a reference to the by-laws (or a provision of the by-laws) for the strata scheme concerned, and
- (b) references in those sections to the lessor included reference to the body corporate under the strata scheme concerned and any centre manager appointed, employed or engaged by the body corporate to have management functions in respect of the centre.

Note—

Considering section 54 as an example of the operation of section 62:

The provisions of section 54 are taken to form part of the by-laws for the retail shopping centre. The section will then operate to impose requirements on the lessor, the body corporate and the centre manager. If advertising and promotion costs are charged to a lessee under the by-laws and not the lease, the lessor will have no obligations under section 54 because those amounts are not charged under the lease. The body corporate and the centre manager on the other hand will have the obligations that the lessor would otherwise have had.

Part 7A Unconscionable conduct

62A Application of Part

- (1) This Part extends to apply to a retail shop lease that was entered into before the commencement of section 6 or under an option granted or agreement made before the commencement of section 6, but only if this Act would have applied to the lease if it had been entered into after the commencement of section 6.
- (2) This Part does not apply to conduct that occurred before the commencement of this section.

62B Unconscionable conduct in retail shop lease transactions

- (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) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a lessor has contravened subsection (1) in connection with a retail shop lease, the Tribunal may have regard to:

- (a) the relative strengths of the bargaining positions of the lessor and the lessee, and
 - (b) whether, as a result of conduct engaged in by the lessor, the lessee was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the lessor, and
 - (c) whether the lessee was able to understand any documents relating to the lease, and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the lessee or a person acting on behalf of the lessee by the lessor or a person acting on behalf of the lessor in relation to the lease, and
 - (e) the amount for which, and the circumstances under which, the lessee could have acquired an identical or equivalent lease from a person other than the lessor, and
 - (f) the extent to which the lessor's conduct towards the lessee was consistent with the lessor's conduct in similar transactions between the lessor and other like lessees, and
 - (g) the requirements of any applicable industry code, and
 - (h) the requirements of any other industry code, if the lessee acted on the reasonable belief that the lessor would comply with that code, and
 - (i) the extent to which the lessor unreasonably failed to disclose to the lessee:
 - (i) any intended conduct of the lessor that might affect the interests of the lessee, and
 - (ii) any risks to the lessee arising from the lessor's intended conduct (being risks that the lessor should have foreseen would not be apparent to the lessee), and
 - (j) the extent to which the lessor was willing to negotiate the terms and conditions of any lease with the lessee, and
 - (k) the extent to which the lessor and the lessee acted in good faith.
- (4) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a lessee has contravened subsection (2) in connection with a retail shop lease, the Tribunal may have regard to:
- (a) the relative strengths of the bargaining positions of the lessee and the lessor, and
 - (b) whether, as a result of conduct engaged in by the lessee, the lessor was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the lessee, and
 - (c) whether the lessor was able to understand any documents relating to the lease,

and

- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the lessor or a person acting on behalf of the lessor by the lessee or a person acting on behalf of the lessee in relation to the lease, and
 - (e) the amount for which, and the circumstances under which, the lessor could have granted an identical or equivalent lease to a person other than the lessee, and
 - (f) the extent to which the lessee's conduct towards the lessor was consistent with the lessee's conduct in similar transactions between the lessee and other like lessors, and
 - (g) the requirements of any applicable industry code, and
 - (h) the requirements of any other industry code, if the lessor acted on the reasonable belief that the lessee would comply with that code, and
 - (i) the extent to which the lessee unreasonably failed to disclose to the lessor:
 - (i) any intended conduct of the lessee that might affect the interests of the lessor, and
 - (ii) any risks to the lessor arising from the lessee's intended conduct (being risks that the lessee should have foreseen would not be apparent to the lessor), and
 - (j) the extent to which the lessee was willing to negotiate the terms and conditions of any lease with the lessor, and
 - (k) the extent to which the lessee and the lessor acted in good faith.
- (5) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with a retail shop lease by reason only that the first-mentioned person institutes legal proceedings in relation to that lease or refers to arbitration a dispute or claim in relation to that lease.
- (6) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with a retail shop lease by reason only that the first-mentioned person fails to renew the lease or issue a new lease.
- (7) For the purpose of determining whether a lessor has contravened subsection (1) or whether a lessee has contravened subsection (2):
- (a) the Tribunal must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention, and
 - (b) the Tribunal may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that

commencement.

- (8) A lessor or lessee, or former lessor or lessee, who suffers loss or damage by reason of unconscionable conduct of another person that is in contravention of this section may recover the amount of the loss or damage by lodging a claim against the other person under section 71A.
- (9) If the matter of such loss or damage arises in connection with a matter the subject of proceedings in the Tribunal, the Tribunal may proceed to decide it, and in so doing may award such sum as it thinks fit.

Part 8 Dispute resolution

Division 1 Preliminary

63 Interpretation

- (1) In this Part:

court means a court, tribunal or other body or person authorised by law, or by consent or agreement of parties, to decide or resolve any issue that is in dispute between parties, and includes an arbitrator.

party or **former party** to a retail shop lease or former retail shop lease includes a person who is a guarantor or covenantor under a lease or former lease.

retail tenancy dispute means any dispute concerning the liabilities or obligations (including any obligation to pay money) of a party or former party to a retail shop lease or former lease, being liabilities or obligations which arose under the lease or former lease or which arose in connection with the use or occupation of the retail shop to which the lease or former lease relates.

Tribunal means the Administrative Decisions Tribunal of New South Wales established by the [Administrative Decisions Tribunal Act 1997](#).

- (2) This Part extends to apply to:

- (a) a retail shop lease that was entered into before the commencement of section 6 or under an option granted or agreement made before the commencement of section 6, and
- (b) a dispute that arose before the commencement of section 6 or which concerns a liability or obligation that arose before the commencement of section 6.

Division 2 Mediation

64 The Registrar

- (1) The Minister is to appoint the holder of a statutory office or a public servant as the Registrar of Retail Tenancy Disputes for the purposes of this Act.
- (2) The Registrar may, for the purposes of this Act and with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, administrative office or a public or local authority.
- (3) The Registrar may delegate to any public servant the exercise of any function of the Registrar under this Act, except this power of delegation.

65 Functions of Registrar

- (1) The Registrar has the following functions:
 - (a) to make arrangements to facilitate the resolution by mediation of retail tenancy disputes (whether or not a dispute has been formally referred to the Registrar under this Act),
 - (a1) to make arrangements to facilitate the resolution by mediation of disputes or applications under section 19 (3), 19A (3), 31 (3) or 31A (3) or the subject, or possible subject, of a claim under section 62B,
 - (b) to report to the Minister on the operation of this Act,
 - (c) to take proceedings for an offence against this Act or to authorise persons to take proceedings for offences against this Act,
 - (d) such other functions as may be conferred or imposed on the Registrar by or under this or any other Act.
- (2) The Registrar may, at any stage of proceedings brought before a court concerning a retail tenancy dispute intervene in the proceedings. If the Registrar intervenes in proceedings, the Registrar becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.
- (3) In making arrangements for the resolution by mediation of disputes or other matters, the Registrar is to have regard to the need for mediation of those disputes or other matters to be conducted by persons who are experienced in the field of retail shop leases.
- (4) In the exercise of his or her functions under this Act, the Registrar is not subject to the control or direction of the Minister.

66 Mediation of disputes and other matters

- (1) Any or all of the parties or former parties to a retail shop lease may refer a retail tenancy dispute or other dispute or matter referred to in section 65 (1) (a1) to the Registrar for mediation of the dispute. The Registrar is entitled to charge an application fee (not exceeding any maximum fee prescribed by the regulations) for the referral of a retail tenancy dispute or other dispute or matter referred to in section 65 (1) (a1) to the Registrar.

Note—

Before applying for formal mediation of a dispute parties are encouraged to approach the Registrar for preliminary assistance of the kind referred to in section 67. There is no charge for this.

- (2) The costs of and associated with formal mediation before a mediator of a retail tenancy dispute or other dispute or matter under arrangements made by the Registrar are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.
- (3) A mediator has, in the exercise of functions performed as a mediator under this Act, the same protection and immunities as a Judge of the Supreme Court.

67 The nature of mediation

- (1) In this Division:

mediation is not limited to formal mediation procedures and includes the following:

- (a) preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute,
 - (b) other appropriate forms of alternative dispute resolution.
- (2) A reference in this Division to a **mediator** includes a reference to a person who provides the assistance or alternative dispute resolution referred to in subsection (1).

Note—

The first step in any dispute is to ensure that the parties have read their lease and have spoken to one another about their concerns in an effort to resolve the dispute.

68 Disputes and other matters must be submitted to mediation before proceedings can be taken

- (1) A retail tenancy dispute or other dispute or matter referred to in section 65 (1) (a1) may not be the subject of proceedings before any court unless and until the Registrar has certified in writing that mediation under this Part has failed to resolve the dispute or matter or the court is otherwise satisfied that mediation under this Part is unlikely to resolve the dispute or matter.

- (2) The Registrar must certify that mediation under this Part has failed to resolve a retail tenancy dispute or other dispute or matter referred to in section 65 (1) (a1) if the Registrar is satisfied that any one or more of the parties to the dispute or matter has refused to take part in or has withdrawn from mediation of the dispute or matter.
- (3) This section does not apply to proceedings before a court for an order in the nature of an injunction.
- (4) This section does not operate to affect the validity of any decision made by a court.

69 Statements made during mediation not admissible

Any statement or admission made in the course of the mediation of a retail tenancy dispute or other dispute or matter referred to in section 65 (1) (a1) pursuant to arrangements made by the Registrar under this Part is not admissible at a hearing of a claim under Division 3 or in any other legal proceeding.

Division 3 Determination of claims by Administrative Decisions Tribunal

70 Definitions

In this Division:

retail tenancy claim means any of the following:

- (a) a claim in connection with a liability or obligation with which a retail tenancy dispute is concerned, being:
 - (i) a claim for the payment of a specified sum of money,
 - (ii) a claim for relief from payment of a specified sum of money,
 - (iii) a claim for the doing of specified work or the provision of specified services,
 - (iv) a claim for the surrender of possession of specified premises,
 - (v) a claim for assignment of rights under a lease or for a declaration that a lessor is not entitled to withhold consent to an assignment of the rights of a lessee,
 - (vi) a claim for relief against forfeiture,
 - (vii) a claim regarding the rectification of the lease,
 - (viii) a claim regarding the invalidity of a lease for inconsistency with this Act or the regulations,
 - (ix) a claim for a declaration of the rights, obligations and liabilities of the parties under a lease,

(x) without limiting the generality of subparagraph (i), a claim for compensation under section 10,

(b) an application under section 19 (3) or 31 (3) by a specialist retail valuer,

(c) a claim against a specialist retail valuer under section 19A (3) or 31A (3) for compensation for loss or damage suffered as a consequence of the use or communication or divulging of information.

unconscionable conduct claim means a claim for relief under section 62B.

71 Lodging of retail tenancy claims with Tribunal

(1) A party or former party to a retail shop lease or former retail shop lease may lodge a retail tenancy claim in respect of the lease with the Tribunal for determination of the claim.

(2) A claim may not be lodged more than 3 years after the liability or obligation that is the subject of the claim arose.

(3) (Repealed)

Note—

Under section 37 of the [Administrative Decisions Tribunal Act 1997](#), the effect of enabling applications to be made to the Tribunal is to confer jurisdiction on it. By virtue of section 142 of that Act, an application includes a mechanism by which an Act provides for a matter to be brought to the attention of the Tribunal for an original decision.

71A Lodging of unconscionable conduct claims with Tribunal

(1) A lessor or lessee, or former lessor or lessee, under a retail shop lease or former retail shop lease may lodge an unconscionable conduct claim with the Tribunal for determination of the claim.

(2) A claim may not be lodged more than 3 years after the alleged unconscionable conduct occurred.

(3) In this section:

party or **former party** to a retail shop lease or former retail shop lease includes a person who is a guarantor or covenantor under a lease or former lease.

72 Powers of Tribunal relating to retail tenancy claims

(1) In proceedings for a retail tenancy claim lodged with the Tribunal under this Part, the Tribunal is empowered to make any one or more of the following orders that it considers appropriate:

(a) an order that a party to the proceedings pay money to a person specified in the

- order, whether by way of debt, damages or restitution, or refund any money paid by a specified person,
- (b) an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings,
 - (c) an order that a party to the proceedings:
 - (i) do any specified work or perform any specified service or any obligation arising under this Act or the terms of a lease, or
 - (ii) surrender possession of specified premises to another person, or
 - (iii) assign his or her or its rights under a lease to a specified person, or
 - (iv) do or perform, or refrain from doing or performing, any specified act, matter or thing,
 - (d) an order granting a party to the proceedings relief against forfeiture,
 - (e) an order, by consent of the parties, requiring the parties to the proceedings to rectify a lease,
 - (f) an order:
 - (i) declaring any provision made by a lease to be void for being inconsistent with this Act or the regulations, or
 - (ii) declaring that a lessor is not entitled to withhold consent to an assignment of the rights of a lessee, or
 - (iii) declaring the rights and liabilities of the parties under law, whether any consequential relief is or could be claimed or not,
 - (g) such other order, in the nature of an interlocutory order of a kind referred to in paragraphs (a)–(f), as the Tribunal considers proper to be made in order to resolve or assist resolution of the dispute between the parties.
- (2) The Tribunal may make such ancillary orders as it considers necessary for the purpose of enabling an order under this section to have full effect.
- (3) The Tribunal may impose such conditions as it considers appropriate when making an order under this section.
- (4) The Tribunal may make an interim order under this section pending final determination of a claim, if it appears to the Tribunal desirable to do so.

72AA Powers of Tribunal relating to unconscionable conduct claims

- (1) In proceedings for an unconscionable conduct claim lodged with the Tribunal under this Part, the Tribunal is empowered to make any one or more of the following orders that it considers appropriate:
 - (a) an order that a party to the proceedings pay money to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person,
 - (b) an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings.
- (2) The Tribunal may make such ancillary orders as it considers necessary for the purpose of enabling an order under this section to have full effect.
- (3) The Tribunal may impose such conditions as it considers appropriate when making an order under this section.
- (4) The Tribunal may make an interim order under this section pending final determination of a claim, if it appears to the Tribunal desirable to do so.

72A Power of Tribunal to award interest

- (1) When the Tribunal orders on a retail tenancy claim or an unconscionable conduct claim that a person pay money to another person, the Tribunal may order that there is to be included, in the amount ordered to be paid, interest at a specified rate on the whole or any part of that amount for the whole or any part of the period between when the cause of action arose and when the order takes effect.
- (2) If the whole or part of an amount claimed under a retail tenancy claim or an unconscionable conduct claim is paid during proceedings in the Tribunal on the claim, prior to or without an order for payment being made in respect of the claim, the Tribunal may order that interest be paid at a specified rate on the whole or any part of the money paid for the whole or any part of the period between when the cause of action arose and the date of the payment.
- (3) The rate of interest specified by the Tribunal under this section must not exceed the rate at which interest is payable on a judgment debt of the District Court.
- (4) This section does not:
 - (a) authorise the giving of interest on interest, or
 - (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise, or

(c) affect the damages recoverable for the dishonour of a bill of exchange.

- (5) On a claim for the payment of money, the Tribunal may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order.
- (6) For the purposes of subsection (5), **appropriate settlement sum** is a sum offered by a party in settlement of a claim for the payment of money where the amount ordered to be paid (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. Subsection (5) does not prevent an award of interest for the period before the settlement offer is made.

73 Monetary limit on Tribunal's jurisdiction

The Tribunal has no jurisdiction to make an order or orders in respect of a particular retail tenancy claim or an unconscionable conduct claim if the total of:

- (a) the amount or amounts (if any) of money to be paid, and
 - (b) the amount or amounts (if any) of money to be declared not to be due or owing, and
 - (c) the value or values (if any) of the work to be done or the services to be performed,
- under or by virtue of the order or orders would exceed \$300,000 or such other amount as may be prescribed by the regulations.

74 Tribunal must attempt to conciliate

- (1) The Tribunal must not make an order in respect of a retail tenancy claim or an unconscionable conduct claim that is before it unless it has brought, or used its best endeavours to bring, the parties to the claim to a settlement acceptable to all of them.
- (2) For that purpose, the Tribunal may adjourn the hearing of a claim to enable the dispute or matter concerned to be referred to the Registrar under Division 2 for mediation of the dispute or matter.
- (3) If such a settlement is reached, the Tribunal must make an order under this Division that gives effect to the settlement to the extent permitted by this Division.
- (4) Part 4 of Chapter 6 of the [Administrative Decisions Tribunal Act 1997](#) does not apply to a retail tenancy claim or an unconscionable conduct claim that may be made to the Tribunal under this Act.

75 Removal of court proceedings to the Tribunal

- (1) If civil proceedings pending in a court involve a retail tenancy dispute, the court must on the application of any party to the proceedings transfer the proceedings (or so much of the proceedings as involve such a dispute) to the Tribunal to be dealt with as

a claim under this Division, but only if the court is satisfied that:

(a) the dispute is such as may effectively be dealt with as a claim under this Division and that it is appropriate that the dispute be dealt with by the Tribunal, and

(b) the interests of justice do not require that the matter be dealt with by the court.

- (2) In determining whether or not it is appropriate that a matter be dealt with by the Tribunal, a court is to have regard to the general principle that retail tenancy disputes should be dealt with by the Tribunal rather than by a court.
- (3) Proceedings are taken to involve a retail tenancy dispute if any issue in dispute in the proceedings involves a liability or obligation with which a retail tenancy dispute is concerned.
- (4) This section does not prevent a court from granting urgent relief of an interlocutory nature where it is in the interests of justice to do so.
- (5) This section does not apply to proceedings by way of an appeal.
- (6) A court may make such ancillary orders as it considers necessary for the purpose of enabling an order under this section for the transfer of proceedings to the Tribunal to have full effect.

76 Jurisdictional overlap

- (1) If a retail tenancy claim or an unconscionable conduct claim has been lodged with the Tribunal under this Part and at the time it was lodged no issue arising under the claim was the subject of a dispute in civil proceedings pending before a court, a court has no jurisdiction to hear or determine such an issue in civil proceedings, unless:
- (a) the claim lodged with the Tribunal, or the part of that claim to which the issue relates, is withdrawn or is dismissed for want of jurisdiction, or
- (b) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of the Tribunal made in respect of the claim on the ground that the Tribunal had no jurisdiction to hear and determine the issue.
- (2) If a retail tenancy claim or an unconscionable conduct claim has been lodged with the Tribunal under this Part and at the time it was lodged an issue arising under the claim was the subject of a dispute in civil proceedings pending before a court, the Tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue, unless:
- (a) those proceedings, or the part of the proceedings relating to the issue, are or is transferred to the Tribunal by the court concerned, or
- (b) those proceedings, or the part of the proceedings relating to the issue, are or is

withdrawn or dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits, or

(c) a court of record has, on a judicial review, quashed or declared invalid those proceedings or that part of those proceedings or any order, judgment or decision made in those proceedings in relation to the issue, on the ground that the first-mentioned court had no jurisdiction to hear and determine the issue.

- (3) If a retail shop lease provides that a dispute be submitted to arbitration, it is competent for a retail tenancy claim or an unconscionable conduct claim involving that dispute to be lodged with the Tribunal under this Part unless all steps necessary to secure arbitration of the dispute have been taken.
- (4) If a retail tenancy claim or an unconscionable conduct claim has been lodged with the Tribunal, any provision of a retail shop lease that provides for the submission of a dispute with which the claim is concerned to arbitration is of no effect in relation to the dispute.

76A Removal of proceedings to Supreme Court

- (1) A party to proceedings before the Tribunal for an unconscionable conduct claim may apply to the Tribunal to have the proceedings transferred to the Supreme Court.
- (2) The Tribunal must transfer the proceedings if the Tribunal is satisfied that:
 - (a) the nature of the claim is such that it may be more effectively and appropriately dealt with by the Supreme Court, and
 - (b) the interests of justice do not require the matter to be continued to be dealt with by the Tribunal.
- (3) The Supreme Court has jurisdiction to hear and determine proceedings for an unconscionable conduct claim transferred to it under this section and may make any orders and do anything that the Tribunal may do in determining an unconscionable conduct claim.
- (4) The Supreme Court may exercise all the functions that are conferred or imposed by or under this or any other Act on the Tribunal to determine the unconscionable conduct claim.

77 Appeals

- (1) A party to any proceedings (other than a party to proceedings for an unconscionable conduct claim) in which the Tribunal makes an order or other decision under this Act may appeal to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#).
- (2) A party to any proceedings for an unconscionable conduct claim may appeal to the

Supreme Court, on a question of law, against any decision of the Tribunal in those proceedings.

- (3) Sections 120 and 121 of the *Administrative Decisions Tribunal Act 1997* apply to an appeal to the Supreme Court under subsection (2) in the same way as they apply to an appeal to the Supreme Court, on a question of law, against a decision of the Appeal Panel.
- (4) A party to any proceedings for an unconscionable conduct claim may appeal to the Supreme Court, with the leave of the Supreme Court, for a review of the merits of a decision by the Tribunal in those proceedings.
- (5) Sections 115 and 116 of the *Administrative Decisions Tribunal Act 1997* apply to an appeal to the Supreme Court under subsection (4) in the same way as they apply to appeals to the Appeal Panel under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* that extend to a review of the merits of an appealable decision.
- (6) If proceedings relate partly to a retail tenancy claim and partly to an unconscionable conduct claim, subsections (2)–(5) apply to those proceedings.
- (7) An appeal to the Supreme Court by a person under this section must be made:
 - (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
 - (b) within such further time as the Supreme Court may allow.

77A Tribunal may award costs

The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application made under this Part.

77B Assessors

Part 5 of Chapter 2 of the *Administrative Decisions Tribunal Act 1997*, and section 74 of that Act, insofar as it relates to assessors, do not apply to a claim that may be made to the Tribunal under this Act.

77C Right of appearance

- (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or may be represented by a lawyer or other agent.
- (2) This section applies despite the provisions of section 71 of the *Administrative Decisions Tribunal Act 1997*.

Part 9 Ancillary interpretation provisions

78 Interpretation based on industry practice

In the interpretation of this Act, a court (as defined for the purposes of Part 8) is to have regard to accepted practices and interpretations within the industry concerning the leasing of retail shops.

78A Meaning of “the Act” in leases

A retail shop lease is taken to include provision to the effect that a reference in the lease to **the Act** is a reference to the [Retail Leases Act 1994](#), except in so far as the context or subject-matter otherwise indicates or requires.

79 Leases partly for retail shops and partly for other premises

If a retail shop lease applies to a retail shop as well as to other separate or adjoining premises that are not a retail shop, this Act applies to the lease only to the extent that the lease is a lease of a retail shop.

80 Meaning of “renewal” of lease

A reference in this Act to the renewal of a retail shop lease (**the current lease**) is a reference to the lessor and the lessee under the current lease entering into a new retail shop lease for the retail shop to which the current lease relates (whether or not on the same terms as the current lease).

Part 9A Sydney (Kingsford-Smith) Airport

80A Application

(1) This Part applies only in respect of premises at a passenger terminal at Sydney (Kingsford-Smith) Airport as described in the [Airports Regulations 1997](#) under the [Airports Act 1996](#) of the Commonwealth.

(2) In this Part:

Airport means Sydney (Kingsford-Smith) Airport as described in the [Airports Regulations 1997](#) under the [Airports Act 1996](#) of the Commonwealth.

Airport passenger terminal means a passenger terminal at the Airport.

airside premises means premises wholly within the part of the international passenger terminal of the Airport to which access is limited to the following persons:

(a) a person who holds a valid security identification card or a valid visitor identification card (within the meaning of Division 7 of Part 7 of the [Air Navigation Regulations 1947](#) of the Commonwealth),

- (b) a person under the supervision of a person who holds such a valid security identification card or valid visitor identification card,
- (c) a person who is authorised by law to have access to restricted areas at the Airport,
- (d) a person who holds a boarding pass.

80B Non-retail premises exempted

- (1) Premises at an Airport passenger terminal used wholly or predominantly for the carrying on of a business are exempt from the operation of this Act except for premises used wholly or predominantly for the carrying on of any of the following businesses:
 - (a) a business specified in Schedule 1,
 - (b) a business that is a bank, a provider of financial services or a medical centre in each case located within a retail precinct (being an area of an Airport passenger terminal that has been designated by the operator of the terminal for use primarily for retail purposes).
- (2) Premises at an Airport passenger terminal that are used wholly or predominantly for, or that are a site for, business centres and lounges, booths and counters for purposes associated with duty free docket plucking, commercial offices, check-in counters, airline lounges, currency exchange outlets, tax refund booths, information booths, free internet facilities, storage facilities including duty free storage, government offices (such as for customs and quarantine or police), advertising, telephone booths, luggage lockers, baggage trolley operations, airline sales desks, mobile cart operations, electronic accommodation booking units, vending units, creches and children's play areas are, for the purposes of subsection (1), taken to be premises used wholly or predominantly for the carrying on of a business.

80C Leases in master concessions over 1,000 square metres exempted

- (1) This Act does not apply to a lease of premises at an Airport passenger terminal if:
 - (a) the premises form part of a master concession that has an aggregate lettable area of 1,000 square metres or more, and
 - (b) the lease is a head lease under the master concession, and
 - (c) the premises are used wholly or predominantly for carrying on the business of the supply of food and beverages or the supply of products that are duty free or tax free.
- (2) Premises at an Airport passenger terminal that are all leased to the same lessee comprise a **master concession** and the leases to that lessee are the **head leases**

under that master concession.

- (3) The **aggregate lettable area** of a master concession is the aggregate of the lettable areas of the premises that comprise the master concession.

80D Further entitlement to withhold consent to assignment

For the purposes of section 34, a lessor of premises at an Airport passenger terminal is taken not to have engaged in any of the activities described in section 34 (1) (a)–(f) because of anything done or omitted to be done by the lessor wholly or predominantly for any one or more of the following purposes:

- (a) airport safety,
- (b) airline safety,
- (c) airport security,
- (d) airline security,
- (e) satisfying regulatory requirements.

80E Exemption from section 39

For the purposes of section 39, the lessor under a retail shop lease of airside premises is entitled to withhold consent to the assignment of the lease if the proposed assignee of the lease has inferior skills for competing in the international airport retail market.

80F Exemption from section 50

Section 50 does not apply in respect of a lease of airside premises.

Part 10 General

81 Extension of term—effect on [Real Property Act 1900](#)

- (1) The extension of the term of a retail shop lease by operation of a provision of this Act is of no effect for the purposes of the [Real Property Act 1900](#) unless and until a lease is registered under that Act which gives effect to the extension of term, or the variation of a lease that is already registered under that Act is registered to give effect to the extension of term.
- (2) The Registrar-General is not bound to inquire into or to recognise any increase or alleged increase in the term of a retail shop lease by operation of a provision of this Act.
- (3) The lessor under a retail shop lease the term of which is extended by operation of a provision of this Act is bound, at the request of the lessee:
 - (a) to execute a lease in the approved form for the purposes of the [Real Property Act](#)

1900 to enable registration of the lease under that Act (with its term so extended) if the lease is not already so registered, and

- (b) to enter into such variation of the lease as may be necessary to give effect to the extension of term if the lease is already registered under that Act, and to obtain all necessary consents, for the purposes of the registration under that Act of the variation of lease.

82 Exemptions from Act

The regulations may exempt from the operation of this Act or any specified provision of this Act any specified person, retail lease or retail shop or any specified class of persons, retail leases or retail shops, either unconditionally or subject to conditions.

83 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

84 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

84A Savings and transitional provisions

Schedule 3 has effect.

85 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

86 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 7 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 7 years.

Schedule 1 Retail shop businesses

(Section 3)

Antique shops

Art galleries
Art supplies shops
Arts and crafts shops
Barbecue equipment shops
Barbers
Beauticians
Beauty therapists
Beauty shops
Beach wear shops
Beer, wine and spirit shops (except where goods are for consumption on the premises)
Bicycle shops
Bicycle accessories shops
Biscuit bar shops
Bookshops
Boot and shoe repairers
Bridal wear sales and hire shops
Building supplies shops
Business machines and equipment shops
Butcher shops
Cake shops
Camping equipment shops
Cards shops
Carpet shops
Cigarette shops
Clock shops
Coins and coin collections shops
Confectionery shops
Convenience food shops
Cookie shops
Copper fitting shops
Cosmetics shops
Costumes and formal wear hire shops
Curtain shops
Delicatessen shops
Department stores
Dinnerware shops
Disposals shops
Drapery shops
Dry cleaners
Duty free shops
Electrical appliance shops
Electronic equipment and supplies shops
Engravers
Equestrian wear shops
Equipment hire shops
Fast food shops
Fast-photo processors
Floor covering shops

Florist shops
Flower shops
Fruit and vegetable shops
Fruit juice shops
Furniture shops
Games and hobbies shops
General stores
Gift shops
Gift-wrapping shops
Grocery shops
Greengrocer shops
Haberdashery shops
Hairdressers
Hardware shops
Health food shops
Hearing aid shops
Hot bread kitchen shops
Hot water system shops
Household appliance shops
Household fixtures and fittings shops
Ice cream shops
Interior decoration shops
Jewellery shops
Key cutting shops
Kitchenware shops
Leather goods shops
Lighting shops
Linen shops
Lingerie shops
Lottery agencies
Manchester shops
Martial arts supplies shops
Mixed business shops
Motor vehicle and motor cycle accessories shops (excluding tyre shops and batteries shops)
Music shops
Newsagency shops
Nick-nack shops
Nut bar shops
Optometrists
Organ shops
Paint and paper shops
Pastry shops
Pet shops
Pharmacy shops
Photographic equipment and supplies shops
Picture frames shops
Plumbing supplies shops
Pools and spas shops

Poultry shops (whether fresh or frozen poultry or both fresh and frozen poultry)
Precious stones shops
Prints and posters shops
Restaurants, cafeterias, coffee lounges and other eating places
Rock shops
Rubber stamp supply shops
Seafood shops
Second-hand goods shops
Shoe shops
Shops selling or engaged in providing any 1 or more of the following goods or services in relation to men and boys:

accessories, caps, clothing, clothing alterations, sunshades

Shops selling or engaged in providing any 1 or more of the following goods or services in relation to women, girls and infants:

accessories, baby wear, bags, caps, clothing, clothing alterations, sunshades

Shops selling any 1 or more of the following goods:

cassettes, musical instruments, prerecorded tapes, records

Silverware shops
Sleepware shops
Smallgoods shops
Snack bars
Soft drink shops
Soft furnishing shops
Souvenir shops
Sporting goods shops
Stamps and stamp collection shops (whether for purchase or sale or both)
Stationery shops
Supermarkets
Surfboard shops
Surfing accessories shops
Takeaway food shops
Television, video equipment and other household appliances hire shops
Tobacconists shops
Toy shops
Umbrella shops
Underwear shops
Variety stores
Video tape and prerecorded music libraries
Vitamin shops
Wall decorations shops
Watch shops
Writing materials shops
And other business as may from time to time be prescribed by the regulations.

Schedule 2

(Sections 11, 11A)

Lessor and lessee disclosure statements**Part 1 Lessor's disclosure statement****Advice to lessees**

- 1 Before signing agreements to a lease or leases, lessees should ensure they fully understand the documents.
- 2 If there is any doubt, lessees should seek independent legal advice.

Note.

If there is insufficient space on this form please attach additional sheets.

Tenancy details

Address of Shop/Shop No	Lettable Area (sq m)	
Permitted Use of Shop		
Lease Period / /19 to / /19	Options No Yes	Option Periods / /
Finishes, fixtures, fittings, equipment and services to be provided by the lessor. Lessee has to pay for the finishes, fixtures, fittings, equipment and services to be provided by the lessor: yes/no If yes, to what extent: Finishes, fixtures, fittings, equipment and services to be provided by the lessee.		
Hours of access to shop outside trading hours.		
Date on which shop will be available for occupation by the lessee.		
Lessor's requirements as to quality and standard of fittings in shop. Rent: Method for Calculating Rent: 1. Commencement Date 2. Formula 3. Rent Reviews Frequency Nature		

Outgoings to be paid by the lessee

DETAILS OF OUTGOINGS	Estimate \$ p.a.	DETAILS OF OUTGOINGS	Estimate \$ p.a.
Air Conditioning/ Ventilation		Audit Fees	
Building Intelligence & Emergency Systems		Car Parking	

Child Minding		Cleaning	
Electricity		Energy Management Systems	
Fire Protection		Gardening	
Gas & Oil		Insurance	
Land Tax		Lifts and escalators	
Local Government rates and charges		Management Costs	
Pest Control		Public Address/Music	
Repairs and Maintenance		Sinking Fund for Repairs and Maintenance	
Security		Sewage Disposal & Sullage	
Signs		Telephones (Public)	
Uniforms		Water, sewerage and drainage rates and charges	
Others (specify)		Waste disposal and removal	
TOTAL (both columns)			
Formula for apportionment of outgoings if the lessee is not liable for the total amount			
Additional outgoings to be borne by lessee			

Retail shopping centre details

Name of Retail Shopping Centre		
Address of Retail Shopping Centre	Suburb/Town	Postcode
Number of Retail Shops in Retail Shopping Centre	Gross Lettable Area (sq m)	
Parking Facilities at Retail Shopping Centre • Number of bays for customers • Number of bays for lessees		
Facilities and services provided by the lessor		
Changes or developments planned by the lessor for:		
Retail Shopping Centre	<input type="checkbox"/> No	<input type="checkbox"/> Yes Attach details
Surrounding Roads	<input type="checkbox"/> No	<input type="checkbox"/> Yes Attach details
Core trading hours (the times when retail shops in the shopping centre are required to be open for business)		

Tenant mix (attach floor plan showing existing and proposed tenancy mix of the precinct and the location of common areas and kiosks within the precinct)

This arrangement applies as at the date of this statement but may be changed from time to time, subject to agreements or representations details of which are given in this Disclosure Statement.

Tenant Association

No

Yes

Attach details of constitution, voting rights, contributions

Contribution to retail shopping centre advertising and promotion

No Yes

Lessee's contribution \$ per annum

Details as to interest of lessor

Is the Lessor:

Owner of the shop

or

Lessee of the shop

Give details of any rights and obligations of lessor under that lease that may affect the shop.

Details as to agreements or representations

Give details of any other agreements between lessor and lessee, or representations made by lessor or lessee including those relating to exclusivity or limitations on competing uses.

Note.

Section 11A of the [Retail Leases Act 1994](#) requires a lessee's disclosure statement to be provided to the lessor within 7 days (or any agreed further period) of the lessee receiving the lessor's disclosure statement. The lessee may be liable to a penalty for an offence under that Act if the lessee's disclosure statement is not so provided.

Part 2 Lessee's disclosure statement

Advice to the lessor

- 1 The lessee acknowledges that the attached Part 1, Lessor's Disclosure Statement, was received from the lessor prior to entering into the lease.
- 2 The lessor has made available to the lessee a copy of the proposed retail shop lease.
- 3 The lessee has **sought/not sought** independent advice in respect of the commercial terms contained in the Lessor's Disclosure Statement and the obligations contained in the proposed retail shop lease.
- 4 The lessee believes that the lessee will be able to fulfil the obligations contained in the lease, including the payment of the proposed rent, outgoings and other amounts, based on the lessee's own business projections for the business.
- 5 In entering into the retail shop lease, the lessee has relied on the following statements or representations made by the lessor or the lessor agents.

Note.

Matters such as agreements or representations relating to exclusivity or limitations on competing uses, sales or customer traffic should be

detailed.

- 6 Apart from the statements or representations set out above, no other promises, representations, warranties or undertakings (other than those contained in the lease) have been made by the lessor to the lessee in respect of the premises or the business to be carried out on the premises.

Should more space be required please detail on another page.

Signed by or for and on behalf of the Lessee

.....

Date

Schedule 2A

(Section 41)

Assignor's disclosure statement

- 1 The assignor has provided the assignee with the lessor's disclosure statement in respect of the lease together with details of any changes to the information contained in the disclosure statement since the statement was given.
- 2 The assignee has been advised that there are no outstanding notices in respect of the lease.
- 3 The assignee has been advised that there are no outstanding notices from any authority in respect of the retail shop.
- 4 The assignee has been advised that there are/are not any encumbrances on the lease.
- 5 The assignee has been advised that there are/are not any encumbrances on, or outside ownership of, any of the fixtures and fittings within the retail shop.
- 6 The lessor has/has not conferred any rent concessions or other benefits on the assignor during the term of the lease. The concessions and benefits conferred on the assignor are:
 - 7 The assignor has provided to the assignee sales figures and relevant information as to the trading performance of the retail shop for the past three years or for such period as the lease has been in operation if that period is less than three years. The total (aggregate) sales figure for the past 3 years, or such lesser period as the lease has been in operation, is as follows:

(a) (period/year)	\$
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(b) (period/year) \$

(c) (period/year) \$

Signed by or for and on behalf of the Assignor

.....

Date

Signed by or for and on behalf of the Assignee

.....

Date

Schedule 3 Savings and transitional provisions

(Section 84A)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Retail Leases Amendment Act 1997

Retail Leases Amendment Act 1998

Retail Leases Amendment Act 2002

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Retail Leases Amendment Act 1997

2 Meaning of "1997 Amending Act"

In this Part:

1997 Amending Act means the *Retail Leases Amendment Act 1997*.

3 Application of 1997 amendments

Each amendment made by the 1997 Amending Act extends to leases to which this Act applies that were entered into before the commencement of the amendment, subject to the other provisions of this Part.

4 Outgoings statements and reports

Section 28 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 28 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

5 Adjustment of outgoings contributions

The amendment to section 29 made by the 1997 Amending Act does not apply in respect of an outgoings contribution period that ended before the commencement of the amendment.

6 Advertising and promotion statements and reports

Section 55 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 55 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

7 Mediation costs

The amendment to section 66 made by the 1997 Amending Act extends to formal mediation commenced but not completed before the commencement of the amendment.

8 Interest on claims

Section 72A does not apply to a retail tenancy claim lodged with the Commercial Tribunal before the commencement of that section.

Part 3 Retail Leases Amendment Act 1998

9 Meaning of “1998 Amending Act”

In this Part:

1998 Amending Act means the [Retail Leases Amendment Act 1998](#).

10 Application of 1998 amendments

(1) The amendments made by the 1998 Amending Act do not extend:

- (a) to leases in existence when this clause commences, or
- (b) to any lease entered into under an option granted or agreement made before the commencement of this clause, or
- (c) to any lease referred to in paragraph (a) or (b) that is assigned to another person, subject to the other provisions of this Part and section 62A.

(2) Despite subclause (1), the amendments made to Part 8 extend to apply in relation to:

- (a) a retail shop lease or former lease that was entered into before the commencement of the amendments to Part 8, or under an option granted or agreement made before that commencement, and
- (b) a dispute that arose before the commencement of the amendments to Part 8 or that concerns a liability or obligation that arose before that commencement.

11 Relocation

Section 34A, as inserted by the 1998 Amending Act, applies to the relocation of a retail shop, if the shop is situated in a retail shopping centre and the lease is a lease to which section 57 (as in force immediately before its repeal by the 1998 Amending Act) applied immediately before its repeal.

12 Rent decreases

Section 18 (4), as amended by the 1998 Amending Act, extends to leases that were entered into before the commencement of the amendment and to which this Act applies, but only in respect of decreases in rent occurring after that commencement.

Part 4 Retail Leases Amendment Act 2002

13 Recovery by lessor of GST

The substitution of section 22A by the *Retail Leases Amendment Act 2002* does not affect the previous operation of that section (as originally enacted) in relation to the payment by or recovery from a lessee of the amount of any GST payable in respect of the lease before the substitution of that section.

14 Non-specific outgoings

Section 30 (3) does not apply in respect of a liability to contribute towards an outgoing of a lessor that arose before the commencement of that subsection.