

Queensland



# RETAIL SHOP LEASES ACT 1984

**Reprinted as in force on 1 June 1992  
(includes amendments up to Act No. 73 of 1991)**

**Reprint No. 1**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 1 June 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- use updated references permitted by Division 3 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- correct spelling, and use different spelling consistent with current legislative drafting practice, as permitted by section 26 and (2) of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 36, and 39 of that Act;
- omit unnecessary referential words as permitted by section 41 of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

# Queensland



## RETAIL SHOP LEASES ACT 1984

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# RETAIL SHOP LEASES ACT 1984

[as amended by all amendments that commenced before 1 June 1992<sup>2</sup>]

**An Act to regulate the making of retail shop leases and to provide for resolution of disputes under such leases and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Retail Shop Leases Act 1984*<sup>3-4</sup>.

### Commencement

2.(1) Except as provided in subsection (2), this Act shall commence on the day on which the Governor gives assent thereto for and on behalf of Her Majesty.

- (2) The provisions of Parts 4 and 5 shall commence on 1 July 1984.

### Interpretation

4.(1) In this Act except where a contrary intention appears—

“adequate particulars” means, in relation to any matter—

- (a) where the parties to a retail shop lease have agreed as to what particulars are adequate—those particulars;
- (b) where the parties to a retail shop lease have not so agreed—particulars relevant to that matter of a nature and sufficiency such that a sound commercial decision in respect of that matter can be made thereon;

“building” includes any structure;

**“chairperson”** means the chairperson of a Retail Shop Lease Tribunal appointed pursuant to section 28;

**“common areas”** means all stairways, escalators, elevators, malls, walkways, trafficways, parking areas, toilets, rest rooms, gardens, fountains and other areas within or adjacent to a building and intended for use by the public or for use in common by the tenants of premises within the building in connection with the conduct of business in premises within the building;

**“determination of market rent”** means determination of market rent payable under a retail shop lease pursuant to section 10;

**“goodwill”** means an intangible, saleable asset separate and distinct from the value of the stock, fixtures, fittings and other tangible assets of the business arising from the reputation and the relations formed with customers of the business and the nature of its location;

**“key money”** means any money that is to be paid to or at the direction of a landlord or a landlord’s agent, by way of a premium, non-repayable bond or otherwise, or any benefit that is to be conferred on or at the direction of a landlord or a landlord’s agent in connection with the granting, renewal or assignment of a lease;

**“landlord”** means the person who under a lease is or would be entitled to the rent payable in respect of the premises to which the lease relates whether that person holds a freehold estate in or a less tenancy of those premises;

**“lease”** means any lease or agreement, whether in writing or not, that provides for a tenancy of premises whether for a term or for a periodic tenancy or at will;

**“mediator”** means a person appointed to be a member of a panel of mediators pursuant to section 17;

**“Minister”** means the Minister for Industry, Small Business and Technology or other Minister of the Crown for the time being charged with the administration of this Act and includes a person for the time being performing the duties of the Minister;

**“registrar”** means the registrar appointed by section 51;

**“retail shop”** means premises—

- (a) which are used wholly or predominantly for the carrying on of 1



or more of the businesses specified in Schedule 1; or

(b) situated in a retail shopping centre, that are used wholly or predominantly for the provision of 1 or more of the services specified in Schedule 2;

but does not include premises situated within an enterprise exempted from compliance with the provisions of this Act by the Governor in Council by order in council pursuant to section 5A;

**“retail shop lease”** means a lease that provides for the tenancy of a retail shop other than a tenancy—

(a) that is of a retail shop with a floor area that exceeds 1 000 m<sup>2</sup>; and

(b) that is held by a corporation within the meaning of the *Companies (Queensland) Code*, which would not be eligible to be incorporated in Queensland as a proprietary company, or that is held by a subsidiary of such a corporation;

**“Retail Shop Lease Mediation Panel”** or **“Panel”** means the panel of mediators appointed pursuant to section 17;

**“Retail Shop Lease Tribunal”** or **“Tribunal”** means a Retail Shop Lease Tribunal established pursuant to section 28;

**“retail shopping centre”** means a cluster of premises in respect of which—

(a) 5 or more are used wholly or predominantly for the carrying on of 1 or more of the businesses specified in Schedule 1; and

(b) one and the same person is or would be (when the premises are leased) the head lessor;

but does not include a building with more than 1 storey except in relation to each storey of the building on which is situated a cluster of premises in respect of which provisions (a) and (b) apply;

**“service station”** means—

(a) the business of selling, by retail, petroleum products as motor fuel; or

(b) the business of servicing or repairing motor vehicles or motor vessels in conjunction with the business of selling, by retail, petroleum products as motor fuel;

**“specialist retail valuer”** means a specialist retail valuer designated pursuant to section 10B;

**“the Valuers Registration Board”** means the Valuers Registration Board of Queensland constituted under the *Valuers Registration Act 1965*.

(2) A reference in this Act to arbitration shall be construed as a reference to arbitration conducted in accordance with the *Arbitration Act 1973* or, in the case of a retail shop lease that expressly provides for the mode of arbitration, in accordance with those provisions and to the extent that those provisions do not adequately provide in accordance with that Act.

A retail shop lease which pursuant to this Act is deemed to provide for a reference of any question to arbitration shall be deemed to be an agreement to arbitrate.

### **Application of Act**

**5.(1)** Subject to subsections (2) and (3), this Act does not apply—

(a) in the case of a retail shop lease in respect of a business or service specified in Schedule 1 or 2—where such a lease has been—

(i) entered into or renewed; or

(ii) entered into pursuant to an option conferred by a lease that was entered into; or

(iii) entered into pursuant to an agreement for lease that was entered into;

before the day on which the Governor gives assent to this Act for and on behalf of Her Majesty;

(b) in the case of a retail shop lease in respect of a business or service that is prescribed by the regulations as a specified business or specified service pursuant to the provisions of this Act—where such lease has been—

(i) entered into or renewed; or

(ii) entered into pursuant to an option conferred by a lease that was entered into; or

(iii) entered into pursuant to an agreement for lease that was entered into;

before the date on which the regulation prescribing that specified business or, as the case may be, specified service takes effect.

(2) Parts 1, 4 and 7 apply to any retail shop lease whether the entry into or renewal of that lease occurred before the day on which the Governor gives assent to this Act for and on behalf of Her Majesty or not.

(3) Part 6 applies to any retail shop lease whether the entry into or renewal of that lease occurred before the day on which the Governor gives assent to this Act for and on behalf of Her Majesty or not.

Provided that in relation to such a lease the provisions of that Part shall be construed as if they contained no reference to a Tribunal.

(3A) Except where it is expressly provided to the contrary in relation to an amendment of this Act, any amendment of this Act made by the *Retail Shop Leases Act Amendment Act 1989*, or before or after that Act, that purports to affect rights or obligations of a landlord or tenant under a retail shop lease shall be construed so as not to affect rights or obligations of a landlord or tenant provided for or deemed to be provided for by a retail shop lease entered into before the enactment of the amendment.

For the purposes of this subsection an amendment that merely prescribes the manner in which any act or thing is to be done shall be deemed not to purport to affect rights or obligations of a landlord or tenant.

(4) This Act applies to every retail shop lease that provides for a tenancy of premises in Queensland—

- (a) irrespective of where the lease is entered into; and
- (b) notwithstanding that the lease purports to be governed by a law other than the law of Queensland.

(5) For the purposes of this Act, a retail shop lease is entered into—

- (a) on the date on which the agreement for lease, or instrument of lease becomes binding on the landlord and tenant thereunder; or
- (b) on the date on which the tenant thereunder enters into the demised premises as tenant;

whichever date is earlier.

**Act's limited application to business of service station**

**5AA.(1)** This Act applies to a retail shop lease that authorises the carrying on of the business of a service station in premises, or to a dispute under such a lease, only to the extent that the matter or dispute in question arises out of or pertains to rights or obligations of the landlord and tenant other than rights or obligations that concern the manner in which business is to be conducted in or about the premises by the tenant as proprietor of a service station.

**(2)** This Act does not apply to a retail shop lease that authorises the carrying on of the business of a service station in premises, or to a dispute under such a lease, in any case where the application of this Act would be inconsistent with the proper application in that case of the *Petroleum Retail Marketing Franchise Act 1980* of the Commonwealth.

**Exemptions from Act**

**5A.(1)** The owner of an enterprise the principal activity of which is an activity other than the retailing of goods or the provision of shopping facilities to the public may apply to the Minister in the prescribed form for the exemption of that enterprise from the provisions of this Act.

**(2)** The Minister shall on receipt of the application make or cause to be made such enquiries and investigations as the Minister considers necessary to satisfy the Minister that—

(a) the enterprise is one the principal activity of which is an activity other than the retailing of goods or the provision of shopping facilities to the public; and

(b) the provisions of the lease entered into or to be entered into between the owner of the enterprise and the tenants of premises situated within the enterprise are appropriate in the circumstances.

**(3)** Upon being so satisfied the Minister shall submit the matter to the Governor in Council for consideration and the Governor in Council may exempt or refuse to exempt the enterprise from the provisions of this Act as the Governor in Council thinks fit.

**(4)** An exemption of an enterprise from the provisions of this Act shall be by order in council.

**(5)** The registrar shall keep in the registry a register in the prescribed

form of enterprises granted exemption from the provisions of this Act by order in council which register may be inspected by members of the public on payment of the prescribed fee.

## **PART 2—PROHIBITED CONDITIONS AND PROVISIONS**

### **Determination of rent as a fraction of turnover**

**6.** A landlord shall not include or cause to be included in a retail shop lease a provision whereby the rent is or may be calculated either in whole or in part as a fraction of the turnover of the business carried on or to be carried on in the premises that are the subject of that lease unless the tenant or prospective tenant has elected, by notice in writing in or to the effect of the prescribed form to the landlord, that method as the method by which the rent payable under the lease shall be determined.

Maximum penalty—\$5 000.

### **Tenant's right to join or form commercial associations**

**6A.** A landlord shall not include or cause to be included in a retail shop lease a provision whereby the tenant is prevented or restricted from—

- (a) joining any chamber of commerce or retail trade association or any other prescribed commercial association; or
- (b) forming or joining a tenants' association for the purpose of promoting a retail shopping centre.

### **No entitlement to turnover figures in certain cases**

**7.** A landlord shall not include or cause to be included in a retail shop lease a provision that—

- (a) the landlord is entitled to be furnished with turnover figures relating to the business carried on at or from the retail shop in question or statements relating thereto; or

(b) the tenant is obliged to furnish to or permit to be gathered by the landlord or the landlord's agent turnover figures relating to the business carried on at or from the retail shop in question;

unless the rent or part of the rent payable under that lease is or may be determined in accordance with the provisions of this Act as a fraction of the turnover of the business.

Maximum penalty—\$5 000.

### **Provision to pay land tax etc. unenforceable**

**7A.(1)** A landlord must not include in a retail shop lease entered into after 1 January 1992 a provision that requires a tenant to—

- (a) pay land tax; or
- (b) reimburse the landlord for land tax.

Maximum penalty—100 penalty units.

**(2)** A provision in a retail shop lease entered into after 1 January 1992 requiring a tenant to—

- (a) pay land tax; or
- (b) reimburse the landlord for land tax;

is unenforceable.

**(3)** A retail shop lease entered into after 1 January 1992 does not include a retail shop lease that arises from—

- (a) a renewal under an option to renew contained in a retail shop lease entered into on or before 1 January 1992; or
- (b) an assignment or transfer of a retail shop lease entered into on or before 1 January 1992.

### **Certain payments to landlord prohibited**

**8.(1)** The landlord under a retail shop lease or any person acting under the landlord's authority shall not be entitled to—

- (a) any key money in connection with the granting, renewal, extension or assignment of the lease; or

- (b) any amount for the goodwill of the business carried on at or from the retail shop in question; or
- (c) any other payment or any benefit in connection with the granting, renewal, extension or assignment of the lease.

**(2)** This section shall not be construed so as to prevent a landlord—

(a) from recovering from the tenant the landlord's costs reasonably incurred in investigating a proposed assignee of the tenant under a retail shop lease; or

(b) from recovering from the tenant the landlord's fair and reasonable expenses of and incidental to the documentation of a retail shop lease or an assignment of a lease and any necessary consents to such a lease or assignment of a lease; or

(ba) from receiving payment of rent in advance if the sum paid in advance does not exceed the amount of rent payable in respect of 1 rental period under the lease; or

(bb) from securing by means of a bond from the tenant the tenant's obligations under the lease; or

(c) from seeking and receiving payment for goodwill of a business from a purchaser of the business if at the time of sale the business is conducted in a retail shop by the landlord who, in connection with the sale of the business, grants to the purchaser a lease of the retail shop.

**(2A)** A landlord under a retail shop lease, or any person acting under the landlord's authority, is not entitled to payment by a tenant under the lease, into a sinking fund or otherwise, for or in respect of the amortisation of costs and expenses of or incidental to—

(a) construction of, or major improvement of a structural nature to—

(i) the building that is or contains the retail shop; or

(ii) any building in a retail shopping centre, if the retail shop is situated in a retail shopping centre; or

(iii) any area used, or to be used, in association with any such building or centre; or

(b) extension of a building referred to in paragraph (a)(i) or of a centre referred to in paragraph (a)(ii).

**(3)** Subject to this Act, a person who is a landlord under a retail shop

lease or any person claiming through such a landlord shall not, in connection with the granting, renewal, extension or assignment of a retail shop lease, demand or accept payment of any amount or the provision of any benefit to which a landlord under a retail shop lease is not entitled by reason of subsection (1) or (2A).

Maximum penalty—\$5 000.

(4) Any amount or the value of any benefit accepted by a person in contravention of this section may be recovered from the person by the person by whom the amount was paid or the benefit was granted by action in a court of competent jurisdiction as a debt due and owing to the first person by the person by whom it was accepted.

### **PART 3—IMPLIED CONDITION**

#### **Requirements if rent determined as a fraction of turnover**

9.(1) If the tenant or prospective tenant under a retail shop lease has elected, by notice in writing in or to the effect of the prescribed form, to the landlord to have the rental determined either in whole or in part as a fraction of the turnover of the business carried on or to be carried on in the premises that are the subject of the lease then—

(a) the lease shall specify the formula by which the amount of rent is to be calculated; and

(b) the tenant shall for the duration of the lease furnish to the landlord—

(i) at the end of each month or at such other times as shall be agreed between the parties, a gross sales certificate which specifies with reasonable accuracy the turnover of the business; and

(ii) at the end of each calendar year or at such other times as shall be agreed between the parties, and at the termination of the lease a statement of that turnover audited by a public accountant;

and the furnishing by the tenant of that gross sales certificate and statement shall in respect of the period to which the certificate or, as the



case may be, statement relates be in full satisfaction of the obligation of the tenant to provide turnover figures in relation to that business.

(2) For the purposes of this section—

“turnover” does not include—

- (a) the nett amount of discounts reasonably and properly allowed to any customer in the usual course of business; or
- (b) the amount of losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business; or
- (c) the amount of uncollected credit accounts written off by the tenant; or
- (d) the amount of any cash or credit refund allowed on a sale the proceeds of which have previously been included as gross receipts where the merchandise is returned and the sale cancelled or fees for the services are refunded wholly or partly; or
- (e) the amount of any instalment of purchase moneys refunded to customers where a lay-by transaction is cancelled; or
- (f) the amount of any purchase, receipt or other similar tax imposed upon the purchase price or cost of hire of merchandise or services at the point of sale or hire; or
- (g) the amount of delivery charges; or
- (h) the price of merchandise exchanged between stores of the tenant made solely for the convenient operation of the business of the tenant and not for the purpose of concluding a sale made at or from the demised premises; or
- (i) the price of merchandise returned to shippers, wholesalers or manufacturers; or
- (j) the amount received from the sale of the fixtures and fittings of the tenant from the retail shop in question; or
- (k) receipts from sales of Golden Casket tickets or from Gold Lotto and Soccer Pools Competitions other than amounts derived as commission or fees from those sales.

**Rent review**

**10.(1)** If provision is made in a retail shop lease for review of the amount of rent payable thereunder during the currency of the lease, the provision shall specify the basis on which or the formula by which the review is to be made.

**(2)** If provision is made in a retail shop lease for review of the amount of rent payable thereunder during the currency of the lease having regard to the market rent of the premises—

(a) the market rent shall be taken to be the rent that, having regard to the terms and conditions of the lease and such other matters that are relevant to the assessment of market rent, would be reasonably expected to be paid for the retail shop if it were unoccupied and offered for renting for the use to which the premises may be put in accordance with the lease; and

(b) in the absence of agreement between the landlord and tenant as to the amount of the market rent of premises, the lease shall be deemed to provide that the determination of market rent shall be made by a specialist retail valuer.

**(3)** In making a determination of market rent of premises a specialist retail valuer is not obliged to have regard to any provision of a relevant retail shop lease that provides for payment of—

(a) a minimum rental; or

(b) a rental of a specified amount;

for the premises.

**Provisions concerning determination by specialist retail valuer**

**10A.(1)** If a determination of market rent is to be made by a specialist retail valuer pursuant to section 10 and—

(a) the relevant retail shop lease does not provide for the nomination of a valuer for the purpose of making such a determination; and

(b) the landlord and tenant of the retail shop concerned have not agreed on a specialist retail valuer for that purpose;

the registrar shall nominate the specialist retail valuer for the purpose of making such determination whereupon the registrar's nominee, having

accepted the nomination, shall be deemed to have been appointed for that purpose by agreement of the landlord and tenant, and determination of the market rent by the registrar's nominee shall be deemed to be the market rent.

(2) It shall not be competent to a specialist retail valuer to enter into a determination of market rent unless the specialist retail valuer is independent of the interests of the landlord and tenant concerned.

(3) If a specialist retail valuer knowingly fails to comply with the provisions of subsection (2) without reasonable excuse such failure shall be deemed to be misconduct in the performance of the valuer's duties as a public valuer for the purposes of section 20 of the *Valuers Registration Act 1965* for which the valuer may be dealt with under that section.

(4) Where a specialist retail valuer has made a determination of market rent—

(a) the determination shall be in writing that—

(i) identifies the location of the retail shop to which it relates; and

(ii) specifies the matters taken into consideration by the valuer in making the determination; and

(b) the market rent so determined shall be taken to be the market rent of the retail shop to which the determination relates; and

(c) the landlord and the tenant of the retail shop to which the determination relates shall each pay one half of the valuer's fee to the valuer.

(5) Every determination of market rent shall be completed and notified by the specialist retail valuer to the landlord and tenant within 30 days of submission of the question to the specialist retail valuer concerned, save where the Valuers Registration Board is satisfied that a reasonable excuse exists for failure to comply with this subsection.

(6) Failure by a specialist retail valuer to comply with the provisions of subsection (5) without reasonable excuse in respect of more than 2 such determinations of market rent shall be deemed to constitute incompetence in the performance of the valuer's duties as a public valuer for the purposes of section 20 of the *Valuers Registration Act 1965* for which the valuer may be dealt with under that section.

**Designation of specialist retail valuers**

**10B.(1)** The Valuers Registration Board shall compile and maintain a list of specialist retail valuers, in addition to and separate from the Register of Valuers of Queensland kept under section 12 of the *Valuers Registration Act 1965*.

For the purposes of this Act, a specialist retail valuer is an individual who is a registered valuer and whose name is included in such list by the Valuers Registration Board pursuant to this section.

**(2)** The list of specialist retail valuers shall be available for inspection at the office where the same is for the time being held, upon payment of such fee as may be determined by the Valuers Registration Board.

**(3)** An individual who is a registered valuer under the *Valuers Registration Act 1965* who desires to be designated as a specialist retail valuer shall make application to the Valuers Registration Board in writing to that effect and pay the prescribed fee.

If the Valuers Registration Board is satisfied that such registered valuer has sufficient experience in retail rental valuation it may approve the application and include the valuer's name on the list of specialist retail valuers, which designation shall take effect from the date of that inclusion, or may refuse the application.

**(4)** The Valuers Registration Board may when designating a specialist retail valuer authorise the valuer to perform retail rental valuations for the purposes of this Act for the whole of the State or may limit the authorisation to making such valuations for such geographical area or areas of the State as that Board sees fit, and the list of specialist retail valuers shall be noted accordingly.

**(5)** The Valuers Registration Board may remove from the list of specialist retail valuers the name of any person whose name has been duly removed from the register within the meaning of the *Valuers Registration Act 1965* and that person shall immediately cease to be a specialist retail valuer for the purposes of this Act.

**Appeal by aggrieved valuer**

**10C.(1)** An individual who is a registered valuer who is aggrieved by a refusal of the Valuers Registration Board of an application for designation as a specialist retail valuer may appeal against such refusal to a Judge of the

District Court at Brisbane who shall have jurisdiction to hear and determine the same.

(2) Every such appeal shall be by way of rehearing upon the evidence adduced before the Board and the decision of a Judge of the District Court upon such an appeal shall be final and binding on all persons concerned.

(3) A person who desires to appeal against a refusal of the Valuers Registration Board referred to in subsection (1) shall—

(a) within 28 days after the date of such refusal serve on the secretary to the Valuers Registration Board a notice of appeal in or to the effect of the prescribed form setting out the grounds of appeal; and

(b) within 7 days of the service of such notice deposit with the Registrar of the District Court at Brisbane the sum of \$200 by way of security for the costs of the appeal.

(4) Upon being served with the notice of appeal under subsection (3) the secretary to the Valuers Registration Board shall immediately send to the Registrar of the District Court at Brisbane a copy of such notice and of the evidence before the Valuers Registration Board and the resolution of the Board relevant to the matter of appeal.

(5) Rules of court may be made under the *District Courts Act 1967* with respect to the institution, conduct and disposal of an appeal.

Until such rules are made or in so far as such rules of court do not extend, the Judge hearing any appeal under this section may, in the particular case, give such directions as the Judge may think fit, and the directions shall, according to their tenor, have the force and effect of rules of court made for the purposes thereof.

### **Requests for assignment of lease**

**11.(1)** Where a tenant of a retail shop lease has requested the landlord, in writing, to consent to an assignment of the lease and has provided the landlord with adequate particulars in relation thereto and the landlord has failed to give an answer to that request to the tenant within 30 days of the date on which that request is received by the landlord, that failure shall be deemed to create a dispute under a retail shop lease for the purposes of this Act and may be referred to a mediator in accordance with the provisions of this Act.

(2) If a retail shop lease provides for recovery from the tenant of costs incurred by the landlord in investigating a proposed assignee of the tenant—

(a) the right of recovery shall be limited to the amount of such costs reasonably so incurred by the landlord and notified by the landlord to the tenant by means of an itemised account; and

(b) in the absence of an express provision for the submission of the question to arbitration, the lease shall be deemed to further provide for submission to arbitration of the question of the amount of such costs reasonably incurred if there be no agreement between the landlord and tenant upon that question.

(3) If in connection with consenting to an assignment of a retail shop lease, a landlord—

(a) purports or seeks to impose on the prospective assignee, so as to bind the assignee as a tenant, an obligation that is not a tenant's obligation under the lease to be assigned; or

(b) purports or seeks to withdraw from the prospective assignee a right conferred on the tenant by the lease to be assigned; or

(c) purports or seeks to impose, as a condition for consenting to the assignment, a condition that the tenant considers unreasonable;

there is thereby constituted a dispute under the retail shop lease between the landlord and the tenant who seeks to assign the lease, which dispute may be referred to a mediator in accordance with this Act.

### **Tenant's right to mortgage etc.**

**11A.(1)** Except where the provisions of this subsection are expressly excluded by the terms of a retail shop lease, in every such lease there shall be implied a provision regulating the tenant's right to deal with, by way of security, the assets of the business conducted in the retail shop to the extent of requiring that before any such dealing is entered into the prospective secured creditor shall enter into an agreement with the landlord with respect to—

(a) the times at which the secured creditor, or the secured creditor's agents, may enter on the retail shop premises, before or after the expiration or termination of the lease; and

(b) the times by or at which and the manner in which the secured

creditor, or the secured creditor's agents, must or may remove fixtures, fittings or equipment subject to the security before or after the expiration or termination of the lease; and

(c) the disposition of the ownership of fixtures, fittings or equipment that are not removed in accordance with the agreement; and

(d) the right of the secured creditor to enter into possession, or to place another person in possession, of the retail shop in the event of the tenant's default under the security; and

(e) making good any damage caused to the retail shop premises as a result of the secured creditor exercising the secured creditor's rights under the security; and

(f) incidental matters relevant thereto.

(2) Subject to subsection (1), a landlord under a retail shop lease is not entitled to obstruct or hinder the tenant in dealing with the lease and other assets of the business conducted in the retail shop by way of security.

(3) To the extent that a provision of a retail shop lease purports to confer on a landlord a right in excess of that conferred by subsection (1) in relation to a tenant's right to deal with, by way of security, assets of the business conducted by the tenant, the provision is void.

### **Sharing of expenses**

**12.(1)** If a tenant under a retail shop lease is required to pay, in addition to rent, all or part of the landlord's outgoings on account of—

- the landlord's expenses of operating, repairing or maintaining the building in which the retail shop is, or, in the case of a retail shopping centre, of any building in the centre, or of areas used in association with any such building; or

- rates, taxes, levies, premiums or charges payable by the landlord because the landlord is owner or occupier of any such building or of the land on which it is erected;

(a) the lease shall specify—

(i) the outgoings that are to be regarded as operating expenses; and

(ii) how the operating expenses will be determined and

apportioned to the tenant; and

(iii) how the operating expenses, or any part thereof, may be recovered by the landlord from the tenant; and

(b) annual estimates in the prescribed form of each of those expenses shall be furnished by the landlord to the tenant at least 1 month before the commencement of the period to which the estimate relates or, where the tenant enters into the lease during the period to which the estimate relates or within 1 month before the commencement of that period, at the time the tenant enters into the lease; and

(c) annual statements in the prescribed form and complying with subsection (2) of expenditure incurred on each of those expenses, audited by a public accountant, shall be furnished by the landlord to the tenant within 3 months after the termination of the period to which the expenditure is referable.

(2) The expenses shown in an annual statement of expenditure referred to in subsection (1)(c) shall be so itemised that the amount allocated therein to each item shall not exceed 5 % of the total of the expenses shown in the statement.

Provided that the amount allocated to an item may exceed 5 % of that total if the item relates to—

(a) a tax, impost or charge levied or made under any Act, or law applicable in the State; or

(b) an outgoing consisting of 1 component (specifically identified) that cannot be dissected so as to comply with the limiting provisions of this subsection.

(3) If, in relation to a new retail shopping centre or a new building that contains 1 or more retail shops, the landlord's accounting period would expire sooner than the expiry of 1 year from the time at which an estimate of expenses is required by subsection (1)(b) to be given, it shall be sufficient compliance—

(a) with the provisions of subsection (1)(b) if the estimate of expenses first furnished under those provisions relates to the landlord's accounting period in lieu of 1 year;

(b) with the provisions of subsection (1)(c), if the first statement of expenditure furnished under those provisions relates to expenditure



during the landlord's accounting period in lieu of 1 year, and is furnished within 3 months after the termination of that accounting period.

(4) Where a person becomes owner of a retail shopping centre or building that contains 1 or more retail shops and the person's accounting period is different from that of the preceding owner the provisions of subsection (3) apply in relation to the centre or building in the hands of the new owner as if it were a new retail shopping centre or a new building acquired by the person.

(5) Where land tax or other charge on land is an outgoing of the landlord under a retail shop lease, the liability of a tenant under the lease to pay, or contribute to, that outgoing shall not exceed the amount (if any) of the tenant's liability therefor had the land, on which is the building, or retail shopping centre, in which the retail shop is situated together with all other land of the landlord used or available for use—

- (a) by, or for the benefit of, the tenants conducting business in the building or centre; or
- (b) in association with trading in the building or centre,

been the only land owned by the landlord.

(6) Subsection (5) does not apply to a retail shop lease entered into after 1 January 1992.

(7) A retail shop lease entered into after 1 January 1992 does not include a retail shop lease that arises from—

- (a) a renewal under an option to renew contained in a retail shop lease entered into on or before 1 January 1992; or
- (b) an assignment or transfer of a retail shop lease entered into on or before 1 January 1992.

### **Option to renew lease**

**13.(1)** Where—

- (a) a retail shop lease (other than a periodic tenancy or tenancy at will, or for a term not exceeding 6 months) is the first lease entered into in respect of the premises to which the lease relates; and
- (b) the term of the lease, or the aggregate of the initial term of the

lease and the term or terms of any option or options provided for therein, is less than 5 years; and

(c) the tenant notifies the landlord in or to the effect of the prescribed form not less than 90 days prior to the date on which the existing tenancy expires; and

(d) at the time of the giving of the notice referred to in provision (c), there exists no unremedied default on the part of the tenant and no default occurs during the balance of the existing tenancy other than a default that is waived by the landlord or in respect of which the tenant is granted relief by the court pursuant to section 124 of the *Property Law Act 1974*;

the tenant shall, except where the making of a lease for that term would be contrary to the law governing subleases, be entitled, at the tenant's option, to a renewal of the lease—

(e) for a second term commencing on the date of expiration of the initial term and expiring on the date that is 5 years from and after the date of commencement of the initial term; and

(f) upon terms and conditions which shall be the same as those upon which the tenant holds the initial term of the lease, other than this entitlement to a renewal, save that the rent payable during the renewed term shall be determined in the first instance and reviewed biennially thereafter having regard to the market rent of the premises calculated in the manner set out in section 10(2).

**(2)** For the purposes of subsection (1)—

(a) a retail shop lease for a term of 5 years or more that provides the landlord with a right to determine the lease before the expiration of 5 years from the date of commencement of the lease, otherwise than upon default by the tenant, shall be deemed to be a lease having a term referred to in subsection (1)(b);

(b) if premises to which a retail shop lease relates are offered for use as 2 separate parts—a retail shop lease of either of the separate parts is not the first lease entered into in relation to that part;

(c) if 2 separate parts of premises to each of which a retail shop lease relates are offered for use as a single entity—a retail shop lease of that entity is not the first lease entered into in relation to the whole premises;

(d) if 2 separate parts of premises have been subject to retail shop leases and the premises are again offered for use as 2 separate parts although comprising areas different from the areas of the parts previously leased—a retail shop lease of either of the separate parts so offered for use is not the first lease entered into in relation to that part.

(3) Where a retail shop lease (other than a periodic tenancy or a tenancy at will) is not the first such lease entered into in respect of the premises to which it relates and does not provide for an option on the part of the tenant to renew the lease, the following provisions shall apply—

(a) the tenant may, not less than 4 months prior to the tenancy expiry date by notice in or to the effect of the prescribed form request the landlord to renew the lease for a period specified in the notice;

(b) upon receipt of that notice the landlord shall, not less than 3 months prior to the tenancy expiry date by notice in or to the effect of the prescribed form inform the tenant whether or not the landlord offers the tenant the option of renewal of the lease and if the landlord does so offer for what period the lease is offered and the proposed terms and conditions of the proposed renewed lease;

(c) if the tenant receives a notice from the landlord that complies with paragraph (b) in which the tenant is offered such an option of renewal of the lease—the tenant shall, if the tenant desires to accept the landlord's offer, give notice in or to the effect of the prescribed form, not less than 2 months prior to the tenancy expiry date, of acceptance of that offer;

(d) if—

(i) the tenant duly gives a notice referred to in paragraph (c); and

(ii) at the time of giving the notice there exists no unremedied default on the part of the tenant and no default occurs during the balance of the existing tenancy other than a default that is waived by the landlord or in respect of which the tenant is granted relief by the court pursuant to section 124 of the *Property Law Act 1974*;

the tenant shall, except where the making of a lease for that term would be contrary to the law governing subleases, be granted a renewal of the existing lease upon terms and conditions consisting of those specified in the notice referred to in paragraph (b);

(e) if the landlord fails to give any notice under paragraph (b) or gives a notice that does not comply with the provisions of paragraph (b), and in the absence of agreement between the landlord and tenant as to holding over—the tenant shall be entitled at the tenant’s option to occupy the premises concerned in the existing tenancy for the term of 3 months from the tenancy expiry date upon the same terms and conditions as those on which the tenant holds the existing term of the lease other than the term thereof and this entitlement to a renewal;

(f) for the purposes of this subsection “**tenancy expiry date**” means the date on which the existing tenancy concerned expires.

### **Tenant’s right to independent legal advice**

**14.** A tenant or a person negotiating with a landlord to become a tenant under a retail shop lease—

(a) shall not be compelled to use the services of a solicitor nominated by a landlord; and

(b) a tenant or person who is so compelled in contravention of paragraph (a) shall not be required to pay to the solicitor any fees for the solicitor’s services.

### **Trading hours pursuant to retail shop leases**

**14A.(1)** During the term current at 29 October 1987 (the commencement of the *Trading Hours Act 1987*) of a retail shop lease a tenant under the lease is not required, because of any provision of the lease, to extend the hours during which the tenant is required by the lease to keep the retail shop open for trading immediately before that date.

**(2)** A tenant under a retail shop lease shall not be held to be in breach of a provision of the lease that requires the tenant to keep the retail shop open for trading by reason that, during the term current at 29 October 1987 of the lease, the tenant has refused or failed to extend the hours during which the tenant is required by the lease to keep the retail shop open for trading immediately before that date.

**Implied provisions for compensation**

**15.(1)** In every retail shop lease (other than a periodic tenancy or tenancy at will) there shall be implied the following provisions—

(a) the landlord is liable to pay to the tenant reasonable compensation for injury suffered by the tenant if the landlord, or a person acting under the landlord's authority, whether pursuant to a right so to do or not—

(i) relocates the business of the tenant to other premises during the term of the lease or of any renewal thereof;

(ii) inhibits in a substantial manner access by the tenant to the retail shop in which the tenant's business is conducted;

(iii) takes action, other than that lawfully required by a department of government or statutory body, that substantially inhibits, or alters, access by customers to the retail shop in which the tenant's business is conducted, or the flow of potential customers past that retail shop;

(iv) causes significant disruption of trading of a tenant in the retail shop in which the tenant's business is for the time being conducted, or fails to take all reasonable steps to prevent or terminate such significant disruption attributable to causes within the landlord's control;

(v) fails to have rectified as soon as is practicable—

(A) any breakdown of plant or equipment under the landlord's care or maintenance; or

(B) any defect in the building that is or contains the retail shop, or, in the case of a retail shop in a retail shopping centre, in any building in the centre, or in common areas, except a defect due to a condition of the building or common area that would have been apparent to the tenant upon the exercise of reasonable diligence, at the time the tenant entered into the retail shop lease or, in the case of a tenant by way of assignment of a retail shop lease, at the time the tenant accepted the assignment;

(vi) neglects to clean, maintain, or repaint such part as is the landlord's responsibility under the retail shop lease of the building

that is or contains the retail shop, or, in the case of a retail shop in a retail shopping centre, of any building in the centre, or of common areas;

(vii) causes the tenant to vacate the retail shop before the expiry of the current term of the lease, or of any renewal thereof, for the purpose of extending, refurbishing, or demolishing the whole or part of the building that is or contains the retail shop, or, in the case of a retail shop in a retail shopping centre, the whole or part of the centre;

(b) the landlord is liable to pay to the tenant reasonable compensation for injury suffered by the tenant and attributable to—

(i) the tenant's entering into the lease, or a renewal thereof, as a result of a false or misleading statement or misrepresentation made by the landlord or any person acting under the landlord's authority; or

(ii) the demised premises not being available to the tenant for use for trade on the date nominated pursuant to section 15A(1)(i) due to default of the landlord or any person acting under the landlord's authority;

(c) any dispute that arises between the landlord and the tenant concerning a right to compensation payable under paragraph (a) or (b), or the amount thereof, shall be referred to a mediator appointed under this Act for solution, and in that event the landlord and the tenant shall act in good faith with a view to the dispute being resolved by mediation or, if the dispute be referred to a Retail Shop Leases Tribunal established under this Act, with a view to the matter in dispute being determined by the Tribunal.

(2) A tenant under a retail shop lease is not entitled to compensation under subsection (1) by reason only that the landlord has prevented the tenant from extending, as permitted by the *Trading Hours Act 1987*, the hours during which the tenant keeps the retail shop open for trading, and every retail shop lease shall be read and construed subject to this subsection in respect of a provision implied therein by subsection (1).

(3) Where the landlord and tenant under a retail shop lease have agreed in the lease as to the amount of compensation payable to the tenant in the event referred to in subsection (1)(i) or (vii), the amount so agreed shall be taken to be reasonable compensation required by the provision implied in the lease

by subsection (1), and every retail shop lease shall be read and construed subject to this subsection in respect of that provision.

### **Documents and information to be given to tenant**

**15A.(1)** At such time before a person enters as tenant into a retail shop lease (other than a periodic tenancy or tenancy at will) as is considered by the person sufficient to allow the person to make a sound commercial decision with respect to entering into the lease (not exceeding in any case 14 days) the landlord shall give to the person—

- (a) a draft of the lease that expresses the standard or general provisions that are, or are to be, included in a lease of retail shops in the building or retail shopping centre in which the retail shop is, or is to be, situated; and
- (b) adequate particulars to enable the person to identify and locate the site of the retail shop in the building or retail shopping centre in which the retail shop is, or is to be, situated; and
- (c) adequate particulars of the approximate area available for lease of the retail shop; and
- (d) adequate particulars of the term of the proposed lease and of any option or options to renew the lease to be had by the tenant; and
- (e) adequate particulars of the rent to be paid upon commencement of the term of the lease, or the method by which such rent is to be determined and of the times at which and the means by which rent for the time being payable under the lease is to be reviewed; and
- (f) adequate particulars of the proportion that the tenant's contribution (if any) to the landlord's outgoings referred to in section 12 is of the total of such outgoings and also adequate particulars of the proportion that the area available for lease of the retail shop is of the total lettable area in respect of which such outgoings are to be calculated; and
- (g) adequate particulars of the use to which the retail shop may be put pursuant to the lease; and
- (h) adequate particulars of the construction work in or about the retail shop that under the lease is to be carried out by the tenant and of the construction work in or about the retail shop that under the lease is to be carried out by the landlord together with specification of the

standard of construction and of finishes thereof; and

(i) where the building or retail shopping centre in which the retail shop is to be situated has not been commenced, or completed—adequate particulars of the date on which the retail shop premises are expected to be available for use for trade by the tenant.

(2) If, before a person has entered into a retail shop lease as tenant, the landlord fails to comply in all respects with such of the provisions of subsection (1) as are apposite to the lease, the tenant may, by notice in writing given to the landlord—

(a) terminate the lease within 14 days (and no later) after the tenant receives the draft lease and such particulars prescribed by subsection (1) as are apposite to the lease;

(b) terminate the lease within 2 months (and no later) after the tenant enters into the lease where the draft lease and such particulars prescribed by subsection (1) as are apposite to the lease are not received by the tenant.

(3) Subsections (1) and (2) do not apply where—

(a) the tenant's entry into a retail shop lease consists in an agreement for lease, or the instrument of lease, becoming binding on the tenant; and

(b) the agreement for lease, or instrument of lease, contains all the particulars apposite to the lease required by subsection (1); and

(c) a copy of the agreement for lease, or instrument of lease, has been given to the tenant.

(4) Where precise particulars of the matters referred to in subsection (1)(f) are not available at the time particulars of those matters are to be given to comply with that subsection, it is sufficient compliance with the subsection if adequate particulars of an estimate of those matters are given in accordance with the subsection.

Provided that if precise particulars of those matters, when established, vary (by way of increase) from the estimated particulars by more than 5 % of the estimation, the landlord shall give to the tenant notification of those precise particulars.

Where such notification is given to a tenant, the period of 14 days referred to in subsection (2)(a) shall be calculated from the day such



notification is received by the tenant, and subsection (2) shall be construed accordingly.

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

**16.(1)** Where a provision of this Act prescribes a duty or an entitlement of a landlord or tenant under a retail shop lease in relation to which this Act applies that duty or entitlement shall be deemed to be provided for by every such retail shop lease.

(2) Any provision of a retail shop lease that purports to exclude the application of an enactment of this Act to a retail shop lease, being one that in accordance with this Act is subject to the enactment, is of no effect.

(3) Where a provision of this Act is inconsistent with a provision expressed in a retail shop lease the provision of this Act shall prevail and the other provision shall, to the extent of the inconsistency, be inoperative.

## **PART 4—RETAIL SHOP LEASE MEDIATION PANEL**

### **Mediation panel**

**17.** The Governor in Council may appoint such number of persons to be members of a panel of mediators for the purposes of this Act as the Governor in Council considers necessary for the proper discharge of the function of mediation under this Act.

Every such appointment shall be notified in the Gazette.

### **Conditions of appointment**

**18.** Every mediator—

- (a) shall be appointed for such term as the Governor in Council determines and specifies in the instrument of appointment; and
- (b) shall be eligible for reappointment; and
- (c) if the mediator is not a member of the public service—shall be entitled to such remuneration as the Governor in Council from time to

time approves, either generally or in a particular case.

### **Removal of mediator**

**19.** A mediator may be removed from office by the Governor in Council at any time if, in the opinion of the Governor in Council—

- (a) the mediator is incapable of properly discharging the functions of a mediator; or
- (b) the mediator is unfit to hold the office of mediator.

### **Functions of mediator**

**20.(1)** Subject to this Act, it is the function of a mediator—

- (a) to hear disputes between landlords and tenants under retail shop leases that are referred to the mediator with a view to attaining a solution of the dispute acceptable to the parties thereto; and
- (b) to report to the Minister annually upon discharge throughout the year of the function referred to in paragraph (a), bringing to notice therein all matters within the mediator's knowledge that are significant to the relationship of landlords and tenants under retail shop leases.

**(2)** The Minister shall cause to be prepared from those reports, as soon as practicable each year, a consolidated report with respect to the discharge of their functions by all mediators throughout Queensland, bringing to notice therein all matters, such as are referred to in subsection (1)(b), that are mentioned in the reports of the mediators furnished to the Minister and shall table that report in the Legislative Assembly within 14 sitting days after the date on which its preparation is completed.

### **Registry of Panel**

**21.(1)** There shall be established and maintained in Brisbane a registry of the Retail Shop Lease Mediation Panel wherein shall be kept all records of mediators on the panel together with a Reference of Disputes Register containing the prescribed particulars and in the prescribed form.

**(2)** The Reference of Disputes Register may be inspected by members of the public on payment of the prescribed fee.

**Records of mediator**

**22.(1)** An official record of evidence given before a mediator shall not be made in any case and any evidence so given shall not be construed as an admission of any fact or liability or be used as evidence in any court or tribunal other than in the hearing of a dispute by a mediator.

**(2)** A mediator is entitled to make such notes of evidence as the mediator requires but those notes shall not form part of the record of the mediator.

**(3)** The record of a mediator shall consist of—

- (a)** particulars of the dispute referred to the mediator as completed by the landlord or tenant pursuant to section 24(1); and
- (b)** the notation of the nature of the issue in dispute as determined and recorded by the mediator during the hearing of the dispute; and
- (c)** the result of the mediation.

**(4)** A mediator shall at the end of each month forward the records of disputes heard and finalised by the mediator during the month then concluded and any mediation agreements in relation thereto to the registry of the panel.

**(5)** The record of a mediator kept in the registry of the panel shall be open for inspection free of charge by the parties to the reference to which the record relates or their authorised representatives and shall be available for production before a Tribunal for the purpose of any proceeding before that tribunal.

**Role of mediator**

**23.(1)** Subject to subsection (2), it is competent to a mediator to seek to resolve by mediation any dispute under a retail shop lease that is referred to the mediator.

**(2)** The competence of a mediator declared by subsection (1) does not extend to a dispute as to arrears of rent, or the amount of rent, payable under a retail shop lease or the amount of landlord's outgoings referred to in section 12.

**References to a mediator**

**24.(1)** A landlord or a tenant who is a party to a dispute under a retail shop lease and who wishes to refer the dispute to a mediator shall institute that reference by completing the prescribed form, filing it in the registry and paying the prescribed fee to the registrar at the time of filing.

**(2)** It is the duty of the registrar to give assistance to a landlord or a tenant who seeks it in completing the prescribed form of reference of a dispute.

**(3)** Each party to a reference before a mediator shall have the carriage of the party's own case and shall not be entitled to be represented by an agent unless—

(a) the party is a corporation in which case it may appear by a representative approved by the mediator; or

(b) in any other case—it appears to the mediator that an agent should be permitted to represent that party and the mediator so approves accordingly.

**(4)** An agent or a representative who has a legal qualification under the laws of Queensland or of any other place or who is of the nature of a professional advocate shall not represent a party to a reference before a mediator except with the consent of the mediator.

**(5)** The hearing of a reference to a mediator shall not be open to the public.

**(6)** A party to a dispute referred to a mediator shall not be compellable to attend a hearing in relation thereto.

**Notice of hearing of dispute by mediator**

**25.** The registrar shall give or cause to be given to every party to a dispute referred to a mediator, reasonable notice of the time when and the place where the mediator is to conduct a hearing of the reference.

**Mediation agreements**

**26.(1)** Where—

(a) a dispute has been referred to a mediator; and

(b) a solution in the form of an agreement acceptable to all of the

parties to the dispute has been reached by the mediator; particulars of the agreement shall be reduced to writing and signed by or on behalf of those parties and a copy of the completed agreement shall be filed in the records of that mediator.

(2) The failure by any party to a mediation agreement to comply with the terms of that agreement within the time therein specified or, if no time is so specified, within 2 months of the date of the filing of the agreement in the records of the mediator shall constitute a breach of the terms of the agreement.

### **Disputes referred to Tribunal in certain circumstances**

#### **27.(1) Where—**

- (a) a mediator, being empowered by the provisions of this Act to hear a dispute, cannot reach a solution to that dispute by way of mediation; or
- (b) a party to a dispute referred to a mediator under this Act which dispute is within the competence of a mediator, having been duly notified of the hearing of the dispute, fails to attend that hearing; or
- (c) a party to a dispute who has signed a mediation agreement breaches that agreement; or
- (d) a dispute referred to a mediator under this Act which dispute is within the competence of a mediator has not been settled within 120 days of the date on which the registry of the Panel receives notification of that dispute;

and it is competent to a Tribunal to hear the dispute in question, the mediator shall, by notice in writing to the registrar in the prescribed form, forthwith refer the dispute to a Tribunal for determination.

#### **(2) Where—**

- (a) the provisions of subsection (1)(a), (b), (c) or (d) apply to a dispute; and
- (b) it is not competent to a Tribunal, pursuant to the provisions of this Act, to hear the dispute;

the mediator shall report the matter to the Minister who may in the Minister's discretion report the matter to Parliament.

## **PART 5—RETAIL SHOP LEASE TRIBUNALS**

### **Retail Shop Lease Tribunals**

**28.(1)** There shall be established such number of Tribunals, each to be known as a Retail Shop Lease Tribunal, as the Governor in Council thinks fit.

**(2)** Each Tribunal shall consist of 3 persons who shall be appointed as members by order in council made on the recommendation of the Minister of whom—

(a) 1 shall be a person—

(i) who has been a Judge of the Supreme Court or a District Court Judge; or

(ii) who is a barrister or solicitor of the Supreme Court of at least 5 years' standing;

who shall be chairperson of the Tribunal; and

(b) 1 shall be a person who, in the opinion of the Minister, is representative of persons who are landlords under retail shop leases; and

(c) 1 shall be a person who, in the opinion of the Minister, is representative of persons who are tenants under retail shop leases.

**(3)** The term of every appointment made to a Tribunal shall commence on the date specified therefor in the order in council by which the appointment is made and, except where the appointment is to a casual vacancy, shall be for such period (not exceeding 3 years) as is specified in the order.

**(4)** Every member of a Tribunal shall be entitled to such remuneration as the Governor in Council from time to time approves, either generally or in a particular case.

**(5)** A person shall be eligible for further appointment as a member of a Tribunal.

**(6)** A person appointed as a member of a Tribunal shall, unless the person sooner vacates office as prescribed, continue to hold office until the person's successor assumes office.

### **Vacation of office**

**29.(1)** A member of a Tribunal may, by notice in writing furnished to the Minister, resign from office at any time.

**(2)** The Governor in Council may at any time remove from office a member of a Tribunal by notice in writing furnished to the member.

**(3)** A member of a Tribunal shall be deemed to have vacated office—

- (a) if the member dies;
- (b) if the member attains the age of 70 years;
- (c) if the member resigns from office;
- (d) if the member is removed from office.

### **Filling vacancies**

**30.(1)** If a casual vacancy occurs in the office of a member of a Tribunal during the currency of the member's term of appointment, there may be appointed to fill that vacancy a person who has the qualification referred to in section 28(2) by reason of which the member's predecessor in office was eligible to be appointed as a member of the Tribunal.

**(2)** A person appointed to fill a casual vacancy as provided in subsection (1) shall hold office for the remainder of the term for which the person's predecessor was appointed but shall be eligible for reappointment if the person remains otherwise qualified as prescribed to be a member of a Tribunal.

### **Validation of proceedings**

**31.** No proceedings of the Tribunal shall be invalidated by reason of any defect in the appointment of any person as a member of the Tribunal.

### **Functions of a Tribunal**

**32.(1)** It is the function of a Tribunal—

- (a) to hear any dispute, which is within the jurisdiction of the Tribunal, that is referred to it pursuant to the provisions of this Act; and
- (b) to make or cause to be made such investigations as it considers

necessary for the purposes of such hearing; and

(ba) to keep a written record of the proceedings of the Tribunal and a record of the documents produced in respect of each dispute referred to it; and

(c) to determine every such dispute in accordance with and for the purposes of the provisions of this Act; and

(d) to report to the Minister annually in relation to its discharge throughout the year of its functions referred to in subparagraphs (a), (b) and (c) bringing to notice therein all matters of significance to the relationship of landlords and tenants under retail shop leases that arise in the course of the discharge of its functions.

(2) The Minister shall cause to be prepared from those reports, as soon as practicable each year, a consolidated report with respect to the discharge of the functions of Tribunals throughout Queensland, bringing to notice all matters that are mentioned in the reports furnished to the Minister by the Tribunals and table that report in the Legislative Assembly within 14 sitting days after the date on which its preparation is completed.

### **Determination of questions before a Tribunal**

33.(1) Subject to subsection (2), a question before a Tribunal shall be decided according to the opinion of a majority of the members constituting the Tribunal.

(2) A question of law arising before a Tribunal shall be decided by the chairperson who for that purpose may constitute the Tribunal and sit alone.

### **Venues**

34. A Tribunal may be constituted at any place in the State and shall meet at such times and places as the chairperson appoints.

### **Registry of Tribunals**

35.(1) For the purposes of this Act there shall be established and maintained a registry of Tribunals at Brisbane.

(2) There shall be kept in the registry all records of the Tribunals that relate to any reference under this Act to the Tribunals for hearing and



determination together with a Tribunals Orders Register containing the prescribed particulars and in the prescribed form.

(3) The Tribunals Orders Register and the records of the Tribunal in respect of a particular dispute referred to it may each be inspected by members of the public on payment of the fees respectively prescribed.

### **Extent of jurisdiction**

**36.(1)** Subject to this Act, a Tribunal has jurisdiction to hear and determine any dispute referred to it by a mediator pursuant to the provisions of this Act, which dispute arises out of or relates to the provisions of Parts 2 or 3 of this Act or concerns—

- (a) the liability of any person to pay moneys; or
- (b) the recovery of moneys due and owing or paid by any person;

in connection with a retail shop lease.

(2) The jurisdiction of a Tribunal conferred by subsection (1) does not extend to a dispute as to—

- (a) arrears of rent, or the amount of rent, payable under a retail shop lease or the amount of landlord's outgoings referred to in section 12;
- (b) a matter in dispute, if the application of this Act to the matter is excluded by section 5A.

(3) Where a retail shop lease provides or is deemed to provide that any question be submitted to arbitration it is competent to a mediator to refer a dispute involving that question to a Tribunal so far as it involves that question unless all steps necessary to secure arbitration of the question have been taken.

Where the mediator has, within the mediator's competence, referred a dispute to the Tribunal, any provision of a retail shop lease that provides for the submission of any question involved in the dispute to arbitration is null and void in relation to that dispute.

This subsection applies in relation to every retail shop lease whether entered into before or after the commencement of the *Retail Shop Leases Act Amendment Act 1988*.

**Notice of hearing of dispute by Tribunal**

**37.(1)** The registrar shall give or cause to be given to every party to a dispute referred to the Tribunal, reasonable notice of the time when and the place where the Tribunal is to conduct a hearing of the reference.

**(2)** If a party to whom notice has been given pursuant to subsection (1) does not attend at the time and place mentioned in the notice, the Tribunal may hear and determine the reference in the party's absence.

**Powers of Tribunal as Commission of Inquiry**

**38.(1)** For the purpose of a Tribunal's exercise of its jurisdiction the prescribed provisions of the *Commissions of Inquiry Act 1950* apply in relation to a Tribunal, its chairperson and other members, and its proceedings as if a Tribunal were a Commission, and its members were commissioners, within the meaning of that Act.

**(2)** The prescribed provisions referred to in subsection (1) are—

s. 5(1), (2) and 3(a); ss. 6, 7, 8(1), 9 to 12 inclusive;

ss. 15, 16 and 17;

ss. 19(1), 20, 22, 22A and 23.

**Witness required to answer**

**39.** Where a witness at a hearing of a Tribunal objects to answering any question put to the witness or to discovery or production of any document or other thing by reason that such answer or the discovery or production of that document or thing may tend to incriminate the witness, the witness shall not be excused from answering or from discovery or production of that document or thing, but no such answer given by the witness and no such document or other thing discovered or produced by the witness shall be admissible in evidence in proceedings for an offence other than for an offence referred to in section 9 or 22 of the *Commissions of Inquiry Acts, 1950-1954*.

**Orders of Tribunals**

**40.(1)** Subject to this Act, a Tribunal is empowered to make, in accordance with the provisions of this Act, 1 or more of the following

orders—

- (a) an order that requires a party to the proceeding before it to pay money to a person specified in the order; or
- (b) an order for a party to the proceeding before it to perform or to discontinue any action particularised by it; or
- (c) an order that dismisses the dispute to which the proceeding relates;

and no other order.

(2) Subject to subsection (1), where a settlement of a dispute is proposed by a party to the dispute that has been referred to a Tribunal and is accepted by the other party or parties to the dispute, the Tribunal may, at the request and with the consent of the parties to the dispute, make an order that gives effect to the terms of the settlement.

(3) A Tribunal may by its order direct that what is required to be done by that order shall be done within a period of time specified in the order.

### **Orders requiring performance or discontinuance of action**

**41.(1)** The person in whose favour an order pursuant to section 40(1)(b) is made may enforce the order by—

- (a) filing in the registry of the Supreme Court—
  - (i) a copy of the order certified by the registrar to be a true copy; and
  - (ii) the person's affidavit, taken by a justice, as to the failure of the person against whom the order is made to comply with the order; and
- (b) serving a copy of each of those documents on the person against whom the order in question was made;

and, where the Registrar of the Supreme Court is satisfied that there has been and still exists a failure to comply with the order, the Registrar shall endorse a certificate of non-compliance on the copy of the order whereupon the order shall be deemed to be an order (duly entered) of the Supreme Court for the performance or, as the case may be, discontinuance of the action in question and may be enforced accordingly.

(2) No court fees shall be payable under subsection (1) up to and including entry of the order.

(3) It shall be competent to a person to file a copy of an order pursuant to subsection (1) once only and a second or subsequent filing of a copy of the order shall be ineffectual.

(4) The *Limitation of Actions Act 1974* applies in respect of any order made by the Tribunal as it applies in respect of any judgment.

### **Orders requiring payment of money**

**42.(1)** An order made by a Tribunal that requires a party to the proceeding to pay money may be made to take effect—

- (a) forthwith; or
- (b) consequent upon that party having failed to comply with another order made by the Tribunal.

(2) Where a person against whom an order which requires the payment of money is made is not present at the time the order is made, the registrar shall, as soon as practicable, cause a copy of that order to be served on that person.

(3) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by filing in the registry of a court having jurisdiction to order the payment of such an amount of money, being the registry of the court at or nearest the place of abode or business of the person ordered to make the payment—

- (a) a copy of the order certified by the registrar to be a true copy; and
- (b) the first person's affidavit, taken by a justice, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default;

and serving a copy of each of those documents on the person against whom the order was made, and, where the Registrar of the court in question is satisfied that there has been and still exists a failure to comply with the order, the Registrar shall endorse a certificate of non-compliance on the copy of the order whereupon the order shall be deemed to be a judgment (duly entered) of that court for the payment of that amount and may be enforced accordingly.

(4) No court fees shall be payable under subsection (3) up to and including entry of judgment.

(5) It shall be competent to a person to file a copy of an order pursuant to subsection (3) once only and a second or subsequent filing of a copy of the order shall be ineffectual.

(6) The *Limitation of Actions Act 1974* applies in respect of any order made by a Tribunal as it applies in respect of any judgment.

### **Renewal of proceedings**

43.(1) A Tribunal may when it makes an order with respect to a dispute referred to it give leave to the person in whose favour the order has been made to renew the reference of the dispute in the proceeding if the order is not complied with.

(2) A person who, pursuant to subsection (1), seeks to have the reference of a dispute renewed shall so notify the registrar who shall take such steps as are necessary to have the proceeding brought before the appropriate Tribunal.

(3) At the time of hearing of such a renewed reference of a dispute, the Tribunal may make such further or other order as it is empowered to make pursuant to this Act.

### **Amendment of particulars of dispute**

44. A Tribunal may at any stage of the hearing of a dispute either at the request of the party by whom the dispute was referred to the mediator or on its own motion with the approval of all of the parties to the dispute, make such order for the amendment of the particulars of the dispute as it thinks fit.

### **Appearances before Tribunal**

45.(1) The following persons are entitled to appear at a hearing of a Tribunal—

- (a) any person authorised in writing by the Minister to so appear;
- (b) each person to whom notice of hearing before the Tribunal has been given pursuant to section 37;

(c) any person granted leave to appear by the Tribunal.

(2) Each party to a reference before a Tribunal shall have the carriage of the party's own case and shall not be entitled to be represented by an agent unless—

(a) the party is a corporation in which case it may appear by a representative approved by the Tribunal; or

(b) in any other case—it appears to the Tribunal that an agent should be permitted to represent that party and the Tribunal so approves accordingly.

(3) An agent or a representative who has a legal qualification under the laws of Queensland or of any other place or who is of the nature of a professional advocate shall not represent a party to a reference before a Tribunal except with the consent of the Tribunal.

(4) The hearing of a reference to a Tribunal shall not be open to the public.

### **No costs allowable**

46. Each party to a dispute referred to a Tribunal shall bear the party's own costs of the proceeding before the Tribunal.

### **Failure to attend hearing or to produce documents**

47. A person who having been served with a summons to attend before a Tribunal—

(a) fails to attend before the Tribunal in obedience to that summons; or

(b) fails to produce any book, document or writing in the person's custody or control, which the person is required by the summons to produce;

commits an offence against this Act.

Maximum penalty—\$5 000.

**Orders of Tribunal to be complied with**

**48.** Any party to a dispute referred for the hearing and determination of a Tribunal who fails to comply with an order of the Tribunal commits an offence against this Act.

Maximum penalty—\$5 000.

**Tribunal's order final and binding**

**49.** An order of a Tribunal shall be final and binding upon each party to the reference in which it is made, whether or not the party has appeared or been represented at the hearing of the reference.

**Restricted right to question Tribunal's proceedings**

**50.** The proceedings of a Tribunal and the finding or order of a Tribunal shall not be questioned in any proceedings whatever except proceedings based solely on 1 or both of the following grounds—

- (a) that the Tribunal had or has no jurisdiction or has exceeded its jurisdiction in the proceedings in question or in making the finding or order in question; or
- (b) there has occurred a denial of natural justice in the course of the proceedings in question.

**PART 6—GENERAL PROVISIONS****Registrar and staff**

**51.(1)** There shall be appointed—

- (a) a person who shall be registrar of the registries of both the Panel and the Tribunals; and
- (b) such staff as is required for the proper functioning of those registries.

**(2)** Every such appointment shall be made under and the appointee shall hold the appointment in accordance with the *Public Service Act 1922*.

(3) A person may hold an appointment in 1 or both of the registries in conjunction with any other position the person holds for the time being in the public service.

### **Parties to references**

52. A person to whom notice is given pursuant to section 25 or 37 shall be taken to be a party to the reference that relates to the dispute of which notice is given, and a person who satisfies a mediator or, as the case may be, Tribunal that the person has a sufficient interest in a resolution of the dispute in question shall be joined as a party to the reference.

### **Withdrawal of claim**

53. A landlord or tenant may at any time by notice in writing to the registrar withdraw a dispute referred by the person to the Panel or a dispute that has been referred by a mediator to a Tribunal whether before or after the mediator or Tribunal has entered upon a hearing of the dispute.

### **Service**

54.(1) For the purposes of this Act, a document may be served—

(a) on a natural person—

(i) by delivering it to the person personally; or

(ii) by leaving it at, or by sending it by post addressed to the person at the address of the place of residence or business of the person last known to the person serving the document; or

(b) on a body corporate, by leaving it at, or sending it by post addressed to the body corporate at the registered office or place of business of the body corporate; or

(c) in such other manner as is prescribed.

(2) Nothing in subsection (1) affects the power of a mediator or Tribunal to authorise service of a document otherwise than as provided in that subsection.

(3) A person who serves a document required or authorised by this Act to be given may attend before any justice having jurisdiction in the State or



part of the State or part of the Commonwealth in which such document was served and depose on oath and in writing endorsed on the document to the service thereof and the manner in which such service was affected.

Such deposition shall, upon production in a court or Tribunal or to a mediator in any proceedings, be evidence of the matters contained therein and, in the absence of evidence to the contrary, conclusive evidence of such matters.

### **Exclusion of other jurisdictions**

**55.(1)** Where a dispute under a retail shop lease is referred to a mediator or a Tribunal the issue in dispute (whether as shown in the initial form of reference to the mediator or as emerging in the course of the hearing of the dispute by the mediator or, as the case may be, the Tribunal) shall not be justiciable at any time by a court or by a tribunal of any other kind save—

- (a) where the proceeding before that court or tribunal of any other kind was commenced before the dispute was referred to a mediator or a Tribunal or where the proceeding before that court is an application for an order in the nature of an injunction touching upon the issue in dispute; or
- (b) where the dispute before a mediator or a Tribunal has been withdrawn; or
- (c) where the mediator cannot reach a solution to the dispute and it is not competent to the Tribunal to hear the dispute; or
- (d) where a mediator has declined to hear the dispute because it is outside the mediator's competence, or a Tribunal has struck out the reference to it of the dispute because the dispute is beyond the Tribunal's jurisdiction.

**(2)** For the purposes of this Act a dispute shall be taken to have been referred—

- (a) to a mediator when section 24(1) has been complied with; and
- (b) to a Tribunal when notice in writing is given by a mediator to the registrar pursuant to section 27(1).

**(3)** For the purposes of this Act a proceeding shall be taken to have been commenced before a court if the landlord has—

- (a) served on the tenant a Notice to Remedy Breach of Covenant pursuant to section 124 of the *Property Law Act 1974*; or
- (b) given to the tenant a Notice to Tenant pursuant to section 131 of the *Property Law Act 1974*.

### **Offences generally and penalty**

**56.(1)** A person who contravenes any provision of this Act commits an offence against this Act.

(2) Where no penalty is otherwise expressly provided, a person who commits an offence against this Act is liable to a penalty not exceeding \$5 000.

### **Proceedings for offences**

**57.(1)** A prosecution for an offence against this Act shall be by way of summary proceedings under the *Justices Act 1886* upon the complaint of any person authorised in writing in that behalf by the Minister.

(2) In any proceedings it shall not be necessary to prove the authority of a complainant to lay a complaint in respect of an offence against this Act in the absence of evidence that challenges such authority.

### **Evidentiary provision**

**58.** In proceedings under this Act—

- (a) a signature purporting to be that of the Minister shall be taken to be the signature it purports to be until the contrary is proved;
- (b) a certificate purporting to be under the hand of the registrar as to the solution reached by a mediator made upon a reference to the mediator or the determination and orders of a Tribunal made upon a reference to it shall in all proceedings be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (c) a document purporting to be a copy of a notice required or authorised by this Act to be given shall be evidence of the particulars in the notice of which it purports to be a copy as if it were the original thereof;

(d) it shall not be necessary to prove the authority of any person to do any act or take any proceeding in the absence of evidence to the contrary.

### **Publication of particulars of reference**

**59.(1)** The registrar shall cause to be published in such manner as the Minister nominates generally from time to time the particulars specified in subsection (2) concerning every reference to a Tribunal.

**(2)** The particulars to be published pursuant to subsection (1) are—

- (a) the name of the parties to the dispute;
- (b) the nature of the issue in dispute;
- (c) the determination of and the order or orders made by the Tribunal.

## **PART 7—MISCELLANEOUS**

### **Protection of things done under Act**

**60.(1)** A person shall not incur any liability on account of any thing done bona fide and without negligence for the purpose of this Act for damage or injury alleged to arise by reason thereof.

**(2)** Where the jurisdiction or power of a mediator or the mediator's exercise or proposed exercise thereof is in issue in any proceedings, for the purposes of those proceedings the mediator shall be deemed to be a servant in the employment of the Crown.

### **Regulations**

**61.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) forms to be used for the purposes of this Act and the purposes for which they shall be so used;
- (b) fees to be paid under this Act;
- (c) the practice and procedures of mediators and Tribunals;
- (d) the practices and procedures of registries, the powers, functions and duties of registrars and other persons employed for the purposes of this Act;
- (e) all matters required or permitted by this Act to be prescribed;
- (f) all matters that in the Governor in Council's opinion are necessary or desirable for the proper administration of this Act or to achieve the objects and purposes of this Act.

### **Orders in Council**

**62.** Section 28A of the *Acts Interpretation Act 1954* shall apply with respect to orders in council made for the purposes of this Act, and for the purposes of such application, that section shall be read and construed as if references to regulations were references to orders in council made for the purposes of this Act.

**Review of Act**

**63.(1)** The Minister shall carry out a review of the operation of this Act—

- (a) not later than 6 years after the date of commencement of section 1 of the *Retail Shop Leases Act Amendment Act 1988*;
- (b) thereafter at intervals of not more than 6 years following the year in which the preceding review is completed.

**(2)** In carrying out that review the Minister shall consider and have regard to—

- (a) the effectiveness of the operations of this Act and of the Mediators and Tribunals; and
- (b) the need for continuation, in the then present form of each Tribunal constituted and operating under this Act; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

**(3)** The Minister shall prepare a report based on the Minister's review of the Act and shall, as soon as practicable after that report is prepared, cause the report to be laid before Parliament.

## **SCHEDULE 1**

### **SPECIFIED BUSINESSES**

section 4

Antique shops

Art galleries

Art supplies shops

Arts and crafts shops

Barbeque equipment shops

Beauty shops

Beach wear shops

Bicycle shops

Bicycle accessories shops

Biscuit bar shops

Bookshops

Bottled wine shops (except where goods are for consumption on the premises)

Bridal wear sales and hire shops

Building supplies shops

Business machines and equipment shops

Butcher shops

Cake shops

Camping equipment shops

Cards shops

Carpet shops

Casket shops

Cigarette shops  
Clock shops  
Coins and coin collections shops  
Confectionery shops  
Convenience food shops  
Cookie shops  
Copper fitting shops  
Cosmetics shops  
Costumes and formal wear hire shops  
Curtain shops  
Delicatessen shops  
Department stores  
Dinnerware shops  
Disposals shops  
Drapery shops  
Duty free shops  
Electrical appliance shops  
Electronic equipment and supplies shops  
Equestrian wear shops  
Equipment hire shops  
Fast food shops  
Floor covering shops  
Florist shops  
Flower shops  
Fruit and vegetable shops  
Fruit juice shops  
Furniture shops  
Games and hobbies shops

General stores

Gift shops

Gift-wrapping shops

Grocery shops

Greengrocer shops

Haberdashery shops

Hardware shops

Health food shops

Hearing aid shops

Hot bread kitchen shops

Hot water system shops

Household appliance shops

Household fixtures and fittings shops

Ice cream shops

Interior decoration shops

Jewellery shops

Kitchenware shops

Leather goods shops

Lighting shops

Linen shops

Lingerie shops

Manchester shops

Martial arts supplies shops

Mixed business shops

Motor vehicle and motor cycle accessories shops (excluding tyre shops and batteries shops)

Music shops

Newsagency shops



Nick-nack shops

Nut bar shops

Organ shops

Paint and paper shops

Pastry shops

Pet shops

Pharmacy shops

Photographic equipment and supplies shops

Picture frames shops

Plumbing supplies shops

Pools and spas shops

Poultry shops (whether fresh or frozen poultry or both fresh and frozen poultry)

Precious stones shops

Prints and posters shops

Restaurants, cafeterias, coffee lounges and other eating places

Rock shops

Rubber stamp supply shops

Seafood shops

Second-hand goods shops

Service stations

Shoe shops

Shops selling or engaged in any 1 or more of the following goods or services in relation to men and boys—

accessories, caps, clothing, clothing alterations, sunshades

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

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

Shops selling any 1 or more of the following goods—cassettes, musical instruments, prerecorded tapes, records

Silverware shops

Sleepware shops

Smallgoods shops

Snack bars

Soft drink shops

Soft furnishing shops

Souvenir shops

Spirits shops (excluding shops where spirits are sold for consumption on the shop premises)

Sporting goods shops

Stamps and stamp collection shops (whether for purchase or sale or both)

Stationery shops

Supermarkets

Surfboard shops

Surfing accessories shops

Takeaway food shops

Television, video equipment and other household appliances hire shops

Tobacconists shops

Toy shops

Umbrella shops

Underwear shops

Variety stores

Video tape and prerecorded music libraries

Vitamin shops

Wall decorations shops

Watch shops

Writing materials shops:

And such other business as may from time to time be prescribed by regulation.

**SCHEDULE 2****SPECIFIED SERVICES**

section 4

Accountants

Acupuncturists

Aldermanic offices

Amusement parlours

Architects and drafting services

Banks

Barbers

Beauticians

Beauty therapists

Boot and shoe repairers

Building societies

Bus and airline booking offices

Business consultants

Business machines (repairs and maintenance) offices

Car parking services

Chiropractors

Cleaning contractors

Consulting engineers

Dentists, oral surgeons and dental technicians

Doctors, radiologists, pathologists and other medical services

Dry cleaners

Electoral and electorate offices

Engravers

Entertainment centres

Fast-photo processors

Finance companies and other financial services

Government and government instrumentality offices

Hairdressers

Household appliance repairers (whether electric or non-electric)

Insurance offices

Insurance brokers

Key cutting

Laundries and laundromats

Medical benefits funds

Optometrists

Physiotherapists

Public libraries

Real estate offices

Rent-a-car offices

Small job printers

Solicitors

Squash courts

Stock and share brokers

Tax agents

Travel agencies and tourist information offices and counters:

And such other services as may from time to time be prescribed by regulation.

## ENDNOTES

### 1 Index to Endnotes

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### 2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 1 June 1992. Future amendments of the *Retail Shop Leases Act 1984* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

### 3 List of legislation

#### **Retail Shop Leases Act 1984 No 18**

date of assent 12 March 1984

Parts 4 and 5 commenced 1 July 1984 (see s 2(2) of Act)

remaining provisions commenced on date of assent

as amended by—

#### **Retail Shop Leases Act Amendment Act 1985 No 33**

date of assent 17 April 1985

commenced on date of assent

#### **Retail Shop Leases Act Amendment Act 1988 No 43**

date of assent 3 May 1988

ss 1, 19 commenced on date of assent

remaining provisions commenced 1 June 1988 (proc pubd Gaz 4 June 1988)

#### **Statute Law (Miscellaneous Provisions) Act 1989 No 103 s 3 Sch**

date of assent 25 October 1989

commenced on date of assent

#### **Retail Shop Leases Act Amendment Act 1989 No 117**

date of assent 31 October 1989

commenced on date of assent

#### **Retail Shop Leases Act Amendment Act 1990 No 7**

date of assent 5 April 1990

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1990 No 88 s 3 Sch**

date of assent 6 December 1990

commenced on date of assent

**Land Tax Legislation Amendment Act 1991 No 73 Part 4**

date of assent 21 November 1991

s 28 commenced 2 January 1992 (see s 2(4) of Act)

remaining provisions commenced on date of assent

## 4 List of annotations

**Key to abbreviations in list of annotations**

RA	=	<i>Reprints Act 1992</i>
amd	=	<b>amended</b>
ins	=	<b>inserted</b>
om	=	<b>omitted</b>
renum	=	<b>renumbered</b>
sub	=	<b>substituted</b>
Pt hdg	=	<b>Part heading</b>
Div hdg	=	<b>Division heading</b>
Sdiv hdg	=	<b>Subdivision heading</b>
hdg prec	=	<b>heading preceding</b>
prov hdg	=	<b>provision heading</b>
cl	=	<b>clause</b>
pres	=	<b>present</b>
orig	=	<b>original</b>

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

**Arrangement of Act**

s 3 om (see s 36 RA)

**Interpretation**

s 4 amd 1985 No 33 s 2; 1988 No 43 s 2; 1989 No 117 s 3

**Application of Act**

s 5 amd 1985 No 33 s 3; 1989 No 117 s 4

**Act's limited application to business of service station**

s 5AA (orig ins as 5A 1989 No 117 s 5) renum 1990 No 7 s 2

**Exemption from Act**

s 5A ins 1985 No 33 s 4

**Determination of rent as a fraction of turnover**

prov hdg amd 1988 No 43 s 3

s 6 amd 1985 No 33 s 5

**Tenant's right to join or form commercial associations**

**6A** ins 1988 No 43 s 4

**No entitlement to turnover figures in certain cases**

**s 7** amd 1985 No 33 s 6

**Provision to pay land tax etc. unenforceable**

**7A** ins 1991 No 73 s 27

**Certain payments to landlord prohibited**

**s 8** amd 1985 No 33 s 7; 1988 No 43 s 5; 1989 No 103 s 3 Sch; 1989 No 117 s 6

**Requirements if rent determined as a fraction of turnover**

**s 9** amd 1989 No 103 s 3 Sch

**Rent Review**

**s 10** amd 1985 No 33 s 8; 1988 No 43 s 6; 1989 No 117 s 7

**Provisions concerning determination by specialist retail valuer**

**s 10A** ins 1988 No 43 s 7  
amd 1989 No 117 s 8

**Designation of specialist retail valuers**

**s 10B** ins 1988 No 43 s 7  
amd 1989 No 117 s 9; 1990 No 88 s 3 Sch

**Appeal by aggrieved valuer**

**s 10C** ins 1988 No 43 s 7

**Requests for assignment of lease**

**s 11** amd 1988 No 43 s 8; 1989 No 117 s 10

**Tenant's right to mortgage etc.**

**s 11A** ins 1989 No 117 s 11

**Sharing of expenses**

**s 12** sub 1989 No 117 s 12  
amd 1991 No 73 s 28

**Option to renew lease**

**s 13** amd 1985 No 33 s 10; 1988 No 43 s 10; 1989 No 117 s 13

**Trading hours pursuant to retail shop leases**

**s 14A** sub 1989 No 117 s 14

**Implied provisions for compensation**

**s 15** sub 1989 No 117 s 15

**Documents and information to be given to tenant**

**s 15A** sub 1989 No 117 s 16

**Registry of Panel**

**s 21** amd 1985 No 33 s 12

**Role of mediator**

**s 23** sub 1989 No 117 s 17



**References to a mediator**

s 24            amd 1989 No 117 s 18

**Disputes referred to Tribunal in certain circumstances**

s 27            amd 1985 No 33 s 13; 1989 No 117 s 19

**Retail Shop Lease Tribunals**

s 28            amd 1990 No 7 s 3

**Vacation of office**

s 29            amd 1990 No 7 s 4

**Functions of a Tribunal**

s 32            amd 1985 No 33 s 14

**Determination of questions before a Tribunal**

s 33            amd 1990 No 7 s 5

**Registry of Tribunals**

s 35            amd 1985 No 33 s 15

**Extent of jurisdiction**

s 36            amd 1988 No 43 s 14; 1989 No 117 s 20

**Powers of Tribunal as Commission of Inquiry**

s 38            sub 1989 No 117 s 21

**Exclusion of other jurisdictions**

s 55            amd 1985 No 33 s 16; 1989 No 117 s 22

**Evidentiary provision**

s 58            amd 1989 No 103 s 3 Sch

**Protection of things done under Act**

s 60            amd 1988 No 43 s 15

**Orders in Council**

s 62            ins 1985 No 33 s 17

**Review of Act**

s 63            ins 1988 No 43 s 16

**SPECIFIED BUSINESSES**

Sch 1            amd 1988 No 43 s 17(b); 1989 No 117 s 23; 1990 No 88 s 3 Sch

**SPECIFIED SERVICES**

Sch 2            amd 1988 No 43 s 18