

Retail Shop Leases Amendment Bill 2005

Explanatory Notes

General Outline

Short Title of Retail Shop Leases Amendment Bill 2005

Retail Shop Leases Amendment Bill 2005

Objective of the *Retail Shop Leases Act 1994*

The objective of the *Retail Shop Leases Act 1994* (the Act) is to promote efficiency and equity in the conduct of certain retail businesses in Queensland through the provision of mandatory minimum standards for retail shop leases and a low-cost dispute resolution process for retail tenancy disputes.

Objective of the Bill

The objectives of the Retail Shop Leases Amendment Bill 2005 (the Bill) are to amend the Act to:

- (a) improve its operational efficiency in establishing mandatory minimum lease standards for retail shop leases; and
- (b) enhance the retail tenancy dispute resolution provisions to improve the capacity of the dispute resolution processes to achieve the object of the Act, “a low cost dispute resolution process for retail tenancy disputes.”

Reasons for the Bill

Under section 122(1) of the Act, the Minister must carry out reviews of the operation of the Act to decide whether its provisions remain appropriate. The previous review of the Act was completed in June 2000. Pursuant to section 122(2) of the Act, a review must be carried out within five (5) years of the previous review.

In 2003, the Honourable the Minister for State Development appointed an Industry Working Group comprising key industry stakeholders. The Industry Working Group provided a formal mechanism through which key

stakeholder representatives provided consolidated advice to the Honourable the Minister for State Development and Innovation on review issues. The Industry Working Group comprised representatives from the following key stakeholder organisations:

- National Retail Association
- Queensland Retail Traders and Shopkeepers Association
- Property Council of Australia (Queensland)
- Shopping Centre Council of Australia

Based on input from the Industry Working Group and public responses in regard to the mandatory minimum retail lease standards and the dispute resolution processes, 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.

In addition, several proposals endorsed by the retail sector will be adopted through improving procedures in the retail tenancy dispute resolution process of the Retail Shop Leases Registry, Mediation Panel and Retail Shop Lease Tribunal. Additional guidance and information relevant to retail lessees and lessors will be provided through the Departmental publication, Retail Leasing Guidelines.

Administrative Cost

Administrative costs to the Queensland 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 prescribed by the *Legislative Standards Act 1992*.

Consultation

In October 2002 and April 2003, officers of the Department of State Development sought input from key retail sector and professional organisations regarding the efficacy of the Act. Lessee and lessor retail interest groups raised potential areas of the Act that required resolution to enable an equitable and competitive retail environment.

Based on this initial input, a Discussion Paper was developed and released for public consultation in September 2003. The Discussion Paper was distributed state wide through the Department's State Development Centres and direct to Members of Parliament. Information sessions were held in key regional centres and copies of the Paper distributed throughout the retail sector.

Submissions in response to the Discussion Paper closed on 14 November 2003. Submissions highlighted that amendments were required for both lessees and lessors to assist convenience and equality.

It was noted that there were inconsistencies relating to minimum lease standards. In particular, this impacted on rent review and compensation provisions. Proposed amendments will ensure minimum lease standards that will be commercially beneficial and practical for lessors, lessees, and their professional advisors. Input also comprised retail tenancy dispute resolution issues, such as extended access to mediation and the Tribunal's orders and jurisdiction.

The Ministerial appointed Industry Working Group, representing lessors and lessees from key stakeholder organisations, was established in December 2003. The Industry Working Group provided a formal mechanism through which key stakeholder representatives have presented consolidated advice on review issues to the Honourable the Minister for State Development and Innovation. The Industry Working Group reached unanimous agreement on all the recommendations proposed for amendment to the Act.

Following consideration by the Honourable the Minister, the endorsed recommendations of the Industry Working Group formed the basis of the Policy Review Paper which outlined the Queensland Government's preferred position.

The Policy Review Paper was released in September 2004. Following the Honourable the Minister's consideration of the submissions in response to the Policy Review Paper, the Bill was prepared for introduction to the Legislative Assembly.

Notes on Provisions

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 Act is amended.

Amendment of s 5 (Definitions)

Clause 4 amends section 5.

Sub-clause (1) provides for a Dictionary to contain the definitions in a schedule to the Act, inserted after section 129.

Sub-clause (2) omits existing definitions where these terms need to be updated to reflect current definitions now in use in Australia.

Sub-clause (3) inserts the following definitions:

- defective statement - refers to the section relevant to disclosure statements.
- demolish – a definition related to the provisions introduced in clause 29 to provide specific terms and conditions in regard to the demolition of leased premises.
- financial advice report – defines a new term replacing the former “financial advice certificate”.
- legal advice report - defines a new term replacing the former “legal advice certificate”.
- lessee – the amended definition provides for tenants on holding over under a lease, sub-lessees and franchisees to access the compensation provisions of the Act.
- lessor’s termination notice - refers to the notice issued under the new subdivision 2 – Demolishing building in which lessee’s business is situated.
- listed corporation – new definition to comply with *Corporations Act 2001 (Cwlth)*.
- major lessee – new definition to distinguish lessees with five or more retail shops.
- qualified accountant - new definition to comply with *Corporations Act 2001 (Cwlth)*.

- registered auditor - new definition to comply with *Corporations Act 2001 (Cwlth)*.
- relocation action; relocation day and relocation notice - refers to the new terms within subdivision 1 – Relocating lessee’s business – refer clause 29.
- termination day - a definition for a new term under the subdivision 2 – Demolishing building in which lessee’s business is situated.

Sub-clause (4) defines “lessor” to include “a person acting under the lessor’s authority”.

Sub-clause (5) updates the “retail shop lease” definition to replace “public” with “listed” to comply with *Corporations Act 2001 (Cwlth)*.

Sub-clause (6) enables renumbering of paragraphs resulting from inserting the additional paragraph – sub-clause (7).

Sub-clause (7) amends the definition of “retail shop lease” to exclude non-retail activities located within the common areas of a retail shopping centre. These exclusions include amenities that provide information (eg internet terminals) entertainment (eg amusement machines), community (eg ATMs and public telephones) and leisure (eg vending machines) facilities.

Further exclusions include installations of telecommunication equipment; advertisements displayed within common areas; leased storage areas; and parking facilities.

Sub-clause (8) relocates the definitions to the schedule containing the dictionary.

Replacement of s 8 (Meaning of retail shopping centre)

Clause 5 amends section 8. The current definition is removed and replaced with a definition for a retail shopping centre that requires a cluster of premises to have all the attributes specified –

- five (5) or more are used for a retail business;
- the premises are owned by the one person or comprise lots within a community titles scheme;

- the premises are located in one building or more, only separated by common areas or a road; and
- generally regarded or promoted as a shopping centre.

The existing definition distinguishes between floor levels within a retail shopping centre and causes difficulties in issuing leases which need to reflect constantly changing patterns of usage.

Amendment of s 9 (Meaning of turnover)

Clause 6 amends the meaning of turnover (gross sales of the business day for any particular period).

Sub-clause (1) amends the meaning of turnover to include the words “carried on in a leased shop”. This will allow consistency throughout the definition and the Act.

Sub-clause (2) refers to commission based sales based solely on “lottery”. This sub-clause excludes lottery to extend the definition to exclude all sales made on a commission basis (other than commission on the sales).

Sub-clause (3) includes examples of sales made on a commission basis. This allows the incorporation of stamps, phone cards, bus/ferry tickets, and any other sales made on a commission basis. This proposal will more accurately reflect current commercial practice for commission only sales.

Insertion of new Division 3 – Notes.

Clause 7 inserts a Division 3 and a new section 9A that declares that any notes in the text of the Act are to be interpreted as part of the Act.

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

Clause 8 amends general leasing arrangements for exclusions to apply to short term leases.

The new sub-section (8) states that only Parts 1 to 3 (Preliminary, Object of the Act and its Achievement and Interpretation) and Part 7 (Retail Shop Lease Trading Hours), will apply when a lessee enters into a lease for a period of not more than six (6) months.

Sub-section (9) provides specific definitions to determine the meaning of short term. The Act will always apply in instances where the term of the lease is, or extends to more than, six (6) months.

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

Clause 9 amends the requirements for the lessor's disclosure obligations.

Sub-section (1) requires the lessor to provide a disclosure statement and draft lease seven (7) days before the lessee enters into the lease.

Sub-section (2) refers to circumstances where the lessor does not provide the disclosure statement or makes a false or misleading statement.

Sub-section (3) allows the lessee to end the lease within 6 months.

Sub-section (4) makes the lessor liable for compensation for loss or damage.

In sub-section (5) where a lessor has provided a defective statement, the lessee can not terminate the lease if the lessor acted honestly and reasonably and the lessee is not disadvantaged because of the defective statement.

In addition, the amendment (sub-section 6) provides for major lessees (five (5) or more retail businesses in Australia) to waive the requirement for lessor's disclosure statement to be provided seven (7) days prior to entering into the retail shop lease. This will allow an experienced lessee to act expeditiously to acquire a competitive retail site without delay.

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

Clause 10 omits wording to make this provision compulsory. Now, it will be a mandatory requirement for a lessee to give a disclosure statement to a lessor.

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

Clause 11 omits wording to make this provision compulsory. Now, it will be a mandatory requirement for an assignee to provide a disclosure statement to the assignor.

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

Clause 12 amends disclosure obligations between a lessor and a prospective assignee.

Sub-section (1) inserts a disclosure period of seven (7) days prior to entering the lease or the assignment of the lease.

Sub-section (2) inserts a provision which provides greater flexibility and enables major lessees/assignees (with more than five (5) retail shops in Australia) to waive the seven (7) day disclosure period, to ensure that experienced lessees/assignees can act immediately to secure an appropriate site for their business.

Sub-section (3) omits wording to make this disclosure obligation provision compulsory. It will be mandatory for an assignee to provide the lessor with a disclosure statement.

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

Clause 13 omits the existing section 22D and replaces it with a provision which states that a prospective lessee (who is not a major lessee) and a prospective assignee (who is not a major lessee) must give the lessor a financial advice report and a legal advice report, before entering in to the lease. The reference to a "certificate" has been amended to "report" to ensure compliance with Australian Auditing Standards.

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

Clause 14 inserts a provision relating to the lessee's obligations to make particular payments. These are certain expenses incurred by the lessor that relate to actions performed at the request of the lessee. Examples of these costs include legal costs associated with the preparation of a variation to the lease, for example a rent concession or the consent to a sub-lease or licence.

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

Clause 15 amends provisions dealing with the timing and bases of rent reviews.

Sub-clause (1) amends numbering of paragraphs resulting from amendments.

Sub-clause (2) inserts a new basis for which rent can be calculated, incorporating base rent and turnover rent. This will allow more flexibility for both lessors and lessees in an expanding market to negotiate favourable conditions for developing retail businesses.

Sub-clause (3) amends numbering of paragraphs as required resulting from amendments.

Sub-clause (4) omits “above a stated amount” to ensure that this provision does not exclude any particular circumstances.

Sub-clause (5) amends numbering of paragraphs resulting from amendments.

Sub-clause (6) amends numbering of paragraphs resulting from amendments.

Sub-clause (7) inserts sub-sections (8), (9) and (10).

Sub-section (8) inserts a provision which enables lessors and major lessees to opt out of the Act’s rent review provisions if the lessee has provided certification from a lawyer that it has sought appropriate professional advice on the implications. This allows a lessor and an informed lessee to devise a rent review mechanism that is currently outside the provisions of the Act.

Sub-section (9) clarifies that an adjustment of rent to recover GST from the lessee or a rent concession is not a rent review.

In addition, sub-section (10) allows for a retail shop lease to include a clause that when a rent review is undertaken the amount by which the rent can be increased is limited.

Insertion of new pt 6, div 4, sdiv 2

Clause 16 inserts a new Subdivision 2 - Current market rent, and a new section 27A - Lessee may require early determination of current market rent. This provision applies if a retail shop lease has an option for the lessee to renew or extend the lease at the current market rent.

This amendment will allow (when the lessor and lessee have not already made an agreement regarding the market rent) for the lessee to request that the market rent determination be undertaken prior to exercising their option for a further term of the lease. This will allow a lessee to make an informed decision and assessment regarding the option.

The proposed amendment will align the Act with other jurisdictions and standards adopted nationally.

Insertion of new s 28A

Clause 17 sets out conditions for lessee's and lessor's submissions to a specialist retail valuer to assist in making a determination of the current market rent. Five (5) new sub-clauses will ensure a more transparent and equitable process.

- submissions by the lessee and lessor are made in writing to the specialist retail valuer;
- submissions are made within a reasonable period decided by the valuer;
- a copy of the submission must be given to the other party;
- the other party may make a response to the valuer about the submission; and
- a response must be given within a reasonable period of time decided by the valuer.

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

Clause 18 amends section 29 of the Act, which details matters to be considered by specialist retail valuers when undertaking a market rent review.

Sub-clause (1) amends numbering of paragraphs resulting from amendments.

Sub-clause (2) inserts the phrase "the terms and conditions of the lease". This will ensure that a specialist retail valuer will consider the provisions of the retail shop lease when undertaking a market rent review.

Amendment of s 31 (Requirements of determination)

Clause 19 amends the information required in a specialist retail valuer's written determination of market rent. Additional requirements include that the written determination will provide a detailed explanation and specify all issues considered when assessing the market rent.

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

Clause 20 amends the provision which outlines that a valuer must give the determination to the lessor and lessee.

Sub-clause (1) amends numbering of paragraphs resulting from amendments.

Sub-clause (2) provides for the exchange of submissions to the valuer between parties, followed by a right of reply by each party to the valuer. This provision ensures that a reasonable time period within realities of the retail operating environment, and creates a more transparent and equitable process.

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

Clause 21 replaces section 34. This provision ensures that the lessor and lessee equally share financial responsibility for the valuer's fee for the determination of the current market rent.

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

Clause 22 inserts the term "registered auditor" and refers to standards utilised by the accounting profession which is in accordance with the *Corporations Act 2001 (Cwlth)*. This provision will ensure consistency across jurisdictions.

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

Clause 23 expands this section to include all retail premises. The existing section referred only to retail shops located in retail shopping centres. The remaining provisions specifying the conditions for the management of the sinking funds for major maintenance and repairs remain unchanged.

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

Clause 24 omits the previous provision and inserts a new provision for compensation implied in certain leases. The clause also is expanded to incorporate the new section 43A. Section 42(2)(b) will enable access to compensation provisions where a lease has expired and the lessee is still in occupation of the shop while negotiating a new lease.

Amendment of s 43 (When compensation is payable)

Clause 25 makes amendments to compensation provisions to allow specific timeframes and conditions for relocation to be considered under a new Subdivision 1.

Sub-clause (1) adds “by lessor” to end of the title of the section to clearly show this section relates only to compensation payable by the lessor. A new section 43A provides for when compensation is payable by other parties.

Sub-clause (2) omits the provisions relating to the relocation of a retail business. Refer to the new sections 46C to 46G for the conditions relating to relocation of a retail shop.

Sub-clause (3) amends numbering of paragraphs as required.

Insertion of new s 43A (When compensation is payable by other parties)

Clause 26 inserts a new section 43A compensation provision which applies in regard to a false or misleading statement in the lessee’s, assignor’s or assignee’s disclosure statement. If the lessor suffers a loss as a result of the false or misleading statement the lessee is liable to pay reasonable compensation.

Amendment of s 44 (Amount of compensation)

Clause 27 omits sub-section 1(A) which refers to decisions made by the Retail Shop Lease Tribunal with regard to the amount of compensation, including consideration of how much notice the proposed relocation was given to the lessee. The periods of notice are now specified in the new relocation provisions under Subdivision 1.

Replacement of s 46 (Options to renew leases)

Clause 28 inserts a new section 46 to set the conditions when a lease provides for an option to extend or renew the lease. The new provisions mean that the onus for notification will move from the lessee to the lessor. The requirement will mean that the lessor will need to send a written notice of the date by which the lessee will have to exercise their option at least two (2) months before the option date.

Furthermore, a new section 46AA will apply if a lease does not provide for an option to renew or extend the lease, or is not the subject of an agreement

for renewal or extension. A lessor will be required to give written notice to the lessee as to whether they intend offering a new lease. This notice will need to be given up to one (1) year but no less than six (6) months before the end of the existing lease.

Additional sub-clauses provide for the withdrawal of an offer by the lessor, circumstances when the lessor does not issue the written notice and for the lessee's termination.

Replacement of s46C (Relocating lessee's business)

Clause 29 replaces the existing section 46C Relocating lessee's business and inserts three new subdivisions. Subdivision (1) - Relocating lessee's business, subdivision (2) – Demolishing building in which lessee's business is situated and subdivision (3) – Other general provisions.

Subdivision 1 (Relocating lessee's business)

This new provision defines "relocation action" as requiring the lessee to relocate the business, terminating the lease and offering the lessee a new lease of an alternative shop, in situations where the lessor proposes works which can not be carried out without vacant possession of the leased shop.

The new section 46D sets out that the lessor must provide at least three (3) months written notice of the details of the redevelopment, information about the alternative premises and the date by which the shop must be vacated.

The provisions within section 46E provide for the response by the lessee including:

- an option for termination of the lease within one (1) month of the receiving the relocation notice;
- if the lessee does not provide a termination notice it is taken that the lessor's offer of a lease of alternative premises is accepted by the lessee.

The lessee's entitlement to a new lease in section 46F provides for the same terms and conditions as the existing lease with the rent adjusted to reflect the different location or value of the alternative premises.

In regard to the costs of relocation, section 46G sets out that the lessor is required to meet the reasonable costs of dismantling the existing shop and re-establishing the business in the alternative premises and any legal costs incurred by the lessee.

Subdivision 2 (Demolishing building in which lessee's business is situated)

The new Subdivision 2 – Demolishing building in which lessee's business is situated – is also inserted by clause 29. There are four (4) sections relating to demolition. Section 46H sets out the implied provisions if a retail shop lease contains a “demolition” clause.

The steps for the lessor to terminate the lease are set out in section 46I. This requires a written notice to be issued six (6) months prior which provides information on the details of the proposed demolition and the date the lease ends.

Under section 46J, the conditions for the lessee to give a written notice of termination are set out. Section 46K provides for the lessor to pay reasonable compensation to the lessee if there was not a genuine proposal to undertake demolition within a reasonable timeframe. There is also a provision for the amount of compensation (where there is no agreement) to be decided under the dispute resolution mechanisms of the Act.

Insertion of new s 50A

Clause 30 inserts a new section 50A to release an assignor from the ongoing liabilities of the lease. This provision relies on the assignor and assignee providing disclosure statements to the lessor, and ensures that when an assignment is entered into, the assignor is not held liable for the default of an assignee.

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

Clause 31 omits the timeframe of seven (7) days and inserts “as soon as practicable”. This has been amended because at various times the Chief Executive is unable to issue the written notice of mediation within the time period specified eg during Christmas and New Year periods.

Amendment of ss 63 (Reference of dispute – by mediator) and 64 (Reference of dispute – by party)

Clause 32 amends section 63 by omitting the timeframe four (4) months and inserting “one (1) year” for the lodgement of a notice of dispute at the end of a lease. This has been extended to allow for all outstanding issues between lessee and lessor to be resolved and to provide a more reasonable period of time prior to lodging a notice of dispute.

Clause 32 also amends section 64 by omitting the timeframe four (4) months and inserting “one (1) year” for the lodgement of a notice of dispute at the end of a lease. This has been extended to allow for all outstanding issues between lessee and lessor to be resolved and to provide a more reasonable period of time prior to lodging a notice of dispute.

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

Clause 33 omits the timeframe of 14 days and inserts “as soon as practicable”. This has been amended because the time period 14 days is not practical to allow parties an opportunity to request an adjournment to consider informal negotiations or settlement offers.

Amendment of s 66A (Appointment of tribunal)

Clause 34 omits the timeframe 14 days and inserts “as soon as practicable”. This has been amended to allow the chief executive to provide a practical period of notice to Tribunal members of their appointment to hear a particular dispute. Frequently the notice under section 65(5) or section 66(3) is issued six (6) to ten (10) weeks in advance. It is not efficient or effective to appoint the additional Tribunal members at that time. The amendment will allow the chief executive to appoint the additional Tribunal members in a timely manner with adequate notice.

Replacement of s 70A (Necessary parties)

Clause 35 omits the existing section 70A which requires the Tribunal to order a person to be included as a party to a dispute. A new section 70A will enable the Tribunal to make such an order if the Tribunal considers the person has an interest in the result of the dispute, or is affected by the dispute, or it is desirable for any other reason that the person be included.

Amendment of s 71 (Limited right of representation)

Clause 36 amends section 71.

Sub-clauses (1) and (2) omit the provisions which stated that a party to the dispute may not be represented at the Tribunal’s hearing by a lawyer or professional advocate without the other party’s agreement. The new sub-section (1) enables either disputing party to be represented at a Tribunal hearing after applying to the Tribunal in writing and obtaining the Tribunal’s leave.

Sub-clause (3) omits superfluous wording “In addition”.

Sub-clause (4) amends numbering of paragraphs as required resulting from amendments.

Insertion of new s 82A

Clause 37 inserts a new provision under Part 8, Division 5 - Tribunal must attempt to conciliate. This provision ensures that the Tribunal does not make an order for the dispute unless the Tribunal has used its best efforts to bring the parties to settlement. This provision also enables the Tribunal to adjourn the hearing so that parties can reach a mediated solution. If a mediation agreement is reached, the Tribunal must make an order giving effect to the agreement.

Amendment of s 83 (Tribunals’ orders)

Clause 38 amends the Tribunal’s orders. These amendments will provide consistency across jurisdictions and realise potential cost savings for all parties in a retail shop lease dispute.

Sub-clause (1) inserts the phrase “including declaratory orders”, enabling the Tribunal the capacity to make a declaratory order.

Sub-clause (2) inserts wording that enables the Tribunal to provide for the ability to rectify a lease with the consent of parties to the dispute. This provision also enables the Tribunal to make an order that a market rent determination (which did not comply with section 29 of the Act) to be set aside and a fresh determination of the market rent be undertaken.

Insertion of new s 88A (Correcting errors)

Clause 39 inserts a new provision for reconsideration of the Tribunal’s determination on the basis of clerical or factual error, and enabling the Tribunal to correct errors. Disputing parties may lodge a written application to the Tribunal within 14 days after the decision is made, and the error must be significant to have influenced the outcome of the hearing.

Replacement of s 91 (Costs)

Clause 40 omits the existing section 91 which is replaced with new provisions relating to costs and payment of costs if an offer to settle is rejected.

This new section applies to costs for directions hearings and Tribunal hearings. Each party must bear their own costs, unless an order for costs is made. An order for costs can be made against a party in certain circumstances:

- the dispute is frivolous or vexatious
- a party has incurred costs because of a failure to attend a mediation conference, or failed to give adequate notice when seeking to adjourn a hearing, failed to comply with a direction or requirement of the Tribunal or sought the inclusion of another party.

The section provides for a Tribunal order, in regard to costs, to be filed in the District Court and for the amount decided under the *Uniform Civil Procedure Rules 1999*.

The new section 91A (Payment of costs if offer to settle rejected) allows parties to make formal offers of settlement, and for the Tribunal to have powers to consider a costs order against a party which fails to accept a favourable formal offer.

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

Clause 41 omits the existing section 102 and replaced with a provision which addresses the appointment of appropriately qualified persons by the Governor in Council to the Tribunal.

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

Clause 42 outlines the composition of members appointed to the Tribunal.

The amendment allows for a Tribunal to be made up of members with the appropriate qualifications. Sub-clause (2) provides that if the monetary amount in dispute is less than the amount prescribed within the meaning of the *Small Claims Tribunals Act 1973*, the hearing of the dispute may be conducted by a legal member sitting alone.

Amendment of s 109 (Tribunals' jurisdiction)

Clause 43 prescribes the Tribunal's jurisdiction.

Sub-clause (1) inserts a provision which will enable the Tribunal jurisdiction to hear disputes regarding the business of a service station

unless the *Petroleum Retail Marketing Franchise Act 1980 (Cwth)* applies to the business. The amendment reflects the content of section 17 and section 97 of the existing Act.

Sub-clause (2) inserts a provision which will enable the Tribunal when hearing a claim for compensation lodged by a lessee, to also decide disputes regarding arrears of rent payable under the lease. In many instances when the Tribunal is hearing a claim for compensation by the lessee, associated rental arrears are claimed by the lessor. Currently, the rental arrears issues are subject to a separate action in another jurisdiction.

Amendment of s 122 (Review of Act)

Clause 44 extends the timeframe within which a review of the Act must be undertaken. Currently, a review must be carried out within five (5) years of the commencement of the previous review. This provision changes the timeframe to within seven (7) years after the previous review. This is a more practical timeframe to allow for the implementation of the amendments in the marketplace ensuring the provisions of the amending Act have been adopted in retail shop leases.

Insertion of new pt 12, div 3 – Division 3 (Transitional provision for Retail Shop Leases Amendment Act 2005)

Clause 45 relates to transitional provisions for the *Retail Shop Leases Amendment Act 2005*.

Section 129 (Application of Act)

The provisions which apply to mandatory minimum retail shop lease standards will only apply to new leases entered into after the commencement of the Act.

In regard to the amendments covering retail tenancy dispute resolution, these provisions will apply to all retail shop lease disputes lodged after the commencement of the Act.

Insertion of new schedule

Clause 46 inserts the schedule providing the Dictionary at the end of the Act.

SCHEDULE MINOR AMENDMENTS

Section 25(3)(b), “an approved”

Clause 1 omits the term “an approved auditor” and inserts the term “a registered auditor”. This amendment is consistent with the *Corporations Act 2001 (Cwlth)*.

Part 6, division 4, before section 27 (Subdivision 1 – Timing and bases of rent review)

Clause 2 inserts a new subdivision and title.

Section 35(1), after “section”

Clause 3 inserts “section 28A or” to ensure a reference is to the new provision.

After section 35 (Subdivision 3 – Other provisions about rent review)

Clause 4 inserts a subdivision and title.

Part 6, division 6, heading , “in retail shopping centres”

Clause 5 omits the words “in retail shopping centre” from the title as the provisions in this division apply to all retail premises.

Section 64(2) ‘notice given to the chief executive in the approved form’

Clause 6 omits “the approved form” – a notice in writing is sufficient.

Section 66(1), ‘and (3)’

Clause 7 omits reference to subsection 66(3), as that provision is no longer relevant to the intent of section 66(1).

Section 89(3), ‘the approved form’

Clause 8 omits the requirement “the approved form” - in writing is sufficient.

Section 107, '106(a)'

Clause 9 amends the reference to the renumbered paragraph.