



Queensland

*COVID-19 Emergency Response Act 2020*  
*Retail Shop Leases Act 1994*

# **Retail Shop Leases and Other Commercial Leases (COVID- 19 Emergency Response) Regulation 2020**

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Queensland

# Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

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# Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*.

### 2 Declaration

It is declared that this regulation is made under the *COVID-19 Emergency Response Act 2020*, section 23.

*Note—*

This regulation expires on 31 December 2020. See the *COVID-19 Emergency Response Act 2020*, section 23(6).

### 3 Main purposes

The main purposes of this regulation are—

- (a) to mitigate the effects of the COVID-19 emergency on lessors and lessees under affected leases by giving effect to the good faith leasing principles set out in the National code; and
- (b) to establish a process for resolving—
  - (i) small business tenancy disputes; and
  - (ii) affected lease disputes.

## 4 Definitions

The dictionary in schedule 1 defines particular words used in this regulation.

## 5 Meaning of *affected lease*

- (1) A lease of premises is an *affected lease* if—
  - (a) it is—
    - (i) a retail shop lease; or
    - (ii) a prescribed lease; and
  - (b) on the commencement the lease, or an agreement to enter into the lease, is binding on the lessee, whether or not the lease has commenced; and
  - (c) the lessee under the lease is an SME entity; and
  - (d) the lessee under the lease, or an entity that is connected with, or an affiliate of, the lessee responsible for, or involved in, employing staff for the business carried on at the leased premises, is eligible for the jobkeeper scheme.
- (2) Also, if the lessee under an affected lease under subsection (1) is a franchisee, a lease under which the franchisor is lessee of the premises occupied by the franchisee is also an *affected lease*.
- (3) For working out whether the lessee is an SME entity for subsection (1)(c), the lessee's annual turnover is taken to be—
  - (a) if the lessee is an entity connected with, or an affiliate of, another entity—the aggregate annual turnover of the entities; or
  - (b) otherwise—the annual turnover of the business carried on by the lessee at the leased premises.

*Note—*

An entity that is a franchisee is not connected with, or an affiliate of, the franchisor merely because the entity is a franchisee.



- (3A) Also, a lease of premises is an *affected lease* during the extension period only if the lessee under the lease, or an entity mentioned in subsection (1)(d), is eligible for the jobkeeper scheme for the period starting on 28 September 2020 and ending on 4 January 2021.
- (4) However, an *affected lease* does not include—
- (a) a lease under which premises are to be used wholly or predominantly for a farming business under the *Farm Business Debt Mediation Act 2017*, schedule 1; or
  - (b) a lease, permit, licence or sublease under the *Land Act 1994*, unless—
    - (i) it is a sublease of premises under a lease that has a rental category of 13 or 16 under that Act; and
    - (ii) the sublessor under the sublease is not a government leasing entity within the meaning of the *Land Regulation 2020*, section 26(3).
- (5) In this section—

*affiliate*, of an entity, means an affiliate of the entity under the *Income Tax Assessment Act 1997* (Cwlth), section 328-130.

*connected with*, an entity, means connected with the entity under the *Income Tax Assessment Act 1997* (Cwlth), section 328-125.

*eligible for the jobkeeper scheme* means eligible for the jobkeeper scheme under the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cwlth), sections 7 and 8.

*franchisor*, in relation to a lease of premises occupied by a franchisee, includes a leasing entity that is connected with or an affiliate of the franchisor.

*SME entity* has the meaning given under the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020* (Cwlth), section 5.

*turnover*, of a business, includes income earned from internet sales, but does not include a grant or assistance given by the Commonwealth, State or a local government to mitigate the effects of the COVID-19 emergency.

## **6 Prescribed relevant leases—Act, s 23**

For section 23(8) of the Act, definition *relevant lease*, paragraph (b), a lease, other than a retail shop lease, under which the leased premises are to be wholly or predominantly used for carrying on a business is prescribed.

## **7 References to carrying on a business—non-profit entities**

If a lessee carries on operations or activities on a non-profit basis, a reference in this regulation to carrying on a business includes a reference to the carrying on of the operations or activities by the lessee.

## **8 Disapplication of Retail Shop Leases Act 1994, pt 5 in particular circumstances**

The *Retail Shop Leases Act 1994*, part 5 does not apply to a variation of a lease agreed under this regulation by the parties to the lease.

# **Part 2 Obligations of lessors and lessees under affected leases**

## **Division 1 Preliminary**

### **9 What is a *prescribed action***

A *prescribed action* is an action under a lease or another agreement relating to leased premises, or the starting of a

proceeding in a court or tribunal, for any of the following in relation to the lease or other agreement—

- (a) recovery of possession;
- (b) termination of the lease;
- (c) eviction of the lessee;
- (d) exercising a right of re-entry to premises;
- (e) seizure of any property, including for the purpose of securing payment of rent;
- (f) forfeiture;
- (g) damages;
- (h) the payment of interest on, or a fee or charge relating to, unpaid rent or outgoings;
- (i) a claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings;
- (j) the performance of an obligation by the lessee or another person under a guarantee under the lease;
- (k) exercising or enforcing another right by the lessor under the lease or other agreement relating to the leased premises.

## **10 Part applies subject to lease variation or agreement**

- (1) Nothing in this part—
  - (a) prevents the parties to an affected lease from entering into a variation of an affected lease, or an agreement relating to an affected lease, that is inconsistent with this part as in force on the commencement or as amended; or
  - (b) affects the validity of a variation of an affected lease, or an agreement relating to an affected lease, that is inconsistent with this part, whether entered into before or after the commencement or amendment of this part.

- (2) However, section 13(2) applies despite anything in an affected lease or in a variation or agreement mentioned in subsection (1).
- (3) Also, despite anything in an affected lease or in a variation or agreement mentioned in subsection (1), a party to an affected lease is not prevented from seeking to negotiate a condition of the lease under this part or part 3.

## **Division 2                      General obligations**

### **11            Parties to affected lease must cooperate**

The lessor and lessee under an affected lease must cooperate and act reasonably and in good faith in all discussions and actions associated with—

- (a) mitigating the effect of the COVID-19 emergency on the parties to the lease; and
- (b) other matters to which this part applies.

*Note—*

A mediator or court may have regard to whether or not a lessor or lessee under an affected lease has complied with this section in a proceeding relating to the affected lease.

### **12            Lessor under affected lease must not take prescribed action on particular grounds**

- (1) A lessor under an affected lease must not take a prescribed action on any of the following grounds—
  - (a) a failure to pay rent for a period occurring wholly or partly during the response period or extension period;
  - (b) a failure to pay outgoings for a period occurring wholly or partly during the response period or extension period;

- (c) the business carried on at the leased premises not being open for business during the hours required under the lease during the response period or extension period.
- (2) However, subsection (1) does not prevent the lessor taking a prescribed action—
- (a) in accordance with—
    - (i) a variation of the lease made under division 3; or
    - (ii) a settlement agreement or other agreement between the lessor and lessee entered into about a matter mentioned in subsection (1)(a), (b) or (c); or
    - (iii) an order of a court or tribunal; or
  - (b) if, despite a genuine attempt by the lessor to negotiate rent payable and other conditions of the lease under division 3, the lessee has substantially failed to comply with the lessee's obligations under that division in relation to the negotiations; or
  - (c) on a ground that is not related to the effects of the COVID-19 emergency.
- (3) The lessee under the affected lease may apply to QCAT or a court with jurisdiction to hear the matter for an order requiring the lessor to comply with subsection (1).
- (4) Also—
- (a) if the lessee mentioned in subsection (3) is a franchisor who is the lessee of the premises occupied by the franchisee, the application may be made jointly with the franchisee; and
  - (b) if the lessee mentioned in subsection (3) is a franchisee and the franchisor is the lessee of the premises occupied by the franchisee, the franchisor may apply to have the lessor of the premises joined in the matter.
- (5) In the proceeding, QCAT or a court may—
- (a) make any order it considers appropriate; and

- (b) award costs against the lessor or the lessee in the proceeding.

### **13 Lessor must not increase rent**

- (1) A lessor under an affected lease must not increase the rent payable by the lessee during the response period or extension period.
- (2) If the lease provides for a review of rent during the response period or extension period, the lessor may review the rent under the lease but must not give effect to an increase in rent until the extension period ends.

*Example—*

The lessor is entitled, on review of rent under the lease, to increase rent on 1 July 2020. The lessor decides to increase the amount of rent payable. The lessee is not required to pay the increased amount, and rent in relation to the increased amount can not start to accrue, until after the end of the extension period.

- (3) However, subsections (1) and (2) do not apply to the extent that the rent increase is worked out under the lease by reference to the turnover of the business carried on at the leased premises.
- (4) The lessor must not, during or after the response period or extension period, take a prescribed action against the lessee on the ground of a failure to pay an amount equal to or representing the amount of the increase prohibited under this section.

## Division 3                      **Obligations for negotiating outcomes**

### **14       Parties must renegotiate rent payable and other conditions**

- (1) A party (the *initiator*) to an affected lease may, in writing, ask another party to the lease to negotiate the rent payable under, and other stated conditions of, the lease.
- (2) After the initiator's request is made, the parties must, as soon as practicable, give each other information relating to the request that is—
  - (a) true, accurate, correct and not misleading; and
  - (b) sufficient to enable the parties to negotiate in a fair and transparent way.

*Examples of sufficient information—*

- a clear statement about the terms of the lease the initiator is seeking to negotiate
- a statement by the lessee that demonstrates why the lease is an affected lease, accompanied by supporting information and evidence, including—
  - accurate financial information or statements about the turnover of the lessee's business
  - information demonstrating that the lessee is an SME entity under section 5, having regard to any entities that the lessee is connected with, or an affiliate of
  - evidence of the lessee's eligibility for, or participation in, the jobkeeper scheme
  - information about any steps the lessee has taken to mitigate the effects of the COVID-19 emergency on the lessee's business, including the details of any assistance being received by the lessee from the Commonwealth, State or a local government
- in relation to a franchisor—information about any concession or benefit provided to or by the franchisor in relation to rent or outgoings for the premises occupied by the franchisee, and any

undertakings to pass those concessions or benefits on to the franchisee

- (3) The parties to the affected lease must—
  - (a) negotiate the conditions of the lease the subject of the initiator’s request; and
  - (b) comply with section 15.

## **15 Negotiating rent payable and other conditions**

- (1) Within 30 days after a party receives sufficient information about a request under section 14(2), the lessor must offer the lessee a reduction in the amount of rent payable under the lease, and any proposed changes to other stated conditions.
- (2) The offer must—
  - (a) relate to any or all of the rent payable under the affected lease—
    - (i) to the extent the request relates to the response period—during the response period; or
    - (ii) to the extent the request relates to the extension period—during the extension period; and
  - (b) to the extent the request relates to the response period—provide for no less than 50% of the rent reduction offered to be in the form of a waiver of rent; and
  - (c) have regard to—
    - (i) all the circumstances of the lessee and the affected lease, including the reduction in turnover of the business carried on at the leased premises during the response period or extension period; and
    - (ii) the extent to which a failure to reduce the rent payable under the lease would compromise the lessee’s ability to comply with the lessee’s obligations under the lease, including the payment of rent; and



- (iii) the lessor's financial position, including any financial relief provided to the lessor as a COVID-19 response measure; and
  - (iv) if a portion of rent or another amount payable under the lease represents an amount for land tax, local government rates, statutory charges, insurance premiums or other outgoings—any reduction in, or waiver of, the amount payable.
- (2A) Also, to the extent the request relates to the extension period, the offer may include or consist of any rent reduction already offered or given in relation to that period before the commencement of the extension amendment.
- (3) On receiving the lessor's offer, the lessee and lessor must cooperate and act reasonably and in good faith in negotiating a reduction in the amount of rent payable under the lease for the response period or extension period, including any conditions relating to the reduction in rent.
- (4) The reduction in rent and any conditions relating to the reduction in rent may be given effect by—
  - (a) a variation to the lease; or
  - (b) another agreement between the parties that gives effect to the matters agreed to under subsection (3).
- (5) To remove any doubt, it is declared that nothing in this section requires any portion of an offer of rent reduction in relation to the extension period to be in the form of a waiver of rent.

## **16 Further rent negotiations**

- (1) This section applies if, after a reduction in the amount of rent is agreed between the parties to an affected lease (whether the agreement is entered into before or after the commencement), a ground on which the agreement is based changes in a material way.

*Examples—*

- the lessee's turnover has not increased as significantly as anticipated
  - the lessee's income decreases substantially
- (2) A party may ask another party to the lease to negotiate a further reduction in rent during the response period or extension period.

*Note—*

Nothing in this regulation prevents the parties from negotiating an increase in rent, but an increase resulting from a review of rent during the response period or extension period must not take effect until the extension period ends. See section 13.

- (3) Sections 14 and 15 apply to the negotiation as if the party making the request were the initiator under section 14(1).
- (4) However, to the extent the reduction in rent relates to the response period, the lessor's offer need not comply with section 15(2)(b).
- (5) Also, to the extent the request relates to the extension period, the lessor's offer may include or consist of any rent reduction already offered or given in relation to that period before the commencement of the extension amendment.

## **17 Requirements relating to deferred rent**

- (1) This section applies if the parties to an affected lease agree under this part to defer payment of an amount of rent.
- (2) The variation of the lease or agreement between the parties—
- (a) must not require payment of the deferred rent to commence until—
    - (i) to the extent the deferred rent relates to the response period—the day after the end of the response period; or
    - (ii) to the extent the deferred rent relates to the extension period—the day after the end of the extension period; and

- (b) must require payment of the deferred rent to be amortised, using a method agreed between the parties, over a period of at least 2 years but no more than 3 years, starting on the day mentioned in paragraph (a) in relation to the rent; and
  - (c) must provide that the lessor must not, under the lease, require the lessee to pay interest or any other fee or charge in relation to an amount of deferred rent, unless the lessee fails to comply with the conditions on which the rent is deferred.
- (3) Despite the conditions of the lease, the lessor may continue to hold any security deposit given to the lessor until the deferred rent has been paid.
  - (4) If the lessor continues to hold a security deposit under subsection (3) after the lease ends, the lessor holds, and may claim in relation to, the security deposit under the conditions of the lease in effect immediately before it ended.

## **18 Extending lease for period of waiver or rent deferral**

- (1) This section applies if rent under an affected lease is waived or deferred for a period.
- (2) The lessor must offer the lessee an extension to the term of the lease on the same conditions as those contained in the lease except that the rent payable during the extension must be adjusted for the waiver or deferral.
- (3) The extension offered to the lessee must be equivalent to the period for which rent is waived or deferred.
- (4) However, subsections (1) to (3)—
  - (a) apply to a lessor only to the extent the lessor is not subject to an existing legal obligation that is inconsistent with the obligation to extend the lease under this section; and

- (b) do not apply if the lessor demonstrates that the lease can not be extended because the lessor intends to use the leased premises for a commercial purpose of the lessor.

## **19 Lessor may reduce services for leased premises**

If a lessee under an affected lease is unable to operate a business at the premises for any part of the response period or extension period because of the COVID-19 emergency, the lessor may cease or reduce any service at the premises—

- (a) to the extent it is reasonable in the circumstances; and
- (b) subject to any reasonable request by the lessee.

## **20 Confidentiality**

- (1) A party to an eligible lease dispute must not disclose protected information obtained under or as a result of the operation of this regulation, other than—
  - (a) with the consent of the person to whom the information relates; or
  - (b) to a professional advisor or financier who agrees to keep the information confidential; or
  - (c) to the extent the information is available to the public; or
  - (d) as authorised by the small business commissioner; or
  - (e) as authorised under an Act or law.

Maximum penalty—20 penalty units.

- (2) A party to an eligible lease dispute must not use protected information for any purpose other than for negotiating or resolving the eligible lease dispute under this regulation.

Maximum penalty—20 penalty units.

- (3) In this section—

*personal information* means the name, address and contact details of an individual, other than the lessor or lessee of the lease the subject of an eligible lease dispute.

*protected information* means—

- (a) personal information; or
- (b) information relating to business processes or financial information, including information about the trade of a business.

## **Part 3                      Dispute resolution**

### **Division 1                Preliminary**

#### **21            Application of part**

This part applies in relation to affected lease disputes and small business tenancy disputes (each an *eligible lease dispute*).

#### **22            Parties' rights under this part apply**

To remove any doubt, it is declared that if a provision of an affected lease or a small business lease requires or permits a dispute under or about the lease to be dealt with using a particular procedure, the provision does not prevent a party from starting mediation under this part, even if the procedure under the lease has not been complied with.

#### **23            Parties may use alternative ways to resolve disputes**

- (1) This part does not prevent the parties to an eligible lease dispute agreeing to undertake a dispute resolution process other than as provided for under this part.

*Examples—*

- 1 Both parties to an eligible lease dispute are medium to large enterprises who agree to resolve the dispute by appointing an arbitrator.
  - 2 A party to an eligible lease dispute starts mediation proceedings under division 3. The mediation is unsuccessful, so the parties agree to appoint an arbitrator under the terms of the lease to resolve the dispute.
  - 3 The parties to an eligible lease dispute agree to resolve the dispute using 1 of the following methods—
    - (a) a dispute resolution process provided for under the lease or a mandatory industry code; or
    - (b) a mediation process agreed to between the parties; or
    - (c) referral of the dispute to arbitration conducted under guidelines published by the small business commissioner.
- (2) To the extent the parties agree, or are required under a law or industry code, to undertake a dispute resolution process other than under this part, the small business commissioner may, but is not required to, provide assistance or information to the parties in relation to resolving the dispute.

## **24 Relationship with Retail Shop Leases Act 1994**

- (1) This section applies if an eligible lease dispute arises in relation to a retail shop lease.
- (2) This part, and not the *Retail Shop Leases Act 1994*, part 8, applies to the dispute.

## **Division 2 Obligation of parties**

### **25 Parties must attempt to resolve dispute before starting mediation**

- (1) Before starting mediation under division 3 for an eligible lease dispute, the parties to the lease must attempt to resolve the dispute.

- (2) In attempting to resolve the dispute, each party must cooperate and act reasonably and in good faith in all discussions and actions associated with the dispute.

## **Division 3                      Starting mediation**

### **26                      Giving dispute notice**

- (1) A party to an eligible lease dispute may give notice (a *dispute notice*) of the dispute to the small business commissioner.
- (2) The dispute notice must be in the form approved by the commissioner.
- (3) As soon as practicable after receiving the dispute notice, the small business commissioner must—
  - (a) accept the dispute notice; or
  - (b) dismiss the dispute notice.
- (4) The small business commissioner may dismiss the dispute notice if the commissioner considers the dispute notice—
  - (a) does not relate to an eligible lease dispute; or
  - (b) is frivolous or vexatious; or
  - (c) has not been given in good faith.

### **27                      Small business commissioner must arrange mediation conference**

- (1) As soon as practicable after the small business commissioner accepts a dispute notice, the commissioner must—
  - (a) nominate a mediator to mediate the eligible lease dispute; and
  - (b) give written notice to each party to the dispute stating—
    - (i) the details of the mediator nominated to mediate the dispute; and

- (ii) the details, including the time and date, 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.
  - (3) A party may, within 2 days after the notice is received, ask the mediator to change the mediation conference date to a day that is no later than 7 days after the date stated in the notice.
  - (4) If the mediator receives a request under subsection (3), the mediator may—
    - (a) change the mediation conference date to a day that is no later than 7 days after the date stated in the notice; and
    - (b) give each party to the dispute a further notice stating the details, including the new time and date, of the mediation conference.
  - (5) Also, a party may, within 2 days after the notice is received, ask the mediator to mediate related disputes together at the mediation conference.

*Example of related disputes—*

a dispute between a franchisee who subleases premises and the franchisor who is the sublessor, and a dispute between the franchisor who leases the premises occupied by the franchisee and the lessor from whom the franchisor leases the premises

- (6) If the mediator receives a request under subsection (5) and the parties to the related disputes agree, the mediator may give each party to the related disputes a further notice stating the details, including the time and date of the mediation conference and the parties to the related disputes that are to participate in the conference.
- (7) If the parties to the dispute and the mediator agree, the mediation may be held using any technology allowing reasonably contemporaneous and continuous communication between the parties.

*Examples—*

teleconferencing, videoconferencing



## **28 Representation**

- (1) A party to an eligible lease dispute may be represented at a mediation conference by—
  - (a) an agent; or
  - (b) if the party is a corporation—an officer or employee of the corporation.
- (2) However, a party may be represented by a lawyer only with the approval of the mediator.
- (3) The mediator may give an approval under subsection (2) if the mediator considers representation by a lawyer would assist the parties in mediating an outcome to the dispute, or is otherwise justified having regard to particular matters, including, for example, the complexity of the matters the subject of the dispute.

## **29 Conference to be held in private**

The mediation conference is not open to the public.

## **30 Parties must attend conference**

- (1) A party to the eligible lease dispute who is given notice of the mediation conference under section 27(1)(b) must attend the mediation conference, unless the party has a reasonable excuse.
- (2) If a party fails to attend a mediation conference in contravention of subsection (1), a court or tribunal may award costs against the party in a proceeding relating to the eligible lease dispute.

## **31 Who else may participate in mediation conference**

- (1) The mediator may allow a person to attend and participate in the mediation conference if the mediator is satisfied the

person has an interest in the resolution of the eligible lease dispute.

- (2) However, before the mediation conference is held, notice of the person's proposed attendance and participation must be given to each party to the dispute.
- (3) A person who participates in or attends the conference under this section does not become a party to the dispute.

### **32 Settlement agreements**

- (1) This section applies if the parties to the eligible lease dispute reach an agreement about the dispute at the mediation conference.
- (2) The agreement (the *settlement agreement*) must be recorded in writing and signed by the parties.

*Note—*

The settlement agreement may be in the form of a settlement agreement, or provide that the agreement be given effect by a variation to the lease (including a written variation capable of registration).

### **33 Notifying outcome of mediation**

- (1) The mediator must, as soon as practicable after the mediation ends—
  - (a) give each party to the eligible lease dispute—
    - (i) if the parties have entered into a settlement agreement under section 32—a copy of the signed settlement agreement; or
    - (ii) otherwise—a notice about the outcome of the mediation; and
  - (b) notify the small business commissioner of the outcome of the mediation.
- (2) A notice mentioned in subsection (1)(b)—

- (a) must not state anything about the extent to which a party acted in good faith in the mediation; but
- (b) may state that a party did not attend the mediation conference.

### **34 Admissions made during mediation conference**

Evidence of anything said in a mediation conference for an eligible lease dispute is not admissible in a proceeding before a court or tribunal.

### **35 Withdrawal of dispute notice**

- (1) A person may, by written notice given to the small business commissioner, withdraw a dispute notice lodged by the person for an eligible lease dispute, unless the person has made an application about the dispute to QCAT or a court.

*Note—*

The QCAT Act, section 46 provides for the withdrawal of applications and referrals.

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

### **36 Exclusion of other proceedings if mediation started**

- (1) If a dispute notice is lodged or given for an eligible lease dispute after the commencement, the dispute must not be referred to arbitration or heard by QCAT or a court until—
  - (a) a settlement agreement is entered into under section 32; or
  - (b) a notice is given to the parties about the outcome of the mediation under section 33(1)(a)(ii); or

- (c) the dispute notice is withdrawn.
- (2) However, subsection (1) does not apply if—
  - (a) a proceeding about the issue in dispute was started in a court before the dispute notice was lodged or given, and the proceeding has not been removed or transferred to QCAT; or
  - (b) an application for an order in the nature of an injunction about the issue in dispute is made to a court; or
  - (c) a mediator is of the opinion the mediator is prevented from mediating the dispute under section 39.
- (3) Despite subsection (2)(a), subsection (1) does apply in relation to a dispute if a proceeding about the issue is, on the commencement, stayed or suspended under section 48(2).
- (4) For subsection (2)(a), a proceeding is taken to have been started before a court if the lessor has—
  - (a) served on the lessee a notice under the *Property Law Act 1974*, section 124; or
  - (b) given the lessee a notice under the *Property Law Act 1974*, section 131.

### **37 Costs**

- (1) Each party to an eligible lease dispute must pay the party's own costs for the mediation conference, including costs of travel and accommodation for attending the mediation conference, unless otherwise ordered by QCAT or a court.
- (2) The small business commissioner must pay the mediator's fees and costs for the mediation conference.

## **Division 4                      Mediators**

### **38            Functions of mediators**

- (1) A mediator's function under this part is to mediate impartially between the parties to an eligible lease dispute with the aim of resolving the dispute.
- (2) It is not a function of a mediator to—
  - (a) advise a party about the law; or
  - (b) encourage or assist a party in reserving or establishing legal rights; or
  - (c) act as an adjudicator or arbitrator.

### **39            When mediator must not mediate dispute**

- (1) A mediator must not mediate an eligible lease dispute if—
  - (a) the dispute is about an issue between the parties that—
    - (i) is the subject of retail shop lease arbitration; or
    - (ii) has been the subject of an interim or final award in a proceeding for a retail shop lease arbitration; or
    - (iii) is before, or has been decided by, a court; or
  - (b) the dispute relates to a lease of premises used for the carrying on of the business of a service station mentioned in the *Retail Shop Leases Act 1994*, section 97(1)(c).
- (2) For subsection (1)(a)(i), an eligible lease dispute is the subject of retail shop lease arbitration only if a proceeding for the retail shop lease arbitration has started.

#### **40 Interaction with and application of Retail Shop Leases Act 1994**

- (1) A mediator's function and jurisdiction under this part is in addition to, and does not affect, the mediator's function and jurisdiction under the *Retail Shop Leases Act 1994*, part 9.
- (2) A reference to a mediator's function and jurisdiction in the *Retail Shop Leases Act 1994* does not include a reference to the mediator's function and jurisdiction under this part.
- (3) However, the *Retail Shop Leases Act 1994*, section 114(1) applies to a mediator as if a reference in that provision to the mediator's function were a reference to the mediator's function under this part.

### **Division 5 QCAT proceedings**

#### **41 When person may apply**

- (1) This section applies if—
  - (a) an eligible lease dispute is within QCAT's jurisdiction under section 42; and
  - (b) any of the following apply—
    - (i) the parties to the dispute can not reach a settlement agreement;
    - (ii) a party to the dispute does not attend the mediation conference for the dispute and does not have a reasonable excuse;
    - (iii) the dispute is not settled within 30 days after the dispute notice is given to the small business commissioner;
    - (iv) a party to a settlement agreement claims that another party to the agreement has not complied with the agreement within the period stated in it or, if no period is stated, within 14 days after the agreement is signed; and

- (c) no more than 6 months has elapsed since—
  - (i) the affected lease or small business lease ended, whether by expiry, surrender or termination; or
  - (ii) the last day the lessee was required, under an agreement, to pay deferred rent.
- (2) A party to the eligible lease dispute—
  - (a) may apply to QCAT, as provided under the QCAT Act, for an order to resolve the dispute; and
  - (b) if any application is made under paragraph (a)—must give the small business commissioner written notice that the person has made the application.

## **42 Jurisdiction of QCAT**

- (1) QCAT has jurisdiction to hear and decide eligible lease disputes unless—
  - (a) the dispute is about an issue between the parties that—
    - (i) is the subject of retail shop lease arbitration; or
    - (ii) has been the subject of an interim or final award in a proceeding for a retail shop lease arbitration; or
    - (iii) is before, or has been decided by, a court; or
  - (b) the dispute relates to a lease of premises used for the carrying on of the business of a service station mentioned in the *Retail Shop Leases Act 1994*, section 97(1)(c); or
  - (c) 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.
- (2) For subsection (1)(a)(i), a retail tenancy dispute is the subject of retail shop lease arbitration only if a proceeding for a retail shop lease arbitration has started.

### **43 Constitution of QCAT**

For a proceeding for an eligible lease dispute, QCAT is to be constituted as provided for under the *Retail Shop Leases Act 1994*, section 102 in relation to retail shop lease disputes under that Act.

### **44 QCAT orders**

- (1) Subject to subsection (3), QCAT may make the orders, including declaratory orders, QCAT considers to be just to resolve an eligible lease dispute.
- (2) In making an order for an eligible lease dispute, QCAT must have regard to the extent to which each party has complied with part 2.
- (3) 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, a stated thing;
  - (b) an order requiring a party to the dispute to pay an amount, including an amount of compensation, to a stated person;
  - (c) an order about the amount of rent payable for the response period or extension period or how rent is to be worked out, including, for example, by reference to the turnover of the lessee's business;
  - (d) an order that a party to the dispute is not required to pay an amount to a stated person;
  - (e) an order setting aside the whole, or part of, the settlement agreement between the parties to the dispute;
  - (f) an order that an item, or part of an item, of the lessor's outgoings for the building in which the leased premises are situated was or was not reasonably incurred in, or directly attributable to, the operations, maintenance or repair of the building;



- (g) if the dispute is about the payment of compensation by the lessor to the lessee under the small business lease, and the lease contains provision for the amount of compensation payable—an order that the amount of compensation payable under the lease is reasonable;
  - (h) an order giving effect to a settlement agreement entered into by the parties to the dispute;
  - (i) if the *Retail Shop Leases Act 1994*, section 22E applies in relation to the affected lease—an order mentioned in section 22E(2) of that Act;
  - (j) with the consent of the parties to the dispute, an order to rectify the lease;
  - (k) if QCAT finds that a specialist retail valuer did not comply with the *Retail Shop Leases Act 1994*, section 29 in making a determination of current market rent in relation to the dispute—an order that the determination be set aside and a further determination, in compliance with that section, be made.
- (4) If QCAT finds a party to an affected lease dispute has contravened section 11 or a party to an eligible lease dispute has engaged in unconscionable conduct in relation to an affected lease or small business lease, QCAT may make only 1 of the following orders based on the contravention or unconscionable conduct—
- (a) an order requiring the party who contravened the section or engaged in the unconscionable conduct to pay an amount to a stated person;
  - (b) an order that the party who contravened the section or engaged in the unconscionable conduct is not required to pay any amount to any person.

## **Division 6                      Proceedings generally**

### **45            Matters court or tribunal may consider for eligible lease disputes**

In a proceeding about an eligible lease dispute, a court or tribunal, in hearing and deciding a matter, may have regard to the extent to which each party to the dispute has complied with the party's obligations under this regulation, including sections 11 and 25.

### **46            Enforcing settlement agreement**

- (1) A party to an eligible lease dispute who enters into a settlement agreement may apply to a court with jurisdiction to hear the dispute for an order enforcing the agreement.
- (2) The court may make any order it considers appropriate in the circumstances.

## **Part 4                              Miscellaneous**

### **47            General exemption under lease for lessee complying with COVID-19 response measures**

- (1) This section applies in relation to an act or omission of a lessee under a retail shop lease, prescribed lease or other small business lease, if the act or omission—
  - (a) occurs on or after the commencement of the Act; and
  - (b) is required under a COVID-19 response measure or a law of the Commonwealth or another State in response to the COVID-19 emergency.
- (2) The act or omission—
  - (a) is taken not to amount to a breach of the lease; and

- (b) does not constitute grounds for termination of the lease or the taking of any prescribed action by the lessor against the lessee.
- (3) However, this section does not affect a termination of the lease or a prescribed action that was finalised or completed before the commencement of this regulation.

#### **48 Suspension of prescribed action by lessor started during pre-commencement period**

- (1) This section applies in relation to a lease if—
  - (a) during the pre-commencement period—
    - (i) a proceeding for a lease dispute was started in relation to the lease; or
    - (ii) the lessor under the lease had started or taken an action that, if it had been started or taken after the commencement, would constitute taking a prescribed action in contravention of section 12; and
  - (b) on the commencement—
    - (i) the dispute has not been resolved; or
    - (ii) the action has not been completed or finalised.
- (2) The proceeding or action, to the extent that it relates to the action mentioned in subsection (1)(a)(ii) and remains unresolved, incomplete or not finalised, is taken to be stayed or suspended until the extension period ends.

*Note—*

This section does not prevent the parties to the dispute attempting to resolve the dispute under part 2 or 3, or by any other method available to the parties.

- (3) In this section—

***lease dispute*** means any dispute concerning the liabilities or obligations under a retail shop lease or prescribed lease if—

- (a) on the commencement the lease is an affected lease; and
- (b) the matter the subject of the dispute would, if it had arisen during the response period or extension period for the lease, have constituted a prescribed action.

***pre-commencement period*** means the period—

- (a) starting at the beginning of the day on 29 March 2020; and
- (b) ending immediately before the commencement of this section.

***resolved***, in relation to a dispute, means—

- (a) a settlement agreement or other binding agreement has been entered into by the parties to the dispute; or
- (b) an order has been made about the dispute by a court or tribunal; or
- (c) the dispute has been withdrawn.

## Part 5 Transitional provision

### 49 Retail tenancy disputes started before commencement

- (1) This section applies if—
  - (a) before the commencement, a dispute notice for a retail tenancy dispute was lodged under the *Retail Shop Leases Act 1994*, section 55; and
  - (b) on the commencement—
    - (i) the retail tenancy dispute is also an eligible lease dispute; and
    - (ii) the dispute has not been resolved.
- (2) The *Retail Shop Leases Act 1994*, part 8 continues to apply for the retail tenancy dispute.
- (3) However, this section—

- (a) is subject to any suspension of the dispute under section 48; and
  - (b) does not prevent a person from starting mediation under part 3, division 3.
- (4) In this section—
- resolved***, in relation to a retail tenancy dispute, means—
- (a) a mediation agreement has been signed by or for the parties to the dispute under the *Retail Shop Leases Act 1994*, section 61; or
  - (b) an order has been made about the dispute by QCAT under the *Retail Shop Leases Act 1994*, section 83, as in force before the commencement; or
  - (c) the dispute notice for the dispute has been withdrawn under the *Retail Shop Leases Act 1994*, section 91, as in force before the commencement.

## Schedule 1 Dictionary

### section 4

*affected lease* see section 5.

*affected lease dispute* means any dispute concerning the liabilities or obligations of the parties to an affected lease arising during the response period or extension period, and includes a dispute about negotiating, or a failure to negotiate, rent under part 2, division 3.

*business* means an undertaking, whether or not for profit, including—

- (a) the manufacture, sale or supply of goods or services; and
- (b) a trade or profession.

*dispute notice* see section 26(1).

*eligible lease dispute* see section 21.

*extension amendment* means the amendment of this regulation by the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020*.

*extension period* means the period—

- (a) starting at the beginning of the day on 1 October 2020; and
- (b) ending at the end of the day on 31 December 2020.

*lease* see section 23(8) of the Act.

*leased premises* means premises occupied under a lease.

*lessee* means the person who has the right to occupy premises under a lease.

*lessor* means the person who grants the right to occupy premises under a lease.

**mediator** means a mediator under the *Retail Shop Leases Act 1994*, schedule.

**National code** means the document called ‘National Cabinet mandatory code of conduct—SME commercial leasing principles during COVID-19’ agreed to by the National Cabinet on 3 April 2020.

**premises** includes land and coastal waters of the State.

*Example—*

a marina berth

**prescribed action** see section 9.

**prescribed lease** means a lease prescribed as a relevant lease under section 6.

**response period** means the period—

- (a) starting at the beginning of the day on 29 March 2020; and
- (b) ending at the end of the day on 30 September 2020.

**retail shop lease** means a retail shop lease under the *Retail Shop Leases Act 1994*.

**retail shop lease arbitration** means arbitration under the *Retail Shop Leases Act 1994*, schedule.

**settlement agreement** see section 32.

**small business** means—

- (a) a business carried on by a sole trader; or
- (b) a business employing fewer than 20 full-time, or full-time equivalent, employees.

**small business lease** means a lease under which the leased premises are to be wholly or predominantly used for carrying on a small business.

**small business tenancy dispute** means a dispute about a small business lease, or about the use or occupation of the leased premises.