



Retail Shop Leases Act 1994

Current as at 17 May 2013

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Queensland

Retail Shop Leases Act 1994

Contents

| | | Page |
|-------------------|--|------|
| Part 1 | Preliminary | |
| 1 | Short title | 7 |
| Part 2 | Object of Act and its achievement | |
| 3 | Object of Act. | 7 |
| 4 | How object of Act to be achieved | 7 |
| Part 3 | Interpretation | |
| Division 1 | Standard definitions | |
| 5 | Definitions. | 8 |
| Division 2 | Extended definitions | |
| 6 | Meaning of common areas. | 8 |
| 7 | Meaning of outgoings. | 9 |
| 8 | Meaning of retail shopping centre | 10 |
| 9 | Meaning of turnover | 11 |
| Division 3 | Notes | |
| 9A | Notes in text | 12 |
| Part 4 | Operation of Act and former Act | |
| 10 | Act binds all persons | 12 |
| 11 | Application of Act—when lease entered into | 12 |
| 12 | Application of Act—where lease entered into. | 13 |
| 13 | Application of Act to leases—general. | 13 |
| 14 | Continued application of certain provisions of former Act to existing retail shop leases | 14 |
| 15 | Application of Act—if premises become or cease to be retail shop after commencement of lease | 15 |
| 16 | Application of Act to existing leases in exempt enterprises | 16 |
| 17 | Application of Act to leases of service stations | 16 |
| 18 | Act's provisions implied in leases | 17 |
| 19 | Contracting out of Act prohibited | 17 |

Contents

| | | |
|----------------------|--|----|
| 20 | Act prevails over inconsistent leases | 17 |
| Part 5 | Preliminary disclosures about leases | |
| 21 | Application of part | 17 |
| 22 | Lessor's disclosure obligation to prospective lessee | 18 |
| 22A | Prospective lessee's disclosure obligation to lessor. | 19 |
| 22B | Assignor's and prospective assignee's disclosure obligations to each other | 19 |
| 22C | Lessor's and prospective assignee's disclosure obligations to each other | 20 |
| 22D | Financial and legal advice reports | 20 |
| 22E | Effect of failure to comply with sections 22A–22D | 21 |
| 23 | Lessor to give lessee certified copy of lease | 21 |
| Part 6 | Minimum lease standards | |
| Division 1 | Preliminary | |
| 24 | Lessee's obligations to make particular payments | 22 |
| 24A | GST payments | 23 |
| Division 2 | Turnover rent | |
| 25 | Requirements if rent a percentage of turnover | 23 |
| Division 3 | Confidentiality of turnover information | |
| 26 | Lessor not to disclose turnover information | 24 |
| Division 4 | Rent review | |
| Subdivision 1 | Timing and bases of rent reviews | |
| 27 | Timing and bases of rent reviews | 26 |
| Subdivision 2 | Current market rent | |
| 27A | Lessee may require early determination of current market rent | 29 |
| 28 | Rent review on basis of current market rent | 30 |
| 28A | Parties' submissions to specialist retail valuer | 30 |
| 29 | Matters to be considered by specialist retail valuers | 31 |
| 30 | Valuer may require information from lessor | 31 |
| 31 | Requirements of determination | 32 |
| 32 | Valuer to give determination to lessor and lessee | 32 |
| 33 | Effect of determination | 33 |
| 34 | Parties to share cost of determination | 33 |
| 35 | Confidentiality of lease information | 33 |
| Subdivision 3 | Other provisions about rent review | |
| 36 | Certain rent review provisions of leases void | 34 |

| | | |
|----------------------|--|----|
| 36A | Ratchet rent provision void | 34 |
| Division 5 | Lessor's outgoing and other payments | |
| 37 | Requirements when lessee to pay lessor's outgoing | 35 |
| 37A | Lessor's recovery of electricity charges | 37 |
| 38 | Lessee's liability to pay proportion of lessor's apportionable outgoing | 37 |
| 39 | Payment of key money and amount for goodwill prohibited | 37 |
| Division 6 | Other payments for retail shops | |
| 40 | Sinking fund for major maintenance and repairs | 39 |
| 41 | Promotion and advertising | 40 |
| Division 7 | Implied provisions for compensation | |
| 42 | Compensation provisions implied in particular leases | 40 |
| 43 | When compensation is payable by lessor | 41 |
| 43A | When compensation is payable by other parties | 42 |
| 44 | Amount of compensation | 43 |
| Division 8 | Lease dealings | |
| 45 | Lessee's right to deal with lease and business assets | 43 |
| 46 | Lessor's notice about when option to renew or extend must be exercised | 44 |
| 46AA | Renewing lease if no option or other agreement | 44 |
| Division 8A | Provisions about unconscionable conduct | |
| 46A | Unconscionable conduct | 46 |
| 46B | Matters QCAT may consider in deciding if a party's conduct is unconscionable | 46 |
| Division 9 | General | |
| Subdivision 1 | Relocating lessee's business | |
| 46C | Provisions implied in retail shop lease | 48 |
| 46D | How lessor takes relocation action | 48 |
| 46E | Termination notice by lessee or deemed acceptance | 49 |
| 46F | Terms and conditions of new lease | 50 |
| 46G | Lessee's entitlement to relocation costs | 50 |
| Subdivision 2 | Demolishing building in which lessee's business is situated | |
| 46H | Provisions implied in retail shop lease | 51 |
| 46I | How lessor terminates the lease | 51 |
| 46J | Termination by lessee | 51 |
| 46K | Compensation payable by lessor | 52 |

Contents

| | | |
|----------------------|---|----|
| Subdivision 3 | Other general provisions | |
| 47 | Lessee's right to independent legal advice. | 52 |
| 48 | Lessee's liability for costs associated with preparation etc. of lease | 53 |
| 49 | Lessee's right to join or form commercial associations | 53 |
| 50 | Retail tenancy disputes between lessors and lessees about assignments of leases | 54 |
| 50A | Release of assignor from lease | 54 |
| Part 7 | Retail shop lease trading hours | |
| 51 | Definitions. | 55 |
| 52 | Requirements for resolution | 56 |
| 53 | Trading hours | 56 |
| Part 8 | Retail tenancy dispute resolution | |
| Division 1 | Preliminary | |
| 54 | Parties' rights under this part preserved | 57 |
| Division 2 | Mediation of retail tenancy disputes | |
| 55 | Lodgement of retail tenancy disputes. | 58 |
| 56 | Chief executive to act on dispute notice | 58 |
| 57 | Limited right of representation | 58 |
| 58 | Conference to be held in private. | 59 |
| 59 | Parties attendance at conference not compellable. | 59 |
| 60 | Parties to mediation conference | 59 |
| 61 | Mediation agreements | 59 |
| 62 | No official record of mediation conference | 59 |
| Division 3 | Reference of retail tenancy disputes and applications to QCAT | |
| 63 | Reference of dispute—by mediator | 60 |
| 64 | Application to QCAT—by party. | 60 |
| Division 4 | Provision about QCAT orders | |
| 83 | QCAT orders. | 61 |
| Division 5 | General | |
| 91 | Withdrawal of disputes | 63 |
| 94 | Exclusion of other jurisdictions | 63 |
| Part 9 | Administration | |
| Division 1 | Mediators | |
| 95 | Mediators | 64 |
| 96 | Mediators' function | 64 |

| | | |
|-------------------|---|----|
| 97 | Mediators' jurisdiction | 65 |
| 98 | Duration of appointment | 66 |
| 99 | Conditions of appointment | 66 |
| 100 | Removal from office | 66 |
| 101 | Annual reports | 66 |
| Division 2 | Provisions for QCAT proceedings | |
| 102 | Constitution of QCAT | 67 |
| 103 | QCAT's jurisdiction | 67 |
| Division 3 | Confidentiality, privilege and immunity | |
| 113 | Mediators and former tribunal members to maintain secrecy . . . | 69 |
| 114 | Ordinary protection and immunity allowed | 70 |
| 115 | Admissions made during mediation conference | 70 |
| Division 4 | General | |
| 116 | Register | 70 |
| 117 | Delegations | 71 |
| 118 | Chief executive may approve forms | 71 |
| 119 | Chief executive's responsibility | 71 |
| Part 10 | Miscellaneous | |
| 120 | Evidentiary provisions | 72 |
| 121 | Regulation-making power | 72 |
| 122 | Review of Act | 72 |
| Part 12 | Transitional provisions | |
| Division 1 | Provision for Act No. 47 of 1994 | |
| 123 | Retail Shop Leases Act 1984 references | 73 |
| Division 2 | Provisions for Act No. 19 of 2000 | |
| 124 | Obligations to give disclosure statements and financial and legal advice certificates | 73 |
| 125 | Current market rent determinations | 73 |
| 126 | Relocating lessee's business | 74 |
| 127 | Resolution for changing core trading hours | 74 |
| 128 | Existing retail tenancy disputes | 74 |
| Division 3 | Provision for Act No. 4 of 2006 | |
| 129 | Application of Act | 75 |
| Division 4 | Provisions for Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 | |
| 130 | Definitions for div 4 | 75 |

Contents

| | | |
|---------------------|--|-----|
| 131 | Application of s 64 | 76 |
| 132 | Existing referrals of and applications about retail tenancy disputes to chief executive | 76 |
| 133 | Existing referrals of retail tenancy disputes to former tribunal legal member | 77 |
| Division 5 | Provision for Criminal Code and Other Legislation Amendment Act 2011 | |
| 134 | Transitional provision for s 36A. | 78 |
| 135 | Transitional provision for amendment of ss 43 and 44 | 78 |
| Schedule | Dictionary | 79 |
| Endnotes | | |
| 1 | Index to endnotes. | 85 |
| 2 | Date to which amendments incorporated. | 85 |
| 3 | Key | 86 |
| 4 | Table of reprints | 86 |
| 5 | List of legislation. | 87 |
| 6 | List of annotations | 89 |
| 7 | Forms notified or published in the gazette | 101 |

Retail Shop Leases Act 1994

[as amended by all amendments that commenced on or before 17 May 2013]

An Act about retail shop leases

Part 1 Preliminary

1 Short title

This Act may be cited as the *Retail Shop Leases Act 1994*.

Part 2 Object of Act and its achievement

3 Object of Act

The object of this Act is to promote efficiency and equity in the conduct of certain retail businesses in Queensland.

4 How object of Act to be achieved

The object of this Act is to be achieved through—

- (a) mandatory minimum standards for retail shop leases; and
- (b) a low cost dispute resolution process for retail tenancy disputes.

Part 3 Interpretation

Division 1 Standard definitions

5 Definitions

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

Division 2 Extended definitions

6 Meaning of *common areas*

- (1) *Common areas* of a retail shopping centre are areas in or adjacent to the centre that are used, or intended for use—
 - (a) by the public; or
 - (b) in common by the lessees of premises in the centre in relation to the conduct of businesses in premises in the centre.
- (2) *Common areas* include—
 - (a) stairways, escalators and elevators; and
 - (b) malls and walkways; and
 - (c) parking areas; and
 - (d) toilets and rest rooms; and
 - (e) gardens and fountains; and
 - (f) information, entertainment, community and leisure facilities.
- (3) However, *common areas* do not include leased areas.

7 Meaning of *outgoings*

- (1) A lessor's *outgoings* for a retail shopping centre or leased building are—
 - (a) the lessor's reasonable expenses directly attributable to the operation, maintenance or repair of—
 - (i) the centre or building; and
 - (ii) areas used in association with the centre or building; and
 - (b) charges, levies, premiums, rates or taxes payable by the lessor because the lessor is the owner or occupier of—
 - (i) the centre or building; or
 - (ii) the land on which the centre or building is situated; and
 - (c) an amount mentioned in section 24A(2).
- (2) An outgoing mentioned in subsection (1) may be either an apportionable outgoing or a specific outgoing and the sum of the apportionable outgoings and specific outgoings is the lessor's outgoings.
- (3) However, lessor's *outgoings* do not include—
 - (a) land tax payable on the land on which the centre or building is situated; and
 - (b) expenditure of a capital nature, including the amortisation of capital costs; and
 - (c) contributions to a depreciation or sinking fund; and
 - (d) insurance premiums for loss of profits; and
 - (e) lessor's contributions to merchants' associations and centre promotion funds; and
 - (f) payment of interest and charges on amounts borrowed by the lessor; and
 - (g) another item prescribed by regulation.

[s 8]

Examples for subsection (3)(b)—

- 1 Costs and expenses of or incidental to the building or extension of, or major improvement of a structural nature to, the centre or building or area used in association with the centre or building, are expenditure of a capital nature.
- 2 Replacement costs of major items of plant and equipment in the centre or building are expenditures of a capital nature.

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*.

9 Meaning of *turnover*

- (1) *Turnover* of a business carried on in a leased shop is the gross sales of the business for any particular period.
- (2) However, *turnover* of a business carried on in a leased shop does not include the following amounts—
- (a) the net amount of discounts reasonably and properly allowed to customers in the usual course of business;
 - (b) losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business;
 - (c) amounts of uncollected credit accounts written off by the lessee;
 - (d) cash or credit refunds allowed on sales that have previously been included as gross receipts if the goods sold are returned and the sales cancelled;
 - (e) fees for services refunded in whole or part if the fees have previously been included as gross receipts;
 - (f) amounts of instalments refunded to customers for cancelled lay-by transactions;
 - (g) taxes, including GST, imposed on the purchase price or cost of hire of goods or services at the point of sale or hire;
 - (h) delivery charges;
 - (i) the value of goods exchanged between 2 or more of the lessee's shops if the exchange is made solely for the

[s 9A]

convenient conduct of the lessee's business and not for concluding a sale made at or from the leased shop;

- (j) the value of goods returned to shippers, wholesalers or manufacturers;
- (k) amounts received from the sale of the lessee's fixtures and fittings from the leased shop;
- (l) amounts received from sales made on a commission basis (other than commission on the sales).

Examples of sales made on a commission basis—

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

Division 3 Notes

9A Notes in text

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

Part 4 Operation of Act and former Act

10 Act binds all persons

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

11 Application of Act—when lease entered into

A retail shop lease is entered into on whichever is the earlier of the following dates—

- (a) the date the lease becomes binding on the lessor and lessee;

-
- (b) the date the lessee enters into possession of the leased shop.

12 Application of Act—where lease entered into

This Act applies to all retail shop leases of premises in Queensland—

- (a) regardless of where the lease is entered into; and
- (b) even though the lease purports to be governed by a law other than Queensland law.

13 Application of Act to leases—general

- (1) Subject to subsections (2) to (7), this Act applies to all retail shop leases whether entered into or renewed before or after 28 October 1994.
- (2) This part (other than section 14), part 5 and part 6 do not apply to existing retail shop leases.
- (3) Section 27, as in force immediately before the commencement of the *Retail Shop Leases Amendment Act 1999*, continues to apply to a retail shop lease entered into before the commencement, and any extension or renewal of the lease, as if that Act had not commenced.
- (4) Subject to subsection (5), section 27, as amended by the 2000 amendment Act, applies only to a retail shop lease entered into after the commencement of this subsection.
- (5) Section 27(8) applies only to a retail shop lease entered into after 28 October 1994.
- (6) Part 6, division 8A, applies only to a retail shop lease entered into after the commencement of the division.
- (7) Subsection (1) has effect subject to the following provisions—
- section 15
 - section 16

[s 14]

- section 17
 - section 21
 - section 42
 - section 45(3)
 - section 46(9)
 - part 7.
- (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 12 also contains provisions about the application of this Act.

- (9) In this section—

2000 amendment Act means the *Retail Shop Leases Amendment Act 2000*.

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.

14 Continued application of certain provisions of former Act to existing retail shop leases

- (1) The following provisions of the former Act continue to apply (to the extent that they applied immediately before the commencement of this section) to an existing retail shop lease as if this Act had not been enacted—
- part 1, other than section 5A
 - part 2

-
- part 3, other than the following sections—
 - section 10B
 - section 10C
 - section 15A
 - section 56
 - section 57
 - section 58
 - schedules 1 and 2.
- (2) For the purposes of applying a provision of the former Act to an existing retail shop lease, a reference in the provision to—
- (a) a specialist retail valuer is a reference to a specialist retail valuer under the *Valuers Registration Act 1992*; and
 - (b) the registrar is a reference to the chief executive; and
 - (c) a mediator is a reference to a mediator under this Act; and
 - (d) a retail shop leases tribunal or tribunal is a reference to QCAT.

15 Application of Act—if premises become or cease to be retail shop after commencement of lease

- (1) This Act does not apply to—
- (a) a lease of premises that become a retail shop after the commencement of the lease; or
 - (b) an assignment of the lease; or
 - (c) a renewal of the lease under an option under the lease.

Example of subsection (1)(a)—

On 1 April 1995 a person enters into a 3-year lease for the conduct of a business from premises that are not in a retail shopping centre. On 1 September 1995, the business is prescribed by regulation as a retail business. Under the subsection, this Act does not apply to the lease even though the premises have become a retail shop.

[s 16]

- (2) This Act continues to apply to—
- (a) a lease of premises that cease to be a retail shop after the commencement of the lease; or
 - (b) an assignment of the lease; or
 - (c) a renewal of the lease under an option under the lease.

Example of subsection (2)(a)—

On 1 April 1995 a person enters into a 3-year lease for the conduct of a business from premises in a retail shopping centre. On 1 September 1995, the business ceases to be a retail shop because the cluster of premises in which the leased premises are situated cease to be a retail shopping centre. Under the subsection, this Act continues to apply to the lease even though the premises are no longer a retail shop.

16 Application of Act to existing leases in exempt enterprises

- (1) This Act does not apply to leases—
- (a) entered into before the commencement of this section between the owner of an exempt enterprise under the former Act and a tenant of premises in the enterprise; and
 - (b) to which the former Act did not apply because of the exemption of the enterprise from the provisions of the former Act.
- (2) However, part 8, division 2 applies to a lease mentioned in subsection (1) if the lease would be a retail shop lease if entered into after the commencement of this section.

17 Application of Act to leases of service stations

- (1) This Act does not apply to a retail shop lease for the carrying on of the business of a service station if the *Trade Practices (Industry Codes—Oilcode) Regulations 2006* (Cwlth) applies to the carrying on of the business under a franchise agreement within the meaning of that Act.

- (2) This Act (other than part 6) applies to a retail shop lease (whether entered into or renewed before or after the commencement of this section) for the carrying on of the business of a service station if the *Trade Practices (Industry Codes—Oilcode) Regulations 2006* (Cwlth) does not apply to the carrying on of the business under a franchise agreement within the meaning of that Act.

18 Act's provisions implied in leases

If, under this Act, a duty is imposed or an entitlement is conferred on a lessor or lessee under a retail shop lease, the duty or entitlement is taken to be included in the lease.

19 Contracting out of Act prohibited

A provision of a retail shop lease is void if it purports to exclude the application of a provision of this Act that applies to the lease.

20 Act prevails over inconsistent leases

If a provision of this Act is inconsistent with a provision of a retail shop lease, the provision of this Act prevails and the provision of the lease is void to the extent of the inconsistency.

Part 5 Preliminary disclosures about leases

21 Application of part

- (1) This part does not apply to—
- (a) a retail shop lease for a periodic tenancy or tenancy at will; or

[s 22]

- (b) a retail shop lease entered into or renewed under an option under a retail shop lease.
- (2) Sections 22, 22A and 23 do not apply to an assignment of a retail shop lease.

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.

22A Prospective lessee's disclosure obligation to lessor

Before entering into a retail shop lease, the prospective lessee must give the lessor a disclosure statement.

22B Assignor's and prospective assignee's disclosure obligations to each other

- (1) An assignor of a retail shop lease must give a prospective assignee a disclosure statement at least 7 days before asking the lessor to consent to the assignment.
- (2) The prospective assignee must give a disclosure statement to the assignor before the lessor is asked to consent to the assignment.

[s 22C]

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.

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.

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

- (1) This section applies if a person (the *disclosing person*) fails to give another person (the *receiving person*) a document under sections 22A to 22D and the relevant lease or assignment is entered into.
- (2) A retail tenancy dispute exists between the persons, and the receiving person, within the relevant period, may apply, as provided under the QCAT Act, to QCAT for an order that the disclosing person give the document to the receiving person.
- (3) In this section—
relevant period means—
 - (a) for section 22A or 22D(1)—within 2 months after the lease is entered into; or
 - (b) for section 22B, 22C or 22D(2)—within 2 months after the assignment is entered into.

23 Lessor to give lessee certified copy of lease

Within 30 days after a retail shop lease is signed by the parties, the lessor must give the lessee a certified copy of the signed lease.

Maximum penalty—40 penalty units.

Part 6 Minimum lease standards

Division 1 Preliminary

24 Lessee's obligations to make particular payments

- (1) A retail shop lease must not contain a provision requiring the lessee to make any payment other than for the following—
 - (a) rent;
 - (b) if specified in the lease, the following—
 - (i) the lessor's outgoings, or the specified part of the lessor's outgoings, for the retail shopping centre or leased building in which the leased shop is situated;
 - (ii) damages for breach of a term of the lease;
 - (iii) an indemnity given by the lessee to the lessor for loss or damage suffered by the lessor as a result of the actions or omissions of the lessee or a person acting for the lessee;
 - (iv) subject to subsection (3), interest on arrears of rent or outgoings;
 - (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) Subsection (1) applies whether the provision requires payment to be made—
 - (a) to the lessor or someone else; or
 - (b) by the lessee or someone else.

Example of subsections (1) and (2)—

A provision of a retail shop lease requiring a lessee to pay the lessor's land tax or to reimburse the lessor for land tax (regardless of by whom, or to whom, the payment is to be made) is void under section 20.

- (3) A retail shop lease may contain a provision requiring the lessee to make a payment for interest on arrears of rent or outgoings only if the interest rate, or the way in which the interest rate is to be calculated, is stated in the lease.
- (4) Subsection (1) has effect subject to the following sections—
- section 24A
 - section 34
 - section 39(2)
 - section 40
 - section 41
 - section 48.

24A GST payments

- (1) Nothing in this Act prevents a lessor from requiring a lessee to pay an amount (the *GST amount*) that is directly or indirectly attributable to GST payable for a supply made by the lessor to the lessee under the lease.
- (2) If a lease provides that the GST amount is to be paid by the lessee to the lessor as an outgoings item, the GST amount is a specific outgoing.

Division 2 Turnover rent

25 Requirements if rent a percentage of turnover

- (1) This section applies if, under a retail shop lease, the rent is or may be calculated either in whole or part as a percentage of the turnover of the lessee's business carried on, or to be carried on, in or from the leased shop.

[s 26]

- (2) The lease must specify the formula to be used to calculate the rent.
- (3) During the term of the lease, the lessee must give to the lessor—
 - (a) at the end of each month or at the other times agreed between the parties, a certificate specifying with reasonable accuracy the turnover of the business; and
 - (b) at the end of each year or at the other times agreed between the parties, and at the termination of the lease, a statement of the turnover of the business prepared by a registered auditor.
- (4) If the lessee complies with subsection (3), the lessee is taken to have fully complied with any obligation under the lease to give the lessor the turnover of the lessee's business.

Division 3 Confidentiality of turnover information

26 Lessor not to disclose turnover information

- (1) A lessor must not, whether directly or indirectly, disclose to anyone else information obtained by the lessor about the turnover of the lessee's business (whether under the lease or under section 25) without the lessee's agreement.
Maximum penalty—60 penalty units.
- (2) However, the lessor may disclose information—
 - (a) in a document giving the aggregate turnover of businesses, or a class of business, in the retail shopping centre in which the leased shop is situated if the disclosure is made in a way that does not disclose information about the turnover of an individual lessee's business; or
 - (b) specifying the turnover of the lessee's business to—

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- (i) a prospective purchaser or mortgagee of the retail shopping centre in which the leased shop is situated; or
 - (ii) a professional adviser to, or properly appointed agent of, a prospective purchaser or mortgagee mentioned in subparagraph (i); or
 - (iii) the lessor's professional advisers; or
 - (iv) a court under a court order; or
 - (v) a mediator under this Act or QCAT; or
 - (vi) a specialist retail valuer under section 30.
- (3) A person who is given information under subsection (2)(b)(i) or (ii)—
- (a) may use the information only to enable the prospective purchaser or mortgagee to make a decision whether to purchase the lessor's interest in, or to obtain financial accommodation on the security of, the retail shopping centre; and
 - (b) must not, whether directly or indirectly, disclose the information to anyone else without the lessee's agreement.

Maximum penalty—60 penalty units.

- (4) A person who is given information under subsection (2)(b)(iii)—
- (a) may use the information only to determine the lessee's rent on the basis of the turnover of the lessee's business carried on in the leased shop or to advise the lessor on the centre's trading performance; and
 - (b) must not, whether directly or indirectly, disclose the information to anyone else without the lessee's agreement.

Maximum penalty—60 penalty units.

- (5) If a person discloses information in contravention of subsection (1), (3) or (4) and the lessee suffers loss or damage

[s 27]

because of the disclosure, the lessee is entitled to the reasonable compensation for the loss or damage agreed between the lessor and lessee or, failing agreement, decided by way of the dispute resolution process.

- (6) An agreement under the lease about the disclosure of turnover information or the amount of compensation is not an agreement for the purposes of subsection (1), (3)(b), (4)(b) or (5).

Division 4 Rent review

Subdivision 1 Timing and bases of rent reviews

27 Timing and bases of rent reviews

- (1) If, under a retail shop lease, the rent payable under the lease or any renewal or extension of the lease is to be reviewed during the term of the lease or under an option to renew or extend the lease, the lease must state the timing of the reviews and the basis on which each review is to be made.
- (2) The rent may not be reviewed more than once in each year of the lease.
- (3) Subsection (2) does not apply to the first year of the lease.
- (4) The rent may be reviewed using different bases during the term of the lease, but each review must be made using only 1 basis.
- (5) The basis for a rent review must be a single basis consisting of 1 of the following—
 - (a) the current market rent of the leased shop;
 - (b) an independently published index of prices, costs or wages;
 - (c) a fixed percentage of the base rent;
 - (d) a fixed actual amount;

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- (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;
 - (f) another basis prescribed by regulation;
 - (g) a single basis formed by a combination of 2 or more bases mentioned in paragraphs (b) to (f).
- (6) 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 review of the base rent must be made in accordance with subsections (4) and (5).
- (7) If, under a retail shop lease, the rent is to be reviewed during the term of the lease or any renewal or extension of the lease, the rent payable for the rental period after the timing of an invalid review is—
- (a) for an invalid review mentioned in subsection (11), definition *invalid review*, paragraph (a)—the same as the rent payable before the timing of the review; or
 - (b) for an invalid review mentioned in subsection (11), definition *invalid review*, paragraph (b)—the rent worked out on 1 of the bases, chosen by the lessee, on which the review was made; or
 - (c) for an invalid review mentioned in subsection (11), definition *invalid review*, paragraph (c)—the rent worked out on 1 of the bases, chosen by the lessee, on which the review was to be made under the void provision.
- (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

[s 27]

- (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.
- (11) In this section—
 - invalid review*, of rent under the lease, means—
 - (a) a review in a year of the lease, other than the first year, in which the rent is to be reviewed under the lease more than once; or
 - (b) a review made under the lease using more than 1 basis; or
 - (c) a review under a provision of a lease that is void under section 36(d) or (e).

year, of the lease, means a period of 12 months starting on—

- (a) the day the lease is entered into; or
- (b) an anniversary of the day the lease was entered into; or
- (c) if, for a particular 12 month period, there is not an anniversary of the day the lease was entered into—the last day of the month corresponding to the month the lease was entered into.

Editor's note—

Paragraph (c) deals with a lease entered into on the last day of February in a leap year.

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—

[s 28]

- (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; or
- (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.

28 Rent review on basis of current market rent

- (1) This section applies if—
 - (a) rent under a retail shop lease is to be reviewed on the basis of the current market rent of the leased shop; and
 - (b) the lessor and lessee can not agree on the current market rent within 1 month after the review date.
- (2) The current market rent is to be determined by a specialist retail valuer agreed by the lessor and lessee, or failing agreement, nominated by the chief executive.
- (3) The valuer may carry out the determination only if the valuer is independent of the interests of the lessor and lessee.

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.

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- (5) The response must be given within the reasonable period decided by the valuer.

29 Matters to be considered by specialist retail valuers

In making a determination of the current market rent, the specialist retail valuer—

- (a) must determine the rent—
 - (i) on the basis of the rent that would be reasonably expected to be paid for the retail shop if it were unoccupied and offered for leasing for the use for which the shop may be used under the lease or a substantially similar use; and
 - (ii) on the basis of gross rent less lessor's outgoings payable by the lessee under the lease; and
 - (iii) on an effective rent basis; and
- (b) must not have regard to the value of the goodwill of the lessee's business or the lessee's fixtures and fittings in the retail shop; and
- (c) must have regard to—
 - (i) the terms and conditions of the lease; and
 - (ii) submissions from the lessor and lessee about the market rent of the shop; and
 - (iii) the other matters prescribed by regulation.

30 Valuer may require information from lessor

- (1) The specialist retail valuer may, by written notice, require the lessor to give the valuer any relevant information about leases in the retail shopping centre in which the shop is situated.
- (2) If the lessor does not give the information to the valuer within 14 days after the notice is given to the lessor, the valuer, within 7 days after the lessor fails to give the information, must give the lessee written notice of the lessor's failure.

[s 31]

- (3) If the lessee is given a notice under subsection (2), a retail tenancy dispute exists between the lessor and the lessee.
- (4) This section has effect despite the provisions of the retail shop lease.

31 Requirements of determination

- (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.
- (2) The determination must also state—
 - (a) whether the current market rent includes GST; and
 - (b) if the rent includes GST, the GST amount.

32 Valuer to give determination to lessor and lessee

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

- (a) the valuer is asked to make the determination;
- (b) 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;
- (d) if the lessor is required to give the valuer information (*lease information*) under section 30—the lessor gives the lease information to the valuer;
- (e) if a retail tenancy dispute under section 30 proceeds to mediation or QCAT under part 8—the lessor gives the lease information to the valuer as required by or under a

mediation agreement made under the part, or order made by QCAT.

33 Effect of determination

The current market rent of the leased shop determined by the specialist retail valuer is the current market rent of the shop and the rent payable under the lease for the rental period under the review.

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.

35 Confidentiality of lease information

- (1) A specialist retail valuer who obtains information under section 28A or 30 must not—
 - (a) use the information for any purpose other than to determine the current market rent for the leased shop; and
 - (b) whether directly or indirectly, disclose the information to anyone else without the agreement of the lessor and lessee.

Maximum penalty—60 penalty units.

- (2) However, subsection (1)(b) does not prevent the valuer from disclosing information in a way that does not identify a particular lease when specifying the matters taken into consideration by the valuer in making the determination.
- (3) If the valuer discloses information in contravention of subsection (1) and the lessor or lessee suffers loss or damage because of the disclosure, the lessor or lessee is entitled to be paid by the valuer the reasonable compensation for the loss or damage agreed between the lessor or lessee and the valuer or,

[s 36]

failing agreement, decided by way of the dispute resolution process.

Subdivision 3 Other provisions about rent review

36 Certain rent review provisions of leases void

A provision of a retail shop lease is void to the extent that it—

- (a) requires the lessee to appoint someone to determine the current market rent of the leased shop other than in accordance with this Act; or
- (b) requires the lessee to pay for a determination of current market rent by a specialist retail valuer other than under section 34; or
- (c) requires the determination of the current market rent of the leased shop to be made other than in accordance with this Act; or
- (d) reserves, or has the effect of reserving, to a party a discretion to apply 1 of 2 or more methods of calculating the rent of the leased shop on a particular review of the rent; or
- (e) provides for the rent of the leased shop to change on a particular review of the rent in accordance with whichever of 2 or more methods of calculating the change would result in the higher or highest rent.

36A Ratchet rent provision void

- (1) Subsection (2) applies if a retail shop lease provides a basis for rent review under which the rent may be varied, including by a decrease, but the lease includes a ratchet rent provision.
- (2) The ratchet rent provision is void.
- (3) In this section—

ratchet rent provision means any provision of a retail shop lease to the extent that it—

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- (a) prevents, or enables the lessor or another person to prevent, the rent decreasing under a rent review; or
 - (b) limits or specifies, or allows the limitation or specification of, the amount by which the rent may decrease under a rent review; or
 - (c) prevents, or allows the avoidance of, the rent review by the lessor or another person for a purpose mentioned in paragraph (a) or (b).

Division 5 Lessor's outgoings and other payments

37 Requirements when lessee to pay lessor's outgoings

- (1) In this section—
outgoings include maintenance and promotion amounts.
- (2) If, under a retail shop lease, the lessee is required to pay all or part of the lessor's outgoings for the retail shopping centre or leased building in which the leased shop is situated—
 - (a) the lease must specify—
 - (i) the outgoings payable by the lessee; and
 - (ii) how the outgoings will be determined and apportioned to the lessee; and
 - (iii) how the outgoings may be recovered by the lessor from the lessee; and
 - (b) the lessor must give to the lessee an annual estimate in the approved form of the lessor's outgoings, other than specific outgoings—
 - (i) at least 1 month before the start of the period to which the estimate relates; or
 - (ii) if the lessee enters into the lease during the period to which the estimate relates or within 1 month

[s 37]

before the start of the period—when the lessee enters into the lease; and

- (c) the lessor must give the lessee an audited annual statement in the approved form of the outgoings within 3 months after the end of the period to which the outgoings relate.

Maximum penalty—60 penalty units.

- (3) The outgoings shown in the annual estimate and statement must be itemised so that the amount shown for each item is not more than 5% of the total outgoings shown in the estimate or statement.
- (4) However, the amount shown for an item may be more than 5% of the total outgoings if the item relates to—
 - (a) a charge, levy, rate or tax payable under an Act; or
 - (b) a particular outgoing that can not be broken up to comply with the subsection (3).
- (5) The audited annual statement must—
 - (a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and
 - (b) contain the auditor’s opinion on whether the statement presents fairly the lessor’s outgoings for the accounting period to which it relates in accordance with the lessor’s financial records and this Act; and
 - (c) compare the annual estimates of the lessor’s outgoings with the amount actually spent by the lessor for the outgoings during the period; and
 - (d) compare the total amount actually spent by the lessor for outgoings during the period with the total amounts actually paid by lessees to the lessor during the period.
- (6) If a person becomes the owner of a retail shopping centre or building containing 1 or more retail shops, the first estimate and statement of outgoings given by the person may be made for a period less than 1 year.

37A Lessor's recovery of electricity charges

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

38 Lessee's liability to pay proportion of lessor's apportionable outgoings

- (1) In this section—

apportionable outgoings include maintenance amounts.
- (2) The proportion of a lessor's apportionable outgoings for a retail shopping centre or leased building payable by a lessee under a retail shop lease who is enjoying or sharing the benefit of the outgoing must not be more than the proportion that the area of the lessee's leased shop bears to the total area of all premises in the centre or building that are—
 - (a) leased to or occupied by lessees who enjoy or share the benefit resulting from the outgoing (whether or not they are lessees under retail shop leases); or
 - (b) available for lease to or occupation by lessees who would, if leased or occupied, enjoy or share the benefit resulting from the outgoing (whether or not they would be lessees under retail shop leases).

39 Payment of key money and amount for goodwill prohibited

- (1) A person must not, as lessor or for the lessor, under or in

[s 39]

relation to a retail shop lease, seek or accept the payment of key money or any amount for the goodwill of the lessee's business carried on in or from the leased shop.

Maximum penalty—100 penalty units.

- (2) However, subsection (1) does not prevent a lessor from—
 - (a) recovering from the lessee the lessor's costs reasonably incurred in investigating a proposed assignee of the lessee under a retail shop lease; or
 - (b) recovering from the lessee the lessor's reasonable expenses of and incidental to an assignment of a retail shop lease and any necessary consents to the assignment; or
 - (c) receiving payment of rent in advance if the amount paid is not more than the rent payable for 1 rental period under the lease; or
 - (d) getting a repayable bond from the lessee to secure the lessee's obligations under the lease; or
 - (e) receiving from the purchaser of the lessor's business conducted in a retail shop payment for the goodwill of the business or the plant, equipment, fixtures or fittings in the retail shop; or
 - (f) receiving payment from the lessee for amounts spent by the lessor for fitting out the leased shop; or
 - (g) seeking and accepting payment for the grant of a franchise in relation to the grant of a retail shop lease.
- (3) If an amount is paid to, or a benefit accepted by, a person in contravention of subsection (1), the person who paid or conferred the benefit may recover the amount or value of the benefit as a debt.

Division 6 Other payments for retail shops

40 Sinking fund for major maintenance and repairs

- (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) The lessor may keep only 1 sinking fund for the purposes mentioned in subsection (1).
- (3) The lessor must pay maintenance amounts paid by the lessee for the credit of the sinking fund into an interest bearing account kept by the lessor.

Maximum penalty—100 penalty units.
- (4) The lessor must only apply amounts standing to the credit of the sinking fund and interest earned on the fund for a purpose mentioned in subsection (1).

Maximum penalty—100 penalty units.
- (5) The lessor is liable to pay into the sinking fund any deficiency attributable to a failure by the lessor or any predecessor in title of the lessor to comply with subsection (4).
- (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.
- (7) The lessor must not seek or accept payments of maintenance amounts from a lessee of a retail shop that would result in the

[s 41]

amount standing to the credit of the sinking fund being more than \$100000.

Maximum penalty for subsection (7)—100 penalty units.

41 Promotion and advertising

- (1) This section applies if—
 - (a) a lessee under a retail shop lease is required to pay amounts for promotion and advertising of the retail shopping centre (*promotion amounts*) in which the leased shop is situated to the lessor or an entity to which the lessee is required under the lease to be a member; and
 - (b) under the lease, the promotion amounts are not treated as part of the lessor's outgoings.
- (2) The lessor must only apply promotion amounts for promotion and advertising directly attributable to the centre.

Maximum penalty—100 penalty units.

- (3) To remove any doubt, subsection (2) does not prevent the lessor from applying promotion amounts for joint promotions and advertising with other retail shopping centres.

Division 7 Implied provisions for compensation

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.

43 When compensation is payable by lessor

- (1) The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee because the lessor, or a person acting under the lessor's authority—
 - (a) substantially restricts the lessee's access to the leased shop; or
 - (b) takes action (other than action under a lawful requirement) that substantially restricts, or alters—
 - (i) access by customers to the leased shop; or
 - (ii) the flow of potential customers past the shop; or
 - (c) causes significant disruption to the lessee's trading in the leased shop or does not take all reasonable steps to prevent or stop significant disruption within the lessor's control; or
 - (d) does not have rectified as soon as is practicable—
 - (i) any breakdown of plant or equipment under the lessor's care or maintenance; or
 - (ii) any defect in the retail shopping centre or leased building containing the leased shop, other than a defect due to a condition that would have been reasonably apparent to the lessee when the lessee entered into the lease or, for a lessee by way of assignment of the lease, when the lessee accepted the assignment; or
 - (e) neglects to clean, maintain or repaint the retail shopping centre or leased building containing the leased shop or the part of the centre or building that, under the lease, is the lessor's responsibility; or
 - (f) causes the lessee to vacate the leased shop before the end of the lease or renewal of it because of the extension, refurbishment or demolition of the retail shopping centre or leased building containing the shop.

[s 43A]

- (2) The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee because—
 - (a) the lessee entered into the lease, or a renewal of it, on the basis of a false or misleading statement or misrepresentation made by the lessor or any person acting under the lessor's authority; or
 - (b) the leased shop was not available to the lessee for trading on the date specified in the disclosure statement given under section 22 or 22C because of the default of the lessor or anyone acting under the lessor's authority.
- (3) However, the lessee is not entitled to compensation under subsection (1) or (2) merely because the lessor has prevented the lessee from extending, as permitted by the *Trading (Allowable Hours) Act 1990*, the hours during which the lessee keeps the leased shop open for trading.
- (4) A false or misleading statement or misrepresentation referred to in subsection (2)(a), if the lessee is an assignee, is a reference to a false or misleading statement or misrepresentation made by the lessor to the assignee that causes loss and damage to be suffered by the assignee.
- (5) A reference in subsection (2)(a) to the lessee having entered into the lease includes, if the lessee is an assignee, a reference to the assignee having entered into the assignment of the lease.
- (6) In this section—
lessee includes an assignee of the lease.

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.

44 Amount of compensation

- (1) If parties cannot agree on the amount of compensation payable under this division, the amount is to be decided by way of the dispute resolution process.
- (2) An agreement under the lease or an assignment of the lease about compensation payable under this division is void to the extent it limits the amount.

Division 8 Lease dealings

45 Lessee's right to deal with lease and business assets

- (1) A lessor under a retail shop lease must not obstruct or hinder the lessee in dealing with the lease or other assets of the business carried on in the leased shop by way of security.
Maximum penalty—40 penalty units.
- (2) However, a lessee under a retail shop lease is not entitled to deal with the lease or other assets of the business carried on in or from the leased shop by way of security without the lessor and the prospective secured creditor entering into an agreement about—
 - (a) the times when the creditor or the creditor's agents may enter the leased shop, before or after the end of the lease; and
 - (b) the times by or when, and the way in which, the creditor, must or may remove fixtures, fittings or equipment subject to the security before or after the end of the lease; and

[s 46]

- (c) the disposal of fixtures, fittings or equipment that are not removed under the agreement; and
 - (d) the right of the creditor to enter into possession, or to place someone else in possession, of the leased shop if the lessee defaults under the security; and
 - (e) making good any damage caused to the leased shop because of the creditor exercising the creditor's rights under the security; and
 - (f) matters incidental to the matters mentioned in paragraphs (a) to (e).
- (3) Despite sections 19 and 20, this section does not apply to a retail shop lease if the lease declares that this section does not apply to it.

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.

[s 46A]

Division 8A Provisions about unconscionable conduct

46A Unconscionable conduct

- (1) A lessor must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.
- (2) A lessee must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.
- (3) For this section, a person is not to be taken to engage in unconscionable conduct in connection with a retail shop lease only because the person—
 - (a) starts legal proceedings relating to the lease; or
 - (b) refers to arbitration a dispute or claim relating to the lease; or
 - (c) fails to issue or renew the lease.
- (4) This section does not apply to conduct that occurred before the commencement of this section.

46B Matters QCAT may consider in deciding if a party's conduct is unconscionable

- (1) In deciding whether a party to a retail tenancy dispute has engaged in unconscionable conduct in connection with the retail shop lease, QCAT may have regard to the following matters—
 - (a) the relative strengths of the bargaining positions of each of the parties;
 - (b) whether, as a result of conduct engaged in by the party, the other party was required to comply with conditions that were not reasonably necessary for the protection of the other party's legitimate interests;

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- (c) whether the other party was able to understand any documents relating to the lease;
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the other party or a person acting for the other party by the party or a person acting for the party in relation to the lease;
 - (e) the amount for which, and the circumstances under which, the other party could have acquired an identical or equivalent lease from a person other than the party;
 - (f) the extent to which the party's conduct towards the other party was consistent with the party's conduct in similar transactions between the party and parties like the other party;
 - (g) the requirements of any applicable industry code;
 - (h) the requirements of any other industry code, if the other party acted on the reasonable belief that the party would comply with the code;
 - (i) the extent to which the party unreasonably failed to disclose to the other party—
 - (i) any intended conduct of the party that might affect the other party's interests; and
 - (ii) any risks to the other party arising from the party's intended conduct (being risks that the party should have foreseen would not be apparent to the other party);
 - (j) the extent to which the party was willing to negotiate the terms and conditions of any lease with the other party;
 - (k) the extent to which the party and the other party acted in good faith.
- (2) QCAT may also have regard to circumstances existing before the commencement of section 46A.
- (3) Subsections (1) and (2) do not limit the matters to which QCAT may have regard in making its decision.
- (4) However, QCAT must not have regard to the following—

[s 46C]

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

(5) In this section—

applicable industry code has the meaning given under the *Competition and Consumer Act 2010* (Cwlth), section 51ACA.

industry code has the meaning given under the *Competition and Consumer Act 2010* (Cwlth), section 51ACA.

Division 9 General

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.

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- (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.

[s 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.

[s 46K]

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

47 Lessee's right to independent legal advice

- (1) A lessee or prospective lessee under a retail shop lease must not be compelled to use, or pay for (in whole or part), the services of a lawyer nominated by the lessor.
- (2) If a person is compelled to use the services of a lawyer in contravention of subsection (1), the lessor is liable to pay to the person the amount paid by the person for the services.

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

- (1) A lessee under a retail shop lease is not liable to pay any amount for the lessor's legal or other expenses in relation to the following—
- (a) preparing, renewing or extending the lease;
 - (b) submitting the lease, on its expiry, for reassessment of lease duty under the *Duties Act 2001*.

Note—

See the *Duties Act 2001*, chapter 17 (Repeal, savings and transitional provisions), part 5 (Transitional and savings provisions for Revenue Legislation Amendment Act 2005), division 2 (Provisions for ending of lease duty).

- (2) However, subsection (1) does not prevent a lessee under a retail shop lease from being required to pay for 1 or more of the following—
- (a) survey fees associated with the registration of the lease;
 - (b) the reasonable expenses incurred by the lessor in obtaining the consent of the lessor's mortgagee to the lease;
 - (c) lease duty on the lease;
 - (d) registration of the lease.

49 Lessee's right to join or form commercial associations

A lessor must not include in a retail shop lease a provision preventing or restricting the lessee from—

- (a) joining any chamber of commerce, retail trade association or other commercial association; or
- (b) forming or joining a lessees' association to promote a retail shopping centre or for another purpose of mutual interest to lessees.

Maximum penalty—40 penalty units.

[s 50]

50 Retail tenancy disputes between lessors and lessees about assignments of leases

- (1) A retail tenancy dispute exists between a lessor and lessee under a retail shop lease if—
 - (a) under the lease, the lessee may assign the lease only with the lessor's consent; and
 - (b) the lessee has given the lessor full particulars of a proposed assignment of the lease and asked the lessor, in writing, to consent to it; and
 - (c) the lessor has not given an answer to the lessee within 1 month after the request and the particulars are given to the lessor.
- (2) A retail tenancy dispute also exists between a lessor and lessee under a retail shop lease if, in relation to consenting to an assignment of a retail shop lease, the lessor—
 - (a) purports or seeks to impose on the prospective assignee as lessee, an obligation that is not the lessee's obligation under the lease; or
 - (b) purports or seeks to withdraw from the prospective assignee a right conferred on the lessee under the lease; or
 - (c) purports or seeks to impose, as a condition for consenting to the assignment, a condition that the lessee considers unreasonable.
- (3) To remove any doubt, this section does not limit the circumstances in which a retail tenancy dispute may exist between a lessor and lessee under a retail shop lease.

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

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- 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.

Part 7 Retail shop lease trading hours

51 Definitions

In this part—

core trading hours, for a retail shopping centre, means hours not outside the allowable trading hours under the *Trading (Allowable Hours) Act 1990* that—

- (a) are stated in a resolution passed by the eligible lessees of the centre under section 52 as the hours retail shops in the centre may be required to open for trading; or
- (b) until a resolution is passed—
- (i) for existing leases—the lessees of the centre were required, immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, to keep the retail shops open for trading; or
- (ii) for other leases—the lessees of the centre are required by the lessor to keep the retail shops open for trading.

eligible lessee, for a retail shopping centre, means a lessee of a retail shop in the centre (whether or not the lessee is a lessee under a retail shop lease).

[s 52]

eligible shop, for a retail shopping centre, means a retail shop in the centre (whether or not the shop is leased under a retail shop lease).

existing lease means a retail shop lease current at the commencement of the *Trading (Allowable Hours) Amendment Act 1994*.

52 Requirements for resolution

A resolution is passed by the eligible lessees of a retail shopping centre if—

- (a) the resolution is put to a vote of the eligible lessees by 1 or more of the lessees or the lessor; and
- (b) at least 7 days before the vote is taken, each eligible lessee is given a written notice that includes—
 - (i) the terms of the resolution; and
 - (ii) information about how and when the vote is to be taken; and
- (c) voting is by secret ballot on the basis of 1 vote for each eligible shop in the centre; and
- (d) each eligible lessee is allowed to vote on that basis; and
- (e) votes are cast by eligible lessees representing at least 50% of the number of eligible shops; and
- (f) the resolution is supported by at least 75% of the eligible lessees who voted; and
- (g) each person who casts a vote may scrutinise the counting of votes.

53 Trading hours

- (1) A lessor must not require a lessee under an existing lease to extend the hours that, immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, the lessee was required to keep the retail shop open for trading.

Maximum penalty—100 penalty units.

- (2) However, a retail shop lease may include a condition requiring the lessee to keep the premises open for trading in the core trading hours for the retail shopping centre.
- (3) A condition of a retail shop lease that purports to impose on the lessee an obligation to open the premises for trading outside the core trading hours for the retail shopping centre is void.
- (4) However, if the term is in an existing lease, it is void only to the extent that it requires the lessee to open the premises for trading outside the core trading hours for the retail shopping centre.
- (5) A lessee under a retail shop lease (the *first lessee*) is not liable under the first lessee's lease for any additional outgoings of the lessor only because an eligible lessee's shop is open for trading outside the core trading hours when the first lessee's shop is not open for trading.
- (6) Subsection (5) applies despite any condition in the first lessee's lease.

Part 8 Retail tenancy dispute resolution

Division 1 Preliminary

54 Parties' rights under this part preserved

To remove any doubt, if a provision of a retail shop lease requires or permits a dispute under or about the lease to be referred to arbitration or be heard by any court or tribunal, the provision does not limit a party's rights under this part.

Division 2 Mediation of retail tenancy disputes

55 Lodgement of retail tenancy disputes

- (1) A party to a retail tenancy dispute that is within a mediator's jurisdiction under section 97 may lodge notice of the dispute with the chief executive.
- (2) The notice (*dispute notice*) must be in the approved form and accompanied by the fee prescribed by regulation.

56 Chief executive to act on dispute notice

- (1) As soon as practicable after the dispute notice is lodged, the chief executive must—
 - (a) nominate a mediator to mediate the retail tenancy dispute; and
 - (b) give written notice to the parties to the dispute of—
 - (i) the mediator nominated to mediate the dispute; and
 - (ii) the time, date and place of the mediation conference to be conducted by the mediator.
- (2) The mediation conference date must be at least 7 days after the notice is given.

57 Limited right of representation

At the mediation conference, each party to the retail tenancy dispute—

- (a) must conduct the party's own case; and
- (b) may be represented by an agent approved by the mediator only if—
 - (i) the party is a corporation; or
 - (ii) the mediator is satisfied an agent should be permitted to represent the party.

58 Conference to be held in private

The mediation conference is not open to the public.

59 Parties attendance at conference not compellable

A party to the retail tenancy dispute can not be compelled to attend the mediation conference.

60 Parties to mediation conference

- (1) The mediator may allow a person to take part in the mediation conference if the mediator is satisfied the person has a sufficient interest in the resolution of the retail tenancy dispute.
- (2) However, the person does not become a party to the dispute.

61 Mediation agreements

- (1) This section applies if the parties to the retail tenancy dispute reach an agreement on the solution of the dispute.
- (2) The agreement (the *mediation agreement*) must be put into writing and signed by or for the parties.
- (3) The mediator must give a copy of the signed agreement to the chief executive as soon as practicable after it is signed.

62 No official record of mediation conference

- (1) A person must not make an official record of anything said at a mediation conference.
Maximum penalty—40 penalty units.
- (2) However, the mediator may make notes of the mediation conference the mediator considers appropriate.

Division 3 Reference of retail tenancy disputes and applications to QCAT

63 Reference of dispute—by mediator

- (1) This section applies if—
 - (a) a retail tenancy dispute is within QCAT’s jurisdiction and—
 - (i) the parties can not reach a mediated solution to the dispute; or
 - (ii) a party to the dispute does not attend the mediation conference for the dispute; or
 - (iii) the dispute is not settled within 4 months after the dispute notice is lodged; and

Note—

See section 103 for QCAT’s jurisdiction.

- (b) the retail shop lease has not ended (whether by expiry, surrender or termination) more than 1 year before the dispute notice was lodged.
- (2) The mediator must—
 - (a) refer the dispute, as provided under the QCAT Act, to QCAT; and
 - (b) give the chief executive written notice of the referral.
- (3) The party who lodged the notice of the dispute under section 55 is the applicant in the proceeding before QCAT for the dispute.

64 Application to QCAT—by party

- (1) A party to a retail tenancy dispute may apply, as provided under the QCAT Act, to QCAT for an order to resolve the dispute if—
 - (a) any of the following provisions apply—

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- (i) the party claims that another party to a mediation agreement has not complied with the agreement within the time stated in it or, if no time is stated, within 2 months after the agreement is signed;
 - (ii) a mediator refuses to refer the dispute to QCAT because the mediator is of the opinion that the dispute is not within QCAT's jurisdiction;
 - (iii) a court has ordered that a proceeding started in the court for the dispute be removed to QCAT or another tribunal; and
- (b) the retail shop lease has not ended (whether by expiry, surrender or termination) more than 1 year before the dispute notice was lodged.
- (2) In this section—

mediation agreement includes a mediation agreement under section 26 of the former Act.

Division 4 Provision about QCAT orders

83 QCAT orders

- (1) Subject to subsection (3), QCAT may make the orders, including declaratory orders, QCAT considers to be just to resolve a retail tenancy dispute.
- (2) Without limiting subsection (1), QCAT may make any 1 or more of the following orders—
 - (a) an order for a party to the dispute to do, or not to do, anything (an *enforcement order*);
 - (b) an order requiring a party to the dispute to pay an amount (including an amount of compensation) to a specified person (a *payment order*);
 - (c) an order that a party to the dispute is not required to pay an amount to a specified person;

[s 83]

- (d) an order setting aside the mediation agreement between the parties to the dispute;
 - (e) an order that an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased building in which the leased shop is situated was or was not reasonably incurred in, or directly attributable to, the operations, maintenance or repair of the centre or building;
 - (f) if the dispute is about the payment of compensation by the lessor to the lessee under the retail shop lease and the lease contains provision for the amount of compensation payable or a formula to calculate the amount of compensation payable—an order that the amount of compensation payable under the lease is reasonable;
 - (g) an order giving effect to a settlement agreed on by the parties to the dispute;
 - (h) an order mentioned in section 22E(2);
 - (i) with consent of the parties to the dispute—an order to rectify the lease;
 - (j) if QCAT 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.
- (3) If QCAT finds a party to the dispute engaged in unconscionable conduct in connection with the retail shop lease, QCAT may only make 1 of the following orders based on the unconscionable conduct—
- (a) an order requiring the party who engaged in the unconscionable conduct to pay an amount to a stated person;
 - (b) an order that the party who engaged in the unconscionable conduct is not required to pay any amount to any person.

Division 5 General

91 Withdrawal of disputes

- (1) A person may, by written notice given to the chief executive, withdraw a dispute notice lodged by the person for a retail tenancy dispute, unless—
 - (a) a mediator has referred the dispute to QCAT under section 63(2); or
 - (b) the person has made an application about the dispute to QCAT as mentioned in section 64.

Note—

The QCAT Act, section 46 provides for the withdrawal of referrals and applications mentioned in paragraphs (a) and (b).

- (2) The notice may be given before or after a mediator has started mediating the dispute.
- (3) If the chief executive has nominated a mediator for the dispute, the chief executive must advise the mediator of the withdrawal as soon as practicable after receiving the notice.

94 Exclusion of other jurisdictions

- (1) On and after the lodgement of a dispute notice for a retail tenancy dispute, the dispute must not be referred to arbitration or heard by any court.
- (2) Subsection (1) does not apply if—
 - (a) the notice of the dispute is withdrawn under section 91 or the referral of, or application for, the dispute is withdrawn under the QCAT Act; or
 - (b) a proceeding about the issue in dispute was started in a court before the dispute notice was lodged and the proceeding has not been removed, or transferred, to QCAT; or
 - (c) an application for an order in the nature of an injunction about the issue in dispute is made to a court; or

[s 95]

- (d) a mediator or QCAT refuses to mediate or hear the dispute because the mediator or QCAT is of the opinion the dispute is not within the jurisdiction of a mediator or QCAT; or
 - (e) the mediator can not reach a solution to the dispute and QCAT does not have jurisdiction to hear the dispute.
- (3) For subsection (2)(b), a proceeding is taken to have been started before a court if the lessor has—
- (a) served on the lessee a notice under section 124 of the *Property Law Act 1974*; or
 - (b) given to the lessee a notice under section 131 of the *Property Law Act 1974*.
- (4) If an application for an order mentioned in subsection (2)(c) is made to a court, the QCAT proceeding for the dispute ends only if the court—
- (a) grants the application; and
 - (b) makes an order that is inconsistent with allowing the QCAT proceeding to continue.

Part 9 Administration

Division 1 Mediators

95 Mediators

The Minister may appoint the number of persons the Minister considers necessary to be mediators.

96 Mediators' function

A mediator's function is to seek to resolve, by mediation, retail tenancy disputes within a mediator's jurisdiction.

97 Mediators' jurisdiction

- (1) A mediator has jurisdiction to mediate retail tenancy disputes, other than a retail tenancy dispute—
 - (a) about an issue between the parties that—
 - (i) is the subject of arbitration; or
 - (ii) has been the subject of an award (interim or final) in an arbitration proceeding; or
 - (iii) is before, or has been decided by, a court; or
 - (b) about—
 - (i) arrears of rent under a retail shop lease; or
 - (ii) the amount of rent payable under a retail shop lease; or
 - (iii) the amount of a lessor's outgoings under a retail shop lease; or
 - (c) under a retail shop lease for the carrying on of the business of a service station, if the *Trade Practices (Industry Codes—Oilcode) Regulations 2006* (Cwlth) apply to the carrying on of the business under a fuel re-selling agreement within the meaning of those regulations.
- (2) For subsection (1)(a)(i), a retail tenancy dispute is only the subject of arbitration if the arbitration proceeding has started.
- (3) However, a mediator has jurisdiction to mediate a retail tenancy dispute about—
 - (a) the procedure for the determination of rent payable under a retail shop lease, but not the actual amount of the rent; or
 - (b) the basis on which lessor's outgoings are payable by, and the procedure for charging lessor's outgoings to, a lessee under a retail shop lease, but not the actual amount of the outgoings; or
 - (c) whether an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased

[s 98]

building in which a leased shop is situated was reasonably incurred in, or directly attributable to, the operations, maintenance or repair of the centre or building.

98 Duration of appointment

- (1) A mediator must be appointed for a term not longer than 3 years.
- (2) A mediator may resign by signed notice of resignation given to the Minister.

99 Conditions of appointment

- (1) A mediator who is not a member of the public service is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A mediator holds office on the conditions not provided in this Act as are decided by the Minister.

100 Removal from office

The Minister may remove a mediator from office, by written notice given to the mediator, if the Minister is satisfied the mediator—

- (a) is incapable of properly discharging the functions of a mediator; or
- (b) is unfit to hold the office.

101 Annual reports

- (1) Within 2 months after the end of each financial year, a mediator must report to the chief executive on the mediator's discharge of the function in the year.
- (2) The report must include details of all matters that—

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- (a) the mediator becomes aware of during the discharge of the mediator's function; and
 - (b) significantly affect relationships between lessors and lessees under retail shop leases.

Division 2 Provisions for QCAT proceedings

102 Constitution of QCAT

- (1) Subject to subsection (2), for a proceeding for a retail shop lease dispute, QCAT is to be constituted by the following persons who are QCAT members—
 - (a) a legally qualified member;
 - (b) a person representing lessors under retail shop leases;
 - (c) a person representing lessees under retail shop leases.
- (2) If the amount, value or damages in dispute is less than the QCAT prescribed amount, QCAT may be constituted by—
 - (a) a legally qualified member; or
 - (b) a QCAT adjudicator.
- (3) In this section—

legally qualified member means a person who is a legally qualified member under the QCAT Act.

QCAT adjudicator means an adjudicator under the QCAT Act.

QCAT member means a member under the QCAT Act.

QCAT prescribed amount means the prescribed amount under the QCAT Act.

103 QCAT's jurisdiction

- (1) QCAT has jurisdiction to hear retail tenancy disputes, other than a retail tenancy dispute—

[s 103]

- (a) about an issue between the parties that—
 - (i) is the subject of arbitration; or
 - (ii) has been the subject of an interim or final award in an arbitration proceeding; or
 - (iii) is before, or has been decided by, a court; or
 - (b) about—
 - (i) arrears of rent under a retail shop lease; or
 - (ii) the amount of rent payable under a retail shop lease; or
 - (iii) the amount of a lessor's outgoings under a retail shop lease; or
 - (c) if the amount, value or damages in dispute is more than the monetary limit within the meaning of the *District Court of Queensland Act 1967*, section 68; or
 - (d) under a retail shop lease for the carrying on of the business of a service station, if the *Trade Practices (Industry Codes—Oilcode) Regulations 2006* (Cwlth) apply to the carrying on of the business under a fuel re-selling agreement within the meaning of those regulations.
- (2) However, QCAT has jurisdiction to hear a retail tenancy dispute about—
- (a) the procedure for the determination of rent payable under a retail shop lease, but not the actual amount of the rent; or
 - (b) the basis on which the lessor's outgoings are payable by, and the procedure for charging the lessor's outgoings to, a lessee under a retail shop lease, but not the actual amount of the outgoings; or
 - (c) whether an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased building in which a leased shop is situated was reasonably incurred in, or directly attributable to, the

-
- operations, maintenance or repair of the centre or building; or
- (d) 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.
- (3) For subsection (1)(a)(i), a retail tenancy dispute is only the subject of arbitration if the arbitration proceeding has started.

Division 3 Confidentiality, privilege and immunity

113 Mediators and former tribunal members to maintain secrecy

- (1) A mediator or former tribunal member must not disclose information coming to the knowledge of the mediator or member during the dispute resolution process or the hearing of a matter under part 8, division 4 as in force before the commencement.

Maximum penalty—100 penalty units.

- (2) However, a mediator or former tribunal member may disclose information—
- (a) with the agreement of all parties to the dispute resolution process; or
- (b) for statistical purposes without revealing the identity of any person about whom the information is relevant; or
- (c) for an inquiry or proceeding about an offence or other misconduct that happens during the dispute resolution process; or
- (d) under a requirement under an Act.
- (3) In this section—

commencement means the commencement of this subsection.

[s 114]

former tribunal member means a member of a tribunal established under this Act before the commencement.

114 Ordinary protection and immunity allowed

- (1) A mediator has, in the performance of the mediator's function, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.
- (2) A person who is a party, or the party's agent, appearing at a mediation process for a retail tenancy dispute has the same protection and immunity the person would have if the dispute were in the Supreme Court.
- (3) A document produced at, or used for, a mediation process has the same protection during the process it would have if produced before the Supreme Court.

115 Admissions made during mediation conference

Evidence of anything said in a mediation conference for a retail tenancy dispute is not admissible in any proceeding before any court or tribunal.

Division 4 General

116 Register

- (1) The chief executive must keep a register of mediators and retail tenancy disputes.
- (2) The register of retail tenancy disputes must contain the following details for each dispute for which a dispute notice is lodged under section 55—
 - (a) the date the dispute notice was lodged;
 - (b) the names of the parties;
 - (c) the subject matter of the dispute;
 - (d) the results of the mediation process.

- (3) The chief executive must keep the register open for inspection by members of the public during office hours on business days at a place reasonably accessible to the public.
- (4) A person may inspect the register, or obtain a copy of the register or a part of it, on payment of the fee (if any) prescribed under a regulation.

117 Delegations

- (1) The Minister may delegate the Minister's powers under this Act to an officer of the public service.
- (2) The chief executive may delegate the chief executive's functions or powers under this Act to an officer of the public service.

118 Chief executive may approve forms

The chief executive may approve forms for use under this Act.

119 Chief executive's responsibility

For the efficient and proper administration of this Act, the chief executive—

- (a) is responsible for ensuring lessors and lessees under retail shop leases are advised about the practices and procedures of the department and mediators; and
- (b) may advise lessors and lessees under retail shop leases about potential retail tenancy disputes.

Part 10 **Miscellaneous**

120 **Evidentiary provisions**

- (1) This section applies to a proceeding for an offence against this Act.
- (2) A signature purporting to be that of the chief executive is evidence of the signature it purports to be.
- (3) A document purporting to be a copy of a notice required or authorised by this Act to be given is evidence of the particulars in the original notice of which it purports to be a copy.

121 **Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about—
 - (a) the fees payable under this Act; and
 - (b) the practices and procedures of the mediation process.
- (3) A regulation may create offences and prescribe penalties of not more than 50 penalty units for the offences.

122 **Review of Act**

- (1) The Minister must carry out reviews of the operation of this Act to decide whether its provisions remain appropriate.
- (2) Each review must be carried out within 7 years after the previous review.
- (3) The Minister must prepare a report on each review and table a copy of the report in the Legislative Assembly as soon as practicable after it is prepared.

Part 12 Transitional provisions

Division 1 Provision for Act No. 47 of 1994

123 Retail Shop Leases Act 1984 references

In an Act, a reference to the *Retail Shop Leases Act 1984* may, if the context permits, be taken to be a reference to this Act.

Division 2 Provisions for Act No. 19 of 2000

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

- (1) If, before the commencement of this section, a lessor has given a prospective lessee a disclosure statement for a retail shop lease under section 22 as it existed before the commencement—
 - (a) the lessor is taken to have complied with section 22(1) as it existed after the commencement; and
 - (b) the prospective lessee is taken to have complied with sections 22A and 22D(1).
- (2) If, before the commencement of this section, an assignor has asked a lessor to consent to an assignment of a retail shop lease—
 - (a) the assignor is taken to have complied with section 22B(1); and
 - (b) the prospective assignee is taken to have complied with sections 22B(2), 22C(2) and 22D(2); and
 - (c) the lessor is taken to have complied with section 22C(1).

125 Current market rent determinations

- (1) This section applies if—

[s 126]

- (a) before the commencement of this section, the current market rent of a lease is to be determined by a specialist retail valuer; and
 - (b) on the commencement, the valuer has not given the determination to the lessor and lessee under section 32.
- (2) This Act, as in force immediately before the commencement of this section, applies to the current market rent determination.

126 Relocating lessee's business

- (1) This section applies if, within 3 months after the commencement of section 46C, a lessor relocates a lessee's business to other premises during the term of the lease or of any renewal of it.
- (2) Section 46C does not apply to the relocation.

127 Resolution for changing core trading hours

- (1) This section applies if, immediately before the commencement of this section, a secret ballot has not been conducted for a notice given under section 52 before the commencement about a resolution to change core trading hours for a retail shopping centre.
- (2) The secret ballot must be conducted and decided under section 52 as in force immediately before the commencement of this section.

128 Existing retail tenancy disputes

If, on the commencement of this section, a retail tenancy dispute referred to the chief executive before the commencement has not been resolved, the dispute must be resolved under part 8 as in force immediately before the commencement of this section.

Division 3 Provision for Act No. 4 of 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.

Division 4 Provisions for Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009

130 Definitions for div 4

In this division—

commencement means the commencement of this section.

[s 131]

former tribunal legal member means a person who was a tribunal legal member within the meaning of this Act as in force before the commencement.

previous, if followed by a section number, means the section of that number as in force before the commencement.

Note—

See also the QCAT Act, chapter 7.

131 Application of s 64

- (1) This section applies if, before the commencement—
 - (a) a mediator refused to refer a retail tenancy dispute to the chief executive because the mediator was of the opinion that the dispute was not within a tribunal’s jurisdiction; or
 - (b) a court ordered that a proceeding started in the court for the dispute be removed to a tribunal.
- (2) Section 64 applies to the dispute as if the mediator refused to refer the dispute to QCAT or the court ordered that the proceeding be removed to QCAT.

132 Existing referrals of and applications about retail tenancy disputes to chief executive

- (1) This section applies if, before the commencement, a retail tenancy dispute—
 - (a) was referred to the chief executive under previous section 63(2) or previous section 64(2); and
 - (b) had not been referred to a former tribunal legal member under previous section 65(1); and
 - (c) had not been withdrawn.
- (2) This section also applies if, before the commencement, an application about a retail tenancy dispute—
 - (a) was made to the chief executive under previous section 89(2); and

-
- (b) had not been renewed under previous section 90; and
 - (c) had not been withdrawn.
- (3) The chief executive must refer the dispute to QCAT.
 - (4) The party who lodged the notice of the dispute under section 55 or made the application under previous section 89(2) is the applicant in the proceeding before QCAT for the dispute.

133 Existing referrals of retail tenancy disputes to former tribunal legal member

- (1) This section applies if, before the commencement, a retail tenancy dispute—
 - (a) was referred to a former tribunal legal member under previous section 65; and
 - (b) had not been withdrawn, struck out or otherwise disposed of.
- (2) From the commencement—
 - (a) the retail tenancy dispute is taken to be an existing tribunal proceeding for the prescribed QCAT Act provisions; and
 - (b) the party who lodged the notice of the dispute under section 55 is the applicant in the proceeding before QCAT for the dispute.
- (3) Also, for applying the prescribed QCAT Act provisions in relation to the dispute, the former tribunal legal member is taken to be a former tribunal.
- (4) In this section—

prescribed QCAT Act provisions means the following provisions of the QCAT Act, chapter 7—

 - (a) part 1;
 - (b) section 254;
 - (c) part 2, division 3;
 - (d) part 4.

[s 134]

Division 5 **Provision for Criminal Code and
Other Legislation Amendment Act
2011**

134 **Transitional provision for s 36A**

Section 36A applies to a retail shop lease entered into after the commencement of this section.

135 **Transitional provision for amendment of ss 43 and 44**

The amendment of sections 43 and 44 by the *Criminal Code and Other Legislation Amendment Act 2011* applies to a retail shop lease assigned or entered into after the commencement of this section.

Schedule Dictionary

section 5

agreement includes an oral agreement.

apportionable outgoings of a lessor means the lessor's outgoings other than specific outgoings.

approved form means a form approved by the chief executive.

arbitration means arbitration conducted—

- (a) under the *Commercial Arbitration Act 2013*; or
- (b) if a retail shop lease provides for the manner of arbitration—
 - (i) under the lease; and
 - (ii) to the extent that the lease is inadequate—under the *Commercial Arbitration Act 2013*.

Australian lawyer see the *Legal Profession Act 2007*, schedule 2.

base rent means rent, or the part of rent, that is a specified amount of money (whether or not the amount is subject to change).

building includes any structure.

common areas see section 6.

conviction includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

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.

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

dispute notice see section 55.

dispute resolution process means—

- (a) a mediation process; or
- (b) the hearing, by QCAT, of a retail tenancy dispute under the QCAT Act.

effective rent basis, for the determination of rent under a retail shop lease, means the determination of the rent taking into account all associated advantages and disadvantages under arrangements made between the lessor and lessee that reflect the net consideration passing to the lessor from the lessee under the lease and associated arrangements.

enforcement order see section 83(2)(a).

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

existing retail shop lease, for sections 13(2) and 14, means—

- (a) a retail shop lease entered into or renewed before the commencement of section 5, as originally enacted, on 28 October 1994; or
- (b) a retail shop lease entered into, or renewed, under an option under an agreement that was entered into before the commencement of section 5, as originally enacted, on 28 October 1994; or
- (c) a retail shop lease entered into under an agreement for lease that was entered into before the commencement of section 5, as originally enacted, on 28 October 1994; or
- (d) an assignment of a retail shop lease mentioned in paragraph (a), (b) or (c).

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.

former Act means the *Retail Shop Leases Act 1984*.

key money means—

- (a) an amount to be paid to, or at the direction of, a lessor by way of a premium, non-repayable bond or otherwise, for the granting, renewing or assigning of a lease; or
- (b) any benefit to be conferred on, or at the direction of a lessor for the granting, renewing or assigning of a lease.

lawyer means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

lease means an agreement under which a person gives or agrees to give to someone else for valuable consideration a right to occupy premises whether or not the right is—

- (a) an exclusive right to occupy the premises; or
- (b) for a term or by way of a periodic tenancy or tenancy at will.

leased building means the building (other than a building in a retail shopping centre) in which a leased shop is situated.

leased shop means the retail shop leased, or to be leased, under a retail shop lease.

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 means the person who, under a lease, is or would be entitled to the rent payable for the leased premises regardless of the person's interest in the premises, and includes—

- (a) a person acting under the lessor's authority; and
- (b) in relation to a retail tenancy dispute—the former lessor.

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

listed corporation means a listed corporation under the Corporations Act.

maintenance amounts see section 40(1).

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

mediation means the process under part 8, division 2 under which the parties to a retail tenancy dispute use a mediator to help them resolve the dispute by negotiated agreement without adjudication.

mediation agreement see section 61.

mediation conference means a conference conducted by a mediator under part 8, division 2 between the parties to a retail tenancy dispute.

mediation process—

- (a) means the process of mediation of a retail tenancy dispute under part 8; and

- (b) includes all steps taken in making arrangements for a mediation conference or in the follow-up of the mediation conference.

mediator means a mediator appointed under this Act.

outgoings, of a lessor, see section 7.

payment order see section 83(2)(b).

promotion amounts see section 41(1)(a).

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).

retail business means a business prescribed by regulation as a retail business.

retail shop means premises that are—

- (a) situated in a retail shopping centre; or
- (b) used wholly or predominantly for the carrying on of 1 or more retail businesses.

retail shop lease means a lease of a retail shop, other than a lease of—

- (a) a retail shop with a floor area of more than 1000m² by a listed corporation or a listed corporation's subsidiary; or
- (b) a retail shop within the South Bank corporation area if the lease is a perpetual lease or another lease for a term, including renewal options, of at least 100 years entered into or granted by the South Bank Corporation; or
- (c) premises in a theme or amusement park; or
- (d) premises at a flea market, including an arts and crafts market; or
- (e) a temporary retail stall at—

- (i) an agricultural or trade show; or
- (ii) a carnival, festival or cultural event; or
- (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
- (g) another type of premises prescribed by regulation.

retail shopping centre see section 8.

retail tenancy dispute means any dispute under or about a retail shop lease, or about the use or occupation of a leased shop under a retail shop lease, regardless of when the lease was entered into.

South Bank corporation area means the corporation area as defined under the *South Bank Corporation Act 1989*.

specialist retail valuer means a person whose name is recorded on the list of specialist retail valuers kept under the *Valuers Registration Act 1992*.

specific outgoings, of a lessor, means the following—

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

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

termination day see section 46I(2).

turnover see section 9.

Endnotes

1 Index to endnotes

| | Page |
|--|------|
| 2 Date to which amendments incorporated | 85 |
| 3 Key | 86 |
| 4 Table of reprints | 86 |
| 5 List of legislation | 87 |
| 6 List of annotations | 89 |
| 7 Forms notified or published in the gazette | 101 |

2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 17 May 2013. Future amendments of the *Retail Shop Leases Act 1994* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No. [X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised version |
| num | = numbered | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2002 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | | |

4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

| Reprint No. | Amendments to | Effective | Reprint date |
|-------------|-----------------|------------------|------------------|
| 1 | none | 28 October 1994 | 1 November 1994 |
| 2 | 1995 Act No. 57 | 28 November 1995 | 19 February 1996 |
| 2A | 1999 Act No. 23 | 30 April 1999 | 27 August 1999 |
| 2B | 2000 Act No. 19 | 1 July 2000 | 14 July 2000 |

| Reprint No. | Amendments to | Effective | Reprint date |
|------------------------------|---------------------|---------------------------------------|-----------------------|
| 3 | 2000 Act No. 19 | 1 July 2000 | 3 August 2000 |
| 3A | 2001 Act No. 71 | 1 March 2002 | 1 March 2002 |
| Reprint No. | Amendments included | Effective | Notes |
| 3B | 2003 Act No. 19 | 9 May 2003 | |
| 3C | 2003 Act No. 24 | 27 June 2003 | |
| 3D | 2004 Act No. 11 | 1 July 2004 | |
| 3E | 2005 Act No. 60 | 1 January 2006 | |
| 3F | 2006 Act No. 4 | 3 April 2006 | R3F withdrawn, see R4 |
| 4 | — | 3 April 2006 | |
| 4A | 2007 Act No. 24 | 1 July 2007 | |
| 4B | 2008 Act No. 69 | 28 August 2009 | |
| 5 | 2009 Act No. 24 | 1 December 2009 | |
| | 2009 Act No. 48 | | |
| 5A | 2010 Act No. 54 | 1 January 2011 | |
| 5B | 2011 Act No. 7 | 4 April 2011 | |
| Current as at 17 May 2013 | | Amendments included 2013 Act No. 8 | Notes |

5 List of legislation

Retail Shop Leases Act 1994 No. 47

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 28 October 1994 (1994 SL No. 386)

amending legislation—

Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 4 sch

date of assent 22 November 1995

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995

commenced on date of assent

Retail Shop Leases Amendment Act 1999 No. 23

date of assent 30 April 1999

commenced on date of assent

Retail Shop Leases Amendment Act 2000 No. 19

date of assent 23 June 2000

ss 1–2 commenced on date of assent

s 22 commenced 24 June 2001 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 July 2000 (2000 SL No. 171)

Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch

date of assent 9 May 2003

commenced on date of assent

South Bank Corporation and Other Acts Amendment Act 2003 No. 24 ss 1, 2(2), pt 5

date of assent 16 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 27 June 2003 (2003 SL No. 124)

Legal Profession Act 2003 No. 97 ss 1, 2(2), 380 sch 1

date of assent 3 December 2003

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 2004 No. 11 s 642

Legal Profession Act 2004 No. 11 ss 1, 2(2), 596 sch 1

date of assent 31 May 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2004 (2004 SL No. 106)

Revenue Legislation Amendment Act 2005 No. 60 ss 1–2(1), 36 sch 2

date of assent 28 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2006 (see s 2(1))

Retail Shop Leases Amendment Act 2006 No. 4

date of assent 22 February 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 3 April 2006 (2006 SL No. 38)

Legal Profession Act 2007 No. 24 ss 1–2, 770 sch 1

date of assent 28 May 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2007 (2007 SL No. 151)

Justice (Fair Trading) Legislation Amendment Act 2008 No. 69 ss 1–2, 107(1) sch

date of assent 11 December 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 28 August 2009 (2009 SL No. 179)

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 9 pt 27

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

State Penalties Enforcement and Other Legislation Amendment Act 2009 No. 48 ss 1, 2(5), ch 4 pt 21

date of assent 19 November 2009

ss 1–2 commenced on date of assent
 remaining provisions commenced 1 December 2009 immediately after the commencement of the Queensland Civil and Administrative Tribunal Act 2009 No. 23 ch 7 (see s 2(5) and 2009 SL No. 251)

Fair Trading (Australian Consumer Law) Amendment Act 2010 No. 54 ss 1–2, 67 sch

date of assent 1 December 2010
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 2011 (2010 SL No. 359)

Criminal Code and Other Legislation Amendment Act 2011 No. 7 pts 1, 5

date of assent 4 April 2011
 commenced on date of assent

Commercial Arbitration Act 2013 No. 8 ss 1AA–1AB, 43 sch 1 pt 2

date of assent 14 March 2013
 ss 1AA–1AB commenced on date of assent
 remaining provisions commenced 17 May 2013 (2013 SL No. 65)

6 List of annotations

Commencement

s 2 om R2 (see RA s 37)

Definitions

s 5 Note—prev s 5 contained definitions for this Act. Definitions are now located in schedule (Dictionary).
 pres s 5 sub 2006 No. 4 s 4(1)

Meaning of *outgoings*

s 7 amd 2000 No. 19 s 5

Meaning of *retail shopping centre*

s 8 sub 2006 No. 4 s 5

Meaning of *turnover*

s 9 amd 2000 No. 19 s 6; 2006 No. 4 s 6

Division 3—Notes

div 3 (s 9A) ins 2006 No. 4 s 7

Application of Act to leases—general

s 13 amd 2000 No. 19 ss 4(2), 7, 37; 2006 No. 4 ss 4(8), 8; 2009 No. 24 s 1599(3)

Continued application of certain provisions of former Act to existing retail shop leases

s 14 amd 2000 No. 19 s 37; 2009 No. 24 s 1572

Application of Act to existing leases in exempt enterprises

s 16 amd 2000 No. 19 s 37

Application of Act to leases of service stations

s 17 amd 2000 No. 19 s 37; 2009 No. 48 s 182

Application of part

s 21 amd 2000 No. 19 s 8

Lessor's disclosure obligation to prospective lessee

prov hdg sub 2000 No. 19 s 9(1)

s 22 amd 2000 No. 19 s 9(2)–(5)
sub 2006 No. 4 s 9

Prospective lessee's disclosure obligation to lessor

s 22A ins 2000 No. 19 s 10
amd 2006 No. 4 s 10

Assignor's and prospective assignee's disclosure obligations to each other

s 22B ins 2000 No. 19 s 10
amd 2006 No. 4 s 11

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

s 22C ins 2000 No. 19 s 10
sub 2006 No. 4 s 12

Financial and legal advice reports

s 22D ins 2000 No. 19 s 10
amd 2004 No. 11 s 596 sch 1
sub 2006 No. 4 s 13

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

s 22E ins 2000 No. 19 s 10
amd 2009 No. 24 s 1573

PART 6—MINIMUM LEASE STANDARDS

Lessee's obligations to make particular payments

prov hdg sub 2000 No. 19 s 11(1)

s 24 amd 2000 No. 19 ss 11(2)–(5), 37; 2006 No. 4 s 14

GST payments

s 24A ins 2000 No. 19 s 12

Requirements if rent a percentage of turnover

s 25 amd 2006 No. 4 s 3 sch

Lessor not to disclose turnover information

s 26 amd 2000 No. 19 s 37; 2009 No. 24 s 1574

Division 4—Rent review

Subdivision 1—Timing and bases of rent reviews

sdiv hdg ins 2006 No. 4 s 3 sch

Timing and bases of rent reviews

prov hdg sub 1999 No. 23 s 3(1)

s 27 amd 1999 No. 23 s 3(2)–(6); 2000 No. 19 s 13; 2006 No. 4 s 15

Subdivision 2—Current market rent**sdiv hdg** ins 2006 No. 4 s 16**Lessee may require early determination of current market rent****s 27A** ins 2006 No. 4 s 16**Parties' submissions to specialist retail valuer****s 28A** ins 2006 No. 4 s 17**Matters to be considered by specialist retail valuers****s 29** amd 2006 No. 4 s 18**Valuer may require information from lessor****s 30** amd 2000 No. 19 s 14**Requirements of determination****s 31** amd 2000 No. 19 s 15; 2006 No. 4 s 19**Valuer to give determination to lessor and lessee****s 32** sub 2000 No. 19 s 16
amd 2006 No. 4 s 20; 2009 No. 24 s 1575**Parties to share cost of determination****s 34** sub 2006 No. 4 s 21**Confidentiality of lease information****s 35** amd 2000 No. 19 s 37; 2006 No. 4 s 3 sch**Subdivision 3—Other provisions about rent review****sdiv hdg** ins 2006 No. 4 s 3 sch**Certain rent review provisions of leases void****s 36** amd 2000 No. 19 s 37**Ratchet rent provision void****s 36A** ins 2011 No. 7 s 24**Requirements when lessee to pay lessor's outgoings****s 37** amd 2000 No. 19 s 17; 2006 No. 4 s 22**Lessor's recovery of electricity charges****s 37A** ins 2000 No. 19 s 18**Division 6—Other payments for retail shops****div hdg** amd 2006 No. 4 s 3 sch**Sinking fund for major maintenance and repairs****s 40** amd 2006 No. 4 s 23**Promotion and advertising****s 41** amd 2000 No. 19 s 19**Compensation provisions implied in particular leases****s 42** amd 2000 No. 19 s 37
sub 2006 No. 4 s 24

When compensation is payable by lessor

prov hdg amd 2006 No. 4 s 25(1)

s 43 amd 2000 No. 19 s 37; 2006 No. 4 s 25(2)–(3); 2011 No. 7 s 25

When compensation is payable by other parties

s 43A ins 2006 No. 4 s 26

Amount of compensation

s 44 amd 2000 No. 19 ss 20, 37; 2006 No. 4 s 27

sub 2011 No. 7 s 26

Lessee's right to deal with lease and business assets

s 45 amd 2000 No. 19 s 37

Lessor's notice about when option to renew or extend must be exercised

s 46 amd 2000 No. 19 ss 21, 37

sub 2006 No. 4 s 28

Renewing lease if no option or other agreement

s 46AA ins 2006 No. 4 s 28

Division 8A—Provisions about unconscionable conduct

div hdg ins 2000 No. 19 s 22

div 8A editor's note om 2010 No. 54 s 67 sch

Unconscionable conduct

s 46A ins 2000 No. 19 s 22

Matters QCAT may consider in deciding if a party's conduct is unconscionable

prov hdg amd 2009 No. 24 s 1576(1)

s 46B ins 2000 No. 19 s 22

amd 2009 No. 24 s 1576(2)–(3); 2010 No. 54 s 67 sch

Division 9—General

Subdivision 1—Relocating lessee's business

sdiv hdg ins 2006 No. 4 s 29

Provisions implied in retail shop lease

s 46C ins 2000 No. 19 s 23

sub 2006 No. 4 s 29

How lessor takes relocation action

s 46D ins 2006 No. 4 s 29

Termination notice by lessee or deemed acceptance

s 46E ins 2006 No. 4 s 29

Terms and conditions of new lease

s 46F ins 2006 No. 4 s 29

Lessee's entitlement to relocation costs

s 46G ins 2006 No. 4 s 29

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

sdiv 2 (ss 46H–46K) ins 2006 No. 4 s 29

Subdivision 3—Other general provisions**sdiv hdg** ins 2006 No. 4 s 29**Lessee's liability for costs associated with preparation etc. of lease****s 48** amd 2000 No. 19 s 24; 2001 No. 71 s 551 sch 1; 2005 No. 60 s 36 sch 2**Retail tenancy disputes between lessors and lessees about assignments of leases****s 50 prov hdg** amd 2000 No. 19 s 25**Release of assignor from lease****s 50A** ins 2006 No. 4 s 30**Definitions****s 51** amd 2000 No. 19 s 37**Requirements for resolution****s 52** amd 2000 No. 19 s 26**PART 8—RETAIL TENANCY DISPUTE RESOLUTION****Lodgement of retail tenancy disputes****s 55** amd 2000 No. 19 s 37**Chief executive to act on dispute notice****s 56** amd 2006 No. 4 s 31**Limited right of representation****s 57** amd 2009 No. 24 s 1577**Division 3—Reference to retail tenancy disputes and applications to QCAT****div hdg** sub 2009 No. 24 s 1578**Reference of dispute—by mediator****s 63** amd 2006 No. 4 s 32; 2009 No. 24 s 1579; 2009 No. 48 s 183**Application to QCAT—by party****s 64** amd 2000 No. 19 s 37; 2006 No. 4 ss 32, 3 sch
sub 2009 No. 24 s 1580**Subdivision 1—Directions hearings****sdiv hdg** om 2009 No. 24 s 1581 (orig in pt 8 div 4)**Chief executive must refer dispute for directions hearing****s 65** sub 2000 No. 19 ss 27–28
amd 2006 No. 4 s 33
om 2009 No. 24 s 1581**Holding directions hearing****s 66** sub 2000 No. 19 s 28
amd 2006 No. 4 s 3 sch
om 2009 No. 24 s 1581**Subdivision 2—Tribunal's hearing****sdiv hdg** om 2009 No. 24 s 1581 (orig in pt 8 div 4)

Appointment of tribunal

s 66A ins 2000 No. 19 s 29
amd 2006 No. 4 s 34
om 2009 No. 24 s 1581

Presiding member

s 67 om 2009 No. 24 s 1581

Venues

s 68 om 2009 No. 24 s 1581

Hearing to be held in private

s 69 om 2009 No. 24 s 1581

Appearances before tribunal

s 70 om 2009 No. 24 s 1581

Inclusion of parties

s 70A ins 2000 No. 19 s 30
sub 2006 No. 4 s 35
om 2009 No. 24 s 1581

Limited right of representation

s 71 amd 2006 No. 4 s 36
om 2009 No. 24 s 1581

Procedure

s 72 om 2009 No. 24 s 1581

Amendment of dispute

s 73 om 2009 No. 24 s 1581

Questions to be decided by majority of tribunal

s 74 om 2009 No. 24 s 1581

Tribunals to keep records of proceedings

s 75 om 2009 No. 24 s 1581

Powers of tribunal

s 76 om 2009 No. 24 s 1581

Inspection of documents

s 77 om 2009 No. 24 s 1581

Offences—hearings

s 78 om 2009 No. 24 s 1581

Self incrimination

s 79 om 2009 No. 24 s 1581

False or misleading information

s 80 om 2009 No. 24 s 1581

False or misleading documents

s 81 om 2009 No. 24 s 1581

Contempt of tribunal

s 82 om 2009 No. 24 s 1581

Tribunal must attempt to conciliate

s 82A ins 2006 No. 4 s 37
om 2009 No. 24 s 1581

Division 4—Provision about QCAT orders

div hdg prev div 4 hdg om 2009 No. 24 s 1581
pres div 4 hdg ins 2009 No. 24 s 1582

QCAT orders

prov hdg sub 2009 No. 24 s 1583(1)
s 83 amd 2000 No. 19 s 31; 2006 No. 4 s 38; 2009 No. 24 s 1583(2)–(4)

Enforcement of certain tribunal orders

s 84 om 2009 No. 24 s 1584(1)

Orders requiring payments

s 85 om 2009 No. 24 s 1584(1)

Orders of tribunal to be complied with

s 86 om 2009 No. 24 s 1584(1)

Tribunal's order final and binding

s 87 om 2009 No. 24 s 1584(1)

Order to state reasons

s 87A ins 2000 No. 19 s 32
om 2009 No. 24 s 1584(1)

Restricted right to question tribunal's hearing and order

s 88 amd 2000 No. 19 s 33
om 2009 No. 24 s 1584(1)

Correcting errors

s 88A ins 2006 No. 4 s 39
om 2009 No. 24 s 1584(1)

Application to renew dispute

s 89 amd 2006 No. 4 s 3 sch
om 2009 No. 24 s 1584(1)

Renewal of dispute

s 90 om 2009 No. 24 s 1584(1)

Division 5—General

div hdg prev div 5 hdg om 2009 No. 24 s 1582
pres div 5 hdg ins 2009 No. 24 s 1584(2)

Withdrawal of disputes

s 91 sub 1999 No. 23 s 4
amd 2000 No. 19 s 34; 2003 No. 19 s 3 sch
sub 2006 No. 4 s 40; 2009 No. 24 s 1585

Payment of costs if offer to settle rejected

s 91A ins 2006 No. 4 s 40
om 2009 No. 24 s 1585

Allowance to witness

s 92 om 2009 No. 24 s 1585

Withdrawal of disputes

s 93 om 2009 No. 24 s 1585

Exclusion of other jurisdictions

s 94 amd 2000 No. 19 ss 35, 37; 2009 No. 24 s 1586

Division 6—Renewable of retail tenancy disputes

div hdg om 2009 No. 24 s 1584(1)

Division 7—General

div hdg om 2009 No. 24 s 1584(2)

PART 9—ADMINISTRATION

Mediators' jurisdiction

s 97 amd 2009 No. 24 s 1587

Division 2—Provisions for QCAT proceedings

div hdg sub 2009 No. 24 s 1588

Constitution of QCAT

s 102 amd 1995 No. 51 s 4 sch; 2004 No. 11 s 596 sch 1
sub 2006 No. 4 s 41; 2009 No. 24 s 1588

QCAT's jurisdiction

s 103 sub 2009 No. 24 s 1588

Subdivision 1—Tribunal panel and members

sdiv hdg om 2009 No. 24 s 1588 (orig in pt 9 div 2)

Conditions of appointment

s 104 om 2009 No. 24 s 1588

Removal from office

s 105 om 2009 No. 24 s 1588

Subdivision 2—Composition, functions, jurisdiction and powers of tribunals

sdiv hdg om 2009 No. 24 s 1588 (orig in pt 9 div 2)

Composition of retail shop lease tribunals

s 106 amd 1995 No. 51 s 4 sch; 2000 No. 19 s 37; 2006 No. 4 s 42
om 2009 No. 24 s 1588

Chairperson

s 107 amd 1995 No. 51 s 4 sch; 2000 No. 19 s 37; 2006 No. 4 s 3 sch
om 2009 No. 24 s 1588

Tribunals' function

s 108 om 2009 No. 24 s 1588

Tribunals' jurisdiction

s 109 amd 2000 No. 19 s 37; 2003 No. 19 s 3 sch; 2006 No. 4 s 43
om 2009 No. 24 s 1588

Tribunals' general powers

s 110 om 2009 No. 24 s 1588

Transfer of hearings between tribunals and courts

s 111 om 2009 No. 24 s 1588

Subdivision 3—Annual reports

sdiv hdg om 2009 No. 24 s 1588 (orig in pt 9 div 2)

Reports on discharge of tribunals' function

s 112 om 2009 No. 24 s 1588

Mediators and former tribunal members to maintain secrecy

prov hdg amd 2009 No. 24 s 1589(1)

s 113 amd 2009 No. 24 s 1589(2)–(4)

Ordinary protection and immunity allowed

s 114 amd 2009 No. 24 s 1590

Admissions made during mediation conference

prov hdg amd 2009 No. 24 s 1591(1)

s 115 amd 2009 No. 24 s 1591(2)–(3)

Register

s 116 amd 2008 No. 69 s 107(1) sch; 2009 No. 24 s 1592

Delegations

s 117 amd 2009 No. 24 s 1593

Chief executive's responsibility

s 119 amd 2009 No. 24 s 1594

Evidentiary provisions

s 120 amd 2009 No. 24 s 1595

Regulation-making power

prov hdg sub 2003 No. 19 s 3 sch

s 121 amd 2009 No. 24 s 1596

Review of Act

s 122 amd 2006 No. 4 s 44

PART 11—REPEALS AND CONSEQUENTIAL AMENDMENTS

pt hdg om R1 (see RA s 40)

PART 12—TRANSITIONAL PROVISIONS

pt hdg prev pt 12 hdg exp 28 April 1995 (see s 129)

pres pt 12 hdg ins 1995 No. 57 s 4 sch 2

Division 1—Provision for Act No. 47 of 1994

div hdg ins 2000 No. 19 s 36

sub 2009 No. 24 s 1597(1)

Retail Shop Leases Act 1984 references

s 123 prev s 123 om R1 (see RA s 40)
pres s 123 ins 1995 No. 57 s 4 sch 2

Division 2—Provisions for Act No. 19 of 2000

div hdg ins 2000 No. 19 s 36
sub 2009 No. 24 s 1597(2)

Obligations to give disclosure statements and financial and legal advice certificates

s 124 prev s 124 om R1 (see RA s 40)
pres s 124 ins 1999 No. 23 s 5
sub 2000 No. 19 s 36

Current market rent determinations

s 125 prev s 125 exp 28 April 1995 (see s 129)
pres s 125 ins 2000 No. 19 s 36

Relocating lessee's business

s 126 prev s 126 exp 28 April 1995 (see s 129)
pres s 126 ins 2000 No. 19 s 36

Resolution for changing core trading hours

s 127 prev s 127 exp 28 April 1995 (see s 129)
pres s 127 ins 2000 No. 19 s 36

Existing retail tenancy disputes

s 128 prev s 128 exp 28 April 1995 (see s 129)
pres s 128 ins 2000 No. 19 s 36

Division 3—Provision for Act No. 4 of 2006

div hdg ins 2006 No. 4 s 45
sub 2009 No. 24 s 1597(3)

Application of Act

s 129 prev s 129 exp 28 April 1995 (see s 129)
pres s 129 ins 2006 No. 4 s 45

**Division 4—Provisions for Queensland Civil and Administrative Tribunal
(Jurisdiction Provisions) Amendment Act 2009**

div 4 (ss 130–133) ins 2009 No. 24 s 1598

**Division 5—Provision for Criminal Code and Other Legislation Amendment Act
2011**

div 5 (ss 134–135) ins 2011 No. 7 s 27

SCHEDULE—DICTIONARY

Note—definitions for this Act were originally located in prev s 5
prev sch om R1 (see RA s 40)
pres sch ins 2006 No. 4 s 46
def *agreement* reloc 2006 No. 4 s 4(8)
def *apportionable outgoings* reloc 2006 No. 4 s 4(8)
def *approved accounting standards* amd 2000 No. 19 s 4(3)

- om from prev s 5 2006 No. 4 s 4(2)
- def **approved agent** reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **approved auditor** amd 2000 No. 19 s 4(3)
om from prev s 5 2006 No. 4 s 4(2)
- def **approved form** reloc 2006 No. 4 s 4(8)
- def **arbitration** reloc 2006 No. 4 s 4(8)
amd 2013 No. 8 s 43 sch 1 pt 2
- def **attendance notice** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **Australian lawyer** ins 2004 No. 11 s 596 sch 1
reloc 2006 No. 4 s 4(8)
amd 2007 No. 24 s 770 sch 1
- def **base rent** 2006 No. 4 s 4(8)
reloc 2006 No. 4 s 4(8)
- def **building** 2006 No. 4 s 4(8)
reloc 2006 No. 4 s 4(8)
- def **chairperson** 2006 No. 4 s 4(8)
reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **common areas** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
- def **conviction** 2006 No. 4 s 4(8)
reloc 2006 No. 4 s 4(8)
- def **defective statement** ins 2006 No. 4 s 4(3)
reloc 2006 No. 4 s 4(8)
- def **demolish** ins 2006 No. 4 s 4(3)
reloc 2006 No. 4 s 4(8)
- def **disclosure statement** sub 2000 No. 19 s 4(1)–(2)
reloc 2006 No. 4 s 4(8)
- def **dispute notice** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
- def **dispute resolution process** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
sub 2009 No. 24 s 1599(1)–(2)
- def **effective rent basis** reloc 2006 No. 4 s 4(8)
- def **enforcement order** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
- def **entered into** ins 2000 No. 19 s 4(2)
reloc 2006 No. 4 s 4(8)
- def **existing retail shop lease** reloc 2006 No. 4 s 4(8)
amd 2011 No. 7 s 28
- def **financial advice report** ins 2006 No. 4 s 4(3)
reloc 2006 No. 4 s 4(8)
- def **former Act** reloc 2006 No. 4 s 4(8)
- def **GST** ins 2000 No. 19 s 4(2)
om from prev s 5 2006 No. 4 s 4(2)

Endnotes

- def ***GST Act*** ins 2000 No. 19 s 4(2)
 - om from prev s 5 2006 No. 4 s 4(2)
- def ***key money*** reloc 2006 No. 4 s 4(8)
- def ***lawyer*** ins 2004 No. 11 s 596 sch 1
 - reloc 2006 No. 4 s 4(8)
 - amd 2007 No. 24 s 770 sch 1
- def ***lease*** reloc 2006 No. 4 s 4(8)
- def ***leased building*** reloc 2006 No. 4 s 4(8)
- def ***leased shop*** reloc 2006 No. 4 s 4(8)
- def ***legal advice report*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)
- def ***lessee*** sub 2006 No. 4 s 4(2)–(3)
 - reloc 2006 No. 4 s 4(8)
- def ***lessor*** amd 2006 No. 4 s 4(4)
 - reloc 2006 No. 4 s 4(8)
- def ***lessor's termination notice*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)
- def ***listed corporation*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)
- def ***maintenance amounts*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***major lessee*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)
- def ***mediation*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***mediation agreement*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***mediation conference*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***mediation process*** ins 2009 No. 24 s 1599(2)
- def ***mediator*** reloc 2006 No. 4 s 4(8)
- def ***original order*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
 - om 2009 No. 24 s 1599(1)
- def ***outgoings*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***payment order*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***promotion amounts*** amd 2000 No. 19 s 37
 - reloc 2006 No. 4 s 4(8)
- def ***public corporation*** om from prev s 5 2006 No. 4 s 4(2)
- def ***qualified accountant*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)
- def ***registered auditor*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)
- def ***relocation action*** ins 2006 No. 4 s 4(3)
 - reloc 2006 No. 4 s 4(8)

- def **relocation day** ins 2006 No. 4 s 4(3)
reloc 2006 No. 4 s 4(8)
- def **relocation notice** ins 2006 No. 4 s 4(3)
reloc 2006 No. 4 s 4(8)
- def **renewed retail tenancy dispute** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **retail business** reloc 2006 No. 4 s 4(8)
- def **retail shop** reloc 2006 No. 4 s 4(8)
- def **retail shop lease** amd 2003 No. 24 s 50(2)–(3); 2006 No. 4 s 4(5)–(7)
reloc 2006 No. 4 s 4(8)
- def **retail shopping centre** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
- def **retail tenancy dispute** reloc 2006 No. 4 s 4(8)
- def **South Bank corporation area** ins 2003 No. 24 s 50(1)
reloc 2006 No. 4 s 4(8)
- def **specialist retail valuer** reloc 2006 No. 4 s 4(8)
- def **specific outgoing** sub 2000 No. 19 s 4(1)–(2)
reloc 2006 No. 4 s 4(8)
- def **subsidiary** sub 2006 No. 4 s 4(2)–(3)
reloc 2006 No. 4 s 4(8)
- def **termination day** ins 2006 No. 4 s 4(3)
reloc 2006 No. 4 s 4(8)
- def **tribunal** reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **tribunal legal member** ins 2000 No. 19 s 4(2)
reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **tribunal member** reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **tribunal panel** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **tribunal panel member** reloc 2006 No. 4 s 4(8)
om 2009 No. 24 s 1599(1)
- def **turnover** amd 2000 No. 19 s 37
reloc 2006 No. 4 s 4(8)

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