

Queensland



RETAIL SHOP LEASES AMENDMENT ACT 2000

Act No. 19 of 2000

Queensland



RETAIL SHOP LEASES AMENDMENT ACT 2000

TABLE OF PROVISIONS

Section	Page
1 Short title	6
2 Commencement	6
3 Act amended	6
4 Amendment of s 5 (Definitions)	6
5 Amendment of s 7 (Meaning of “outgoings”)	7
6 Amendment of s 9 (Meaning of “turnover”)	8
7 Amendment of s 13 (Application of Act to leases—general)	8
8 Amendment of s 21 (Application of part)	9
9 Amendment of s 22 (Lessor to give lease and disclosure statement to prospective lessee)	9
10 Insertion of new ss 22A–22E	10
22A Prospective lessee’s disclosure obligation to lessor	10
22B Assignor’s and prospective assignee’s disclosure obligations to each other	10
22C Lessor’s and prospective assignee’s disclosure obligations to each other	11
22D Financial, and legal advice certificates	11
22E Effect of failure to comply with sections 22A–22D	12
11 Amendment of s 24 (Lessee’s obligations to pay rent and outgoings)	13
12 Insertion of new s 24A	14
24A GST payments	14
13 Amendment of s 27 (Timing and bases of rent reviews)	14
14 Amendment of s 30 (Valuer may require information from lessor)	15
15 Amendment of s 31 (Requirements of determination)	16

16	Replacement of s 32 (Valuer to give determination to lessor and lessee)	16
	32 Valuer to give determination to lessor and lessee	16
17	Amendment of s 37 (Requirements when lessee to pay lessor's outgoings)	17
18	Insertion of new s 37A	17
	37A Lessor's recovery of electricity charges	17
19	Amendment of s 41 (Promotion and advertising)	17
20	Amendment of s 44 (Amount of compensation)	18
21	Amendment of s 46 (Options to renew leases)	18
22	Insertion of new pt 6, div 8A	18
	<i>Division 8A—Provisions about unconscionable conduct</i>	
	46A Unconscionable conduct	18
	46B Matters tribunal may consider in deciding if a party's conduct is unconscionable	19
23	Insertion of new s 46C	21
	46C Relocating lessee's business	21
24	Amendment of s 48 (Lessee's liability for costs associated with preparation etc. of lease)	21
25	Amendment of s 50 (Retail tenancy disputes about assignments of leases)	21
26	Amendment of s 52 (Requirements for resolution)	22
27	Omission of s 65 (Chief executive to refer dispute to tribunal)	22
28	Replacement of s 66 (Chairperson may hold directions hearing)	22
	65 Chief executive must refer dispute for directions hearing	22
	66 Holding directions hearing	23
29	Insertion of new s 66A	24
	66A Appointment of tribunal	24
30	Insertion of new s 70A	24
	70A Necessary parties	24
31	Amendment of s 83 (Tribunals' orders)	24
32	Insertion of new s 87A	25
	87A Order to state reasons	25

33	Amendment of s 88 (Restricted right to question tribunal’s hearing and order)	26
34	Amendment of s 91 (Costs)	27
35	Amendment of s 94 (Exclusion of other jurisdictions)	27
36	Amendment of pt 12 (Transitional provisions)	27
124	Obligations to give disclosure statements and financial and legal advice certificates	27
125	Current market rent determinations	28
126	Relocating lessee’s business	28
127	Resolution for changing core trading hours	29
128	Existing retail tenancy disputes	29
37	Amendment to omit headings following cross references	29

Queensland



Retail Shop Leases Amendment Act 2000

Act No. 19 of 2000

*An Act to amend the *Retail Shop Leases Act 1994**

[Assented to 23 June 2000]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Retail Shop Leases Amendment Act 2000*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Act amended

3. This Act amends the *Retail Shop Leases Act 1994*.

Amendment of s 5 (Definitions)

4.(1) Section 5, definitions “**disclosure statement**” and “**specific outgoings**”—

omit.

(2) Section 5—

insert—

‘ “**2000 amendment Act**” means the *Retail Shop Leases Amendment Act 2000*.

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

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

“**GST**” has the meaning given under the GST Act.¹

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

“**specific outgoings**”, of a lessor, means the following—

- (a) the lessor’s outgoings that are attributable to a lessee because of the lessee’s direct use of the services or facilities incurring the outgoings;
- (b) an amount mentioned in section 24A(2).²

“**tribunal legal member**” means a person appointed as a tribunal panel member under section 102(a).’.

(3) Section 5, definitions “**approved accounting standards**” and “**approved auditor**”, ‘the Australian Society of Certified Practising Accountants’—

omit, insert—

‘CPA Australia ACN 008 392 452’.

Amendment of s 7 (Meaning of “outgoings”)

5.(1) Section 7(1)—

insert—

‘(c) an amount mentioned in section 24A(2).’.

(2) Section 7—

insert—

‘**(1A)** An outgoing mentioned in subsection (1) may be either an

¹ *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), section 195—
“GST” means tax that is payable under the GST law and imposed as goods and services tax by any of these—

- (a) the *A New Tax System (Goods and Services Tax Imposition—General) Act 1999*; or
- (b) the *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999*; or
- (c) *A New Tax System (Goods and Services Tax Imposition--Excise) Act 1999*.

² Section 24A (GST payments)

apportionable outgoing or a specific outgoing and the sum of the apportionable outgoings and specific outgoings is the lessor's outgoings.'

(3) Section 7(2), 'Examples of subsection (2)(b)'—

omit, insert—

'Examples for subsection (3)(b)'.

(4) Section 7(1A) and (2)—

renumber as section 7(2) and (3).

Amendment of s 9 (Meaning of "turnover")

6. Section 9(2)(g), 'taxes'—

omit, insert—

'taxes, including GST,'.

Amendment of s 13 (Application of Act to leases—general)

7.(1) Section 13(1)—

omit, insert—

'13.(1) Subject to subsections (2) to (7), this Act³ applies to all retail shop leases whether entered into or renewed before or after 28 October 1994.'

(2) Section 13(2), 'However, this'—

omit, insert—

'This'.

(3) Section 13—

insert—

'(2A) Section 27,⁴ as in force immediately before the commencement of the *Retail Shop Leases Amendment Act 1999*, continues to apply to a retail shop lease entered into before the commencement, and any extension or

³ See the *Acts Interpretation Act 1954*, section 14H (References taken to be included in citation of law).

⁴ Section 27 (Timing and bases of rent reviews)

renewal of the lease, as if that Act had not commenced.

(2B) Subject to subsection (5), section 27, as amended by the 2000 amendment Act, applies only to a retail shop lease entered into after the commencement of this subsection.

(2C) Section 27(8) applies only to a retail shop lease entered into after 28 October 1994.

(2D) Part 6, division 8A,⁵ applies only to a retail shop lease entered into after the commencement of the division.’.

(4) Section 13(3), ‘sections’—

omit, insert—

‘provisions’.

(5) Section 13(2A) to (3)—

renumber as section 13(3) to (7).

Amendment of s 21 (Application of part)

8.(1) Section 21(c)—

omit.

(2) Section 21—

insert—

‘(2) Sections 22, 22A and 23 do not apply to an assignment of a retail shop lease.’.

Amendment of s 22 (Lessor to give lease and disclosure statement to prospective lessee)

9.(1) Section 22, heading—

omit, insert—

⁵ Part 6, division 8A (Provisions about unconscionable conduct)

‘Lessor’s disclosure obligation to prospective lessee’.

(2) Section 22(1), from ‘person’—

omit, insert—

‘person a draft of the lease and a disclosure statement.’.

(3) Section 22(2)—

omit.

(4) Section 22(4), ‘(3)(a)’—

omit, insert—

‘(2)(a)’.

(5) Section 22(3) and (4)—

renumber as section 22(2) and (3).

Insertion of new ss 22A–22E

10. After section 22—

insert—

‘Prospective lessee’s disclosure obligation to lessor

‘22A. Before entering into a retail shop lease, the prospective lessee must give the lessor a disclosure statement if the lessor—

- (a) asks the prospective lessee for the disclosure statement; and
- (b) complies with section 22(1).

‘Assignor’s and prospective assignee’s disclosure obligations to each other

‘22B.(1) An assignor of a retail shop lease must give a prospective assignee a disclosure statement at least 7 days before asking the lessor to consent to the assignment.

‘(2) If asked by the assignor, the prospective assignee must give a disclosure statement to the assignor before the lessor is asked to consent to the assignment.

‘Lessor’s and prospective assignee’s disclosure obligations to each other

‘22C.(1) At least 7 days before an assignment of a retail shop lease is entered into, the lessor must give the prospective assignee a disclosure statement and a copy of the lease.

‘(2) If asked by the lessor, the prospective assignee must give a disclosure statement to the lessor before the assignment is entered into.

‘Financial, and legal advice certificates

‘22D.(1) If a prospective lessee of a retail shop is the lessee of less than 5 retail shops in Australia, and uses each shop wholly or predominantly for carrying on 1 or more retail businesses, the prospective lessee, before entering into the lease, must give the lessor—

- (a) a financial advice certificate; and
- (b) a legal advice certificate.

‘(2) If a prospective assignee of a retail shop lease is the lessee of less than 5 retail shops in Australia, and uses each shop wholly or predominantly for carrying on 1 or more retail businesses, the prospective assignee, before entering into the assignment of the lease, must give the lessor—

- (a) a financial advice certificate; and
- (b) a legal advice certificate.

‘(3) For subsections (1)(a) and (2)(a), a ‘financial advice certificate’ is a certificate—

- (a) in the approved form; and
- (b) containing the particulars prescribed under a regulation; and
- (c) signed by a person who—
 - (i) is a member of 1 of the following entities—
 - (A) CPA Australia ACN 008 392 452;
 - (B) Institute of Chartered Accountants;
 - (C) National Institute of Accountants; and

(ii) holds a current practising certificate issued by the entity.

‘(4) For subsections (1)(b) and (2)(b), a ‘legal advice certificate’ is a certificate—

- (a) in the approved form; and
- (b) signed by a barrister or solicitor who is admitted to practise in Queensland; and
- (c) stating that the barrister or solicitor has given the person seeking the certificate advice about the legal meaning and effect of—
 - (i) the terms and conditions of the proposed lease, or the lease the subject of the proposed assignment; and
 - (ii) the disclosure statement given to the person under this part; and
- (d) containing the other particulars prescribed under a regulation.

‘Effect of failure to comply with sections 22A–22D

‘**22E.(1)** This section applies if a person (the “**disclosing person**”) fails to give another person (the “**receiving person**”) a document under section 22A to 22D and the relevant lease or assignment is entered into.

‘(2) A retail tenancy dispute exists between the persons, and the receiving person, within the relevant period, may ask the tribunal for an order that the disclosing person give the document to the receiving person.⁶

‘(3) In this section—

“**relevant period**” means—

- (a) for section 22A or 22D(1)—within 2 months after the lease is entered into; or
- (b) for section 22B, 22C or 22D(2)—within 2 months after the assignment is entered into.’.

⁶ See also section 50 (Retail tenancy disputes between lessors and lessees about assignments of leases)

Amendment of s 24 (Lessee's obligations to pay rent and outgoings)

11.(1) Section 24, heading—

omit, insert—

'Lessee's obligations to make particular payments'.

(2) Section 24(1), from 'rent'—

omit, insert—

'the following—

- (a) rent;
- (b) if specified in the lease, the following—
 - (i) the lessor's outgoings, or the specified part of the lessor's outgoings, for the retail shopping centre or leased building in which the leased shop is situated;
 - (ii) damages for breach of a term of the lease;
 - (iii) an indemnity given by the lessee to the lessor for loss or damage suffered by the lessor as a result of the actions or omissions of the lessee or a person acting for the lessee;
 - (iv) subject to subsection (3), interest on arrears of rent or outgoings.'

(3) Section 24—

insert—

'**(2A)** A retail shop lease may contain a provision requiring the lessee to make a payment for interest on arrears of rent or outgoings only if the interest rate, or the way in which the interest rate is to be calculated, is stated in the lease.'

(4) Section 24(3)—

insert—

- section 24A'.

(5) Section 24(2A) and (3)—

renumber as section 24(3) and (4).

Insertion of new s 24A

12. After section 24—

insert—

‘GST payments

‘**24A.(1)** Nothing in this Act prevents a lessor from requiring a lessee to pay an amount (the “**GST amount**”) that is directly or indirectly attributable to GST payable for a supply made by the lessor to the lessee under the lease.

‘**(2)** If a lease provides that the GST amount is to be paid by the lessee to the lessor as an outgoings item, the GST amount is a specific outgoing.’.

Amendment of s 27 (Timing and bases of rent reviews)

13.(1) Section 27(1B), ‘(1A)’—

omit, insert—

‘(2)’.

(2) Section 27(3)—

omit, insert—

‘**(3)** The basis for a rent review must be a single basis consisting of 1 of the following—

- (a) the current market rent of the leased shop;
- (b) an independently published index of prices, costs or wages;
- (c) a fixed percentage of the base rent;
- (d) a fixed actual amount;
- (e) another basis prescribed by regulation;
- (f) a single basis formed by a combination of 2 or more bases mentioned in paragraphs (b) to (e).’.

(3) Section 27(4), ‘(2) and (3)’—

omit, insert—

‘(4) and (5)’.

(4) Section 27(5), from ‘is the same’—

omit, insert—

‘is—

- (a) for an invalid review mentioned in subsection (9), definition “invalid review”, paragraph (a)—the same as the rent payable before the timing of the review; or
- (b) for an invalid review mentioned in subsection (9), definition “invalid review”, paragraph (b)—the rent worked out on 1 of the bases, chosen by the lessee, on which the review was made; or
- (c) for an invalid review mentioned in subsection (9), definition “invalid review”, paragraph (c)—the rent worked out on 1 of the bases, chosen by the lessee, on which the review was to be made under the void provision.’

(5) Section 27—

insert—

‘(5A) It is declared that an adjustment of the rent merely to enable the lessor to recover GST from the lessee is not a rent review.’

(6) Section 27(6), definition “**invalid review**”—

insert—

- ‘(c) a review under a provision of a lease that is void under section 36(d) or (e).’⁷

(7) Section 27(1A) to (6)—

renumber as section 27(2) to (9).

Amendment of s 30 (Valuer may require information from lessor)

14.(1) Section 30(2), from ‘a retail’—

omit, insert—

‘the valuer, within 7 days after the lessor fails to give the information, must give the lessee written notice of the lessor’s failure.

⁷ Section 36 (Certain rent review provisions of leases void)

‘(2A) If the lessee is given a notice under subsection (2), a retail tenancy dispute exists between the lessor and the lessee.’.

(2) Section 30(2A) and (3)—

renumber as section 30(3) and (4).

Amendment of s 31 (Requirements of determination)

15. Section 31—

insert—

‘(2) The determination must also state—

- (a) whether the current market rent includes GST; and
- (b) if the rent includes GST, the GST amount.’.

Replacement of s 32 (Valuer to give determination to lessor and lessee)

16. Section 32—

omit, insert—

‘Valuer to give determination to lessor and lessee

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

- (a) the valuer is asked to make the determination;
- (b) if the lessor is required to give the valuer information (“**lease information**”) under section 30—the lessor gives the lease information to the valuer;
- (c) if a retail tenancy dispute under section 30 proceeds to mediation or a tribunal hearing under part 8⁸—the lessor gives the lease information to the valuer as required by or under a mediation agreement made, or tribunal order given, under the part.’.

⁸ Part 8 (Retail tenancy dispute resolution)

Amendment of s 37 (Requirements when lessee to pay lessor's outgoings)

17. Section 37(2)(b), 'outgoings'—
omit, insert—
'outgoings, other than specific outgoings'.

Insertion of new s 37A

18. After section 37—
insert—

'Lessor's recovery of electricity charges

'37A.(1) This section applies if—

- (a) under a retail shop lease—
 - (i) the lessor's outgoings include an amount for electricity charges; and
 - (ii) the lessee is required to pay all or part of the amount; and
- (b) the way in which the lessor may recover the amount from the lessee is stated under the *Electricity Act 1994*.

'(2) The lessor may recover the amount from the lessee only under the *Electricity Act 1994*.'

Amendment of s 41 (Promotion and advertising)

19. Section 41(1)(b), 'outgoings.'—
omit, insert—
'outgoings.⁹'.

⁹ See also section 37 (Requirements when lessee to pay lessor's outgoings). Under the section, "**outgoings**" include maintenance and promotion amounts.

Amendment of s 44 (Amount of compensation)

20. Section 44—

insert—

‘(1A) A tribunal, in deciding the amount of compensation payable under section 43(1)(a), may have regard to how much notice of the proposed relocation was given to the lessee.’

Amendment of s 46 (Options to renew leases)

21. Section 46(4), after ‘written notice’—

insert—

‘in the approved form’.

Insertion of new pt 6, div 8A

22. After section 46—

insert—

‘Division 8A—Provisions about unconscionable conduct¹⁰

‘Unconscionable conduct

‘46A.(1) A lessor must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.

‘(2) A lessee must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.

‘(3) For this section, a person is not to be taken to engage in unconscionable conduct in connection with a retail shop lease only because the person—

- (a) starts legal proceedings relating to the lease; or
- (b) refers to arbitration a dispute or claim relating to the lease; or

¹⁰ For corresponding provisions, see the *Trade Practices Act 1974* (Cwlth), section 51AC (Unconscionable conduct in business transactions).

(c) fails to issue or renew the lease.

‘(4) This section does not apply to conduct that occurred before the commencement of this section.

‘Matters tribunal may consider in deciding if a party’s conduct is unconscionable

‘**46B.(1)** In deciding whether a party to a retail tenancy dispute has engaged in unconscionable conduct in connection with the retail shop lease, the tribunal may have regard to the following matters—

- (a) the relative strengths of the bargaining positions of each of the parties;
- (b) whether, as a result of conduct engaged in by the party, the other party was required to comply with conditions that were not reasonably necessary for the protection of the other party’s legitimate interests;
- (c) whether the other party was able to understand any documents relating to the lease;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the other party or a person acting for the other party by the party or a person acting for the party in relation to the lease;
- (e) the amount for which, and the circumstances under which, the other party could have acquired an identical or equivalent lease from a person other than the party;
- (f) the extent to which the party’s conduct towards the other party was consistent with the party’s conduct in similar transactions between the party and parties like the other party;
- (g) the requirements of any applicable industry code;
- (h) the requirements of any other industry code, if the other party acted on the reasonable belief that the party would comply with the code;
- (i) the extent to which the party unreasonably failed to disclose to the other party—

- (i) any intended conduct of the party that might affect the other party's interests; and
- (ii) any risks to the other party arising from the party's intended conduct (being risks that the party should have foreseen would not be apparent to the other party);
- (j) the extent to which the party was willing to negotiate the terms and conditions of any lease with the other party;
- (k) the extent to which the party and the other party acted in good faith.

‘(2) The tribunal may also have regard to circumstances existing before the commencement of section 46A.

‘(3) Subsections (1) and (2) do not limit the matters to which the tribunal may have regard in making its decision.

‘(4) However, the tribunal must not have regard to the following—

- (a) any circumstances that were not reasonably foreseeable at the time of the alleged contravention of section 46A(1) or (2);
- (b) conduct engaged in before the commencement of section 46A.

‘(5) In this section—

“**applicable industry code**” has the meaning given under the *Trade Practices Act 1974* (Cwlth), section 51ACA.

“**industry code**” has the meaning given under the *Trade Practices Act 1974* (Cwlth), section 51ACA.¹¹.

¹¹ *Trade Practices Act 1974* (Cwlth), section 51ACA—

“applicable industry code”, in relation to a corporation that is a participant in an industry, means:

- (a) the prescribed provisions of any mandatory industry code relating to the industry; and
- (b) the prescribed provisions of any voluntary industry code that binds the corporation.

“industry code” means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.

Insertion of new s 46C

23. Part 6, division 9—

insert—

‘Relocating lessee’s business

‘46C.(1) A lessor must not relocate the lessee’s business to other premises during the term of the lease, or any renewal of it, without giving the lessee at least 3 months written notice of the relocation.

‘(2) The notice must state the premises to which the lessee’s business is to be relocated.’.

Amendment of s 48 (Lessee’s liability for costs associated with preparation etc. of lease)

24.(1) Section 48(1), from ‘to the’—

omit, insert—

‘to the following—

- (a) preparing, renewing or extending the lease;
- (b) submitting the lease, on its expiry, for reassessment of stamp duty.’.

(2) Section 48(2), after ‘for’—

insert—

‘1 or more of the following’.

(3) Section 48(2)(a) to (c), ‘or’—

omit.

Amendment of s 50 (Retail tenancy disputes about assignments of leases)

25. Section 50, heading, after ‘disputes’—

insert—

‘between lessors and lessees’.

Amendment of s 52 (Requirements for resolution)

26.(1) Section 52—

insert—

‘(da) votes are cast by eligible lessees representing at least 50% of the number of eligible shops; and’.

(2) Section 52(e)—

omit, insert—

‘(e) the resolution is supported by at least 75% of the eligible lessees who voted; and’.

(3) Section 52(da) to (f)—

renumber as section 52(e) to (g).

Omission of s 65 (Chief executive to refer dispute to tribunal)

27. Section 65—

omit.

Replacement of s 66 (Chairperson may hold directions hearing)

28. Section 66—

omit, insert—

‘Chief executive must refer dispute for directions hearing

‘**65.(1)** Within 14 days after a retail tenancy dispute is referred to the chief executive, the chief executive, by written notice, must refer the dispute to a tribunal legal member to hold a directions hearing.

‘**(2)** As soon as practicable after receiving the notice, the tribunal legal member must advise the chief executive of the time and date on which the directions hearing is to be held.

‘**(3)** Subject to subsection (5), the chief executive must give the parties to the dispute reasonable written notice of the time, date and place of the directions hearing.

‘**(4)** If requested by the tribunal legal member, the notice must include a

requirement that each party (the “**first party**”), before the directions hearing, disclose to the tribunal legal member and each other party each document that is—

- (a) in the possession or under the control of the first party; and
- (b) directly relevant to an allegation in issue in the dispute; and
- (c) stated in the notice.

‘(5) If the tribunal legal member decides that a directions hearing should not be held because of exceptional circumstances, the tribunal legal member must give the chief executive notice of the decision.

‘Holding directions hearing

‘**66.(1)** The provisions of subdivision 2 (other than sections 71(2) and (3) and 74¹²) about the conduct of, and procedure at, a tribunal’s hearing of a retail tenancy dispute and the tribunal’s powers at the hearing apply, with the necessary changes, to a directions hearing.

Examples for subsection (1)—

1. A reference to a tribunal hearing is a reference to a directions hearing.
2. A reference to the tribunal or chairperson is a reference to the tribunal legal member.

‘(2) At the directions hearing, the tribunal legal member may make the decisions and give the directions the tribunal legal member considers appropriate, including directions about the following—

- (a) questions of law;
- (b) the tribunal’s jurisdiction;
- (c) discovery and inspection of documents;
- (d) the parties’ representation at the tribunal’s hearing of the retail tenancy dispute.

‘(3) If the dispute is to proceed to a tribunal hearing after the directions hearing, the tribunal legal member, as soon as practicable after the directions

¹² Sections 71 (Limited right of representation) and 74 (Questions to be decided by majority of tribunal)

hearing, must give the chief executive written notice that a tribunal hearing is required.’.

Insertion of new s 66A

29. Part 8, division 4, subdivision 2—

insert—

‘Appointment of tribunal

‘66A. Within 14 days after receiving a notice under section 65(5) or 66(3), the chief executive must—

- (a) appoint a tribunal to hear the dispute; and
- (b) give written notice to the tribunal members of their appointment to hear the dispute; and
- (c) give written notice to the parties to the dispute of the appointment and composition of the tribunal to hear the dispute.’.

Insertion of new s 70A

30. After section 70—

insert—

‘Necessary parties

‘70A. The tribunal may order that a person be included as a party to the dispute if—

- (a) asked by a party to the retail tenancy dispute; and
- (b) the person’s presence is necessary to allow the tribunal to adjudicate effectually and completely on the dispute.’.

Amendment of s 83 (Tribunals’ orders)

31.(1) Section 83(1), ‘The’—

omit, insert—

‘Subject to subsection (3), the’.

(2) Section 83(2)—

insert—

‘(h) an order mentioned in section 22E(2).¹³’.

(3) Section 83—

insert—

‘(2A) If the tribunal finds a party to the dispute engaged in unconscionable conduct in connection with the retail shop lease, the tribunal may only make 1 of the following orders based on the unconscionable conduct—

- (a) an order requiring the party who engaged in the unconscionable conduct to pay an amount to a stated person;
- (b) an order that the party who engaged in the unconscionable conduct is not required to pay any amount to any person.’.

(4) Section 83(2A) to (4)—

renumber as section 83(3) to (5).

Insertion of new s 87A

32. After section 87—

insert—

‘Order to state reasons

‘**87A.(1)** The tribunal’s order must state the reasons for the tribunal’s decision on which the order is based.

‘(2) Without limiting subsection (1), if the retail tenancy dispute includes, or is about, an allegation that a party to the dispute engaged in unconscionable conduct in connection with the retail shop lease, the order must—

- (a) state the tribunal’s decision relating to the allegation; and
- (b) clearly identify any part of the order that is based on the decision.’.

¹³ Section 22E (Effect of failure to comply with sections 22A–22D)

Amendment of s 88 (Restricted right to question tribunal's hearing and order)

33.(1) Section 88, 'The'—

omit, insert—

'Subject to subsection (2), the'.

(2) Section 88—

insert—

'(2) If the dispute includes an allegation that a party to the dispute engaged in unconscionable conduct in connection with the retail shop lease, a party to the dispute may appeal to the Supreme Court against any part of the order that is based on the tribunal's decision relating to the allegation.

'(3) An appeal under subsection (2) may be made on a matter of law or fact.

'(4) A party to the dispute may appeal under subsection (2) only with the court's leave if the part of the order appealed against—

- (a) is based on the tribunal's decision that the allegation of unconscionable conduct is not proved; or
- (b) is based on the tribunal's decision that the allegation of unconscionable conduct is proved and—
 - (i) does not require the party who is found to have engaged in the unconscionable conduct to pay any amount to any person; or
 - (ii) requires the party who is found to have engaged in the unconscionable conduct to pay an amount of less than \$50 000 to a person.

'(5) A party to the dispute may appeal as of right under subsection (2) if the part of the order appealed against is based on the tribunal's decision that the allegation of unconscionable conduct—

- (a) is proved; and
- (b) requires the party who is found to have engaged in the unconscionable conduct to pay an amount of \$50 000 or more to a person.'

Amendment of s 91 (Costs)**34.** Section 91(3)(b)—*insert—*

‘(iii) sought the inclusion of the party or another person as a party to the dispute.’.

Amendment of s 94 (Exclusion of other jurisdictions)**35.** Section 94—*insert—*

‘(4) If an application for an order mentioned in subsection (2)(c) is made to a court, the tribunal proceeding for the dispute ends only if the court—

- (a) grants the application; and
- (b) makes an order that is inconsistent with allowing the tribunal proceeding to continue.’.

Amendment of pt 12 (Transitional provisions)**36.(1)** Part 12, before section 123—*insert—*

‘Division 1—Transitional provisions for Act No. 47 of 1994’.

(2) Section 124—*omit, insert—*

‘Division 2—Transitional provisions for 2000 amendment Act

‘Obligations to give disclosure statements and financial and legal advice certificates

‘**124.(1)** If, before the commencement of this section, a lessor has given a prospective lessee a disclosure statement for a retail shop lease under section 22 as it existed before the commencement—

- (a) the lessor is taken to have complied with section 22(1)¹⁴ as it existed after the commencement; and
- (b) the prospective lessee is taken to have complied with sections 22A and 22D(1).¹⁵

‘(2) If, before the commencement of this section, an assignor has asked a lessor to consent to an assignment of a retail shop lease—

- (a) the assignor is taken to have complied with section 22B(1);¹⁶ and
- (b) the prospective assignee is taken to have complied with sections 22B(2), 22C(2)¹⁷ and 22D(2); and
- (c) the lessor is taken to have complied with section 22C(1).

‘Current market rent determinations

‘125.(1) This section applies if—

- (a) before the commencement of this section, the current market rent of a lease is to be determined by a specialist retail valuer; and
- (b) on the commencement, the valuer has not given the determination to the lessor and lessee under section 32.¹⁸

‘(2) This Act, as in force immediately before the commencement of this section, applies to the current market rent determination.

‘Relocating lessee’s business

‘126.(1) This section applies if, within 3 months after the

¹⁴ Section 22 (Lessor’s disclosure obligation to prospective lessee)

¹⁵ Sections 22A (Prospective lessee’s disclosure obligation to lessor) and 22D (Financial, and legal advice certificates)

¹⁶ Section 22B (Assignor’s and prospective assignee’s disclosure obligations to each other)

¹⁷ Section 22C (Lessor’s and prospective assignee’s disclosure obligations to each other)

¹⁸ Section 32 (Valuer to give determination to lessor and lessee)

commencement of section 46C,¹⁹ a lessor relocates a lessee's business to other premises during the term of the lease or of any renewal of it.

‘(2) Section 46C does not apply to the relocation.

‘Resolution for changing core trading hours

‘127.(1) This section applies if, immediately before the commencement of this section, a secret ballot has not been conducted for a notice given under section 52²⁰ before the commencement about a resolution to change core trading hours for a retail shopping centre.

‘(2) The secret ballot must be conducted and decided under section 52 as in force immediately before the commencement of this section.

‘Existing retail tenancy disputes

‘128. If, on the commencement of this section, a retail tenancy dispute referred to the chief executive before the commencement has not been resolved, the dispute must be resolved under part 8²¹ as in force immediately before the commencement of this section.’.

Amendment to omit headings following cross references

37.(1) This section applies to a section containing a cross reference to a provision of the Act followed by the heading to the provision in round brackets.

(2) The section is amended by omitting the brackets and the words in the brackets.

¹⁹ Section 46C (Relocating lessee's business)

²⁰ Section 52 (Requirements for resolution)

²¹ Part 8 (Retail tenancy dispute resolution)