

RETAIL SHOP LEASES AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title of Bill

Retail Shop Leases Amendment Bill 2000

Objective of the Bill

The objectives of the legislation are to amend the *Retail Shop Leases Act 1994* (the Act) to improve its operational efficiency in establishing mandatory minimum lease standards for retail shop leases; to improve the level of disclosure between parties entering into a lease; and to minimise the potential for disputes by managing the expectations of the parties to a lease.

Reasons for the Bill

The Act provides for a full review of the Act to be conducted every five years. A review was completed in October 1999. As part of the review process a Working Group consisting of industry representatives, was convened by the Department of State Development. It provided a formal mechanism through which key stakeholder representatives provided consolidated advice to the Department of State Development on review issues. The Group included key stakeholder representatives from the Retailers Association of Queensland, the Queensland Retail Traders and Shopkeepers Association, the Property Council of Australia, the Queensland Investment Corporation and two independent representatives.

Based upon input from the Working Group and responses received from industry stakeholders, a Policy Review Paper was prepared detailing the Government's preferred position on the issues under consideration. The Policy Review Paper was tabled in Parliament on 16 September 1999 and subsequently released for a four-week period of public consultation ending on 15 October 1999.

It was determined as a result of the public consultation process, that amendments to the Act were necessary.

Alternatives to the Bill

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

Administrative Cost

Administrative costs to the government are not expected to increase as a result of the proposed amendments.

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

In November 1998 a Discussion Paper was released to facilitate industry feedback on potential improvements to the Act and as a platform for consultation on various aspects of the legislation.

A Working Group consisting of industry representatives, was convened by the Department of State Development, and met regularly from early February 1999 until August 1999. The Working Group provided a formal mechanism through which key stakeholder representatives provided consolidated advice to the Department of State Development on review issues. The Group included representatives from the Retailers Association of Queensland, the Queensland Retail Traders and Shopkeepers Association, the Property Council of Australia, the Queensland Investment Corporation and two independent representatives.

As a result of the consultation on the Discussion Paper, and based on responses received from stakeholders, a Policy Review Paper was prepared detailing the Government's preferred position on the issues being considered. The Policy Review Paper was tabled in Parliament on 16 September 1999 and subsequently released for a four-week period of public consultation ending on 15 October 1999.

The following government departments have been consulted on the Amendment Bill:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Justice and Attorney-General
- Department of Employment, Training and Industrial Relations
- Department of Communication and Information, Local Government, Planning and Sport
- Department of Mines and Energy
- Department of Natural Resource

NOTES ON CLAUSES

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides for the Act to commence on a date to be proclaimed.

Act amended

Clause 3 states that the *Retail Shop Leases Act 1994* is amended.

Amendment of s 5 (Definitions)

Clause 4 amends section 5.

Sub-clause (1) omits the definitions of "disclosure statement" and "specific outgoings".

Sub-clause (2) inserts — a definition for the term "2000 amendment Act" to make clear that a reference is being made to the *Retail Shop Leases Amendment Act 2000*.

- a new definition for the term "disclosure statement" and makes a reference to part 5 where the term is used.
- a definition for the term "entered into" in relation to when an assignment is entered into.
- a definition for the new term "GST".
- a definition for the new term "GST Act", which appears in the definition of "GST", to make clear that a reference is being made to the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999*.
- a new definition for "specific outgoings" is inserted to clarify that the "specific outgoings" of the lessor are attributable to the lessee as a result of the lessee's direct use of the service or facility incurring the outgoing. A linkage is made to sub-section 24A(2) of the new section 24A which deals with GST payments, and extends the meaning of "specific outgoings" to include a GST amount mentioned in section 24A(2).
- a definition for the new term "tribunal legal member" which is used in the amended sections 65 and 66

Amendment of s 7 (Meaning of Outgoings)

Clause 5 amends section 7.

Sub-clause (1) inserts a new subsection 7(1)(c) to make a link to the new section 24A(2) which deals with GST payments. This is to clarify that a lessee is liable for an amount mentioned in section 24A(2) which deals with GST amounts to be paid by the lessee to the lessor.

Sub-clause (2) inserts a new section 7(1A) to clarify that an outgoing mentioned in sub-section (1) may be either an apportionable outgoing or specific outgoing and that the lessor's outgoings comprise the sum of the lessor's apportionable outgoings *and* specific outgoings.

Sub-clause (3) omits examples of sub-section (2)(b) and inserts examples of sub-section (3)(b) to reflect the change in numbering to be made in sub-clause (4).

Sub-clause (4) renumbers section 7(1A) and (2) to section 7(2) and (3) for clarity.

Amendment of s 9 (Meaning of turnover)

Clause 6 amends subsection 9(2)(g) by substituting "taxes" with "taxes, including GST" to clarify that in calculating the turnover of a business, taxes including GST, are not to be taken into account. If the GST was included in calculating turnover it would artificially increase rent in those cases where the rent is calculated as a percentage of turnover.

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

Clause 7 amends section 13.

Sub-clause (1) omits the existing subsection 13(1) and inserts a redrafted subsection 13(1) to clarify that, subject to subsections 13(2) to (7), the Act including amendments made by the 2000 amendment Act applies to all retail shop leases entered into before or after 28 October 1994, the commencement date of the 1994 Act.

This clause also attaches a footnote to subsection 13(1) referring to the *Acts Interpretation Act 1954*, section 14H (References taken to be included in citation of law) to further clarify that the Act, as amended, applies to all leases entered into before or after 28 October 1994.

Sub-clause (2) omits the phrase "However, this" and inserts "This" to improve the logic flow from subsection (1) to (2).

Sub-clause (3) inserts a new subsection (2A) that relocates section 124, an application provision, to section 13, which deals with this type of provision. The wording and intent of the relocated section has not been changed.

A new subsection (2B) is inserted to clarify that subject to subsection (5), section 27 as amended by the 2000 amendment Act will only apply to a retail shop lease entered into after the commencement of that Act.

The new subsection (2C) is inserted to make clear that subsection 27(8) is applicable to retail shop leases entered into after 28 October 1994.

The new subsection (2D) is inserted to make clear that the new division 8A, in Part 6, which deals with unconscionable conduct will only apply to a retail shop lease entered into after the commencement of the 2000 amendment Act. The intent is to ensure that the unconscionable conduct provisions are not inadvertently applied retrospectively to retail shop lease dealings.

Sub-clause (4) omits the word "sections" from subsection 13(3) and inserts the word "provisions" for accuracy and clarity.

Sub-clause (5) renumbers section 13 for clarity.

Amendment of s 21 (Application of part)

Clause 8 amends section 21.

Sub-clause (1) omits section 21(c), which excludes assigned leases from disclosure statement requirements. Disclosure requirements are being extended to include assignment of leases. New sections 22B-22E specify disclosure requirements between the relevant parties for leases being assigned.

Sub-clause (2) clarifies that sections 22, 22A and 23 which concern lessor/lessee disclosure obligations are not applicable to the assignment of a retail shop lease.

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

Clause 9 amends section 22.

Sub-clause (1) amends the heading of section 22 to "Lessor's disclosure obligation to prospective lessee". The revised wording of the heading more accurately describes the subject matter of the section and ties it more appropriately with the new sections 22A-22C.

Sub-clause (2) amends subsection 22(1) by omitting the definition of disclosure statement as the definition is now contained in section 5 (Definitions).

Sub-clauses (3) to (5) omit redundant sections and renumbers section 22 for clarity.

Insertion of new ss 22A-22E

Clause 10 inserts new sections 22A-22E.

Section 22A prescribes the disclosure obligations of lessees to lessors and creates a link to subsection 22(1), which covers lessor's disclosure obligations.

Section 22B prescribes the disclosure obligations of assignors and assignees to each other and the time period within which the disclosure information must be exchanged.

Section 22C prescribes the disclosure obligations of lessors and assignees to each other and the time period within which the disclosure information must be exchanged.

Section 22D requires the provision of financial and legal advice certificates in the approved form by prospective lessees and assignees to lessors under certain conditions. This will require prospective lessees/assignees with less than five retail establishments nationally to seek appropriate financial and legal advice prior to entering into a leasing contract. The intent of this section is to improve the financial and legal information base available to small leasing intenders. Access to this information is expected to result in improved business decision making. This section provides that only accountants and solicitors with membership and standing as prescribed may provide the financial and legal advice certificates.

Section 22E prescribes the penalties that will apply if the disclosure requirements under sections 22A-22D are not complied with. In general, where the requirements are not complied with, a retail tenancy dispute may be lodged in the time period prescribed and the tribunal may be asked to make orders directing the provision of the relevant documents.

Increasing the level of pre-lease information that must be exchanged between parties to the lease will also serve to actively address the potential threat of action under the 'unconscionable provisions' (new division 8A)

based on a lack of evidence of disclosure to a weaker party. This risk provides very clear reasons for those in a leasing relationship to disclose all relevant information that directly assists the other party's decision-making processes.

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

Clause 11 amends section 24.

Sub-clause (1) amends the heading of section 24 to "Lessee's obligations to make particular payments". This wording better reflects the subject matter of the amended section, and the lessee's obligation to make particular payments to the lessor.

Sub-clause (2) amends subsection 24(1) to allow the legitimate recovery of a number of other items in addition to rent, provided that they are specified in the lease. These items are:

- lessor's outgoings;
- damages for breach of a term of a lease;
- indemnities for loss or damage suffered by the lessor as a result of actions or omissions of the lessee or a person acting for the lessee; and
- interest on arrears of rent or outgoings.

The recovery of lessor's outgoings or a specified part of lessor's outgoings is currently allowed under the Act. Its inclusion in the amended subsection 24(1) is a logical grouping of recoverable items which are included as part of this amendment.

Sub-clause (3) inserts a new subsection 24(2A). The purpose of this subsection is to further clarify that whilst a lessee may be required to pay, if specified in the lease, interest on arrears of rent or outgoings, the interest rate or the formula or mechanism for its calculation must also be specified in the lease.

Sub-clause (4) inserts in section 24(3) an additional qualification for the operation of section 24(1) and makes reference to a new section 24A which is inserted to deal with GST payments.

Sub-clause (5) renumbers section 24 for clarity.

Insertion of new section 24A

Clause 12 inserts a new section 24A 'GST payments'.

Section 24A(1) is inserted to make clear that there is nothing in this Act to prevent a lessor from requiring a lessee to pay a GST amount which might be attributable either directly or indirectly to GST payable for a supply made by the lessor to the lessee under the lease.

Section 24A(2) clarifies that where the lease provides for the GST amount payable by the lessee to the lessor as an outgoings item, then the GST amount is to be treated as a specific outgoing. This is done to ensure that GST is not treated as an apportionable outgoing to lessees.

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

Clause 13 amends section 27.

Sub-clauses (1), (3) and (7) renumber section 27 for clarity.

Sub-clause (2) omits the existing section 27(3) and inserts a new section 27(3) to clarify that a rent review may only be undertaken on one of the bases identified in subsection 27(3). Subsection 27(3)(f) allows two or more of the methods of rent review listed in subsection 27(3)(b) to (e) to be used in combination to form **one** base of rent review. Current market rent (s.27(3)(a)) of the leased shop is specifically excluded from the basis which may be used in combination to form a new basis of rent review.

Sub-clause (4) amends subsection 27(5) to change the remedy that may be applied in circumstances where an invalid 'multiple rent review' is carried out. Should these circumstances occur, the amendment allows the lessee to choose which of the methods of rent review will apply. This remedy will also apply where a provision in a lease for a rent review is void under section 36 (d) or (e).

Sub-clause (5) inserts a new subsection 27(5A) to clarify that in the circumstance where a landlord 'grosses-up' the rent for the purpose of including GST (as required under Commonwealth legislation), then this will not constitute a rent review. The intent of this new provision is to prevent the situation arising of a lessee considering such action by the lessor as a rent review and a breach of the provisions of section 27.

Sub-clause (6) inserts an additional definition of invalid review, linking section 27 to sections 36(d) and (e).

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

Clause 14 amends section 30.

Sub-clause (1) requires that if a lessor fails to provide information to the valuer as required under subsection 30(1), the valuer must give the lessee notice of the lessor's failure to provide the information within seven days. This removes the onus for lodging a dispute from the valuer, who is not a party to the lease, and to more logically place it upon the lessee should the lessor fail to comply with subsection 30(1).

A new subsection 30(2A) provides that a retail tenancy dispute exists between the lessor and the lessee when a lessee is given written notice from a valuer of the lessor's failure to give the valuer the required information to enable a rent review to be undertaken.

Sub-clause (2) renumbers section 30 for clarity.

Amendment of s 31 (Requirements for determination)

Clause 15 inserts a new subsection 31(2) to clarify that the valuer is to identify any GST component in determining current market rent. The intent is to ensure that the Act's treatment of leases with regard to GST is consistent with the Commonwealth's GST legislation; that it reflects market valuation practice; and that the rental figure is separated from any GST component or portion.

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

Clause 16 omits the present section 32 and inserts a redrafted section 32 to provide for an additional timeframe, namely that the valuer must give a determination of current market rent to the lessor and lessee within 1 month after the lessor provides information to the valuer under section 30.

The redrafted section includes a new provision in section 32(c) to include the time frame for a valuer to give a determination to the lessor and lessee if a dispute arises under new subsection 30(2A). In this case, the time frame is linked to when a lessor provides information to a valuer under a mediation agreement or tribunal order.

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

Clause 17 amends subsection 37(2)(b) to clarify that estimates of the lessor's outgoings, which must be provided to lessees under subsection 37(2)(b) do not have to include estimates of "specific outgoings".

Insertion of new s 37A (Lessor's recovery of electricity charges)

Clause 18 inserts a new section 37A to prescribe that where a lessor may recover electricity charges forming part of a lessor's outgoings and where the lessee is required to pay, under the terms of a retail shop lease, all or part of the amount, the lessor's recovery of electricity charges must be only in the way specified under the *Electricity Act 1994*.

Amendment of s 41 (Promotion and advertising)

Clause 19 amends subsection 41(1)(b) by attaching an explanatory note to the provision to clarify that promotion amounts under this section are subject to the same auditing and accounting requirements as outgoings under section 37.

Amendment of s 44 (Amount of compensation)

Clause 20 inserts a new subsection 44(1A) to establish a link with subsection 43(1)(a). It clarifies that if compensation is payable in connection with the relocation of a lessee's premises, the tribunal may take into account the period of notice of relocation which was given in determining the amount of compensation payable.

Amendment of s 46 (Options to renew leases)

Clause 21 provides a head of power to make a regulation prescribing a specific form that will be used to inform a lessee of a lessor's intention as to whether a retail shop lease will be renewed.

Insertion of new pt 6, div 8A

Clause 22 inserts a new Part 6 division 8A, which deals with unconscionable conduct.

Subsections (1) and (2) of new section 46A (Unconscionable conduct) specifically prohibit a lessor or lessee from engaging in unconscionable conduct in relation to a retail shop lease.

The community at large associates the term unconscionable conduct with unfair behaviour. However, the term has specific legal meaning that requires more than mere 'unfair' conduct in order for the behaviour to be classed as 'unconscionable'.

Unconscionable conduct may be understood as taking advantage of a party who then does not make an independent and voluntary decision or who cannot make a judgement as to what is in their best interests. The provisions for unconscionable conduct prohibit a stronger party dealing with a disadvantaged party in a harsh or oppressive manner.

Subsection 46A(3) identifies 3 instances where a person is not considered to have behaved unconscionably. This limitation is inserted to clarify that instituting legal proceedings with regard to a lease, or taking action to arbitrate a retail tenancy dispute, or failing or declining to issue or renew a lease, does not of itself constitute unconscionable conduct. This is to ensure that normal lease dealings are not interpreted as unconscionable conduct and thereby unnecessarily involve the leasing parties in a retail tenancy dispute.

Subsection 46A(4) specifically limits the application of this section to unconscionable conduct that occurs after this section comes into effect.

A new section 46B (Matters tribunal may consider in deciding if a party's conduct is unconscionable) is inserted. Section 46B prescribes a range of matters, which the tribunal may take into account when considering allegations of unconscionable conduct. Matters that could be taken into account include the bargaining strengths of the parties; the ability of the weaker party to understand the lease documentation; and the extent to which the stronger party was willing to negotiate.

In making its determination the tribunal may take into account circumstances which may have prevailed before the commencement of section 46B. The intent of section 46B is to make clear that a tribunal must not be influenced by *circumstances* which were *not reasonably foreseeable* at the time of the allegation, or by *conduct* which occurred before the commencement of section 46A.

In considering the unconscionable conduct provisions it is useful to refer to the expanded disclosure requirements dealt with in sections 22A-22E. Increasing the amount of pre-lease information available to the parties to a lease will minimise the potential for disputes by managing the expectations of those parties. A higher level of pre-lease disclosure will actively address the threat of action under the 'unconscionable conduct' provisions.

The wording of sections 46A and 46B are in close alignment with the unconscionable conduct provisions (s 51AC) of the *Trade Practices Act 1974 (Cwlth)* and Part 7A of the *New South Wales Retail Leases Act 1994*. While the Commonwealth provisions may be accessed by the retail industry in Queensland, seeking redress via the Federal Court is less accessible in terms of time and cost when compared with the Retail Shop Lease Tribunal processes.

Insertion of new s 46C

Clause 23 inserts new section 46C (Relocating lessee's business) to clarify that where a lessor intends to relocate a lessee's business to other premises during the term of the lease, the lessor is required to give at least three (3) months written notice of this intended action and state the premises to which the lessee is to be relocated. In the event of a breach of this provision, compensation is determined in accordance with the provisions of sections 43 and 44 of the Act.

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

Clause 24 amends section 48.

Sub-clause (1) amends subsection 48(1) to clarify that the lessee must not be required to pay for the lessor's legal costs associated with lease preparation or with any "upstamping" of a lease. (Lease dealings such as an extension of a lease or its renewal incur additional stamp duty fees. This type of activity is commonly referred to as "upstamping").

Sub-clause (2) amends subsection 48(2) to clarify that a lessee may be required to pay for any combination of the items listed under this section and that these items are not mutually exclusive.

Sub-clause (3) makes a grammatical correction to the amended section 48 but does not change the intent of the section.

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

Clause 25 amends the heading of section 50 by inserting the words "between lessors and lessees" after "disputes" to make clear that the section deals with retail tenancy disputes between lessors and lessees concerning assignments of leases. (The new section 22E covers disputes that might arise between parties to a lease assignment, other than between lessors and lessees).

Amendment of s 52 (Requirements for resolution)

Clause 26 amends section 52.

Sub-clause (1) inserts a new section 52(da) to clarify that the total number of voters taking part in a vote on a resolution to change "core trading hours" must represent a minimum of 50% of the retail shops in the centre.

Sub-clause (2) amends section 52(e) so that a resolution to change "core trading hours" within a shopping centre may only be carried with the support of at least 75% of the eligible lessees who participated in the vote.

Sub-clause (3) renumbers section 52(da) to (f) to section 52(e) to (g) for ease of understanding and clarity.

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

Clause 27 omits section 65.

Replacement of s 66 (Chairperson may hold directions hearing)

Clause 28 replaces section 66 with new sections 65 and 66.

New section 65 has the heading, 'Chief executive must refer dispute for directions hearing'. The section streamlines Retail Shop Leases Registry procedures to require the chief executive to refer in writing a retail tenancy dispute within 14 days to a tribunal legal member to hold a directions hearing. As soon as practicable upon receipt of this notice the tribunal legal member sets the date and time for the directions hearing and advises the chief executive of these details. The chief executive is then required to give reasonable written notice to the parties to the dispute of the date, time and venue at which the directions hearing is to take place. The tribunal legal member also has the discretion to determine that a directions hearing is not required under exceptional circumstances. In this case the tribunal legal member must advise the chief executive in writing.

The section allows the tribunal legal member the additional discretion of requiring the notice to the parties to include a requirement regarding discovery and the disclosure of relevant documents to be made available to the tribunal legal member and the parties to the dispute prior to the directions hearing.

New section 66 has the heading, 'Holding directions hearings'. Subsection 66(1) clarifies that the provisions of 'sub-division 2—Tribunal's hearing', which describe the conduct of, and procedure at, a tribunal's hearing of a retail tenancy dispute, apply to the conduct and procedure of directions hearings and that the tribunal powers at a tribunal hearing also apply to a directions hearing. Examples are provided to illustrate how these provisions should be applied to a directions hearing.

The subsection also specifically excludes subsections 71(2) and (3) and section 74 from application to a directions hearing.

Subsection 66(2) specifies the directions, which the tribunal legal member may make in connection with the directions hearing.

Subsection 66(3) provides that should the dispute proceed beyond a directions hearing, the tribunal legal member is to give written notice as soon as is practicable to the chief executive that a tribunal hearing is required.

Insertion of new s 66A

Clause 29 inserts a new section 66A (Appointment of tribunal) which requires the chief executive to appoint, within 14 days of being given notice under subsection 65(5) or 66(3), a tribunal to hear the dispute. The chief executive is required to advise of this action in writing to the tribunal members and the parties to the dispute.

Insertion of new s 70A

Clause 30 inserts a new section 70A (Necessary parties) which will allow parties to a dispute to make a request to the tribunal to join other parties to the dispute where this is necessary to appropriately resolve a dispute.

Amendment of s 83 (Tribunals' orders)

Clause 31 amends section 83.

Sub-clauses (1) and (3) insert a new subsection 83(2A) specifying the kinds of orders the tribunal may make where a dispute or part of a dispute involves a finding of unconscionable conduct.

The new subsection restricts the tribunal to making only two kinds of orders. One that:

- requires the party who engaged in the unconscionable conduct to pay an amount of money to a particular person; or
- does *not* require the party who engaged in the unconscionable conduct to pay any amount to anyone.

The purpose of this restriction is to prevent the tribunal from taking any other kind of action, such as striking out leases or parts of leases. In cases where an allegation of unconscionable conduct is not proved, the tribunal has the discretion to dismiss the dispute.

Sub-clause (3) creates a legislative link between section 83 and new section 22E to clarify that the tribunal may make an order such as that identified in new section 22E.

Sub-clause (4) renumbers subsections 83(2A) to (4) to subsections 83(3) to (5) for ease of understanding and clarity.

Insertion of new s 87A

Clause 32 inserts a new section 87A (Order to state reasons) which requires the tribunal to provide written reasons for its decisions. Section 87A provides that where an allegation of unconscionable conduct is made in a dispute, the written reasons must clearly identify the parts of the order that deal with the allegation.

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

Clause 33 amends section 88.

Sub-clauses (1) and (2) amend section 88 to confer an additional right to question a tribunal's order only in relation to an order or that part of an order that deals with unconscionable conduct. Appeals will be to the Supreme Court.

Section 88(3) clarifies that all appeals on unconscionable conduct may be on matters of law and/or fact.

Section 88(4) clarifies that appeals under subsection 88(2) may only be made with the leave of the Supreme Court where:

- an allegation of unconscionable conduct has not been proved
- an allegation of unconscionable conduct is proved, and the tribunal makes an order against a party that does not require the party to pay any amount to the other party
- an allegation of unconscionable conduct is proved, and the tribunal makes an order against a party that requires the party to pay an amount less than \$50,000 to the other party.

Section 88(5) outlines the circumstances where an appeal under subsection 88(2) may be made to the Supreme Court 'as of right'. This may occur where an allegation of unconscionable conduct is proved and the tribunal makes an order against a party requiring the party to pay an amount of \$50,000 or more to the other party.

Amendment of s 91 (Costs)

Clause 34 amends subsection 91(3)(b) to enable a party to a dispute to make an application for costs on the basis that they or another party were joined in the dispute. This provision extends grounds for the recovery of costs in relation to a party being joined to a dispute and is linked to the new section 70A, which allows a party to be joined to a dispute before the tribunal.

Amendment of s 94 (Exclusion of other jurisdictions)

Clause 35 inserts a new subsection 94(4) to make it clear that where an application for an injunction is made to a court in accordance with subsection 94(2)(c), the proceeding will only stop in the tribunal if the court grants the injunction and if the order of the court is inconsistent with the dispute proceeding in the tribunal.

This amendment ensures that applications for injunctions will only halt tribunal processes if there is good reason for a dispute to be considered by a court rather than the tribunal.

Amendment of pt 12 (Transitional provisions)

Clause 36 amends part 12 (Transitional provisions)

Sub-clause (1) inserts a new division heading before section 123 to identify that section 123 relates to transitional provisions for the *Retail Shop Leases Act 1994*.

Sub-clause (2) omits section 124 as this provision now appears in section 13 (Application of Act to leases—general). This sub-clause also inserts five new sections (ss 124 to 128) to explain transitional arrangements for various leasing interactions which may have commenced under the existing Act and bridge the time period when the 2000 Amendment Act commences.

Essentially, the transitional provisions have been drafted to ensure that the amended provisions under the 2000 Amendment Act are not applied retrospectively to actions that, under the present Act, may have required different compliance requirements. These transitional provisions have been inserted to ensure that a 'change of rules' is not applied to leasing interactions commenced under the existing Act.

Amendment to omit headings following cross references

Clause 37 implements current legislative drafting practice by omitting cross-reference headings that occur within a section. The headings will be inserted as footnotes in accordance with current drafting practice. This avoids cluttering up a section and makes it easier to read.