

# Retail Leases Act 1994 No 46

[1994-46]



New South Wales

## Status Information

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### Responsible Minister

- Minister for Small Business

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Retail Leases Act 1994 No 46



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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 sections 5 and 6B for the retail shops that are excluded from the operation of this Act,
- \* see sections 6, 6A and 84B 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

(1) In this Act—

**authorised deposit-taking institution** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

**business day** means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State.

**Department** means the Department of Customer Service.

**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.

**lease preparation expenses** means legal or other expenses incurred by the lessor in connection with the preparation or entering into of a retail shop lease including expenses incurred in connection with obtaining the consent of a mortgagee but does not include registration fees under the [Real Property Act 1900](#).

**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.

**lettable area** of a retail shop does not include—

- (a) car parking spaces, or
- (b) storage areas not attached to the retail shop premises where the business of the shop is or is to be carried on.

**licensed conveyancer** means the holder of a licence in force under the [Conveyancers Licensing Act 2003](#).

**listed business** means a business prescribed for the purposes of paragraph (a) of the definition of **retail shop** (including a business for the time being specified in Schedule 1).

**outgoings**—see section 3A.

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

**permanent retail market**—see section 6B.

**premises** includes a defined area (for example, a stall in a market) in a building or

other permanent structure.

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

**retail shop** means premises that—

- (a) are used, or proposed to be used, wholly or predominantly for the carrying on of one or more of the businesses prescribed for the purposes of this paragraph (whether or not in a retail shopping centre), or
- (b) are used, or proposed to be used, for the carrying on of any business (whether or not a business prescribed for the purposes of paragraph (a)) in a retail shopping centre.

**Note 1—**

Sections 5 and 6B limit the retail shops to which this Act applies.

**Note 2—**

Clause 17 of Schedule 3 provides that the businesses specified in Schedule 1 are taken to be prescribed for the purposes of paragraph (a) of this definition until regulations prescribing businesses and repealing Schedule 1 are made.

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

Sections 6, 6A and 84B limit the retail shop leases to which this Act applies.

**retail shopping centre** means a cluster of premises (not being the stalls in a market) 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 listed businesses,
- (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 Development Act 2015](#),
- (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.

**retail specialty shop** means a retail shop referred to in paragraph (a) of the definition of **retail shop**, other than a department store, a supermarket or premises of a kind prescribed as excluded from this definition by the regulations.

**Secretary** means the Secretary of the Department.

**specialist retail valuer** means—

- (a) for the purposes of a valuation under this Act relating to a retail specialty shop in a retail shopping centre having both—
- (i) 20 or more retail specialty shops, and
  - (ii) a total of lettable areas of retail specialty shops that exceeds 1,000 square metres,
- a valuer having not less than 5 years' experience in valuing retail specialty shops in shopping centres of that kind, or
- (b) for the purposes of a valuation under this Act relating to any other retail specialty shop or any other retail shop, a valuer having not less than 5 years' experience in valuing retail shops.

**strata levies** means contributions levied under the [Strata Schemes Management Act 2015](#) or any other Act relating to strata schemes.

**Tribunal** means the Civil and Administrative Tribunal.

**Note—**

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A reference in this Act to the lessor or the lessee, in the context of a provision that has application to a proposed retail shop lease, includes a reference to the proposed lessor or proposed lessee.

### **3A Definition of “outgoings”**

- (1) In this Act, **outgoings** means the following—
- (a) a lessor's outgoings on account of expenses attributable to the management, operation, maintenance or repair of the retail shop building or land,

- (b) a lessor's outgoings on account of rates, taxes, levies, premiums or charges payable by the lessor because the lessor is the owner or occupier of the retail shop building or land 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 the retail shop building or land,
- (c) fees charged by a lessor for services provided by the lessor in connection with the management, operation, maintenance or repair of the retail shop building or land.

(2) In this section, **retail shop building or land** means the building in which the retail shop is located or (in the case of a retail shop in a retail shopping centre) any building in the retail shopping centre, and includes any areas used in association with any such building.

### **3B Application of Act to agreements to lease**

- (1) This Act applies to and in respect of an agreement to lease in the same way as it applies to and in respect of a lease.
- (2) When a lease (the **resulting lease**) is entered into pursuant to an agreement to lease—
  - (a) a lessor's disclosure statement given for the agreement to lease is deemed to have been given for the resulting lease, and
  - (b) a separate lessor's disclosure statement is not required or permitted to be given for the resulting lease.

### **4 Notes**

Notes included in this Act except where occurring in Schedules 2 and 2A 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—

- (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) premises used only for any one or more of the purposes listed in Schedule 1A (Excluded uses),

- (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) (Repealed)
- (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 premises at airports.

## **6A Application of Act to short-term leases**

- (1) **Generally, Act not to apply to short-term leases** Subject to subsection (2), this Act does not apply to a lease of a retail shop 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).
- (2) **Exception for successive, extended or renewed leases for more than one year** If the lessee has been in possession or entitled to be in possession of the retail shop without interruption for more than one year (whether by means of a series of 2 or more leases or by means of an extended or renewed lease or leases, or by any combination of those means), this Act applies to—
  - (a) the lease on and from the day on which the lessee has been in possession or entitled to be in possession of the shop for more than one year, and
  - (b) any succeeding lease or leases of the shop to the lessee, where possession or entitlement to possession is not interrupted.
- (3) **Operation of provisions for disclosure statements** Sections 11–12A do not apply to the lease referred to in subsection (2) (a), but apply to any succeeding lease referred to in

subsection (2) (b).

(4) (Repealed)

(5) **Operation of other provisions** The regulations may provide that, if this Act applies to a lease because of subsection (2), specified provisions of this Act (other than section 11 and Part 2A) do not apply to or in respect of the lease or apply with prescribed modifications.

(6) **Certain interruptions do not break continuity** The regulations may provide that interruptions for a prescribed period or of a prescribed kind are to be disregarded for the purposes of this section.

(7) **Holding over** For the purposes of subsection (1), a provision for holding over by the lessee at the end of the term of the lease does not confer a right on the lessee to extend the lease if it operates at the discretion of each of the lessee and the lessor.

(8) **Assignment** This section has effect in relation to a lease whether or not it is assigned to another person, but if it is assigned the period of possession or entitlement to possession by the assignee is taken to include any period of possession or entitlement to possession by the assignor and any previous assignor.

## **6B Application of Act to retail shops in markets**

(1) This Act does not apply to a retail shop that is a stall in a market unless the market is a permanent retail market.

(2) A **permanent retail market** is an assemblage of stalls, styled or described as a market, that are predominantly used for retail businesses and that operate in a building or other permanent structure the sole or dominant use of which (or of the part in which the market operates) is the operation of the market.

### **Note—**

A stall in a permanent retail market is not a retail shop to which this Act applies unless it satisfies the definition of **retail shop** in section 3.

(3) The regulations may make provision for or with respect to modifying the operation of this Act in its application to a retail shop in a permanent retail market.

(4) Regulations under this section may include provision for a mandatory code of conduct for lessors and lessees under leases of retail shops in a permanent retail market (including provision for sanctions for non-compliance with the mandatory code).

## **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 Entering into a lease**

### **9 Copy of lease and retail tenancy guide to be provided at negotiation stage**

- (1) 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—
    - (i) a copy of the proposed lease, and
    - (ii) if the regulations so provide—a copy of a retail tenancy guide prescribed by or identified in the regulations,  
  
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.

- (2) The copy of the retail tenancy guide to be made available to a prospective lessee may be or be a copy of—
  - (a) the officially printed guide, or
  - (b) a version of the guide printed from a website of a government department or



authority or from a website identified in the regulations.

## 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 Lessor's disclosure statement

- (1) At least 7 days before a retail shop lease is entered into, the lessor must give the lessee a disclosure statement for the lease (the ***lessor's disclosure statement***) that complies with the following requirements—
  - (a) the lessor's disclosure statement is to be in writing and is to be in or to the effect of Parts A and B of the form in Schedule 2 (the ***prescribed form***),
  - (b) the lessor's disclosure statement is to include Part B of the prescribed form for the purposes of Part B being completed by the lessee and provided to the lessor as the lessee's disclosure statement (under section 11A),
  - (c) the lessor's disclosure statement must contain the information and be accompanied by the material that is required to complete or accompany Part A of the prescribed form (but only to the extent that is relevant to the lease concerned),
  - (d) the form of the lessor's disclosure statement is not required to comply strictly with the prescribed form (including its layout) so long as it is substantially to the same effect as the prescribed form.

Maximum penalty—50 penalty units.

**Note—**

Because the lessor's 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.
- (2A) If the lessee terminates the lease in accordance with this section, the lessee is entitled to recover compensation from the lessor for costs reasonably incurred by the lessee in connection with the lessee entering into the lease, including compensation for expenditure by the lessee in connection with the fit-out of the retail shop.
- (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's disclosure statement may be amended with the agreement in writing of the lessor and the lessee before or after the lease is entered into and any such amendment has effect from the date specified in the agreement (which can be a date before the agreement is made).

**Note—**

The Tribunal also has power to order the rectification of a lessor's disclosure statement. See section 72AB.

### **11A Lessee's disclosure statement**

- (1) No later than 7 days after receiving the lessor's disclosure statement from the lessor (or within such longer period as may be agreed with the lessor), the lessee must give the lessor a statement in writing (as the **lessee's disclosure statement**) that is in or

to the effect of Part B of the form set out in Schedule 2 and completed as required by that Part.

Maximum penalty—50 penalty units.

- (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) (Repealed)
- (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**

- (1) A provision of a retail shop lease that requires the lessee to pay or contribute towards the cost of providing any finishes, fixtures, fittings, equipment or services in or for the shop 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.
- (2) To remove doubt, this section does not apply to outgoings.

## **12A Lessee not required to pay undisclosed outgoings**

- (1) The lessee under a retail shop lease is not liable to pay any amount to the lessor in respect of any outgoings unless the liability to pay the amount was disclosed in the lessor's disclosure statement for the lease.
- (2) If the lessor's disclosure statement provided an estimate of the amount of any outgoing and the estimated amount is less than the actual amount, the following provisions apply—
  - (a) if there was no reasonable basis for the estimate when the lessor's disclosure statement was given, the lessee's liability for any payment in respect of the outgoing is to be determined on the basis of the amount estimated (instead of the actual amount) and is to be reduced accordingly,
  - (b) if the lessee's liability to pay an amount (the **actual amount**) in respect of an outgoing is reduced because there was no reasonable basis for an estimate of the outgoing, any liability of the lessee in respect of any subsequent increase in the outgoing is to be reduced in the same proportion as the actual amount was reduced.
- (3) This section does not apply to an outgoing in the nature of a tax, rate or levy that is imposed by or under an Act after the lessor's disclosure statement is given and that

was not an outgoing of the lessor when the lessor's disclosure statement was given.

- (4) A lessee is entitled to recover from the lessor any amount paid to the lessor that the lessee was not liable to pay because of this section.
- (5) 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.

### **13 Costs before fit-out**

- (1) This section applies if a lessee of a retail shop is liable to pay an amount for, or associated with, any works carried out by or on behalf of the lessor (before or after the lease is entered into) to enable the proposed fit-out of the shop by the lessee.
- (2) The maximum amount of the costs of the works, or a basis or formula with respect to those costs, is to be agreed in writing by the lessor and lessee before the lease is entered into.
- (3) The lessee is not liable to pay an amount in respect of the works that is more than the agreed maximum amount.
- (4) (Repealed)

### **13A Tenancy fit-out statement or guide**

- (1) If a prospective lessor of a retail shop in a retail shopping centre requires a particular standard of construction for fit-outs to be carried out by the lessee, the relevant information relating to the standard must be contained in a tenancy fit-out statement (which may be described as a tenancy fit-out guide)—
  - (a) accompanying the lessor's disclosure statement, or
  - (b) accompanying or included in the lease or any agreement for the lease of the shop.
- (2) The lessee is not liable to carry out any fit-out of the kind referred to in subsection (1) to the extent that it is not covered by the tenancy fit-out statement.
- (3) This section does not affect the operation of section 38.

### **14 Key-money and lease preparation expenses prohibited**

- (1) A person must not, as lessor or on behalf of the lessor, seek or accept the payment of key-money or lease preparation expenses 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 or lease preparation expenses 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) (Repealed)
  - (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 security bond or other bond 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.
- (4) This section does not prevent a person, as lessor or on behalf of the lessor, from requiring payment by a prospective lessee or the lessee of a reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment to a proposed lease that was requested by or on behalf of the prospective lessee or the lessee, other than—
- (a) an amendment to insert or vary the particulars of the lessee, the rent or the term, or
  - (b) an amendment to remedy a failure by or on behalf of the lessor to include or omit a term of the proposed lease that was, at the time of the failure to include or omit, agreed between the lessor and the proposed lessee or lessee to be included in or omitted from the proposed lease, or
  - (c) an amendment requested before the lessor is given a lessee's disclosure statement under section 11A.
- (5) If a prospective lessee or the lessee is liable to pay a reasonable sum referred to in

subsection (4), the lessor must provide the prospective lessee or lessee with a copy of any account presented to the lessor in respect of those expenses. The prospective lessee or lessee is not required to make any such payment until the lessor has complied with this requirement.

### **15 Lessee to be provided with executed copy of lease**

- (1) A retail shop lease is taken to include a provision to the effect that the lessor must provide the lessee with an executed copy of the lease within 3 months after the lease is returned to the lessor or the lessor's lawyer or agent following its execution by the lessee.
- (2) That 3-month period is to be extended for any delay attributable to the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent).

### **16 Certain leases must be registered**

- (1) If a retail shop lease is for a term of more than 3 years or if the parties to the lease have agreed that the lease is to be registered, the lessor must lodge the lease for registration in accordance with the [Real Property Act 1900](#) within 3 months after the lease is returned to the lessor or the lessor's lawyer or agent following its execution by the lessee.

Maximum penalty—50 penalty units.

- (2) The 3-month period within which a lease must be lodged for registration is to be extended for any delay attributable to—
  - (a) the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent), or
  - (b) requirements arising under the [Real Property Act 1900](#) that are beyond the control of the lessor.
- (3) For the purposes of this section, the term of a retail shop lease includes any term for which the lease may be extended or renewed at the option of the lessee.

**Note—**

For example, a retail shop lease is for a term of more than 3 years if it is for a term of 1 year with an option to renew for a further term of greater than 2 years.

- (4) This section does not affect the operation of the [Real Property Act 1900](#).

## **Part 2A Security bonds**

### **Division 1 Preliminary**

## 16A Definitions

(1) In this Part—

**approved form** means a form approved by the Secretary.

**authorised officer** means—

- (a) the Secretary, or
- (b) a person appointed by the Secretary to be an authorised officer—
  - (i) for the purposes of this Part generally, or
  - (ii) for the purposes of a particular provision of this Part in which the expression is used.

**prescribed proceedings** means—

- (a) proceedings in a court (other than a prosecution) or before the Tribunal in relation to any matter which, under the terms or conditions of a lease, could, but for this Part, have given rise to a claim in relation to a security bond deposited or paid in accordance with those terms or conditions, or
- (b) mediation of a retail tenancy dispute concerning such a claim.

**security bond**, in relation to a lease or proposed lease, means an amount of money that—

- (a) was (before or after the lease became, or the proposed lease becomes, binding on the parties) deposited with or paid to—
  - (i) the lessor, or
  - (ii) another person, in accordance with the directions of the lessor or the terms or conditions of the lease or proposed lease, or
  - (iii) another person acting on behalf of the lessor, and
- (b) was so deposited or paid in such a way that the effect is to secure, otherwise than by payment of rent in advance, the lessor against any failure by a lessee to comply with any terms or conditions (irrespective of whether those terms or conditions are related to payment of rent or not) applying to or in connection with the lease or proposed lease.

(2) An amount of money deposited with or paid to a person as referred to in paragraph (a) (ii) or (iii) of the definition of **security bond** in subsection (1) in respect of a lease is, for the purposes of section 16C, taken to be deposited with or paid to the lessor under that lease.

- (3) For the purposes of the definition of **security bond** in subsection (1), where—
- (a) money is deposited or paid as referred to in that definition in relation to a proposed lease, and
  - (b) a lease between the parties, and of the premises, to which the proposal relates is entered into,
- the lease entered into is taken to be the lease proposed at the time the money is deposited or paid, whether or not the lease entered into differs from the lease proposed at that time.

### **16B Guarantees and other forms of security**

- (1) A retail shop lease is taken to include a provision to the effect that the lessor is not entitled to unreasonably refuse to accept a guarantee from an authorised deposit-taking institution in satisfaction of any requirement to provide a security bond or other bond or a third party guarantee for the performance of the lessee's obligations under the lease.
- (2) Security provided otherwise than in the form of a security bond is not otherwise subject to the requirements of this Part (except section 16BA).

### **16BA Return of bank guarantees**

- (1) A lessor who receives a bank guarantee for a lease must return the original bank guarantee to the lessee within 2 months (the **maximum return period**) after the lessee completes performance of the obligations under the lease for which the bank guarantee is provided as security.  
  
Maximum penalty—50 penalty units.
- (2) A lessor is not required to return a bank guarantee if it has expired or been cancelled.
- (3) The maximum return period does not run for any period during which the matter of the lessor's entitlement to claim or realise the bank guarantee is the subject of proceedings pending in a court or the Tribunal.
- (4) A lessor who is unable to return an original bank guarantee is able to satisfy the requirement under this section or an order of the Tribunal to return the bank guarantee by providing any consent or release necessary to have the bank guarantee cancelled.
- (5) A lessor is liable to pay to the lessee compensation for—
  - (a) any loss or damage suffered by the lessee as a result of any failure by the lessor to return a bank guarantee in compliance with this section or an order of the Tribunal, and



(b) reasonable costs incurred by the lessee in connection with the cancellation of a bank guarantee because the lessor was unable to return the original bank guarantee in compliance with this section or an order of the Tribunal.

(6) In this section, **bank guarantee** means a guarantee from an authorised deposit-taking institution in satisfaction of any requirement to provide a security bond or other bond or a third party guarantee for the performance of the lessee's obligations under the lease.

## **Division 2 Deposit of security bonds with Secretary**

### **16C Deposit of security bonds with Secretary**

- (1) This section applies where a lessor receives a security bond for a lease or a proposed lease on or after the commencement of this section.
- (2) The lessor must deposit with the Secretary an amount of money equivalent to the amount of the security bond not later than 20 business days (or, where some other period is prescribed for the purposes of this subsection, that other period) after—
  - (a) the date of receipt of the security bond, or
  - (b) the date on which the lease became, or the proposed lease becomes, binding on the parties,whichever is the later.
- (3) If a lessor's agent receives on behalf of the lessor a security bond for a lease or proposed lease, subsection (2) extends to require the agent to deposit with the Secretary an amount of money equivalent to the amount of that security bond and so extends as if a reference in that subsection to a lessor were a reference to the agent.
- (4) The Secretary may, without affecting the obligation imposed on a lessor or lessor's agent under this section, refuse to accept any amount tendered for deposit under subsection (2) that is not accompanied by a notification in or to the effect of the approved form duly completed.
- (5) If a security bond that is (pursuant to section 82) exempt from the operation of subsection (2) subsequently ceases to be exempt, this section applies to the bond as if it had been received when it ceased to be exempt.
- (6) The Secretary, by instrument in writing, may, in any particular case or class of cases, extend the period prescribed by or under subsection (2).
- (7) Subsection (2) has effect despite the terms of a lease, any rule of law or the provisions of any other Act.

### **16D Deposit of existing security bonds with Secretary**

- (1) If a lessor under a lease or proposed lease to which this Act does not apply received a deposit or payment of money as a security bond and this Act subsequently becomes applicable to the lease (because of the operation of section 6A or for any other cause) this Part then applies to the security bond and the **relevant day** is the day when this Act becomes applicable to the lease.
- (2) The lessor, or the lessor's agent, must deposit with the Secretary within 3 months after the relevant day an amount of money equivalent to the current balance of the amount deposited or paid.
- (3) The **current balance** is the amount of money deposited or paid, together with any interest or similar payments, and less—
  - (a) any amount that—
    - (i) has been deducted by way of fees or charges by an authorised deposit-taking institution, or
    - (ii) has been refunded or become refundable, or
    - (iii) has become the property of the lessor, or
    - (iv) has become subject to prescribed proceedings, or
    - (v) is payable to the lessee by way of interest earned, before or during the period referred to in subsection (2), or
  - (b) any amount of a kind prescribed by the regulations.
- (4) The Secretary may, without affecting the obligation imposed on a lessor under subsection (2), refuse to accept any amount tendered for deposit under that subsection that is not accompanied by a notification in or to the effect of the approved form duly completed.
- (5) If a security bond that is (pursuant to section 82) exempt from the operation of subsection (2), subsequently ceases to be exempt, section 16C applies to the bond as if it had been received when it ceased to be exempt, and this section ceases to apply to the bond.
- (6) The Minister, by instrument in writing, may, generally or in any particular case or class of cases, extend the period prescribed by subsection (2).
- (7) Subsection (2) has effect despite the terms of a lease, any rule of law or the provisions of any other Act.

### **16E Provisions in leases relating to security bonds**

- (1) No one (other than the Secretary) is, in respect of any period after the date that an amount of money equivalent to the amount of a security bond is deposited with the Secretary, entitled to receive interest in respect of the bond.
- (2) (Repealed)
- (3) If, but for this Part, a lessor or lessee would have a claim against a security bond under the terms and conditions of a lease for an amount that cannot be recovered under any other provision of those terms and conditions—
  - (a) the lessor may recover from the lessee as a debt an amount equivalent to the amount of the claim that the lessor would have had against that security bond, and
  - (b) the lessee may recover from the lessor as a debt an amount equivalent to the amount of the claim that the lessee would have had against that security bond.

### **Division 3 Payment out of security bonds**

#### **16F Interpretation**

In this Division, a reference to an amount of money, in relation to a lease, is a reference to an amount of money equivalent to the amount of money, or part of the amount of money, as the case may require, held on deposit by the Secretary in respect of that lease.

#### **16G Application for payment**

- (1) An application to the Secretary to pay out an amount of money in respect of a lease may be made—
  - (a) jointly by the lessor and the lessee, or
  - (b) by the lessor alone, or
  - (c) by the lessee alone.
- (2) An application is to be in or to the effect of the approved form and may be made at any time.
- (3) An application by the lessor alone and an application by the lessee alone may, at the discretion of the Secretary, be treated as having been made jointly by the lessor and the lessee, if the applications are substantially the same.

#### **16H Payment on application**

- (1) **Payment on joint application or to other party** If an application under section 16G—
  - (a) is made jointly by a lessor and a lessee under a lease, or

(b) is made by a lessor under a lease who, in that application, directs the Secretary to pay out an amount of money to the lessee, or

(c) is made by a lessee under a lease who, in that application, directs the Secretary to pay out an amount of money to the lessor,

the Secretary must pay out an amount of money as directed in that application.

- (2) **Notice to lessee of application by lessor for payment to lessor** If an application under section 16G is made by a lessor alone under a lease who, in that application, directs the Secretary to pay out an amount of money to the lessor, the Secretary must give notice in writing of the receipt of the application to the lessee.
- (3) **Notice to lessor of application by lessee for payment to lessee** If an application under section 16G is made by a lessee alone under a lease who, in that application, directs the Secretary to pay out an amount of money to the lessee, the Secretary must give notice in writing of the receipt of the application to the lessor.
- (4) **Payment to applicant lessor** If a lessee to whom notice has been given under subsection (2)—
- (a) does not, within 14 days (or, where some other period is prescribed for the purposes of this subsection, that period) after service on the lessee of the notice or the date of posting of the notice, as the case may be, notify the Secretary in writing that the lessee has commenced prescribed proceedings in relation to an amount of money referred to in the notice, or
- (b) does so notify the Secretary, but those proceedings are discontinued,
- the Secretary must pay out that amount to the lessor.
- (5) **Payment to applicant lessee** If a lessor to whom notice has been given under subsection (3)—
- (a) does not, within 14 days (or, where some other period is prescribed for the purposes of this subsection, that period) after service on the lessor of the notice or the date of posting of the notice, as the case may be, notify the Secretary in writing that the lessor has commenced prescribed proceedings in relation to an amount of money referred to in the notice, or
- (b) does so notify the Secretary, but those proceedings are discontinued,
- the Secretary must pay out that amount to the lessee.
- (6) (Repealed)
- (7) **Conflicting applications** If conflicting applications are received, the Secretary may disregard the later or latest application received.

- (8) **Notice: exceptions** Without limiting subsection (7), the regulations may provide that the Secretary need not give notice under subsection (2) or (3) in such circumstances as may be prescribed.
- (9) **Extension of period in particular cases** The Secretary may in any particular case extend the period prescribed by or under subsection (4) or (5).

### **16I Payment after prescribed proceedings**

- (1) If a lessor or lessee under a lease has, within the period prescribed by or under section 16H (4) or (5), commenced prescribed proceedings in relation to the lease and judgment in the proceedings has been entered in or given by a court or a court or the Tribunal has made an order in those proceedings for the payment of money—
  - (a) the Secretary must—
    - (i) on being served with or obtaining a copy of that judgment or order, and
    - (ii) on being satisfied that the judgment or order has not been satisfied and no steps to enforce the judgment or order have been taken under any other Act, pay out an amount of money held by the Secretary on deposit in respect of the lease, as if the Secretary were the person obliged to pay under the judgment or order, or
  - (b) where the Secretary is satisfied that—
    - (i) the judgment has been entered or given, or the order made, and
    - (ii) that judgment or order has been satisfied (other than as provided in paragraph (a)),the Secretary must pay out that amount of money to the person obliged to pay under the judgment or order.
- (2) If mediation of a retail tenancy dispute about a security bond has been successful, the Secretary must pay out in conformity with the resulting agreement an amount of money held by the Secretary on deposit in respect of the lease concerned, and for that purpose the Secretary is entitled to require—
  - (a) a copy of a certificate issued under section 16N (3) setting out the terms of the resulting agreement, or
  - (b) a notice in writing, in a form approved by the Secretary, that is signed by the parties and sets out the terms of the resulting agreement.
- (3) For all purposes, money paid out by the Secretary under subsection (1) is taken to be money paid by the person against whom the judgment was obtained or the order was made.

### **16J Excess not payable**

- (1) This section applies where, in respect of a lease, the Secretary would, but for this section, be required to pay out an amount of money and that amount of money is in excess of the amount of money held on deposit by the Secretary in respect of the lease.
- (2) The Secretary—
  - (a) must refuse to pay out the money, and
  - (b) must treat applications for payment out of the money as having been withdrawn, and
  - (c) must inform the applicants accordingly.
- (3) This section has effect despite any other provision of this Part.

### **16K Appeal rights**

- (1) The Secretary may, after receiving notice of a judgment or order relating to a security bond, pay out money in respect of the judgment or order no earlier than the expiry of the period within which any right of appeal against the judgment or order must be exercised but must not pay money out if an appeal has been lodged.
- (2) If an appeal has been lodged, the Secretary must not pay out money in respect of the judgment or order unless satisfied that the appeal has been withdrawn or dismissed.
- (3) A payment of money by the Secretary in respect of a judgment or order does not prevent an appeal being lodged.

### **16L Withdrawal of application**

If prescribed proceedings have not been commenced in relation to an amount of money held by the Secretary within the period prescribed by or under section 16H (4) or (5)—

- (a) a lessor or a lessee may, at any time before a payment is made in accordance with an application made by the lessor or lessee, withdraw the application, and
- (b) for the purposes of this section, the application is thereupon taken never to have been made.

### **16M (Repealed)**

### **16N Miscellaneous provisions**

- (1) If the Secretary is required to pay out an amount of money to a person under this Part, the Secretary may, instead of paying out the money to that person, pay out or apply the money in accordance with that person's directions.

- (2) For the purposes of this Act, a court or the Tribunal is authorised to issue—
  - (a) a copy of any entry of a judgment or a copy of an order, in each case certified by the proper officer to be a true copy of the entry or order, and
  - (b) where proceedings have been discontinued, a certificate to that effect signed by the proper officer.
- (3) If a mediation of a retail tenancy dispute about a security bond is successful, the mediator or the Registrar may issue a certificate setting out the resulting agreement.

**Note—**

The certificate may be used for the purposes of section 16I.

- (4) No claim other than a claim provided in this Part lies against the Secretary in respect of security bonds deposited with the Secretary.
- (5) This Part applies notwithstanding the terms of any agreement, any rule of law or the provisions of any other Act.

## **Division 4 Enforcement provisions**

### **160 Receipts to be given for security bonds**

- (1) A lessor, or the lessor's agent, receiving money deposited or paid as a security bond must, at the time of receiving the money, give or cause to be given to the person making the deposit or payment a receipt for the money.
- (2) A receipt given under subsection (1) must contain the following particulars—
  - (a) the names of the lessor and lessee,
  - (b) a sufficient identification of the retail shop concerned,
  - (c) the amount of money received,
  - (d) the date the money was received,
  - (e) such other particulars as are prescribed for the purposes of this subsection.
- (3) A lessor, or the lessor's agent, must keep or cause to be kept, in the manner (if any) and for such term (if any) as are prescribed, a copy of each receipt given under this section.

**Note—**

Clause 24 of Schedule 3 provides that, until regulations are made for the purposes of section 160 (3), regulations are taken to include a provision referred to in that clause.

### **16P (Repealed)**

### **16Q Offences and penalty**

- (1) Any person who contravenes, whether by act or omission, any provision of this Part is guilty of an offence against this Act.
- (2) Any person who is guilty of an offence under this Part (other than under section 16BA (1) or 16WA (3)) is, on conviction, liable to a penalty not exceeding 20 penalty units.
- (3) This section does not apply to the Secretary or a person acting for or on behalf of the Secretary.

### **16R Offences by corporations**

- (1) If a corporation contravenes any provision of this Part or regulations made for the purposes of this Part, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) This section does not apply to a person in the person's capacity as a director of, or as a person concerned in the management of, a corporation constituted by or under an Act.

### **16S Time for commencing proceedings for offences**

Despite anything in any Act, proceedings for an offence against this Part or regulations made for the purposes of this Part may be brought—

- (a) in the case of an offence in relation to a security bond for a lease or a proposed lease—at any time before the expiration of the period of 3 years that next succeeds—
  - (i) the commission of the offence, or
  - (ii) the termination of the lease,whichever is the later, or
- (b) in any other case—at any time before the expiration of the period of 3 years that next succeeds the commission of the offence.

## **Division 5 Accounts**



## **16T Accounts**

The following accounts are to be established in accordance with law—

- (a) a Retail Leases Security Bonds Trust Account (referred to in this Division as the ***Trust Account***),
- (b) a Retail Leases Security Bonds Interest Account (referred to in this Division as the ***Interest Account***).

## **16U Retail Leases Security Bonds Trust Account**

- (1) There is to be paid into the Trust Account all security bonds deposited with the Secretary in accordance with Division 2.
- (2) There is payable from the Trust Account—
  - (a) security bonds authorised to be paid out under section 16H or 16I, and
  - (b) any other payments authorised by or under this or any other Act to be made from that account.

## **16V Retail Leases Security Bonds Interest Account**

- (1) There is to be paid into the Interest Account all interest received on investments of money in the Trust Account.
- (2) There is payable from the Interest Account—
  - (a) the costs of, or the expenses incurred in, the administration of this Act, and
  - (b) any other payments authorised by or under this or any other Act to be made from that account.
- (3) There is payable from the Interest Account such contributions as are agreed annually by the Minister and the Treasurer for payment to the Consolidated Fund.
- (4) Contributions referred to in subsection (3) are to be paid in the manner determined by the Treasurer.
- (5) (Repealed)

## **16W Agents of Secretary**

- (1) Any money received, invested or paid out by an agent of the Secretary for the purposes of this Part is taken to have been received, invested or paid out, as the case may be, by the Secretary.
- (2) Any money received by an agent of the Secretary for the purposes of this Part is taken to have been received by the Secretary on the day that it is received by the agent.

## **Division 6 General**

### **16WA Arrangements for online delivery of services**

- (1) The Secretary may establish an **online retail bond service** comprising online facilities and systems that can be used for any of the following purposes—
  - (a) to deposit a security bond with the Secretary,
  - (b) to make a claim for the payment of a security bond,
  - (c) to make a payment of an amount of a security bond,
  - (d) to give any notice or receipt authorised or required to be given under this Part,
  - (e) to do or facilitate the doing of any other thing authorised or required under this Part.
- (2) Use of the online retail bond service is subject to any terms and conditions imposed by the Secretary.
- (3) A lessor, lessor's agent or any other person must not require a lessee or another person to use the online rental bond service.

Maximum penalty—50 penalty units.

### **16X Exemptions**

- (1) For the purposes of, but without affecting the generality of, section 82, a class of security bond may be described by reference to a class of lease or a class of premises in respect of which security bonds are deposited or paid.
- (2) For the purposes of, but without affecting the generality of, subsection (1), a class of lease may be described by reference to periods of continuous occupancy of premises under leases or by reference to terms or conditions of leases.

### **16Y Continuous occupation**

For the purposes of this Part and regulations made in connection with security bonds, where the same lessee continuously occupies the same retail shop under a series of leases from the same lessor, those leases are taken to be one lease.

### **16Z Annual report**

The annual report of the Department is to include a report of the security bond scheme under this Part.

### **16ZA Service of notices and other documents on Secretary**

- (1) Any notice, summons, writ or other proceeding relating to or connected with this Part

to be served on the Secretary may be served—

- (a) by being left at an office of the Department with a person apparently employed there, or
  - (b) in the case of a notice, by posting it addressed to the Secretary at an office of the Department, or
  - (c) in a manner authorised by the Secretary for electronic service.
- (2) A letter giving a notice in writing to a lessor or lessee by post under Division 3 is taken to be properly addressed if it is addressed to that lessor or lessee at his or her last known address according to the records of the Secretary.
  - (3) This section does not affect the generality of section 81A.

#### **16ZB Recovery of money**

Any charge, fee or money due to the Secretary in connection with this Part may be recovered as a debt or liquidated demand in a court of competent jurisdiction.

#### **16ZC Regulations**

- (1) The regulations may make provision for or with respect to the scheme provided by this Part, including (without limiting the foregoing) the manner in which money is to be deposited with or paid by the Secretary.
- (2) Without affecting the generality of section 85, wherever a provision of this Part requires a form to be prescribed or a document to be in writing, the regulations may prescribe—
  - (a) a form to be used for that purpose, and
  - (b) where that form or document is required to be lodged with or served on or sent to any person—the manner of lodgment, service or sending, and
  - (c) particulars or information to be provided by a person completing that form or document.
- (3) (Repealed)

### **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, 19A (Repealed)**

### **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),
  - (m) the amount of revenue from online transactions, other than online transactions where the goods or services concerned are delivered or provided from or at the retail shop (or the retail shopping centre of which the shop forms part) or where the transaction takes place while the customer is at the retail shop (whether or not the goods or services concerned are delivered from or at the retail shop).
- (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.

## **21A (Repealed)**

## **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.

**Note—**

A lessee has no liability in respect of outgoings unless the liability was disclosed in the lessor's disclosure statement. See section 12A.

- (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 lot in a strata scheme under the [Strata Schemes Development Act 2015](#), the **land concerned** is the lot.

## 27 Outgoings estimates

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 that is the prescribed form for the purposes of section 11,
- (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) if the shop is in a retail shopping centre, the estimate of outgoings is to include—
  - (i) a statement of management fees, broken down into the fees to be paid by the lessee towards the administration costs of running the centre and other fees paid to the management company, and
  - (ii) a statement of cleaning costs to be paid by the lessee, broken down into the costs

of consumables and other costs, and

(iii) any other particulars prescribed by the regulations.

## 28 Outgoings statements

(1) 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.
- (b1) If the shop is in a retail shopping centre, the outgoings statement is to include—
  - (i) a statement of total management fees paid in respect of the centre, broken down into the fees paid towards the administration costs of running the centre and other fees paid to the management company, and
  - (ii) a statement of total cleaning costs paid by the lessor, broken down into the costs of consumables and other costs, and
  - (iii) any other particulars prescribed by the regulations.
- (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, insurance and strata levies, 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).
- (2) An auditor preparing a report under subsection (1) (e) or the lessor must ensure that the lessee is given a reasonable opportunity to make a written submission to the auditor on the accuracy of the lessor's proposed outgoings statement. The auditor need not contact the lessee for the purposes of this subsection if the lessor advises the auditor that the lessor has informed the lessee of the lessee's opportunity under this subsection.
  - (3) The auditor must consider any written submissions made pursuant to subsection (2).

#### **28A Non-provision of outgoings estimate or statement**

- (1) A lessee is entitled to withhold payment of contributions for outgoings if—
  - (a) the lessor has failed to give the lessee a written estimate of outgoings required under section 27 or an outgoings statement required under section 28, and
  - (b) the lessee has, at or after the expiry of the time when the estimate or statement was required to be given to the lessee, requested the lessor in writing to furnish the estimate or statement to the lessee, and
  - (c) the lessor's failure has continued for 10 business days after the request was made.
- (2) The lessee must pay the withheld contributions within 28 days after the lessor furnishes the estimate or statement.
- (3) The lessor is not entitled to recover interest or late payment charges in respect of contributions withheld in accordance with this section.
- (4) The lessee is not in breach of the retail shop lease for acting in accordance with this section.
- (5) This section does not affect any other rights that the lessee has in connection with the lessor's failure to provide the estimate or statement.

#### **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 Determination of current market rent**

- (1) A retail shop lease that provides for rent to be changed to current market rent or 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, as between a willing lessor and a willing lessee in an arm's length transaction (where the parties are each acting knowledgeably, prudently and without compulsion), 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 of the parties to the lease, or failing agreement, by the Registrar.
- (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 being requested to do so by a specialist retail valuer appointed under paragraph (b), supply the valuer with information (where reasonably available to the lessor) requested in a list provided by the valuer to assist the valuer to determine the current market value, including the following information about leases for comparable retail shops in the same building or retail shopping centre—
- (i) current rental for each lease,
  - (ii) rent free periods or any other form of incentive,
  - (iii) recent or proposed variations of any lease,
  - (iv) outgoings for each lease,
- and including any other information prescribed by the regulations.
- (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.

- (1A) A party to a lease may apply to the Registrar for the appointment of a specialist retail valuer for the purposes of subsection (1) (b).
- (1B) A party to a lease may make written submissions to a specialist retail valuer to assist in the valuer's consideration of the valuation, and the valuer must consider any such written submissions.
- (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 receiving the information referred to in subsection (1) (d).
- (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.
- (4) The reasons and matters included in a valuation as referred to in subsection (1) (e) must not be set out in a way that discloses information identifying other leases or parties to other leases or relating to the business of parties to other leases. This subsection does not apply to leases between the parties to the lease for which the valuation is made or to leases whose parties consent to the disclosure of the information.

**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.  
  
If the determination of rent is not notified within 21 days before the end of the term of the lease, the lessee may exercise the option within 21 days after the determination is notified in writing to the lessee (whether before or after the term of the lease), and the term of the lease is extended by the appropriate period to enable the lessee to exercise the option after the lease would otherwise expire.
  - (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.

### **32A Review of current market rent determinations**

(1) **Application for review** A party to a lease may apply to the Registrar for the appointment of two specialist retail valuers to conduct a review of a determination of the current market rent made by a specialist retail valuer made under section 31.

(2) The application for a review must be made within 21 days after the party first received a copy of the determination.

#### **Note—**

Subsection (13) provides another opportunity to make an application for a review if the decision on the review is set aside.

(3) **Review by and decision of valuers** The specialist retail valuers may conduct the review and may jointly—

- (a) affirm the reviewed determination, or
- (b) vary the reviewed determination.

(4) Sections 31 and 31A apply (with any necessary adaptations) to and in respect of the specialist retail valuers in the same way as those provisions apply to and in respect of the original specialist retail valuer.

(5) Without limiting subsection (4), the specialist retail valuers jointly and severally have the powers and obligations of the original specialist retail valuer in connection with obtaining information under the provisions referred to in that subsection.

(6) The specialist retail valuers are to conduct the review and reach their decision not later than one month after they are notified of their appointment.

(7) If the specialist retail valuers are unable to agree by the end of the month referred to in subsection (6), the valuers are taken to have decided to affirm the determination.

(8) **Access to original determination and information** It is the duty of the specialist retail valuer (the **original valuer**) who made the original determination, and of each party to the lease, to ensure that the specialist retail valuers reviewing the determination are given access to—

- (a) the original determination, and

(b) information relating to the matters, specified in the original determination, to which the original valuer had regard to in making the original determination, to the extent that the information is available to the original valuer or party,

unless the specialist retail valuers indicate that they do not require access to the determination or information to be given to them under this subsection.

(9) **Costs of review** The following provisions apply to the costs of the review by the specialist retail valuers—

(a) the parties to the lease are to pay the costs of the review in equal shares, unless paragraph (b) applies,

(b) the party who applies for the appointment of the specialist retail valuers is to pay the costs of the review, if the current market value is jointly determined by the specialist retail valuers to be the same as or within 10 per cent of the amount specified in the original determination.

(c) (Repealed)

(10) **Effect, finality and setting aside of decision** A varied determination has effect as if it were the original determination.

(11) Subject to subsection (12), the joint decision of the specialist retail valuers is final and binding on the parties to the lease.

(12) The Tribunal—

(a) may, on application made by a party to the lease within 21 days after the decision of the specialist retail valuers is given, order that the decision be set aside, if satisfied that the valuers have manifestly made a fundamental error warranting such an order, and

(b) may also order that the costs of the review are not payable by the parties or, if paid, are to be refunded.

The decision is not otherwise reviewable by or appellable to the Tribunal.

(13) If the decision is set aside, a party to the lease may make a fresh application to the Registrar under subsection (1) in relation to the original determination within the period of 21 days after the date of the order setting it aside, and this section applies accordingly.

### **32B Appointment of specialist retail valuers**

(1) The Registrar may appoint specialist retail valuers on application under this Act.

(2) The appointment of a specialist retail valuer is to be made from separate lists of nominees prepared separately by or on behalf of the persons for the time being

holding or acting in the offices of President of the Australian Property Institute Limited (NSW Division), Chief Executive Officer of the Royal Institution of Chartered Surveyors, President of the Australian Valuers Institute and President of the Real Estate Institute of New South Wales Limited.

- (3) The parties to the retail shop lease concerned are to pay the costs of the application to the Registrar in equal shares.
- (4) The Registrar may attach such conditions as the Registrar considers appropriate to the appointment of a specialist retail valuer, including conditions about the fees that may be charged by the valuer in connection with valuations under this Act.
- (5) No matter or thing done or omitted to be done by a specialist retail valuer appointed by the Registrar subjects the valuer to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of a determination of rent by valuation carried out by a specialist retail valuer under a provision of this Act.

## **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 disturbance if a written statement specifically drawing the attention of the lessee to details of the anticipated disturbance was given to the lessee before the lease was entered into, and the statement included the following—

(a) a specific description of the nature of the disturbance,

(b) a statement assessing the likelihood of the disturbance occurring, including an indication of the basis on which the assessment was reached,

(c) a statement of the timing, duration and effect of the disturbance, so far as they can be predicted.

(3A) A general statement to the effect that disturbances may occur during the term of the lease without setting out the matters referred to in subsection (3) is not a statement to which that subsection applies.

(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 not limited to—
  - (i) costs incurred by the lessee in dismantling fittings, equipment or services, and
  - (ii) costs incurred by the lessee in replacing, re-installing or modifying finishes, fittings, equipment or services to the standard existing immediately before the relocation but only to the extent that they are reasonably required in the premises to which the lessee's business is relocated, and
  - (iii) legal costs incurred by the lessee.
- (g) If the lessor and the lessee do not agree as to what the actual amount of reasonable costs of the relocation are to be, the amount of the costs is to be determined by a quantity surveyor—
  - (i) appointed by agreement between the parties to the lease, or

- (ii) failing agreement, appointed by the person for the time being holding or acting in the office of President of the Australian Institute of Quantity Surveyors.

**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 or any part 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 for demolition within a reasonably practicable time after the lease is to be terminated.
    - (a1) The lease cannot be terminated by the lessor on that ground unless the proposed demolition cannot be carried out practicably without vacant possession of the shop.
  - (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 the proposed demolition 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 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 proposed demolition is carried out.
- (4) For the purposes of this section, **demolition** includes repair, renovation and

reconstruction.

### **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,
  - (a1) a provision specifying requirements in the nature of police and security checks and clearances for persons employed in the shop or other persons (such as contractors) doing work in the shop, but only if the provision is included in the lease with the

approval in writing of the Registrar given in a particular case,

- (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,
  - (e) in the case of a retail shop lease that has been awarded by public tender, if the assignee fails to meet any criteria of the tender.
- (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.

(4) This section does not prevent a lessor from securing performance of the assignee's obligations under the assigned lease by requiring the provision of a security bond or other bond or a guarantee from the assignee or any other person.

**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**

The following procedure applies to the assignment of a retail shop lease that requires the consent of the lessor—

(a) A request for the lessor's consent to an assignment of the lease must be made by the lessee in writing.

(b) The lessee must provide the lessor with such information as the lessor may reasonably require to be satisfied that the financial resources and retailing skills of the proposed assignee are not inferior to those of the lessee.

(c) The lessee must provide the proposed assignee with an **updated lessor's disclosure statement** (comprising a copy of the lessor's 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).

(d) For the purpose of enabling the lessee to provide the proposed assignee with the required updated lessor's disclosure statement, the lessor must provide the lessee with an updated lessor's disclosure statement within 14 days after being requested to do so by the lessee.

- (e) If the lessor fails to provide the updated lessor's disclosure statement, it is sufficient compliance with the requirement to provide the proposed assignee with an updated lessor's disclosure statement if the lessee instead provides a lessor's disclosure statement completed by the lessee to the best of the lessee's knowledge (but with information as to current outgoings in place of information as to estimated outgoings).
- (f) The lessor must deal expeditiously with a request for consent to assignment of the lease.
- (g) The lessor has 28 days (the **decision period**) to decide whether to consent or to refuse consent to assignment. The decision period starts from when the request for consent was made by the lessee or from when the lessee has complied with the requirements of this section (whichever is later).
- (h) The lessor is taken to have consented to assignment if the lessee has complied with this section and the lessor has not, within the decision period, given notice in writing to the lessee either consenting or withholding consent to assignment.
- (i) The regulations may prescribe a period that is to replace the period of 28 days as the decision period in this section.

#### **41A Protection of assignor of lease for ongoing business**

- (1) A person (the **assignor**) who assigns a retail shop lease in connection with the continued use of the shop for the conduct of an ongoing business has no liability to the lessor in respect of amounts payable under the lease by the assignee after the lease is assigned if the lessee complies with the requirements of this section.
- (2) The assignor must, at least 7 days before the assignment of lease—
  - (a) provide the assignee with an **updated lessor's disclosure statement** (comprising a copy of the lessor's disclosure statement given to the assignor 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 assignor), and
  - (b) provide the assignee with an assignor's disclosure statement in or to the effect of the form set out in Part A of Schedule 2A, and
  - (c) provide the lessor with a copy of the assignor's disclosure statement (as provided to the assignee for the purposes of paragraph (b)) together with a document signed by the assignor and assignee that is in or to the effect of the form set out in Part B of Schedule 2A (the **disclosure confirmation**).
- (3) For the purpose of enabling the lessee to provide the proposed assignee with the required updated lessor's disclosure statement, the lessor must provide the lessee with an updated lessor's disclosure statement within 14 days after being requested to

do so by the lessee, but if the lessor fails to do so—

- (a) it is sufficient compliance with the requirement to provide the proposed assignee with an updated lessor's disclosure statement if the lessee instead provides a lessor's disclosure statement completed by the lessee to the best of the lessee's knowledge (but with information as to current outgoings in place of information as to estimated outgoings), and
- (b) the assignor and assignee can sign the disclosure confirmation on the basis that the lessor's disclosure statement completed and provided by the lessee constitutes the updated lessor's disclosure statement.

(4) The protection from liability afforded by this section to the assignor extends to any guarantor or covenantor of the assignor.

(5) The assignor (and any guarantor or covenantor of the assignor) is not entitled to the protection of this section if the assignor's disclosure statement contains information that is materially false or misleading.

#### **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.

**44A Negotiations for renewal or extension of lease**

- (1) A lessor of a retail shop must not, by written or broadcast advertisement, indicate the availability of the shop for lease or invite tenders or expressions of interest for tendering, during the term of the lease, unless—
- (a) the lessor has offered the lessee a renewal or extension of the lease under section 44 (1) (a), the offer has not been accepted and (not earlier than one month after the offer was made) the lessor by written notice informs the lessee that negotiations are concluded without result, or
  - (b) the lessor by written notice informs the lessee that the lessor does not propose to offer the lessee a renewal or extension of the lease and there are no arrangements to allow the lessee to remain in possession of the shop, or
  - (c) the lessee by written notice informs the lessor that the lessee does not wish to enter into negotiations for the renewal or extension of the lease or that the lessee wishes to withdraw from the negotiations, or
  - (d) the lessee has vacated or agrees in writing to vacate the shop, or
  - (e) the lessee consents in writing to publication of the advertisement.

Maximum penalty—50 penalty units.

- (2) This section does not affect the industry practice of testing the market, otherwise than by written or broadcast advertisement, in connection with the leasing of a retail shop.
- (3) This section does not apply to a lease of community land within the meaning of the *Local Government Act 1993*.

#### **45 Key-money and lease preparation expenses 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 or lease preparation expenses 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 or lease preparation expenses 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) (Repealed)
  - (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 security bond or other bond 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.
- (4) This section does not prevent a person, as lessor or on behalf of the lessor, from requiring payment by the prospective lessee or the lessee of a reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment to a proposed lease, or to a lease as is proposed to be extended, that was requested by or on behalf of the prospective lessee or the lessee, other than—
  - (a) an amendment to insert or vary the particulars of the lessee, the rent or the term, or

- (b) an amendment to remedy a failure by or on behalf of the lessor to include or omit a term of the proposed lease, or the lease as proposed to be extended, that was, at the time of the failure to include or omit, agreed between the lessor and the proposed lessee or lessee to be included in or omitted from the proposed lease, or the lease as proposed to be extended, or
  - (c) if the amendment is in connection with the renewal of a retail shop lease, an amendment requested before the lessor is given a lessee's disclosure update under section 11A.
- (5) If a prospective lessee or the lessee is liable to pay a reasonable sum referred to in subsection (4), the lessor must provide the prospective lessee or lessee with a copy of any account presented to the lessor in respect of those expenses. The prospective lessee or lessee is not required to make any such payment until the lessor has complied with this requirement.

## **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 Information about turnover from online transactions**

- (1) The lessee under a retail shop lease cannot be required to provide the lessor with information concerning the turnover of the business of the lessee that is turnover from online transactions, and a provision of the lease is void to the extent that it purports to require the provision of information concerning turnover from online transactions.
- (2) This section does not apply to information concerning turnover from online transactions where the goods or services concerned are delivered or provided from or at the retail shop (or the retail shopping centre of which the shop forms part) or where the transaction takes place while the customer is at the retail shop (whether or not the goods or services concerned are delivered from or at the retail shop).

### **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) (Repealed)

## **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 Six-monthly advertising and promotion expenditure statement to be made available to lessees**

(1) 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 relating exclusively to the building or centre in which the retail shop is located 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.

(2) The details to be provided in a statement made available under this section in relation to an accounting period must also include—

- (a) in respect of expenditure by the lessor on account of advertising and promotion costs of the lessor—
  - (i) a statement of the amount contributed by the lessor in respect of expenditure relating exclusively to the building or centre, and
  - (ii) a statement of the total of the amounts contributed by the lessees, and
- (b) in respect of contributions by the lessor on account of advertising and promotion



costs of the lessor relating exclusively to the building or centre and in respect of contributions by the lessees on account of advertising and promotion costs of the lessor—

- (i) a statement of the total unspent amount carried forward to that period, and
  - (ii) a statement of the total unspent amount to be carried forward to the next period, and
- (c) any other statements prescribed by the regulations.

## **55 Annual advertising and promotion expenditure statement to be given to lessees**

- (1) 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 relating exclusively to the building or centre in which the retail shop is located 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.
- (2) The details to be provided in an advertising statement given to a lessee under this section in relation to an accounting period must also include—
- (a) in respect of expenditure by the lessor on account of advertising and promotion costs of the lessor—
    - (i) a statement of the amount contributed by the lessor in respect of expenditure relating exclusively to the building or centre, and
    - (ii) a statement of the total amount contributed by the lessee, and
  - (b) in respect of contributions by the lessor on account of advertising and promotion

costs of the lessor relating exclusively to the building or centre and in respect of contributions by the lessee on account of advertising and promotion costs of the lessor—

- (i) a statement of the total unspent amount carried forward to that accounting period, and
- (ii) a statement of the total unspent amount to be carried forward to the next accounting period, and

(c) any other statements prescribed by the regulations.

(3) An auditor preparing a report under subsection (1) (d) or the lessor must ensure that the lessee is given a reasonable opportunity to make a written submission to the auditor on the accuracy of the lessor's proposed advertising statement. The auditor need not contact the lessee for the purposes of this subsection if the lessor advises the auditor that the lessor has informed the lessee of the lessee's opportunity under this subsection.

(4) The auditor must consider any written submissions made pursuant to subsection (3).

#### **55A Non-provision of marketing plan or advertising and promotion statement**

(1) A lessee is entitled to withhold payment of contributions in respect of advertising or promotion costs of the lessor if—

(a) the lessor has failed—

- (i) to make available to the lessee a marketing plan required under section 53 (a), or
- (ii) to make available to the lessee details of proposed expenditure on an opening promotion as required under section 53 (b), or
- (iii) to make available to the lessee a written statement of expenditure required under section 54, or
- (iv) to give the lessee an advertising statement required under section 55, and

(b) the lessee has, at or after the expiry of the time when the plan, details or statement was required to be made available to or given to the lessee, requested the lessor in writing to furnish the plan, details or statement to the lessee, and

(c) the lessor's failure has continued for 10 business days after the request was made.

(2) The lessee must pay the withheld contributions within 28 days after the lessor furnishes the plan, details or statement.

- (3) The lessor is not entitled to recover interest or late payment charges in respect of contributions withheld in accordance with this section.
- (4) The lessee is not in breach of the retail shop lease for acting in accordance with this section.
- (5) This section does not affect any other rights that the lessee has in connection with the lessor's failure to provide the plan, details or statement.

#### **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 lot under the [Strata Schemes Development Act 2015](#), 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 and misleading or deceptive conduct**

### **Division 1 Unconscionable conduct**

#### **62A Application of Division**

- (1) This Division 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 Division does not apply to conduct that occurred before the commencement of this section.
- (3) Nothing in this Division affects the operation of Division 2.

#### **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.

(10) In this section—

**lessee** or **former lessee** includes a person who is a guarantor or covenantor under a lease or former lease.

## Division 2 Misleading or deceptive conduct

### 62C Interpretation and application of Division

(1) In this Division—

**misleading or deceptive conduct** means conduct to which section 62D applies.

**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.

(2) Nothing in this Division affects the operation of Division 1.

### 62D Misleading or deceptive conduct in connection with retail leases

A party to a retail shop lease must not, in connection with the lease, engage in conduct that it is misleading or deceptive to another party to the lease or that it is likely to mislead or deceive another party to the lease.

### 62E Right to compensation

A party or former party to a retail shop lease who suffers loss or damage by reason of misleading or deceptive conduct of another party may recover the amount of the loss or damage by lodging a claim against the other party under section 71.

## 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, and (without limiting the generality of the foregoing) includes a dispute about a security bond, but does not include a dispute of the kind referred to in section 31 (1) (b) as to the rent payable under a retail shop lease (where the rent is to be current market rent for the shop).

- (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 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 Civil and Administrative 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 payment of money (whether or not stated to be by way of debt, damages, restitution or refund),
  - (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 for the rectification of the lease or the lessor's disclosure statement,
  - (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, 34, 35 or 62E,
  - (xi) without limiting the generality of any other subparagraph, a claim with respect to the entitlement of a party or former party under a lease to receive payment of the whole or a part of a security bond,
- (b), (c) (Repealed)
- (d) an application by a specialist retail valuer under section 31 (3) (including as applied by section 32A),
- (e) a claim against a specialist retail valuer under section 31A (3) (including as applied under section 32A) 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)

#### **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—

**lessor** or **lessee** under a retail shop lease or former retail shop lease includes a person who is a guarantor or covenantor under a lease or former lease.

### **71B Lodging of claims after 3 years**

- (1) A retail tenancy claim may be lodged more than 3 years but no later than 6 years after the liability or obligation that is the subject of the claim arose, if the Tribunal orders that the claim may be lodged with the Tribunal.
- (2) An unconscionable conduct claim may be lodged more than 3 years but no later than 6 years after the alleged unconscionable conduct occurred, if the Tribunal orders that the claim may be lodged with the Tribunal.
- (3) The Tribunal may make an order under this section—
  - (a) on application by the party or former party concerned, and
  - (b) after hearing such of the persons likely to be affected by the application as it sees fit, and
  - (c) if the applicant satisfies the Tribunal that it is just and reasonable to make the order.

### **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 (as permitted by section 72AB) requiring the rectification of the lease or the lessor's disclosure statement,
  - (e1) an order (as permitted by section 72AB) deeming a disclosure statement given by the lessor after the lease is entered into (with or without amendments specified by the Tribunal) to have been given in compliance with section 11 before the lease was entered into,
  - (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, or
    - (iv) declaring that a party is or is not entitled to receive payment of the whole or a part of a security bond,
  - (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.

**72AB Power of Tribunal to order rectification of lease or disclosure statement**

In proceedings for a retail tenancy claim lodged with the Tribunal under this Part, the Tribunal is not to make an order requiring the rectification of the lease or the lessor's disclosure statement or deeming a disclosure statement to have been given (as provided by section 72 (1) (e) or (e1)) unless—

- (a) the order is made with the consent of the parties, or
- (b) the Tribunal is satisfied that the order is necessary to correct an error or omission, or
- (c) the Tribunal is satisfied that the order is necessary to give effect to the intention of the parties when the lease was entered into, or
- (d) the Tribunal is satisfied that the order is necessary to give effect to the actual disclosure of information between the parties.

**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**

- (1) 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 \$750,000 or such other amount as may be prescribed by the regulations, whether on a balance of account or after set-off or otherwise.
- (2) The amount for the time being applicable under subsection (1) may be increased by regulation not more frequently than once each 3 years (disregarding any disallowed regulation or provision of a regulation).
- (3) The amount resulting from an increase by regulation must not exceed the base amount, adjusted in line with movements in the Consumer Price Index (All Groups Index) for Sydney and rounded up to the nearest \$10,000. The base amount is the dollar amount for the time being specified in subsection (1), unaffected by any regulation under that subsection.

### **74 (Repealed)**



## **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.
- (7) This section applies despite anything in Schedule 4 to the *Civil and Administrative Tribunal Act 2013* concerning the removal of court proceedings to the Tribunal.

## **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.
- (5) This section applies despite anything in Schedule 4 to the *Civil and Administrative Tribunal Act 2013* concerning jurisdictional overlap between courts and the Tribunal.

#### **76A Removal of proceedings to Supreme Court**

- (1) A party to proceedings before the Tribunal for an unconscionable conduct claim, or partly for an unconscionable conduct claim and partly for a retail tenancy 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 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 or retail tenancy claim, as the case requires.

- (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.
- (5) This section applies despite anything in Schedule 4 to the [Civil and Administrative Tribunal Act 2013](#) concerning the transfer of proceedings between courts and the Tribunal.

#### **77-77C (Repealed)**

### **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 Premises at airports**

#### **80A Definitions**

- (1) (Repealed)
- (2) In this Part—

**airport** means the following as described in regulations under the [Airports Act 1996](#) of the Commonwealth—

- (a) Sydney (Kingsford-Smith) Airport,

(b) Sydney West Airport.

**airport passenger terminal** means a passenger terminal at an airport.

**airside premises** means premises wholly within the part of the international passenger terminal of an 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.

#### **80BA Application**

This part applies only in relation to premises at an airport passenger terminal.

#### **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 listed business,
  - (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 Exemption from section 34**

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.

### 81A Service of documents and notices

- (1) Any document or notice that must or may be served or given under or for the purposes of this Act must be in writing, and is sufficiently served or given—
  - (a) if delivered personally, or
  - (b) if left at or sent by post to the last known residential or business address in or out of New South Wales of the person to be served, or
  - (c) in the case of a mortgagor in possession, if left at or sent by post to any occupied house or building comprised in the mortgage, or
  - (d) if delivered to the facilities of a document exchange of which the person on whom it is to be served is a member, or
  - (e) where relevant, if served or given in such manner as a court or tribunal may direct, or
  - (f) if served or given in accordance with the terms of the retail shop lease concerned, or

(g) if served or given in accordance with the regulations.

(2) In the case of service by delivery to the facilities of a document exchange, the notice is, unless the contrary is proved, taken to have been served on the second business day following the day of delivery of the notice to those facilities.

## **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, retail shop or security bond or any specified class of persons, retail leases, retail shops or security bonds, either unconditionally or subject to conditions.

### **82A Certain transport and rail authorities**

For the purposes of section 34, Transport for NSW, Rail Corporation New South Wales, Sydney Metro, Sydney Trains and NSW Trains as lessors of retail shops are 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) railway safety,
- (b) railway station safety,
- (c) railway security,
- (d) railway station security,
- (e) satisfying regulatory requirements.

### **82B Delegation by Secretary**

- (1) The Secretary may delegate any functions of the Secretary under this Act (other than this power of delegation) to—
- (a) a member of the staff of the Department, or
  - (b) an authorised officer under Part 2A, or
  - (c) a person holding a position, or a person of a class, prescribed by the regulations.
- (2) A delegate may sub-delegate to a person referred to in subsection (1) any delegated function if the delegate is authorised in writing to do so by the Secretary.

## **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.

### 83A Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means a member of staff of the Department authorised in writing by the Secretary as an authorised officer for the purposes of this section.

### 84 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before the Local Court.

#### 84A Savings and transitional provisions

Schedule 3 has effect.

#### 84B Transitional provisions regarding alteration of list of businesses: existing leases

- (1) In this section—

**legislative amendment** means—

- (a) an amendment to or the substitution of Schedule 1, or
  - (b) the making, amendment or substitution of a regulation.
- (2) If premises become a retail shop within the meaning of this Act because of a legislative amendment, this Act does not apply to—
    - (a) a lease of the premises entered into before the date of the amendment, or
    - (b) a lease of the premises entered into under an option granted or agreement made



before that date,

except in so far as the regulations otherwise provide.

(3) If premises cease to be a retail shop within the meaning of this Act because of a legislative amendment, this Act continues to apply to—

(a) a lease of the premises entered into before the date of the amendment, and

(b) a lease of the premises entered into under an option granted or agreement made before that date,

except in so far as the regulations otherwise provide.

(4) If—

(a) one or more premises in a cluster of premises cease to be a retail shop or retail shops within the meaning of this Act because of a legislative amendment, and

(b) the cluster ceases as a result to be a retail shopping centre within the meaning of this Act,

this Act continues to apply to a lease of other premises in the cluster entered into before the date of the amendment, except in so far as the regulations otherwise provide.

#### **84C Transitional provisions regarding additions to list of businesses: shopping centres**

(1) The purpose of this section is to provide that a cluster of premises does not become a retail shopping centre just because a legislative amendment has the effect of making the business carried on in one or more of existing leased premises a listed business. This exemption ceases to apply when the existing lease expires.

(2) In this section—

**exempted lease** means a lease referred to in section 84B (2) (a) that is exempt from this Act by section 84B (2).

**legislative amendment** means—

(a) an amendment to or the substitution of Schedule 1, or

(b) the making, amendment or substitution of a regulation.

(3) If—

(a) one or more businesses become listed businesses because of a legislative amendment, and

(b) one or more of the premises in a cluster of premises were, immediately before the

date of the amendment, used wholly or predominantly for the carrying on of one or more of those businesses (and not for the carrying on of one or more of listed businesses specified immediately before that date),

the premises referred to in paragraph (b) are to be disregarded for the purpose of determining whether or not the cluster is a retail shopping centre within the meaning of this Act while they are the subject of an exempted lease.

## **85 Regulations**

- (1) 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.
- (2) In particular, the regulations may make provision for or with respect to—
  - (a) the qualifications (including experience and training), appointment and functions of specialist retail valuers, and
  - (b) the preparation, format and general content of the lists of nominated specialist retail valuers, and the times or intervals at which the lists are to be provided, and
  - (c) the construction of a reference in a provision of this Act to an organisation or office that no longer exists.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (4) The regulations may prescribe a form to replace the form in Schedule 2 or 2A or may prescribe modifications to the form in Schedule 2 or 2A.

## **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.

## **Part 11 Response to COVID-19 pandemic**

### **87 Regulation-making power**

- (1) The regulations under any relevant Act may provide for the following matters for the purposes of responding to the public health emergency caused by the COVID-19

pandemic—

- (a) prohibiting the recovery of possession of premises by a lessor or owner of premises or land from a lessee or tenant of the premises or land under the relevant Act in particular circumstances,
  - (b) prohibiting the termination of a lease or tenancy by a lessor or owner of premises or land under the relevant Act in particular circumstances,
  - (c) regulating or preventing the exercise or enforcement of another right of a lessor or owner of premises or land under the relevant Act or an agreement relating to the premises or land in particular circumstances,
  - (d) exempting a lessee or tenant, or a class of lessees or tenants, from the operation of a provision of the relevant Act or any agreement relating to the leasing or licensing of premises or land.
- (2) The Minister may recommend to the Governor that regulations be made under this section only if—
- (a) Parliament is not currently sitting and is not likely to sit within 2 weeks after the day the regulations are made, and
  - (b) in the Minister’s opinion, the regulations are reasonable to protect the health, safety and welfare of lessees or tenants under the Act.
- (3) Regulations made under this section are not limited by the regulation-making power in a relevant Act.
- (4) Regulations made under this section expire on—
- (a) the day that is 6 months after the day on which the regulation commences, or
  - (b) the earlier day decided by Parliament by resolution of either House of Parliament.
- (5) In this section—

**relevant Act** means any of the following—

- (a) [Agricultural Tenancies Act 1990](#),
- (b) [Retail Leases Act 1994](#),
- (c) any other Act relating to the leasing of premises or land for commercial purposes.

## **88 Savings of protections granted during COVID-19 pandemic**

- (1) The *Retail and Other Commercial Leases (COVID-19 Regulation (No 3) 2020* continues to apply, despite the repeal of that regulation, to anything occurring in relation to a lease while the lease was an impacted lease within the meaning of that regulation.

- (1A) The *Retail and Other Commercial Leases (COVID-19) Regulation 2022* continues to apply, despite the repeal of that regulation, to anything occurring in relation to a lease while the lease was an impacted lease within the meaning of that regulation.
- (2) Schedule 5 to the *Conveyancing (General) Regulation 2018* continues to apply, despite the repeal of that Schedule, to anything occurring in relation to a lease while the lease was an impacted lease within the meaning of that Schedule.
- (3) The regulations may provide for exemptions from this section.

## 89 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature (**COVID-19 savings or transitional provisions**) consequent on—
  - (a) the enactment of a provision of this Act relating to anything occurring in relation to a lease in response to the COVID-19 pandemic (a **COVID-19 provision**), or
  - (b) the repeal of—
    - (i) a COVID-19 provision, or
    - (ii) a provision of a regulation made under a COVID-19 provision.
- (2) A COVID-19 savings or transitional provision may, if the regulations provide, take effect from—
  - (a) the date of the repeal of the relevant COVID-19 provision, or
  - (b) a later date.
- (3) A COVID-19 savings or transitional provision has effect despite anything to the contrary in this Act.

## Schedule 1 (Repealed)

### Schedule 1A Excluded uses

(Section 5 (d))

Automatic teller machine

Car parking (not being car parking provided as part of the business of a car park)

Children's ride machine

Communication towers

Digital display screens

Display of signage (not including the use of premises from which signage is sold)

Internet booth (not being an internet cafe or similar use)

Private post boxes

Public tables and seating

Public telephone

Renewable energy generation

Renewable energy storage batteries

Self-storage units

Storage of goods for use or sale in a retail shop (not including storage on premises from which goods are sold)

Storage lockers

Vending machine

## Schedule 2 Lessor and lessee disclosure statements

(Sections 11 and 11A)

### Part A

#### Lessor's disclosure statement

#### Key disclosure items

#### Note—

If the terms "landlord" and "tenant" are substituted for "lessor" and "lessee" in this form, they have the same meanings as "lessor" and "lessee" have, respectively, in the [Retail Leases Act 1994](#).

1	Annual base rent under the lease (see item 10.1)	\$  Including/Excluding GST	p.a.
2	Is rent based on turnover payable by the lessee in year 1? (see item 12)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3	Total estimated outgoings and promotion and marketing costs for the lessee in year 1 (see Part 5 and Part 6)	\$ Including/Excluding GST	
4	Term of the lease (see item 5)	years	months
5	Estimated commencement date of the lease (see item 5.1)	/ /20	
6	Estimated handover date of the premises (see item 7.1)	/ /20	

7 Does the lessee have an option to renew for a further period ?  Yes  
(see item 6)  No

8 Does the lease provide the lessee with exclusivity in relation to the permitted use of the premises?  Yes  
(see item 2.2)  No

## Part 1 Premises

### 1 Premises details

#### 1.1 Street address of premises

*[insert street address of premises and, as applicable, shop number, name of the building/centre in which the premises are located, street address of the building/centre]*

#### 1.2 Plan of premises (if available)

*[insert description of premises by reference to a prepared plan. Attach the plan to this disclosure statement as per item 33.1]*

1.3 Lettable area of premises  m<sup>2</sup>  
Actual/Estimate

Will a survey be conducted?  Yes  No

#### 1.4 Existing structures, fixtures, plant and equipment in the premises, provided by the lessor (excluding any works, fit-out and refurbishment described in Part 3)

*[Select as appropriate]*

- air conditioning
- cool room
- floor coverings
- grease trap
- hot water service
- lighting
- mechanical exhaust
- painted walls
- electrical distribution load (3 phase)
- electrical distribution load (single phase)
- separate utility meter—gas
- separate utility meter—water
- separate utility meter—electricity
- plastered walls
- shop front
- sink
- sprinklers
- suspended ceilings
- telephone
- water supply

waste

other

1.5 Services and facilities provided by the lessor for the benefit of the premises (for example, security services, cleaning)

## 2 Permitted use

2.1 Description of permitted use

*[note: the lessee should investigate if the proposed use of the premises is permitted under planning laws]*

2.2 Is the permitted use described in item 2.1 exclusive to the lessee?

Yes  No

## 3 Number of car parking spaces

3.1 Approximate total spaces spaces

3.2 Available spaces for customers of the building/centre spaces

3.3 Reserved spaces for use of the lessee only spaces

## 4 Head lease

4.1 Is the premises under a head lease or Crown lease?

Yes  No

4.2 Has the lessor provided a copy of the head lease or Crown lease to the lessee?

Yes—attached as per item 33.2

No

Not applicable

4.3 Current term under the head lease or Crown lease and option/s to renew

Not applicable

Details of head lease as follows—

Current term—

years

/ /20 to / /20

Options to renew—

years

/ /20 to / /20

*[list any options for further terms held by the lessor under the head lease]*

4.4 Is the head lessor's consent to the lease required?

Yes  No

## Part 2 Term of lease and option/s to renew lease

### 5 Term of lease

5.1 Date lease commences / /20

	(see also date of handover at item 7)	Actual/Estimate
5.2	Length of term	years months
5.3	Date lease expires	/ /20
	(based on the date indicated at item 5.1 as the date the lease commences)	

## 6 Option/s to renew lease

### 6.1 Option/s details

- No options to renew lease  
 Options as follows—

Length of option	Period of option	Exercise date
years	/ /20 to / /20	/ /20 to / /20
Actual/Estimate		
years	/ /20 to / /20	/ /20 to / /20

Actual/Estimate

[List all options to renew lease]

## Part 3 Works, fit-out and refurbishment

### 7 Date of handover

7.1	Date of handover	/ /20
	(if different to the date the lease commences indicated at item 5.1)	Actual/Estimate

### 8 Lessor's works

8.1 Description of works to be carried out by the lessor before the date the lease commences

[exclude any works that form part of the lessee's fit-out at item 9]

8.2 Estimate of expected contribution by the lessee towards the cost of the lessor's works \$

[see also outgoings (item 14) in relation to any maintenance and repair outgoings]

### 9 Lessee's fit-out works

9.1 Fit-out works to be carried out by the lessee

(excluding the lessor's works at item 8)

9.2 Is the lessor providing any contribution towards the cost of the lessee's fit-out?

Yes

[insert details of lessor's contribution]

No



9.3 Does the lessor have requirements as to the quality and standard of shop front and fit-out?

Yes

*[insert details or provide fit-out guide]*

No

## **Part 4 Rent**

### **10 Annual base rent**

10.1 Starting annual base rent— \$  
(i.e. when the lease commences) Including/Excluding GST

10.2 Rent free period  
*[describe any rent free period]*

10.3 Date of rent commencement— / /20

10.4 How rent payments are to be made?  
*[insert description of how rent is paid—eg by equal monthly instalments in advance on the first day of each month, other than the first and last payments which are calculated on a pro-rata basis]*

### **11 Rent adjustment (rent review)**

11.1 Rent adjustment date(s) and adjustment method

*[insert a list of all rent adjustment dates and adjustment methods—eg fixed increase by X%, fixed increase by \$X, current market rent, indexed to CPI]*

### **12 Rent based on turnover**

12.1 Is a rent based on turnover payable by the lessee?

(Note, the lease must specify the method by which a rent based on turnover is to be determined)

Yes

*[insert method of calculating the turnover rent]*

No

12.2 If a rent based on turnover is not required to be paid, does the lessor require the lessee to provide details of turnover?

Yes  No

## **Part 5 Outgoings**

### **13 Contribution by lessee towards outgoings**

13.1 Is the lessee required to pay or contribute to outgoings?

No

Yes—fixed amount [per annum/other period] of \$

Yes—floating amount [per annum/other period] in respect of outgoings for which an estimate is provided in item 14

13.2 Describe any period during which the lessee is not required to pay outgoings—

13.3 Date on which payment in respect of outgoings is to commence—

/ /20

13.4 Formula(e) for apportioning outgoings or determining lessee's contribution to the total outgoings for the building/centre—

[insert formula(e)]

13.5 The outgoings that the lessee is required to pay or contribute to as a floating amount are each of the outgoings listed in item 14 for which an estimate of the outgoing is provided.

#### **14 Outgoings that the lessee is required to pay or contribute towards—**

*[Provide estimates for whichever of the following outgoings the lessee is liable to pay or contribute to. Estimates are for the accounting period of the lessor that is current when this disclosure statement is given or (if this disclosure statement is given less than 1 month before the start of the next accounting period of the lessor) for that next accounting period.]*

Estimates (including GST)—

##### **14.1 Administration**

Administration (excluding management fees and wages): \$

Audit fees: \$

Management fees: \$

##### **14.2 Air conditioning/temperature control**

Maintenance: \$

Operating costs: \$

##### **14.3 Building/centre management**

Body corporate/strata levies: \$

Building intelligence services: \$

Customer traffic flow services: \$

Energy management services: \$

Gardening and landscaping: \$

Insurance: \$

Pest control: \$

Ventilation: \$

##### **14.4 Building/centre security**

Caretaking: \$

Emergency systems: \$

Fire levy: \$

Fire protection: \$

Security services: \$

##### **14.5 Cleaning**

Cleaning consumables: \$

Cleaning costs (excluding consumables): \$

##### **14.6 Communications**

Post boxes: \$

Public telephones: \$

**14.7 Customer facilities**

Car parking: \$

Child minding: \$

Escalators: \$

Lifts: \$

Uniforms: \$

**14.8 Customer information services**

Information directories: \$

Public address/music: \$

Signage: \$

**14.9 Government rates and charges**

Local government rates and charges: \$

Water sewerage and drainage rates and charges: \$

Land tax: \$

**14.10 Repairs**

Repairs and maintenance: \$

Sinking fund for repairs and maintenance: \$

**Note—**

Under section 23 of the [Retail Leases Act 1994](#), the lessor may not recover the capital costs of the building/centre from the lessee.

**14.11 Utility services**

Electricity: \$

Gas: \$

Oil: \$

Water: \$

**14.12 Waste management**

Sewage disposal: \$

Waste collection and disposal: \$

**14.13 Other outgoings<sup>[[list]]</sup>: \$**

14.14 Total estimated outgoings for the building/centre: \$

14.15 Total estimated lessee contribution to outgoings: \$

**Part 6 Other costs**

**15 Advertising and promotional costs**

15.1 Is the lessee required to contribute towards advertising and promotional costs (including marketing fund contributions) for the building/centre?

Yes  No

15.2 Lessee's contribution to advertising and promotional costs per annum—

- Not applicable
- Yes—contribution per annum is \$ Actual/Estimate
- Yes—contribution per annum is % of the rent (excluding GST) payable from time to time
- Yes [*insert details of lessee's contribution per annum and how this is determined*]

## 16 Other monetary obligations and charges

- 16.1 Outline any costs arising under the lease including up-front costs or other costs not part of the outgoings and not referred to elsewhere in this disclosure statement—  
[*eg interest and legal costs*]

## Part 7 Alteration works (including renovations, extensions, redevelopment, demolition)

### 17 Alteration works

- 17.1 Are there any alteration works, planned or known to the lessor at this point in time, to the premises or building/centre, including surrounding roads, during the term or any further term or terms?
- Yes  
[*insert details of the proposed works*]
  - No

### 18 Clauses in lease dealing with relocation and demolition works

- 18.1 Clause(s) in lease providing for relocation of lessee—
- Clause(s) of the lease
  - Not applicable
- 18.2 Clause(s) in lease providing for demolition of the premises
- Clause(s) of the lease
  - Not applicable

## Part 8 Trading hours

### 19 Core trading hours relevant to lessee

Monday—	am to	pm
Tuesday—	am to	pm
Wednesday—	am to	pm
Thursday—	am to	pm
Friday—	am to	pm
Saturday—	am to	pm
Sunday—	am to	pm
Public holidays—	am to	pm

### 20 Lessee access to premises outside core trading hours

- 20.1 Is the lessee permitted to access the premises and building/centre outside core trading hours?
- Yes

[provide details including cost of access]

No

## Part 9 Retail shopping centre details

### Note—

This Part must only be completed if the premises are in a retail shopping centre as defined in section 3 of the [Retail Leases Act 1994](#).

## 21 Retail shopping centre details

21.1	Total number of shops—	shops
21.2	Gross lettable area of the centre	m <sup>2</sup>
		Actual/Estimate

## 22 Annual turnover of the shopping centre

22.1	Annual estimated turnover (where collected)—	\$
	Including GST/	
	Excluding GST	
22.2	Annual estimated turnover for specialty shops, per m <sup>2</sup> (where collected)	
	Food	\$ per m <sup>2</sup>
		Including GST/
		Excluding GST
	Non food	\$ per m <sup>2</sup>
		Including GST/
		Excluding GST
	Services	\$ per m <sup>2</sup>
		Including GST/
		Excluding GST

## 23 Major/anchor lessees

23.1 Major/anchor lessees and lease expiry dates—

[list all major and anchor lessees (eg department stores, discount department stores, supermarkets) and the dates on which leases held by those lessees expire]

## 24 Floor plan and tenancy mix

24.1 Floor plan showing tenancy mix, common areas, common area trading, kiosks and major lessees—

Attached as per item 34.1

24.2 Does the lessor assure the lessee that the current tenant mix will not be altered by the introduction of a competitor?

Yes  No

**25 Customer traffic flow information**

25.1 Does the lessor collect customer traffic flow information?

Yes—attached as per item 34.2

No

**26 Casual mall licensing for common areas**

26.1 Do you adhere to the Shopping Centre Council of Australia’s Casual Mall Licensing Code of Practice?

Yes—attached as per item 34.3

No

**Part 10 Other disclosures**

**27 Other disclosures**

27.1 Are there any current legal proceedings in relation to the lawful use of the premises or building/centre?

Yes

*[provide details]*

No

**28 Representations by lessor**

28.1 Any other representations by the lessor or the lessor’s agent—

*[lessor to insert details of any other oral or written representations made by the lessor or the lessor’s agent]*

**Part 11 Lessor acknowledgements and signature**

**29 Acknowledgements by lessor**

**By signing this disclosure statement, the lessor confirms and acknowledges that:**

- this disclosure statement contains all representations in relation to the proposed lease by the lessor and the lessor’s agents as at the date of this disclosure statement,
- this disclosure statement reflects all agreements that have been made by the parties,
- the lessor has not knowingly withheld information which is likely to have an impact on the lessee’s proposed business.

**Warnings to lessor when completing this disclosure statement:**

- The lessee may have remedies including termination of lease if the information in this statement is misleading, false or materially incomplete.

**30 Lessor’s signature**

30.1 Name of lessor

*[insert name of lessor]*

30.2 Signed by the lessor or the lessor’s agent for and on behalf of the lessor

.....

30.3 Name of the lessor’s authorised representative or lessor’s agent

[insert name of person signing with the authority of the lessor]

30.4 Date

## **Part 12 Lessee acknowledgements and signature**

### **31 Acknowledgements by the lessee**

**By signing this disclosure statement, the lessee confirms and acknowledges that the lessee received this disclosure statement.**

**Before entering into a lease, lessees should consider these key questions:**

- Does the planning authority allow your proposed use for the premises under planning law?
- Is the security of your occupancy affected by—
  - mortgages, charges or encumbrances granted by the lessor?
  - rights and obligations under a head lease?
- Do the premises comply with building and safety regulations? Are the premises affected by outstanding notices by any authority?
- Could your trading be affected by disturbances or changes to the building/centre?
- Does the lessor require you to refurbish the premises regularly or at the end of the lease?
- Can the lessor end the lease early even if you comply with the lease?
- Are all the existing structures, fixtures and plant and equipment in good working order?
- Are you required to make good the premises at the end of the lease?
- Is the tenancy mix of the shopping centre (if applicable) likely to change during the term of the lease? (see item 24.2)

### **32 Lessee's signature**

**It is important that a lessee seek independent legal and financial advice before entering into a lease.**

[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 provided.]

32.1 Name of lessee

[insert name of lessee]

32.2 Signed by the lessee or for and on behalf of the lessee

.....

32.3 Name of the lessee's authorised representative

[insert name of person signing with the authority of the lessee]

32.4 Date / /20

## **Part 13 Attachments**

### **33 List of attachments**

33.1 Plan of premises (see item 1.2)

- Yes
- Not applicable

33.2 Head lease or Crown lease (see item 4.2)

- Yes
- Not applicable

33.3 Additional attachments

*[list of any additional attachments]*

**34 List of attachments—retail shopping centre**

34.1 Floor plan (see item 24.1)

- Yes
- Not applicable

34.2 Customer traffic flow statistics (see item 25.1)

- Yes
- Not applicable

34.3 Casual mall licensing policy (see item 26.1)

- Yes
- Not applicable

34.4 Additional attachments relating to the retail shopping centre

*[list of any additional attachments]*

**Part B 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 and a copy of a retail tenancy guide as prescribed by or identified in the regulations.
- 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's 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 Assignor's disclosure statement**

(Section 41A)

*[The information in Part A is to be provided to the assignee (together with an updated lessor's disclosure statement) and the signed statement in Part B is to be provided to the lessor if the lessee requires the protection of section 41A.]*

### **Part A Information to be provided to assignee**

The assignor (the lessee under the lease to be assigned) provides the following information about the lease to the assignee (the proposed new lessee)—

- (a) There are/are no outstanding notices in respect of the lease.  
*[insert details of any outstanding notices]*
- (b) There are/are no outstanding notices from any authority in respect of the retail shop.  
*[insert details of any outstanding notices]*
- (c) There are/are no encumbrances on the lease.  
*[insert details of any encumbrances]*
- (d) There are/are no encumbrances on, or outside ownership of, any of the fixtures and fittings within the retail shop.  
*[insert details of any encumbrances or outside ownership]*
- (e) The lessor has/has not conferred rent concessions or other benefits on the assignor during the term of the lease.  
*[insert details of any rent concessions or benefits]*
- (f) Total (aggregate) sales figures for the past 3 years (or for such period as the lease has been in operation if that period is less than 3 years) are as follows—
  - (i) *[insert period/year]* \$
  - (ii) *[insert period/year]* \$
  - (iii) *[insert period/year]* \$

### **Part B Certification and acknowledgement**

I certify that I have provided the assignee with the information indicated in paragraphs (a)–(f) and an updated lessor's disclosure statement.

Assignor—

Date—

I acknowledge receipt from the lessee of the information indicated in paragraphs (a)–(f) and an updated lessor's disclosure statement.

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 or any Act that amends this Act.
- (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.

## **Part 5 Retail Leases Amendment Act 2004**

### **15 Key-money and lease preparation expenses**

Each of sections 13, 14 and 45, as in force before the amendment of the section by the *Retail Leases Amendment Act 2004*, continues to apply to a grant, renewal or extension that took effect before that amendment.

## **Part 6 Retail Leases Amendment Act 2005**

### **16 Meaning of “2005 Amending Act”**

In this Part—

**2005 Amending Act** means the *Retail Leases Amendment Act 2005*.

**17 Prescribed businesses for definition of “retail shop”—section 3 and Schedule 1**

- (1) Until regulations are made for the purposes of paragraph (a) of the definition of **retail shop** in section 3 and Schedule 1 is repealed by regulations under subclause (2)—
  - (a) the businesses specified in Schedule 1 are taken to be prescribed for the purposes of paragraph (a) of that definition, and
  - (b) the regulations may amend Schedule 1.
- (2) Regulations made for the purposes of paragraph (a) of that definition may repeal Schedule 1.

**18 Application of Act to short-term leases—section 6A**

- (1) Section 6A (1) as inserted by the 2005 Amending Act extends to retail shop leases entered into before the commencement of section 6A.
- (2) Section 6A (2) as inserted by the 2005 Amending Act applies to retail shop leases entered into after the commencement of section 6A, but does not apply to or in respect of retail shop leases entered into before that commencement.
- (3) For the avoidance of doubt, section 6A (2) applies to a retail shop lease entered into after the commencement of section 6A by way of renewal of a retail shop lease entered into before that commencement, as referred to in section 80.

**19 Amended disclosure statements—sections 11, 11A and 41 and Schedules 2 and 2A**

- (1) The lessor’s disclosure statement given or to be given on or before the relevant day by a prospective lessor (including the form of lessee’s disclosure statement required to be attached) may be given as if Schedule 2 had not been substituted by the 2005 Amending Act, unless the lessor elects to use the substituted forms set out in Parts 1 and 2 of that Schedule.
- (2) The **relevant day** is the last day of the period of 6 months commencing on the date of the substitution of Schedule 2 by the 2005 Amending Act.
- (3) The lessee’s disclosure statement to be given by a prospective lessee in response to a lessor’s disclosure statement referred to in subclause (1) is to be given in the form in which it was provided by the lessor.
- (4) An assignor’s disclosure statement provided, in relation to a proposed assignment of a retail shop lease, in the form set out in Schedule 2A before the substitution of Schedule 2A by the 2005 Amending Act may continue to be used in relation to that assignment on or after the date of the substitution.

**20 (Repealed)**

**21 Costs before fit-out—section 13**

Section 13 as inserted by the 2005 Amending Act does not apply to leases entered into before the commencement of that section.

**22 Minimum 5 year term—section 16**

Section 16 as amended by the 2005 Amending Act extends to leases in force at the commencement of the amendments made to that section.

**23 Interest payable on security bonds—section 16M**

Until regulations are made for the purposes of section 16M (2), regulations are taken to include provisions providing that—

- (a) the prescribed rate at which an amount equivalent to interest is payable on a security bond is the rate payable (as at the last day of the month for which interest is being calculated) by the Commonwealth Bank of Australia on a Streamline Account balance of \$1,000, and
- (b) the interest payable on a security bond is to be compounded on 30 June and 31 December in each year.

**24 Keeping of copies of receipts for security bonds—section 16O**

Until regulations are made for the purposes of section 16O (3), regulations are taken to include a provision providing that a copy of a receipt given for money deposited or paid as a security bond must be kept for a term—

- (a) commencing on the date the money was received, and
- (b) ending with the date that is 6 months after the date of termination of the retail shop lease concerned.

**25 Valuations by specialist retail valuer—sections 19 and 31**

The amendments made to section 19 or 31 by the 2005 Amending Act do not apply to or in respect of the determination by valuation of a current market rent if a specialist retail valuer was appointed before the commencement of those amendments in relation to that valuation.

**26 Outgoings estimates and statements—sections 27 and 28**

- (1) Section 27 (c) or 28 (b1) as inserted by the 2005 Amending Act applies, in relation to a retail shop lease entered into before or after the commencement of the paragraph, as on and from the relevant day, unless the lessor elects to act in conformity with the inserted paragraph.

- (2) The **relevant day** is the last day of the period of 6 months commencing on the date of commencement of that paragraph.
- (3) Section 28 (2) as inserted by the 2005 Amending Act does not apply where the auditor received the outgoings statement before the commencement of that subsection.

**27 Review of current market rent determinations—section 32A**

Section 32A as inserted by the 2005 Amending Act does not apply in relation to a determination made by a specialist retail valuer before the commencement of that section.

**28 Lessee to be compensated for disturbance—section 34**

The amendment made to section 34 by the 2005 Amending Act does not apply to retail shop leases entered into before the commencement of that amendment.

**29 Relocation—section 34A**

The amendments made to section 34A by the 2005 Amending Act do not apply to costs incurred before the commencement of those amendments.

**30 Negotiations for renewal or extension of lease—section 44A**

- (1) This clause applies to a retail shop lease entered into before the commencement of section 44A as inserted by the 2005 Amending Act.
- (2) Section 44A applies to the lease on and from the expiry of the period of 6 months commencing on the date of commencement of that section.

**31 Advertising and promotion expenditure statements—sections 54 and 55**

- (1) An amendment made by the 2005 Amending Act to section 54 or 55 applies, in relation to a retail shop lease entered into—
  - (a) before the commencement of that amendment, or
  - (b) after that commencement but before the relevant day,as on and from the relevant day, unless the lessor elects to act in conformity with that amendment.
- (2) The **relevant day** is the last day of the period of 6 months commencing on the date of commencement of the amendment to section 54 or 55.
- (3) Section 55 (3) as inserted by the 2005 Amending Act does not apply where the auditor received the advertising statement before the commencement of that subsection.

### **32 Non-provision of marketing plan or advertising and promotion statement—section 55A**

Section 55A as inserted by the 2005 Amending Act extends to and in respect of retail shop leases entered into before the commencement of that section, but does not apply in relation to a lessor's failure referred to in section 55A (1) (a) that occurred before that commencement.

### **33 Misleading or deceptive conduct—Division 2 of Part 7A (ss 62C-62E)**

Division 2 of Part 7A of this Act extends to a retail shop lease that was entered into before the commencement of that Division, but does not apply to conduct that occurred before that commencement.

### **34 Lodging of claims after 3 years—section 71B**

Section 71B as inserted by the 2005 Amending Act extends to a liability or obligation that arose, or conduct that occurred, before the commencement of that section.

### **35 Removal of proceedings to Supreme Court—section 76A**

The amendments made to section 76A by the 2005 Amending Act extend to unconscionable conduct occurring before the commencement of those amendments, but do not apply in relation to proceedings pending at that commencement.

### **36 Appeals—section 77**

The amendment made to section 77 by the 2005 Amending Act extends to unconscionable conduct occurring before the commencement of that amendment, but does not apply in relation to proceedings pending at that commencement.

## **Part 7 Retail Leases Amendment (Review) Act 2017**

### **37 Meaning of "2017 amending Act"**

In this Part—

**2017 amending Act** means the *Retail Leases Amendment (Review) Act 2017*.

### **38 General operation of amendments**

An amendment made by the 2017 amending Act extends to a lease entered into, and a disclosure statement given, before the commencement of the amendment except as otherwise provided by this Schedule.

### **39 Disclosure statement amendments**

- (1) Section 12A does not apply to a lease entered into before the commencement of that section.
- (2) Section 11 (2A) extends to the termination of a lease that was entered into before the



commencement of the subsection but does not apply to the termination of a lease that occurs before that commencement.

- (3) An amendment made to Schedule 2 or 2A by the 2017 amending Act does not apply to a disclosure statement given before the commencement of the amendment.

#### **40 Execution and registration of lease**

The amendment made by the 2017 amending Act that substitutes sections 15 and 16 does not apply to a lease entered into before the commencement of the amendment.

#### **41 Security bonds**

- (1) The amendment of section 16G by the 2017 amending Act does not apply to an application made before the commencement of the amendment.
- (2) The amendment of section 16H by the 2017 amending Act does not apply to an application made before the commencement of the amendment.
- (3) The amendment of section 16K by the 2017 amending Act extends to notice of a judgment or order received before the commencement of the amendment.
- (4) The repeal of section 16M does not affect an entitlement to interest under that section in respect of any period before that repeal and that section (and sections 16E (2) and 16V (5)) continue to apply despite their repeal to the payment of interest in respect of any period during which a security bond was held by the Secretary before that repeal.

#### **42 Return of bank guarantees**

Section 16BA does not apply to a bank guarantee given in respect of a lease entered into before the commencement of the section.

#### **43 Specialist retail valuers**

- (1) After the commencement of the amendments that provide for the appointment of specialist retail valuers by the Registrar instead of by the Tribunal, a specialist retail valuer appointed by the Tribunal is taken to have been appointed by the Registrar.
- (2) A determination of current market rent completed or pending under and for the purposes of provisions of a lease implied by section 19 (a **section 19 determination**) becomes a determination of current market rent completed or pending under those provisions as implied by section 31 (a **section 31 determination**) and accordingly—
  - (a) the appointment of a specialist retail valuer for the purposes of a section 19 determination is taken to be an appointment for the purposes of a section 31 determination, and
  - (b) information supplied to a specialist retail valuer for the purposes of a section 19

determination is taken to have been supplied for the purposes of a section 31 determination, and

(c) a pending claim against a specialist retail valuer under section 19A (3) is taken to be a claim under section 31A (3).

(3) A protection from liability conferred by section 32B (5) on a specialist retail valuer appointed by the Registrar extends to a specialist retail valuer appointed by the Tribunal before the commencement of that section.

#### **44 Minimum 5-year lease term**

(1) Sections 6A (4), 16, 21A and 48 (3) as in force before their repeal or substitution by the 2017 amending Act continue to apply to a retail shop lease in force immediately before their repeal or substitution.

(2) An election under section 6A (4) to have the benefit of section 16 cannot be made after the substitution of section 16 by the 2017 amending Act.

#### **45 Expenses of obtaining consent of mortgagee**

Sections 14 and 45 do not apply to the seeking or accepting of payment of expenses incurred in connection with obtaining the consent of a mortgagee before the commencement of the amendment made by the 2017 amending Act to the definition of ***lease preparation expenses*** in section 3.

#### **46 Turnover rent**

The amendment of section 20 by the 2017 amending Act does not apply in respect of a determination of rent or a component of rent made before the commencement of the amendment.

#### **47 Consent to assignment**

The amendment of section 39 by the 2017 amending Act does not apply in respect of the withholding of consent to an assignment of lease before the commencement of the amendment.

#### **48 Change to monetary limit of Tribunal's jurisdiction**

The amendment made to section 73 by the 2017 amending Act does not apply to a retail tenancy claim or unconscionable conduct claim in respect of a lease entered into before the commencement of the amendment.