



Queensland

Retail Shop Leases Amendment Act 2006

Act No. 4 of 2006



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Retail Shop Leases Amendment Act 2006

Act No. 4 of 2006

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

[Assented to 22 February 2006]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Retail Shop Leases Amendment Act 2006*.

2 Commencement

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

3 Act amended

This Act and the schedule amend the *Retail Shop Leases Act 1994*.

4 Amendment of s 5 (Definitions)

- (1) Section 5, ‘In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’.

- (2) Section 5, definitions *approved accounting standards, approved auditor, GST, GST Act, lessee, public corporation, subsidiary—*

omit.

- (3) Section 5—

insert—

‘*defective statement*, see section 22(8).

demolish, a building, includes carry out substantial repair, renovation or reconstruction of the building that can not practicably be carried out without vacant possession of 1 or more leased shops in the building.

financial advice report means a report—

- (a) in the approved form; and

- (b) containing the particulars prescribed under a regulation; and
- (c) signed by a person who is a qualified accountant.

legal advice report means a report—

- (a) in the approved form; and
- (b) signed by a lawyer; and
- (c) stating that the lawyer has given the prospective lessee of a retail shop, or the prospective assignee of a retail shop lease, seeking the report, 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 part 5; and
- (d) containing the other particulars prescribed under a regulation.

lessee—

- (a) in relation to a retail tenancy dispute, includes the former lessee; and
- (b) for part 6, division 7, includes—
 - (i) a lessee who is holding over under the lease or with the lessor's consent; and
 - (ii) a sublessee or franchisee entitled to occupy the retail shop under the lease or with the lessor's consent.

lessor's termination notice see section 46I(1).

listed corporation means a listed corporation under the Corporations Act.

major lessee means the lessee of 5 or more retail shops in Australia.

qualified accountant means a qualified accountant under the Corporations Act.

registered auditor means an entity registered as an auditor under the Corporations Act.

relocation action see section 46C.

relocation day see section 46D(2).

relocation notice see section 46D(1).

subsidiary, of a listed corporation, means a subsidiary of the corporation under the Corporations Act.

termination day see section 46I(2).’.

- (4) Section 5, definition *lessor*, paragraph (a)—
omit, insert—
‘(a) a person acting under the lessor’s authority; and’.
- (5) Section 5, definition *retail shop lease*, paragraph (a), ‘public’—
omit, insert—
‘listed’.
- (6) Section 5, definition *retail shop lease*, paragraph (f)—
renumber as paragraph (g).
- (7) Section 5, definition *retail shop lease*—
insert—
‘(f) premises that, if the premises were not leased, would be premises within a common area of a retail shopping centre, but only if the premises are used for 1 or more of the following—
(i) information, entertainment, community or leisure facilities;
(ii) telecommunication equipment;
(iii) displaying advertisements;
(iv) storage;
(v) parking; or’.
- (8) Section 5, definitions, as amended—
relocate to the schedule as inserted by section 46.

5 Replacement of s 8 (Meaning of *retail shopping centre*)

Section 8—

*omit, insert—***‘8 Meaning of *retail shopping centre***

‘(1) A *retail shopping centre* is a cluster of premises having all of the following attributes—

(a) 5 or more of the premises are used wholly or predominantly for carrying on retail businesses;

(b) all the premises—

(i) are owned by the 1 person; or

(ii) have the 1 lessor or head lessor, or, if the premises were leased, would have the 1 lessor or head lessor; or

(iii) comprise lots within a single community titles scheme;

(c) all the premises are located in—

(i) 1 building; or

(ii) 2 or more buildings if—

(A) the buildings are adjoining; or

(B) if the premises are owned by the 1 person—the buildings are separated by common areas or other areas owned by the owner or a road; or

(C) if the premises are not owned by the 1 person—the buildings are separated by common areas or a road;

(d) the cluster of premises is promoted, or generally regarded, as constituting a shopping centre, shopping mall, shopping court or shopping arcade.

‘(2) In this section—

community titles scheme means a community titles scheme under the *Body Corporate and Community Management Act 1997*.

6 Amendment of s 9 (Meaning of turnover)

(1) Section 9(2), after ‘business’, first mention—

insert—

‘carried on in a leased shop’.

(2) Section 9(2)(1), ‘lottery’—

omit.

(3) Section 9(2)(1)—

insert—

‘Examples of sales made on a commission basis—

lottery sales, postage stamp sales, public transport ticket sales,
telephone card sales’.

7 Insertion of new pt 3, div 3

Part 3—

insert—

‘Division 3 Notes**‘9A Notes in text**

‘A note in the text of this Act is part of this Act.’.

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

Section 13—

insert—

‘(8) Despite subsections (1) and (3) to (7), only parts 1 to 3 and 7 apply to a short term retail shop lease entered into on or after the commencement of this subsection.

Note—

Part 12¹ also contains provisions about the application of this Act.’

‘(9) In this section—

¹ Part 12 (Transitional provisions)

right to extend, a lease, does not include a holding over right of the lessee, if the right operates at the lessor's discretion.

short term retail shop lease means a retail shop lease for which the combined period of the following is not more than 6 months—

- (a) the lease's original term;
- (b) any periods for which the lessee has a right to extend the lease.'.

9 Replacement of s 22 (Lessor's disclosure obligation to prospective lessee)

Section 22—

omit, insert—

'22 Lessor's disclosure obligation to prospective lessee

- '(1) At least 7 days before a prospective lessee of a retail shop enters into a retail shop lease (the *disclosure period*), the lessor must give to the person a draft of the lease and a disclosure statement.
- '(2) Subsections (3) and (4) apply if—
 - (a) the lessor does not comply with subsection (1); or
 - (b) the disclosure statement when given to the prospective lessee under subsection (1) is a defective statement.
- '(3) The lessee may terminate the lease by giving written notice to the lessor within 6 months after the lessee enters into the lease.
- '(4) The lessor is liable to pay to the lessee the reasonable compensation decided by way of the dispute resolution process for loss or damage suffered by the lessee because of the noncompliance or defective statement.
- '(5) The lessee can not terminate the lease under subsection (3) on the ground that the disclosure statement is a defective statement if—
 - (a) the lessor acted honestly and reasonably and ought reasonably to be excused for giving the defective statement; and

- (b) the lessee is in substantially as good a position as the lessee would have been if the disclosure statement were not a defective statement.
- ‘(6) For subsection (2), the lessor is taken to have given the disclosure statement to the prospective lessee within the disclosure period if—
- (a) the prospective lessee—
 - (i) is a major lessee; and
 - (ii) gives the lessor written notice stating that the prospective lessee—
 - (A) has received appropriate financial and legal advice about the lease; and
 - (B) waives the entitlement, under subsection (1), to receive the disclosure statement within the disclosure period; and
 - (b) the lessor gives the disclosure statement to the prospective lessee before the prospective lessee enters into the lease.
- ‘(7) Termination of the lease under subsection (3) does not affect any right, privilege or liability acquired, accrued or incurred under the lease for any period before the termination.
- ‘(8) In this section—
- defective statement*, for a disclosure statement, means a statement that is incomplete or contains information that is false or misleading in a material particular.’.

10 Amendment of s 22A (Prospective lessee’s disclosure obligation to lessor)

Section 22A, from ‘statement’, first mention—

omit, insert—

‘statement.

11 Amendment of s 22B (Assignor's and prospective assignee's disclosure obligations to each other)

Section 22B(2), 'If asked by the assignor, the'—

omit, insert—

'The'.

12 Replacement of s 22C (Lessor's and prospective assignee's disclosure obligations to each other)

Section 22C—

omit, insert—

'22C Lessor's and prospective assignee's disclosure obligations to each other

- '(1) At least 7 days before an assignment of a retail shop lease is entered into (the *disclosure period*), the lessor must give the prospective assignee a disclosure statement and a copy of the lease.
- '(2) The lessor is taken to have given the disclosure statement to the prospective assignee within the disclosure period if—
- (a) the prospective assignee—
 - (i) is a major lessee; and
 - (ii) gives the lessor written notice stating that the prospective assignee—
 - (A) has received appropriate financial and legal advice about the assignment; and
 - (B) waives the entitlement to receive the disclosure statement within the disclosure period; and
 - (b) the lessor gives the disclosure statement to the prospective assignee before the prospective assignee enters into the assignment.
- (3) The prospective assignee must give a disclosure statement to the lessor before the assignment is entered into.

13 Replacement of s 22D (Financial, and legal advice certificates)

Section 22D—

omit, insert—

‘22D Financial and legal advice reports

- ‘(1) A prospective lessee of a retail shop who is not a major lessee must, before entering into the lease, give the lessor—
- (a) a financial advice report; and
 - (b) a legal advice report.
- ‘(2) A prospective assignee of a retail shop lease who is not a major lessee must, before entering into the assignment, give the lessor—
- (a) a financial advice report; and
 - (b) a legal advice report.’.

14 Amendment of s 24 (Lessee’s obligations to make particular payments)

- (1) Section 24(1)—

insert—

- ‘(c) the lessor’s reasonable legal or other expenses incurred in responding to a request by the lessee for—
- (i) a variation of the lease, including, for example, a rent concession; or
 - (ii) the lessor’s consent to the lessee entering into a sublease or licence with another person in relation to the leased shop.’.

- (2) Section 24(4), ‘section 48(2)’—

omit, insert—

‘section 48’.

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

- (1) Section 27(5)(e) and (f)—

renumber as section 27(5)(f) and (g).

(2) Section 27(5)—

insert—

‘(e) if the rent is determined as a base rent plus an amount equal to a percentage of the turnover of the lessee’s business—the average rental paid over the previous year, or the stated number of previous years, of the lease;’.

(3) Section 27(5)(g), as renumbered, ‘(e)’—

omit, insert—

‘(f)’.

(4) Section 27(6), ‘above a stated amount’—

omit.

(5) Section 27(9)—

renumber as section 27(11).

(6) Section 27(7), ‘(9)’—

omit, insert—

‘(11)’.

(7) Section 27(8)—

omit, insert—

‘(8) Subsections (2) to (7) do not apply if—

(a) the lessee is a major lessee; and

(b) before the lessee entered into the lease the lessee gave the lessor a written notice stating that the lessee received appropriate financial and legal advice about the lease; and

(c) the lease provides for the timing and basis for each review of the lease.

‘(9) To remove any doubt, it is declared that neither of the following is a rent review—

(a) an adjustment of the rent merely to enable the lessor to recover GST from the lessee;

(b) a rent concession.

‘(10) Nothing in this section prevents a retail shop lease limiting the amount by which the rent payable under the lease may be increased.’.

16 Insertion of new pt 6, div 4, sdiv 2

After section 27—

insert—

‘Subdivision 2 Current market rent

‘27A Lessee may require early determination of current market rent

‘(1) This section applies if a retail shop lease provides for an option on the lessee’s part to renew or extend the lease at the current market rent of the leased shop.

‘(1A) However, this section does not apply if—

(a) the lessee is a major lessee; and

(b) before the lessee entered into the lease the lessee gave the lessor a written notice stating that the lessee received appropriate financial and legal advice about the lease; and

(c) the lease provides for the timing and basis for each review of the lease.

‘(2) Unless the current market rent has already been agreed between the lessor and lessee, the lessee may, by written notice given to the lessor in the early determination period, ask for the current market rent to be determined.

‘(3) Sections 28(2) and (3) and 29 apply to the determination.

‘(4) The current market rent must be determined as at the date the request is made under subsection (2).

‘(5) The rent payable under the renewal or extension is the current market rent determined under this section.

- ‘(6) Despite any other provision of this Act or the lease, the last day on which the option mentioned in subsection (1) may be exercised is the earlier of the following—
- (a) 21 days after the lessee receives written notice of the current market rent determined under this section;
 - (b) the day the lease ends.
- ‘(7) In this section—
- early determination period*** means—
- (a) for a lease of not more than 1 year, the period—
 - (i) starting 3 months before the option expiry day; and
 - (ii) ending 1 month before the option expiry day.
 - (b) for a lease of more than 1 year, the period—
 - (i) starting 6 months before the option expiry day; and
 - (ii) ending 3 months before the option expiry day.
- option expiry day*** means the last day on which the option to renew or extend the lease may, under the lease, be exercised.’.

17 Insertion of new s 28A

After section 28—

insert—

‘28A Parties’ submissions to specialist retail valuer

- ‘(1) For section 28, the lessor and lessee may each make a written submission to the specialist retail valuer about the current market rent of the retail shop.
- ‘(2) A submission must be made within the reasonable period decided by the valuer (the ***submission period***).
- ‘(3) A party making a submission must give a copy of it to the other party within the submission period.
- ‘(4) A party who receives a copy of a submission may give the valuer a written response to it.
- ‘(5) The response must be given within the reasonable period decided by the valuer.’.

18 Amendment of s 29 (Matters to be considered by specialist retail valuers)

- (1) Section 29(c)(i) and (ii)—
renumber as section 29(c)(ii) and (iii).
- (2) Section 29(c)—
insert—
‘(i) the terms and conditions of the lease; and’.

19 Amendment of s 31 (Requirements of determination)

- Section 31(1)—
omit, insert—
- ‘(1) The specialist retail valuer’s determination of the current market rent must—
 - (a) be in writing; and
 - (b) identify the location of the leased shop; and
 - (c) state the matters taken into consideration in making the determination; and
 - (d) state detailed reasons for the determination.’.

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

- (1) Section 32(b) and (c)—
renumber as section 32(d) and (e).
- (2) Section 32—
insert—
‘(b) the submission period mentioned in section 28A ends;
(c) if a submission is made to the valuer under section 28A—the period mentioned in section 28A(5) ends;’.

21 Replacement of s 34 (Parties to share cost of determination)

Section 34—

omit, insert—

‘34 Parties to share cost of determination

‘The lessor and lessee must each pay to the specialist retail valuer one-half of the valuer’s fee for determining the current market rent of the retail shop under this subdivision.’.

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

Section 37(5)(a)—

omit, insert—

‘(a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and’.

23 Amendment of s 40 (Sinking fund for major maintenance and repairs)

(1) Section 40(1)—

omit, insert—

‘(1) This section applies if a lessee under a retail shop lease is required to pay amounts (*maintenance amounts*) into a sinking fund for major maintenance of, or repairs to—

(a) the buildings, plant and equipment of, and areas used in association with, the retail shopping centre in which the leased shop is situated; or

(b) the building in which the leased shop is situated and the plant and equipment of, and areas used in association with, the building; or

(c) the leased shop and the plant and equipment of, and areas used in association with, the leased shop.’.

(2) Section 40(2), ‘for the retail shopping centre’—

omit.

(3) Section 40(6)—

omit, insert—

‘(6) The total payments into the sinking fund by all lessees of the retail shops to which the fund relates for any year must not be more than 5% of the total of the lessor’s estimated outgoings for the retail shops for the year.’.

(4) Section 40(7), ‘lessees of retail shops in the retail shopping centre’—

omit, insert—

‘a lessee of a retail shop’.

24 Replacement of s 42 (Compensation provisions implied in certain leases)

Section 42—

omit, insert—

‘42 Compensation provisions implied in particular leases

‘(1) A retail shop lease is taken to include sections 43, 43A and 44.

‘(2) However, subsection (1) does not apply to a lease for—

(a) a periodic tenancy; or

(b) a tenancy at will, other than a tenancy at will created by the lessee holding over under the lease or with the lessor’s consent.’.

25 Amendment of s 43 (When compensation is payable)

(1) Section 43, heading, after ‘payable’—

insert—

‘by lessor’.

(2) Section 43(1)(a)—

omit.

(3) Section 43(1)(b) to (g)—

renumber as section 43(1)(a) to (f).

26 Insertion of new s 43A

After section 43—

insert—

‘43A When compensation is payable by other parties

- ‘(1) This section applies if a following person (the *disclosing person*), or a person acting under the authority of the disclosing person, makes a false or misleading statement or representation in a disclosure statement given to someone else (the *affected person*) under section 22A, 22B or 22C—
- (a) the lessee under a retail shop lease;
 - (b) the assignor or assignee of a retail shop lease.
- ‘(2) The disclosing person is liable to pay to the affected person reasonable compensation for loss or damage suffered by the affected person because of the false or misleading statement or representation.’.

27 Amendment of s 44 (Amount of compensation)

Section 44(1A)—

omit.

28 Replacement of s 46 (Options to renew leases)

Section 46—

omit, insert—

‘46 Lessor’s notice about when option to renew or extend must be exercised

- ‘(1) This section applies if a retail shop lease provides for an option on the lessee’s part to renew or extend the lease.
- ‘(2) At least 2 months, but not longer than 6 months, before the option date, the lessor must give the lessee written notice of the option date.
- Maximum penalty—40 penalty units.

- ‘(3) In this section—

option date means the date stated in the lease as the date by which the lessee, if the lessee intends to exercise the option, must exercise it.

‘46AA Renewing lease if no option or other agreement

- ‘(1) This section applies if a retail shop lease—
- (a) does not provide for an option on the lessee’s part to renew or extend the lease; and
 - (b) is not the subject of an agreement for its renewal or extension.
- ‘(2) The lessor must, by written notice given to the lessee within the notice period—
- (a) offer the lessee a renewal or extension of the lease on terms, including terms about rent, stated in the notice; or
 - (b) tell the lessee that the lessor does not intend to offer the lessee a renewal or extension of the lease.
- ‘(3) An offer made under subsection (2)(a) can not be revoked—
- (a) until 1 month after it is made; or
 - (b) if the lessee accepts the offer within 1 month after it is made.
- ‘(4) If the lessor does not comply with subsection (2), the term of the lease is extended until 6 months after the lessor gives the notice (the *extended period*).
- ‘(4A) However, subsection (4) applies only if the lessee, by written notice given to the lessor before the lease would otherwise expire, asks for the extension.
- ‘(5) The lessee may terminate the lease before the extended period ends by giving at least 1 month’s written notice of termination to the lessor.
- ‘(6) In this section—
- notice period* means the period that is—
- (a) for a lease of not more than 1 year—at least 3 months, but not longer than 6 months, before the lease is to end; or

- (b) for a lease of more than 1 year—at least 6 months, but not longer than 1 year, before the lease is to end.’.

29 Replacement of s 46C (Relocating lessee’s business)

Section 46C—

omit, insert—

‘Subdivision 1 Relocating lessee’s business

‘46C Provisions implied in retail shop lease

‘A retail shop lease is taken to include sections 46D to 46G if the lease states that if—

- (a) the lessor proposes refurbishing, redeveloping or extending the building in which the leased shop is situated during the term of the lease or any renewal of it; and
- (b) the works mentioned in paragraph (a) can not be carried out practicably without vacant possession of the leased shop;

the lessor may take action requiring the lessee to relocate the lessee’s business (*relocation action*).

‘46D How lessor takes relocation action

- ‘(1) The lessor takes relocation action by giving the lessee a written notice (a *relocation notice*) under this section.
- ‘(2) A relocation notice must state each of the following—
- (a) sufficient details of the proposed refurbishment, redevelopment or extension to indicate a genuine proposal that—
- (i) is to be carried out within a reasonably practicable time after the lessee’s business is relocated; and
- (ii) can not be carried out practicably without vacant possession of the leased shop;
- (b) details of the reasonably comparable alternative retail shop to be made available to the lessee;

- (c) the day by which the lessee must vacate the leased shop (the *relocation day*).
- ‘(3) The relocation notice must be given at least 3 months before the relocation day.

‘46E Termination notice by lessee or deemed acceptance

- ‘(1) Within 1 month after receiving the relocation notice, the lessee may give the lessor a written notice terminating the lease.
- ‘(2) If the lessee gives notice under subsection (1), the lease terminates—
- (a) on the day agreed between the lessor and lessee; or
 - (b) if there is no agreement—3 months after the relocation notice is given.
- ‘(3) If the lessee does not give notice under subsection (1), the lessee is taken to have accepted the lessor’s offer of a lease of the alternative retail shop mentioned in the relocation notice, or an alternative retail shop agreed between the lessor and lessee, on the terms and conditions—
- (a) agreed between the lessor and lessee; or
 - (b) if there is no agreement—as provided under section 46F.

‘46F Terms and conditions of new lease

- ‘(1) Unless the lessor and lessee agree otherwise, the terms and conditions of the lease mentioned in section 46E(3) (the *new lease*) are the same as the terms and conditions of the existing lease.
- ‘(2) However—
- (a) the term of the new lease is taken to be the same as the remaining term of the existing lease; and
 - (b) the rent for the alternative retail shop is taken to be the same as the rent for the existing leased shop, adjusted to take into account the difference in the commercial values of the shops when the lessee’s business is relocated.

Note—

This section and section 46G do not prevent the lessee from accepting other arrangements when the details of the relocation are negotiated.

‘46G Lessee’s entitlement to relocation costs

- ‘(1) The lessee is entitled to payment by the lessor of the lessee’s reasonable costs of relocation, including, but not limited to—
- (a) the costs of the following—
 - (i) dismantling and reinstalling any fixtures and fittings;
 - (ii) modifying or replacing any fixtures and fittings to the standard existing immediately before the relocation; and
 - (b) legal costs.
- ‘(2) If the lessor and lessee can not agree on the amount to which the lessee is entitled under subsection (1), the amount must be decided under the dispute resolution process.

‘Subdivision 2 Demolishing building in which lessee’s business is situated

‘46H Provisions implied in retail shop lease

‘A retail shop lease is taken to include sections 46I to 46K if the lease provides for its termination by the lessor if the building in which the leased shop is situated is to be demolished, requiring vacant possession of the leased shop.

‘46I How lessor terminates the lease

- ‘(1) The lessor terminates the lease by giving the lessee a written notice (a *lessor’s termination notice*) under this section.
- ‘(2) A lessor’s termination notice must state—
- (a) sufficient details of the proposed demolition to indicate a genuine proposal to demolish the building within a

reasonably practicable time after the lease is terminated;
and

- (b) the day on which the lease terminates (the *termination day*).
- ‘(3) The notice must be given at least 6 months before the termination day.

‘46J Termination by lessee

- ‘(1) If the lessor gives the lessee a lessor’s termination notice, the lessee may terminate the lease earlier than the termination day by giving the lessor written notice of an earlier termination day (the *lessee’s termination notice*).
- ‘(2) The lessee’s termination notice must be given at least 7 days before the earlier termination day.

‘46K Compensation payable by lessor

- ‘(1) The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee—
- (a) because of the early termination of the lease, if the demolition is not carried out, or is not carried out within a reasonably practicable time after the termination day; and
 - (b) for the fit out of the retail shop to the extent the fit out was not provided by the lessor, whether or not the demolition is carried out.
- ‘(2) However, subsection (1)(a) does not apply if the lessor proves that when the lessor’s termination notice was given there was a genuine proposal to demolish the building within a reasonably practicable time after the termination day.
- ‘(3) The amount of the compensation payable is the amount—
- (a) agreed between the lessor and lessee; or
 - (b) if there is no agreement, decided under the dispute resolution process.
- ‘(4) In this section—

fit out includes the provision or installation of finishes, fixtures, fittings, equipment and services.

‘Subdivision 3 Other general provisions’.

30 Insertion of new s 50A

Part 6—

insert—

‘50A Release of assignor from lease

- ‘(1) This section applies to the assignment of a retail shop lease if—
- (a) the lessor, assignor and assignee (each a *disclosing person*) of the lease have each complied with sections 22B and 22C, or any order mentioned in section 22E(2) and imposed on the disclosing person; and
 - (b) each disclosure statement given under the sections or order by the disclosing person is not a defective statement.
- ‘(2) When the assignment is entered into the assignor is released from any liability under the lease to which the assignor would otherwise be subject if there is any default by the assignee.’.

31 Amendment of s 56 (Chief executive to act on dispute notice)

- (1) Section 56(1), ‘Within 7 days’—

omit, insert—

‘As soon as practicable’.

- (2) Section 56(2)—

omit, insert—

- ‘(2) The mediation conference date must be at least 7 days after the notice is given.’.

32 Amendment of ss 63 and 64

Sections 63(1)(b) and 64(2)(b), ‘4 months’—

omit, insert—

‘1 year’.

33 Amendment of s 65 (Chief executive must refer dispute for directions hearing)

Section 65(1), ‘Within 14 days’—

omit, insert—

‘As soon as practicable’.

34 Amendment of s 66A (Appointment of tribunal)

Section 66A, ‘Within 14 days’—

omit, insert—

‘As soon as practicable’.

35 Replacement of s 70A (Necessary parties)

Section 70A—

omit, insert—

‘70A Inclusion of parties

- ‘(1) The tribunal may order that a person be included as a party to the dispute if the tribunal considers—
- (a) the person ought to be bound by, or have the benefit of, an order of the tribunal in the dispute; or
 - (b) the person’s interests are affected by the dispute; or
 - (c) for another reason it is desirable the person be included as a party.
- ‘(2) The tribunal may make an order under subsection (1) on the application of a party or on the tribunal’s own initiative.’.

36 Amendment of s 71 (Limited right of representation)

(1) Section 71(1)—

omit, insert—

‘(1) At the tribunal’s hearing of the retail tenancy dispute, a party to the dispute may, with the tribunal’s leave, be represented by an approved agent if the party, as early as practicable before the hearing, gives written notice of the representation to—

(a) each other party to the hearing; and

(b) the chief executive.’.

(2) Section 71(2)—

omit.

(3) Section 71(3), ‘In addition, if’—

omit, insert—

‘If’.

(4) Section 71(3)—

renumber as section 71(2).

37 Insertion of new s 82A

Part 8, division 5—

insert—

‘82A Tribunal must attempt to conciliate

‘(1) The tribunal must not make an order for the retail tenancy dispute, including an order mentioned in section 83(3), unless the tribunal has brought, or taken all reasonable steps to try to bring, the parties to the dispute to a settlement acceptable to all the parties.

‘(2) For bringing the parties to the settlement, the tribunal may adjourn the hearing of the dispute to enable the parties to reach a mediation agreement for the dispute.

‘(3) If a mediation agreement is reached, the tribunal must, to the extent permitted under this division, make an order giving effect to the agreement.’.

38 Amendment of s 83 (Tribunals' orders)

(1) Section 83(1), after 'orders'—

insert—

' , including declaratory orders,'.

(2) Section 83(2)—

insert—

'(i) with consent of the parties to the dispute—an order to rectify the lease;

(j) if the tribunal finds that, in making a determination of current market rent, a specialist retail valuer did not comply with section 29—an order that the determination be set aside and a further determination, in compliance with the section, be made.'

39 Insertion of new s 88A

Part 8, division 5—

insert—

'88A Correcting errors

'(1) A tribunal may change a decision made by it to correct any of the following—

(a) a clerical error;

(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures;

(d) a material error in the description of an entity, thing or matter referred to in the decision;

(e) a defect of form.

'(2) The change may be made on the tribunal's own initiative or on the written application of a party to the dispute to which the decision relates.

'(3) An application under subsection (2) must be—

(a) made within 14 days after the decision is made; and

- (b) based on something mentioned in subsection (1)(a) to (e) that is of enough significance to have influenced the outcome of the hearing of the dispute.
- ‘(4) The tribunal need not conduct a hearing for the application.
- ‘(5) The change—
 - (a) may be made by the tribunal that made the decision or the tribunal legal member; and
 - (b) must be made only on the evidence placed before the tribunal at the hearing of the dispute in which the decision was made.
- ‘(6) The making of an application under this section does not, of itself, stop the decision from taking effect according to its terms.’.

40 Replacement of s 91 (Costs)

Section 91—

omit, insert—

‘91 Costs

- ‘(1) This section applies to the costs of either of the following—
 - (a) a directions hearing for a retail tenancy dispute;
 - (b) a tribunal’s hearing of a retail tenancy dispute.
- ‘(2) Each party to the dispute must bear the party’s own costs unless the relevant entity makes an order for costs under subsection (3) or section 91A.
- ‘(3) On application by a party, the relevant entity may make an order for costs if it is satisfied—
 - (a) the retail tenancy dispute is frivolous or vexatious; or
 - (b) the party has incurred costs because another party (the *other party*)—
 - (i) did not give reasonable notice of the other party’s intention not to attend a mediation conference held for the dispute; or
 - (ii) sought an adjournment of the hearing without giving reasonable notice; or

- (iii) contravened a procedural requirement; or
 - (iv) sought the inclusion of the party or another person as a party to the dispute.
- ‘(4) If a party files, in a registry of the District Court, a document certified by the chief executive to be a true copy of an order for costs under this section or section 91A, the document may be enforced as an order of the District Court.
- ‘(5) If the relevant entity makes an order for costs under this section or section 91A that does not state the amount of the costs, the amount must be decided under the *Uniform Civil Procedure Rules 1999* as if the order were an order of the District Court and the hearing were conducted in the District Court.
- ‘(6) In this section—
- relevant entity*** means—
- (a) if the dispute does not proceed to a tribunal hearing after the directions hearing—the tribunal legal member to whom the dispute was referred for the holding of the directions hearing; or
 - (b) if the dispute proceeds to a tribunal hearing—the tribunal.

‘91A Payment of costs if offer to settle rejected

- ‘(1) This section applies if—
- (a) a party to a retail tenancy dispute serves another party to the dispute with a written offer to settle the issues in dispute between the parties; and
 - (b) the other party does not accept the offer while the offer is open; and
 - (c) in the opinion of the tribunal when it hears the dispute, the decision of the tribunal on the issues in dispute is not more favourable to the other party than the offer.
- ‘(2) The tribunal may award the party who made the offer the reasonable costs incurred by the party for the hearing after the offer was served.

- ‘(3) If a retail tenancy dispute involves more than 2 parties, this section applies only if the acceptance of the offer would have resulted in the settlement of the issues in dispute between all the parties.
- ‘(4) In deciding whether a decision is or is not more favourable to a party than an offer, the tribunal must—
- (a) take into account any costs it would have awarded on the day the offer was served; and
 - (b) disregard any interest or costs it awarded for any period after the day the offer was served.’.

41 Replacement of s 102 (Appointment of members of tribunal panel)

Section 102—

omit, insert—

‘102 Appointment of members of tribunal panel

‘The Governor in Council may appoint as members of a panel of retail shop lease tribunal members (the *tribunal panel*)—

- (a) the number of Australian lawyers of at least 5 years standing the Governor in Council considers necessary; and
- (b) the number of persons with appropriate retail shop lease experience to represent lessors and lessees under retail shop leases the Governor in Council considers necessary.’.

42 Amendment of s 106 (Composition of retail shop lease tribunals)

- (1) Section 106, ‘A’—

omit, insert—

‘Subject to subsection (2), a’.

- (2) Section 106—

insert—

- ‘(2) A tribunal may consist only of a person appointed under section 102(a) if the amount, value or damages in dispute is less than the prescribed amount within the meaning of the *Small Claims Tribunals Act 1973*.’.

43 Amendment of s 109 (Tribunals’ jurisdiction)

- (1) Section 109(1)(d), after ‘station’—

insert—

‘, if the *Petroleum Retail Marketing Franchise Act 1980* (Cwlth) applies to the carrying on of the business under a franchise agreement within the meaning of that Act’.

- (2) Section 109—

insert—

- ‘(4) Despite subsection (1)(b)(i), a tribunal has jurisdiction to hear a retail tenancy dispute about arrears of rent payable under a retail shop lease if the dispute is also about the payment of compensation by the lessor to the lessee under the lease.’.

44 Amendment of s 122 (Review of Act)

Section 122(2)—

omit, insert—

- ‘(2) Each review must be carried out within 7 years after the previous review.’.

45 Insertion of new pt 12, div 3

Part 12—

insert—

‘Division 3 Transitional provision for Retail Shop Leases Amendment Act 2006

‘129 Application of Act

- ‘(1) Subject to subsection (2), this Act, as in force immediately before the commencement, continues to apply to a retail shop lease entered into before the commencement, and any

extension or renewal of the lease, as if the 2006 Act had not been enacted.

- ‘(2) On and from the commencement, sections 63, 64, 66, 70A, 71, 82A, 83, 88A, 91, 91A, 106 and 109, as amended or inserted by the 2006 Act, apply to a lease entered into before the commencement and any extension or renewal of the lease.
- ‘(3) This section does not affect the operation of section 8 of the 2006 Act.

Note—

The provisions inserted by section 8 of the 2006 Act include relevant provisions for the application of the provisions of this Act mentioned in the section.

- ‘(4) In this section—

2006 Act means the *Retail Shop Leases Amendment Act 2006*.

commencement means the commencement of this section.’

46 Insertion of new schedule

After section 129, as inserted by this Act—

insert—

‘Schedule Dictionary

section 5’.

Schedule Minor amendments

section 3

- 1 **Section 25(3)(b), ‘an approved’—**
omit, insert—
‘a registered’.

- 2 **Part 6, division 4, before section 27—**
insert—
‘Subdivision 1 Timing and bases of rent reviews’.

- 3 **Section 35(1), after ‘section’—**
insert—
‘28A or’.

- 4 **After section 35—**
insert—
‘Subdivision 3 Other provisions about rent review’.

- 5 **Part 6, division 6, heading, ‘in retail shopping centres’—**
omit.

- 6 **Section 64(2), ‘notice given to the chief executive in the approved form’—**
omit, insert—
‘written notice given to the chief executive’.

- 7 **Section 66(1), ‘and (3)’—**
omit.

Schedule (continued)

8 Section 89(3), 'in the approved form'—*omit, insert—*

'by written notice'.

9 Section 107, '106(a)'—*omit, insert—*

'106(1)(a)'.