

Retail Shop Leases Regulation 2016

Explanatory notes for SL 2016 No. 223

made under the

Retail Shop Leases Act 1994

General Outline

Short title

Retail Shop Leases Regulation 2016

Authorising law

Sections 22, 22A, 22B, 22C, 22D, 55, 121 and definition of *retail business* at Schedule 1 of the *Retail Shop Leases Act 1994*.

Policy objectives and the reasons for them

The principal objective of the *Retail Shop Leases Regulation 2016* (RSLR 2016) is to remake the *Retail Shop Leases Regulation 2006* (RSLR 2006) in substantially the same form, subject to certain technical amendments to implement the consultation outcomes of the latest statutory review process (review) which culminated in the *Retail Shop Leases Amendment Act 2016* (Amendment Act).

The *Retail Shop Leases Act 1994* (Act) provides a framework for addressing the imbalance in negotiating power and access to information between major shopping centre landlords and small retail tenants, including through a reciprocal pre-lease disclosure regime and requiring prospective tenants to obtain a legal advice report and a financial advice report before entering into a retail shop lease or an assignment of a retail shop lease.

The RSLR 2006 supports the operation of the Act by prescribing the:

- types of business that constitute a *retail business* for the purposes of the Act;
- content for the four categories of disclosure statement required under sections 22, 22A, 22B and 22C of the Act (Part 5 disclosure statements);
- content for the legal and financial advice reports required under section 22D of the Act; and
- fee for lodging a dispute notice under section 55 of the Act.

The review consultation included a key industry and professional stakeholder reference group process and the reference group report was tabled in the Parliament on 24 November 2014 (reference group report).

The RSLR 2016 will remake the RSLR 2006 in substantially the same form, subject to technical amendments to:

- implement consensus recommendations of the reference group report for the assignor disclosure statement and the legal advice report;
- make provision in the legal advice report (consequential to the Amendment Act) for advice on waiver of the lessor disclosure period; and
- otherwise update, clarify and streamline the existing content requirements for the Part 5 disclosure statements.

Achievement of policy objectives

The policy objectives of the RSLR 2016 are achieved by remaking the RSLR 2006 in substantially the same form, subject to technical amendments to implement review consultation outcomes. The objectives can only be achieved by remaking the regulation.

Consistency with policy objectives of authorising law

The Act regulates retail shop leases in Queensland with the objective of promoting efficiency and equity in the conduct of retail businesses in Queensland. The RSLR 2016 is consistent with the objectives of the Act as it prescribes the types of business that benefit from statutory protection under the Act and the content for the disclosure statements and legal and financial advice reports required under the Act.

Inconsistency with policy objectives of other legislation

The RSLR 2016 is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The RSLR 2016 will ensure that regulations remain in place which are essential to support the effective operation of the Act.

There are no anticipated costs with the implementation of the RSLR 2016.

Consistency with fundamental legislative principles

The RSLR 2016 does not breach fundamental legislative principles.

Consultation

The Queensland Productivity Commission was consulted and has assessed that a Regulatory Impact Statement is not required.

The Queensland Law Society, the National Retail Association, the Shopping Centre Council of Australia, the Australian Retailers Association, Lease 1 and the Property Council of Australia (key reference group stakeholders) were consulted during the preparation of the RSLR 2016. The key reference group stakeholders support the making of the RSLR 2016.