

# **RETAIL SHOP LEASES AMENDMENT BILL 1999**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Short Title of Bill**

Retail Shop Leases Amendment Bill 1999.

#### **Objective of Bill**

The objective of the legislation is to amend the Retail Shop Leases Act 1994 (“the Act”) to improve its operational efficiency by:—

- providing the Retail Shop Leases Tribunal with the ability to effectively deal with frivolous or vexatious claims and thereby enhance the effectiveness of the operation of the dispute resolution process;
- clarifying the basis for rent reviews; and
- restricting rent reviews to once every twelve (12) months thereby providing a degree of certainty about the outcome of rent review negotiations.

#### **Reasons for the Bill**

In late 1996 members of the Retail Shop Leases Tribunal, industry associations and individual retailers recommended amendments to the Act to improve its operational efficiency. To give effect to the recommendations an interim review of the Act was undertaken. The interim review was progressed as part of the work on the Retail Industry Strategy and a discussion paper on the *Retail Shop Leases Act 1994* was released on 9 April 1997 to encourage wider consultation on the suggested amendments.

Following consultation it was determined that the following amendments were necessary

- clarification of the basis for rent reviews;
- that rent reviews be restricted to once every twelve months except during the first twelve months of a lease; and
- that the Tribunal be given the power to award costs in certain cases.

### **Alternatives to the Bill**

The policy objectives can only be achieved by amendment to the Act.

### **Administrative Cost**

Any additional administrative costs to the government are not expected to be significant.

### **Consistency with Fundamental Legislative Principles**

The provisions of the Bill are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

### **Consultation**

A paper outlining a number of minor amendments including the proposed amendments was released on 9 April 1997 as part of the work on the Retail Industry Strateg

The following government departments have been consulted:-

Queensland Treasury

Department of Justice

Department of the Premier and Cabinet

Department of Equity and Fair Trading

Department of Natural Resources

Department of Communication, Information, Local Government and Planning

## **NOTES ON CLAUSES**

### **Short Title**

Clause 1 sets out the short title of the Bill.

### **Act Amended**

Clause 2 states that the *Retail Shop Leases Act 1994* is amended.

### **Amendment of s27 (Rent may be reviewed on only one basis)**

Clause 3 omits the heading of the section and inserts a new heading which more accurately reflects the content of the amended section.

In subsection (1) of Section 27 “the reviews are” is omitted and replaced with “each review is”.

This change has been made to be consistent with new subsection (2) of Section 27 which provides that rent may be reviewed using different bases but each rent review must be made using only one basis.

Subsection (2) of Section 27 which stated “The reviews must be made using only 1 basis for each rent review.” is omitted. New subsections (1A), (1B) and (2) are inserted.

Subsections (1A) and (1B) provide that rent reviews are restricted to once each year, except during the first year of a lease. Limiting rent reviews to once each year serves to legislate a minimum standard which is current industry practice. Both parties can be assured that rent will be adjusted only once a year, thereby providing a degree of certainty about the outcome of negotiations.

In addition, this amendment will prevent the provisions of Section 36(d) of the Act being circumvented. Section 36(d) provides that a provision of a lease is void to the extent that it reserves, or has the effect of reserving, to a party a discretion to apply one of two or more methods of calculating the rent on a particular rent review. In the past, this

section has been circumvented by separating two rent reviews by as little as a day.

A new subsection (2) is inserted to clarify that the rent may be reviewed using different bases during the term of the lease but each review must be made using only one basis. The wording of the previous subsection (2) was ambiguous in that it was not clear whether rent reviews were restricted to only one basis for review for the entire period of the lease or whether each separate rent review was to be made on only one basis.

In subsection (5) of Section 27 “using more than 1 basis for a rent review” is omitted. Also, “the review is” is omitted and replaced with “an invalid review is”. The effect of this amendment is, if the rent payable under a lease is reviewed more than once in a year, except during the first year, or a review of the rent is made using more than one basis, the rent payable after the review is to remain the same as the rent payable before the review.

Subsection (6) of Section 27 is inserted to define “invalid review” and “year” when used in Section 27. A review is an “invalid review” if the rent payable under a lease is reviewed more than once in a year, except during the first year of the lease or a review is made using more than one basis for the review.

### **Replacement of s91 (Parties to pay own cost)**

Clause 4 omits Section 91 which provided that each party to a retail tenancy dispute must bear their own costs of the tribunal’s hearing of the dispute. New subsections (1) to (5) of Section 91 are inserted. These provisions are inserted to allow the tribunal to order costs to be paid in certain cases including where vexatious or frivolous claims are made where the intention is clearly to prolong or impede access to justice rather than the genuine resolution of a dispute.

Subsection (1) is inserted which states that this section applies to the costs of the tribunal’s hearing of a retail tenancy dispute.

Subsection (2) provides that unless the tribunal makes an order as to costs each party to a dispute must bear their own costs.

Subsection (3) provides that the tribunal may make an order as to costs if

it is satisfied that—

- (a) the dispute is frivolous or vexatious; or
- (b) the party has incurred costs because another party —
  - (i) sought an adjournment of the hearing without giving reasonable notice; or
  - (ii) contravened a procedural requirement.

Subsection (4) allows a party to enforce an order for costs as an order of the District Court.

Subsection (5) provides that if the amount of the costs is not specified by the tribunal the amount must be decided as if the order were an order of the District Court.

### **Insertion of new s124**

New Section 124 entitled “Application of certain amendments of s27” is inserted which provides that the amendments to Section 27 do not apply to leases entered into before the commencement of the *Retail Shop Leases Amendment Act 1998*.