

Queensland



ANNO TRICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 18 of 1984

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

[ASSENTED TO 12TH MARCH, 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Retail Shop Leases Act 1984*.

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

(2) The provisions of Parts IV and V shall commence on 1 July 1984.

3. **Arrangement.** This Act is arranged as follows:—

PART I—PRELIMINARY;

PART II—PROHIBITED CONDITIONS;

PART III—IMPLIED CONDITIONS;

PART IV—RETAIL SHOP LEASE MEDIATION PANEL;

PART V—RETAIL SHOP LEASE TRIBUNALS;

PART VI—GENERAL PROVISIONS;

PART VII—MISCELLANEOUS.

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

“building” includes any structure;

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

“common areas” means all stairways, escalators, elevators, malls, walkways, trafficways, parking areas, toilets, restrooms, 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;

“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 his 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 his agent in connexion 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;

- “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 one or more of the businesses specified in the First Schedule to this Act; or
 - (b) situated in a retail shopping centre, that are used wholly or predominantly for the provision of one or more of the services specified in the Second Schedule to this Act;
- “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 square metres; 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) five or more are used wholly or predominantly for the carrying on of one or more of the businesses specified in the First Schedule to this Act; and
 - (b) one and the same person is or would be (when the premises are leased) the head lessor:
- the term does not include a multi-level building except in relation to each floor of the building on which is situated a cluster of premises in respect of which provisions (a) and (b) apply;

(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.

5. Application of Act. (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 the First or Second Schedule, where such a lease has been—

(i) entered into or renewed;

(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 his 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;

(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 I, IV and VII apply to any retail shop lease whether the entry into or renewal of that lease occurred before the day on which the Governor gives his assent to this Act for and on behalf of Her Majesty or not.

(3) Part VI applies to any retail shop lease whether the entry into or renewal of that lease occurred before the day on which the Governor gives his 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.

(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.

PART II—PROHIBITED CONDITIONS

6. Determination of rent as a fraction of turnover. A landlord shall not include or cause to be included in a retail shop lease a provision whereby the rent is to 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.

Penalty: \$5 000.

7. No entitlement to turnover figures in certain cases. 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 his 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 to be determined in accordance with the provisions of this Act as a fraction of the turnover of the business.

Penalty: \$5 000.

8. Certain payments to landlord prohibited. (1) The landlord under a retail shop lease or any person claiming through him shall not be entitled to—

- (a) any key-money in connexion with the granting, renewal, extension or assignment of the lease;
 - (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 connexion 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 his costs reasonably incurred in investigating a proposed assignee of the tenant under a retail shop lease;
 - (b) from recovering from the tenant his 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
 - (c) who—
 - (i) immediately prior to the sale of a business, has operated that business from a retail shop over which he holds the freehold title; and
 - (ii) in the course of the sale of that business, grants to the purchaser a lease over the retail shop, from claiming goodwill in relation to the sale of that business.

(3) Subject to this Act, a person who is a landlord under a retail shop lease or any person claiming through him shall not, in connexion 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).

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 him 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 him by the person by whom it was accepted.

PART III—IMPLIED CONDITIONS

9. Requirements if rent determined as a fraction of turnover. (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 his 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;
- (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;
- (c) the amount of uncollected credit accounts written off by the tenant;
- (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;
- (e) the amount of any instalment of purchase moneys refunded to customers where a lay-by transaction is cancelled;
- (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;
- (g) the amount of delivery charges;
- (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;

- (i) the price of merchandise returned to shippers, wholesalers or manufacturers;
- (j) the amount received from the sale of the fixtures and fittings of the tenant from the retail shop in question; and
- (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.

10. Rent review. (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 a retail shop lease provides for review of the amount of rent payable thereunder during the currency of the lease having regard to the market rent of the premises then that market rent shall be determinable by reference to the rent that would be paid for the retail shop if it was unoccupied and offered for rental for the use for which the premises are presently permitted or will be permitted under the lease, and having regard to the terms of the lease, on a free and open market and the lease shall be deemed to further provide for submission to arbitration of the question of what rent could be so expected if there be no agreement between the landlord and tenant upon that question.

11. Requests for assignment of lease. (1) Where a tenant of a retail shop lease has requested the landlord, in writing, to consent to an assignment of the lease and the landlord has failed to give an answer to that request to the tenant within 42 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
- (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.

12. Sharing of operating expenses. If a retail shop lease provides for payment by the tenant, in addition to the payment of the rent payable under the lease, of all or part of the expenses of the landlord in operating, repairing or maintaining the building of which the retail shop in question forms a part—

- (a) that lease shall specify—
 - (i) those items of expense which are to be included as operating expenses;

- (ii) how those operating expenses will be determined and apportioned to the tenant; and
- (iii) how those operating expenses may be recovered by the landlord from the tenant;
- (b) annual estimates of each of those expenses shall be furnished by the landlord to the tenant at least one month before the commencement of the period to which the estimate relates; and
- (c) annual statements of expenditure incurred on each of those expenses audited by a public accountant shall be furnished by the landlord to each tenant within three months after the termination of the annual period to which the expenditure is referable.

13. Option to renew lease. (1) Where—

- (a) a retail shop lease is the first such lease entered into in respect of the retail shop in question;
- (b) the aggregate of the initial term of that lease and the term of any option or options contained therein is less than five years;
- (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, the tenant shall, except where the making of a lease for that term would be contrary to the law governing sub-leases, be entitled, at his 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 five 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 he holds the initial term of the lease, other than this entitlement to a renewal, save that where the initial lease does not provide for a review of rental, that lease shall be deemed to provide that the rental payable during such renewed term shall be determined having regard to the market rent applying to that retail shop.

(2) For the purposes of this section, a retail shop lease for a term of five years or more which provides the landlord with a right to determine the lease prior to the expiration of five years from the date of commencement otherwise than upon default by the tenant shall be deemed to be a lease in relation to which the provisions of subsection (1) (b) apply.

14. Tenant's right to independent legal advice. 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 his services.

15. Implied provisions concerning compensation. In every retail shop lease of a retail shop that forms part of a retail shopping centre, the following provisions shall be implied:—

- (a) If the landlord, whether he has the right to do so under the lease or not—
- (i) relocates the business of a tenant to alternative premises within the centre during the term or any renewal of the term of the lease of the tenant;
 - (ii) inhibits the access of a tenant in the centre to his business in any substantial manner;
 - (iii) takes any action that would substantially alter or inhibit the flow of customers to any retail shop or retail shops in the centre;
 - (iv) causes or fails to make reasonable efforts to prevent or to remove any disruption to trading within the centre which disruption causes loss of profits to a tenant or tenants in the centre;
 - (v) fails to have rectified as soon as practicable any breakdown of plant or equipment under his care and maintenance which breakdown causes loss of profits to a tenant or tenants in the centre; or
 - (vi) neglects to adequately clean, maintain or repaint the building or buildings which constitute the centre including common areas,
- then the landlord may be made liable to pay reasonable compensation to the tenant or tenants affected thereby.
- (b) Where a dispute exists between a landlord and a tenant as to the right to compensation or the amount of compensation payable by the landlord to satisfy the provisions of paragraph (a), that dispute—
- (i) shall be referred to a mediator appointed under the provisions of the *Retail Shop Leases Act 1984* for solution; and
 - (ii) if a solution cannot be reached by the mediator, shall be referred to a Tribunal established under the provisions of the *Retail Shop Leases Act 1984* for determination.

16. Act's provisions implied in leases. (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 IV—RETAIL SHOP LEASE MEDIATION PANEL

17. Mediation panel. 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 he considers necessary for the proper discharge of the function of mediation under this Act.

Every such appointment shall be notified in the Gazette.

18. Conditions of appointment. Every mediator—

- (a) shall be appointed for such term as the Governor in Council determines and specifies in the instrument of appointment;
- (b) shall be eligible for re-appointment;
- (c) if he is not a member of the Public Service of Queensland, shall be entitled to such remuneration as the Governor in Council from time to time approves, either generally or in a particular case.

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

20. Functions of mediator. (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 him with a view to attaining a solution of the dispute acceptable to the parties thereto; and
- (b) to report to the Minister annually upon his discharge throughout the year of his function referred to in paragraph (a), bringing to notice therein all matters within his 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 paragraph (b) of subsection (1), that are mentioned in the reports of the mediators furnished to him and shall table that report in the Legislative Assembly within 14 sitting days after the date on which its preparation is completed.

21. Registry of Panel. 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.

22. Records of mediator. (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 he 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 him as completed by the landlord or tenant pursuant to section 24 (1);

(b) the notation of the nature of the issue in dispute as determined and recorded by the mediator during his 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 finalized by him 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 authorized representatives and shall be available for production before a Tribunal for the purpose of any proceeding before that Tribunal.

23. Jurisdiction of mediator. (1) Subject to subsection (2), a mediator has jurisdiction to hear any dispute under a retail shop lease that is referred to him.

(2) This jurisdiction shall not extend to the hearing of any dispute as to arrears of rent or the amount of rent payable under a retail shop lease.

24. References to a mediator. (1) A landlord or a tenant who is a party to a dispute 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 his 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 his 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.

25. Notice of hearing of dispute by mediator. 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.

26. Mediation agreements. (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 two 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.

27. Disputes referred to Tribunal in certain circumstances. (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;

(b) a party to a dispute referred to a mediator under this Act, having been duly notified of the hearing of the dispute, fails to attend that hearing;

(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 has not been settled within 90 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 subparagraphs (a), (b), (c) or (d) of subsection (1) 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 his discretion report the matter to Parliament.

PART V—RETAIL SHOP LEASE TRIBUNALS

28. Retail Shop Lease Tribunals. (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 three persons who shall be appointed as members by Order in Council made on the recommendation of the Minister of whom—

- (a) one shall be a Judge of District Courts who shall be chairman of the Tribunal;
- (b) one shall be a person who, in the opinion of the Minister, is representative of persons who are landlords under retail shop leases; and
- (c) one 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 a period of three years.

(4) Every member of a Tribunal other than the chairman 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 he sooner vacates his office as prescribed, continue to hold office until his successor assumes office in his place.

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

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

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

- (a) if he dies;
- (b) if he attains the age of 70 years;
- (c) if he resigns his office;
- (d) in the case of the chairman, if he ceases to be a judge of District Courts;
- (e) in the case of a member other than the chairman, if he is removed from office.

30. Filling vacancies. (1) If a casual vacancy occurs in the office of a member of a Tribunal during the currency of his 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 his 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 his predecessor was appointed but shall be eligible for reappointment if he remains otherwise qualified as prescribed to be a member of a Tribunal.

31. Validation of proceedings. 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.

32. Functions of a Tribunal. (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;
- (b) to make or cause to be made such investigations as it considers necessary for the purposes of such hearing;
- (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 him by the Tribunals and table that report in the Legislative Assembly within 14 sitting days after the date on which its preparation is completed.

33. Determination of questions before a Tribunal. (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 chairman.

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

35. Registry of Tribunals. (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.

36. Extent of jurisdiction. (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 II or III of this Act.

(2) A Tribunal does not have jurisdiction to make an order—

(a) that requires the payment of a sum of money on account of arrears of rent; or

(b) as to the amount of rent payable under a retail shop lease.

(3) Where by reason of a provision of a retail shop lease or of this Act any question is required or permitted to be submitted to arbitration, it shall not be competent to a mediator to refer a dispute involving that question to a Tribunal so far as it involves that question.

37. Notice of hearing of dispute by Tribunal. (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 his absence.

38. Status of Tribunal and powers of its members. Subject to this Act—

(a) a Tribunal shall be deemed to be a Commission of Inquiry within the meaning of *The Commissions of Inquiry Acts, 1950 to 1954*;

(b) the members of a Tribunal shall be deemed to be Commissioners to whom those Acts apply and to have the powers, authorities, rights, privileges and protection of Commissioners under those Acts other than—

(i) powers reserved by those Acts to the Chairman of a Commission who is a Judge of the Supreme Court; and

- (ii) power to issue a warrant in the first instance or before the return of a summons conferred by section 8 (2) of those Acts,

and the provisions of those Acts shall apply accordingly.

39. Witness required to answer. Where a witness at a hearing of a Tribunal objects to answering any question put to him 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 him, he shall not be excused from answering or from discovery or production of that document or thing, but no such answer given by him and no such document or other thing discovered or produced by him 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 to 1954*.

40. Orders of Tribunals. (1) Subject to this Act, a Tribunal is empowered to make, in accordance with the provisions of this Act, one 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;
- (b) an order for a party to the proceeding before it to perform or to discontinue any action particularized 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.

41. Orders requiring performance or discontinuance of action. (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) his 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 he 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* 1974–1981 applies in respect of any order made by the Tribunal as it applies in respect of any judgment.

42. Orders requiring payment of money. (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) his 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 he 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* 1974–1981 applies in respect of any order made by a Tribunal as it applies in respect of any judgment.

43. Renewal of proceedings. (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.

44. Amendment of particulars of dispute. 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.

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

- (a) any person authorized 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 his 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.

46. No costs allowable. Each party to a dispute referred to a Tribunal shall bear his own costs of the proceeding before the Tribunal.

47. Failure to attend hearing or to produce documents. 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 his custody or control, which he is required by the summons to produce, commits an offence against this Act.

Penalty: \$5 000.

48. Orders of Tribunal to be complied with. 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.

Penalty: \$5 000.

49. Tribunal's order final and binding. 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.

50. Restricted right to question Tribunal's proceedings. 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 one 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 VI—GENERAL PROVISIONS

51. Registrar and staff. (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 his appointment in accordance with the *Public Service Act 1922–1978*.

(3) A person may hold an appointment in one or both of the registries in conjunction with any other position he holds for the time being in the Public Service of Queensland.

52. Parties to references. 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 he has a sufficient interest in a resolution of the dispute in question shall be joined as a party to the reference.

53. Withdrawal of claim. A landlord or tenant may at any time by notice in writing to the registrar withdraw a dispute referred by him 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.

54. Service. (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 authorize service of a document otherwise than as provided in that subsection.

(3) A person who serves a document required or authorized 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.

55. Exclusion of other jurisdictions. (1) Where a dispute relating to 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;

(b) where the dispute before a mediator or a Tribunal has been withdrawn;

(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 or the Tribunal declines to hear a dispute and strikes the dispute out as being without 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).

56. Offences generally and penalty. (1) A person who contravenes or fails to comply with 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.

57. Proceedings for offences. (1) A prosecution for an offence against this Act shall be by way of summary proceedings under the *Justices Act* 1886–1982 upon the complaint of any person authorized 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.

58. Evidentiary provision. (1) 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 him 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 authorized 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.

59. Publication of particulars of reference. (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 VII—MISCELLANEOUS

60. Protection of things done under Act. A person shall not incur any liability on account of any thing done bona fide and without negligence for the purposes of this Act for damage or injury alleged to arise by reason thereof.

61. Regulations. 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 his opinion are necessary or desirable for the proper administration of this Act or to achieve the objects and purposes of this Act.

FIRST SCHEDULE

(s. 4)

SPECIFIED BUSINESSES

Antique shops
Art galleries
Art supplies shops
Arts and crafts shops
Barbeque equipment shops
Beauty shops
Beachwear shops
Bicycle shops
Bicycle accessories shops
Biscuit-bar shops
Bookshops
Bottled wine shops (except where goods are for consumption on the premises)
Bridalwear 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

FIRST SCHEDULE—*continued*SPECIFIED BUSINESSES—*continued*

Cigarette shops
Clock shops
Coins and coin collections shops
Confectionery shops
Convenience food shops
Cookie shops
Copper fittings 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
Giftwrapping 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

FIRST SCHEDULE—*continued*
SPECIFIED BUSINESSES—*continued*

- 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
- Photography 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
- Rock shops
- Rubber stamp supply shops
- Seafood shops
- Second-hand goods shops
- Shoe shops
- Shops selling or engaged in any one 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 one 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 one or more of the following goods:—
 - cassettes, musical instruments, pre-recorded tapes, records

FIRST SCHEDULE—*continued*
SPECIFIED BUSINESSES—*continued*

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 pre-recorded music libraries
 Vitamin shops
 Wall decorations shops
 Watch shops
 Writing materials shops:
 And such other businesses as may from time to time be prescribed by the Regulations.

SECOND SCHEDULE
SPECIFIED SERVICES

(s. 4)

Accountants
 Acupuncturists
 Aldermanic offices
 Amusement parlours
 Architects and drafting services
 Banks
 Barbers
 Beauticians
 Beauty therapists
 Boot and shoe repairers

SECOND SCHEDULE—*continued*
SPECIFIED SERVICES—*continued*

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
Restaurants, cafeterias, coffee lounges and other eating places
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 the Regulations.