



Queensland

Retail Shop Leases Amendment Bill 2015



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Contents

		Page
1	Short title	8
2	Commencement	8
3	Act amended	8
4	Amendment of pt 3, div 2, hdg (Extended definitions)	8
5	Insertion of new ss 5A–5C	8
	5A Meaning of retail shop lease	8
	5B Meaning of retail shop	10
	5C Meaning of retail business	11
6	Amendment of s 7 (Meaning of outgoing)	11
7	Amendment of s 8 (Meaning of retail shopping centre)	11
8	Insertion of new pt 4, div 1, hdg	12
9	Replacement of s 11 (Application of Act—when lease entered into)	12
	11 Application of Act—when lease entered into	12
	11A Application of Act—when assignment entered into	12
10	Replacement of ss 13 to 17	13
	13 Application of Act to leases—general.	13
	14 Application of Act—if premises become or cease to be a retail shop after commencement of lease	13
	Division 2 Relationship of Act to retail shop leases	
11	Renumbering of s 18 (Act's provisions implied in leases)	14
12	Amendment of s 19 (Contracting out of Act prohibited)	15
13	Renumbering of s 20 (Act prevails over inconsistent leases).	15
14	Insertion of new pt 4, div 3	15
	Division 3 Particular retail shop leases	
	18 Definition for div 3.	15
	19 Application of Act and former Act to former Act leases	16
	20 Application of Act, s 27—timing and bases of rent reviews	17

Contents

	20A	Application of Act to short term retail shop leases . . .	18
	20B	Application of Act to particular government leases . .	19
	20C	Application of Act to leases of service stations	19
15		Replacement of ss 21 to 22A	19
	Division 1	Preliminary	
	21	Application of pt 5.	20
	Division 2	Disclosure for entering into or renewing lease	
	21A	Application of div 2	20
	21B	Lessor's disclosure obligation to prospective lessee .	20
	21C	Sublessor's disclosure obligation to sublessee	21
	21D	Franchisor's disclosure obligation to franchisee	22
	21E	Lessor's disclosure obligation to lessee for renewal . .	23
	21F	Lessor's failure to comply with disclosure obligation .	24
	22	Lessor to give lessee the lease document or a certified copy of lease.	26
	22A	Prospective lessee's disclosure obligation to lessor . .	26
	Division 3	Disclosure for entering into assignment of lease	
	22AA	Application of div 3	27
16		Amendment of s 22B (Assignor's and prospective assignee's disclosure obligations to each other)	27
17		Replacement of s 22C (Lessor's and prospective assignee's disclosure obligations to each other)	27
	22C	Lessor's and prospective assignee's disclosure obligations to each other	28
18		Insertion of new pt 5, div 4, hdg	28
19		Amendment of s 22D (Financial and legal advice reports).	29
20		Omission of s 23 (Lessor to give lessee certified copy of lease) .	29
21		Amendment of s 24 (Lessee's obligations to make particular payments) 29	
22		Amendment of s 25 (Requirements if rent a percentage of turnover)	29
23		Amendment of s 26 (Lessor not to disclose turnover information)	29
24		Amendment of s 27 (Timing and bases of rent reviews)	30
25		Amendment of s 27A (Lessee may require early determination of current market rent)	30
26		Amendment of s 28 (Rent review on basis of current market rent)	31
27		Replacement of s 28A (Parties' submissions to specialist retail valuer)	31

	28A	Parties' submissions to specialist retail valuer	31
28		Amendment of s 29 (Matters to be considered by specialist retail valuers).	32
29		Amendment of s 32 (Valuer to give determination to lessor and lessee) 33	
30		Amendment of s 36 (Certain rent review provisions of leases void)	33
31		Amendment of s 36A (Ratchet rent provision void)	33
32		Replacement of s 37 (Requirements when lessee to pay lessor's outgoings).	34
	36B	Definitions for div 5.	34
	37	Lessee's liability to pay amount for outgoings	34
33		Amendment of s 38 (Lessee's liability to pay proportion of lessor's apportionable outgoings)	35
	38A	Annual estimate of apportionable outgoings	36
	38B	Audited annual statement of outgoings	37
	38C	Lessor does not give outgoings estimate or audited annual statement	38
34		Amendment of s 40 (Sinking fund for major maintenance and repairs)	39
35		Insertion of new s 40A	39
	40A	Marketing plan for promotion and advertising	39
36		Amendment of s 41 (Promotion and advertising).	39
37		Insertion of new s 41A	40
	41A	Definition for div 7.	40
38		Amendment of s 42 (Compensation provisions implied in particular leases)	40
39		Amendment of s 43 (When compensation is payable by lessor) .	41
40		Insertion of new ss 43AA to 43AD	41
	43AA	When compensation is payable by lessor—false or misleading statements etc.	41
	43AB	No liability for compensation—emergency responses and statutory compliance	42
	43AC	No liability for compensation—trading hours	42
	43AD	Lessor's liability for relocation or demolition	42
41		Amendment of s 44 (Amount of compensation)	43
42		Insertion of new s 44A	43
	44A	Limitation of compensation amount	43
43		Amendment of s 45 (Lessee's right to deal with lease and business assets)	44

Contents

44	Amendment of s 46 (Lessor’s notice about when option to renew or extend must be exercised)	44
45	Insertion of new s 46AB	44
	46AB Application of div 8A	45
46	Replacement of s 46C (Provisions implied in retail shop lease) . .	45
	46C Requirements for relocation of lessee’s business . . .	45
47	Amendment of s 46D (How lessor takes relocation action)	45
48	Amendment of s 46J (Termination by lessee)	46
49	Amendment of s 48 (Lessee’s liability for costs associated with preparation etc. of lease)	46
50	Replacement of s 49 (Lessee’s right to join or form commercial associations)	47
	49 Lessee’s right to join or form commercial associations	47
51	Replacement of s 50A (Release of assignor from lease)	47
	50A Release of assignor and any guarantor from lease . .	48
	50B Refurbishment and refitting	48
52	Amendment of s 51 (Definitions)	48
53	Replacement of s 53 (Trading hours)	49
	53 Trading hours	49
54	Insertion of new s 53A	49
	53A Outgoings for trading outside core trading hours	49
55	Amendment of s 83 (QCAT orders)	50
56	Amendment of s 97 (Mediators’ jurisdiction)	50
57	Amendment of s 103 (QCAT’s jurisdiction)	51
58	Omission of pt 12, divs 1, 2 and 4	51
59	Renumbering of pt 12, divs 3 and 5	51
60	Insertion of new pt 12, div 3	51
	Division 3 Provisions for Retail Shop Leases Amendment Act 2015	
	136 Definitions for div 3	52
	137 Proposed retail shop leases before commencement—when lease entered into.	52
	138 Proposed assignment of retail shop leases—when assignment entered into.	52
	139 Proposed retail shop leases before commencement—lessor’s disclosure obligation	53
	140 Proposed retail shop leases before commencement—prospective lessee’s disclosure obligation	53

141	Proposed assignment of retail shop leases before commencement—assignor’s disclosure obligation to prospective assignee	54
142	Proposed assignment of retail shop leases before commencement—prospective assignee’s disclosure obligation to lessor	54
143	Timing and bases of rent reviews of proposed retail shop leases—major lessees	55
144	Early determination of current market rent of proposed retail shop leases—major lessees	55
145	Current market rent determinations of specialist retail valuers agreed to or nominated before commencement	55
146	Certain rent review provisions and ratchet rent provisions—major lessee	56
147	Annual estimate of apportionable outgoings	56
148	Marketing plans for promotion and advertising.	56
149	Termination by lessee.	56
150	Lessee’s liability for costs associated with preparation of lease before commencement	57
151	Release of assignor for particular assignments of leases	57
152	Particular leases in a retail shopping centre.	57
153	Transitional regulation-making power	58
61	Amendment of schedule (Dictionary)	58

2015

A Bill

for

An Act to amend the *Retail Shop Leases Act 1994* for particular purposes

	The Parliament of Queensland enacts—	1
Clause 1	Short title	2
	This Act may be cited as the <i>Retail Shop Leases Amendment Act 2015</i> .	3 4
Clause 2	Commencement	5
	This Act commences on a day to be fixed by proclamation.	6
Clause 3	Act amended	7
	This Act amends the <i>Retail Shop Leases Act 1994</i> .	8
Clause 4	Amendment of pt 3, div 2, hdg (Extended definitions)	9
	Part 3, division 2, heading—	10
	<i>omit, insert—</i>	11
	Division 2 Key concepts	12
Clause 5	Insertion of new ss 5A–5C	13
	Part 3, division 2—	14
	<i>insert—</i>	15
	5A Meaning of <i>retail shop lease</i>	16
	(1) A <i>retail shop lease</i> is a lease of a retail shop.	17
	(2) However, a <i>retail shop lease</i> does not include a lease of any of the following—	18 19
	(a) a retail shop with a floor area of more than 1000m ² ;	20 21
	(b) a retail shop within the South Bank corporation area if the lease is entered into	22 23

-
- | | |
|---|----|
| or granted by the South Bank Corporation | 1 |
| and is either— | 2 |
| (i) a perpetual lease; or | 3 |
| (ii) another lease for a term, including | 4 |
| renewal options, of at least 100 years; | 5 |
| (c) premises used wholly or predominantly for | 6 |
| the carrying on of a business by a lessee for | 7 |
| a lessor as the lessor’s employee or agent; | 8 |
| (d) premises in a theme or amusement park; | 9 |
| (e) premises at a flea market, including an arts | 10 |
| and crafts market; | 11 |
| (f) a temporary retail stall at— | 12 |
| (i) an agricultural or trade show; or | 13 |
| (ii) a carnival, festival or cultural event; | 14 |
| (g) premises that, if the premises were not | 15 |
| leased, would be premises within a common | 16 |
| area of a retail shopping centre, but only if | 17 |
| the premises are used for 1 or more of the | 18 |
| following— | 19 |
| (i) an information, entertainment, | 20 |
| community or leisure facility; | 21 |
| (ii) telecommunication equipment; | 22 |
| (iii) an automatic teller machine; | 23 |
| (iv) a vending machine; | 24 |
| (v) an advertisement display; | 25 |
| (vi) storage; | 26 |
| (vii) parking. | 27 |
| (3) Also, a <i>retail shop lease</i> does not include a lease | 28 |
| of premises located in a retail shopping centre | 29 |
| if— | 30 |

[s 5]

-
- (a) the premises are not used wholly or predominantly for carrying on a retail business; and
- (b) at the time the lease is entered into, either—
- (i) if the premises are located on a level of a multi-level building—the retail area of the level is 25% or less of the total lettable area of the level; or
- (ii) if the premises are located in a single level building—the retail area of the building is 25% or less of the total lettable area of the building.
- Examples for paragraph (b)—*
- 1 A lease of premises for an accounting practice on level 4 of a retail shopping centre is not a retail shop lease if, at the time the lease is entered into, 75% of the total lettable area of level 4 is used wholly for professional or commercial offices.
- 2 A lease of premises for a medical centre in a stand-alone single level building within the parking area of a retail shopping centre is not a retail shop lease if, at the time the lease is entered into, 80% of the total lettable area of the building is used wholly for providing medical services.
- (4) The ***retail area***, for a level or building in a retail shopping centre, is the area of the level or building comprising premises used wholly or predominantly for carrying on retail businesses.
- (5) The ***total lettable area***, for a level or building in a retail shopping centre, is the total area of all the premises of the level or building that are—
- (a) leased or occupied; or
- (b) available for lease or occupation.

5B Meaning of ***retail shop***

Retail shop means premises that are—

-
- (a) situated in a retail shopping centre; or 1
 (b) used wholly or predominantly for the 2
 carrying on of a retail business. 3

5C Meaning of *retail business* 4

Retail business means a business prescribed by 5
 regulation as a retail business. 6

Clause 6 Amendment of s 7 (Meaning of *outgoings*) 7

- (1) Section 7(1)(a), from ‘of—’— 8
 omit, insert— 9
 of the centre or building and areas (*associated areas*) 10
 used in association with the centre or building; and 11
- (2) Section 7(3)— 12
 insert— 13
 (da) payment of an excess in relation to a claim 14
 on the lessor’s insurance policy for the 15
 centre or building or associated areas; and 16
- (3) Section 7(3)(g)— 17
 omit. 18
- (4) Section 7(3)(da) to (f)— 19
 renumber as section 7(3)(e) to (g). 20
- (5) Section 7(3), example 1, from ‘area’ to ‘building,’— 21
 omit, insert— 22
 associated areas, 23

Clause 7 Amendment of s 8 (Meaning of *retail shopping centre*) 24

- (1) Section 8(1)(b)(iii), after ‘scheme’— 25
 insert— 26

[s 8]

	under the <i>Body Corporate and Community Management Act 1997</i>	1 2
(2)	Section 8(2)— <i>omit.</i>	3 4
(3)	Section 8, <i>relocate</i> and <i>renumber</i> as section 5D.	5
Clause 8	Insertion of new pt 4, div 1, hdg	6
	Part 4, before section 10— <i>insert—</i>	7 8
	Division 1 General application of Act and former Act	9 10
Clause 9	Replacement of s 11 (Application of Act—when lease entered into)	11 12
	Section 11— <i>omit, insert—</i>	13 14
	11 Application of Act—when lease entered into	15
	A retail shop lease is entered into on the earliest of the following dates—	16 17
	(a) the first date by which the lease is signed by all of the parties to the lease;	18 19
	(b) the date the lessee enters into possession of the retail shop under the lease;	20 21
	(c) the date the lessee first pays rent under the lease, other than as a deposit to secure the premises for the lease.	22 23 24
	11A Application of Act—when assignment entered into	25 26
	An assignment of a retail shop lease is entered into on the earlier of the following dates—	27 28

	(a) the first date by which a deed of assignment is signed by the lessor, assignor and assignee;	1 2 3
	(b) the date the assignee, with the consent of the lessor, enters into possession of the retail shop under the assigned lease.	4 5 6
Clause 10	Replacement of ss 13 to 17	7
	Sections 13 to 17—	8
	<i>omit, insert—</i>	9
	13 Application of Act to leases—general	10
	This Act applies in relation to all retail shop leases whether entered into, or renewed, before or after 28 October 1994, subject to the following provisions—	11 12 13
	(a) section 14;	14
	(b) section 19(1);	15
	(c) section 20;	16
	(d) section 20A;	17
	(e) section 20B;	18
	(f) section 20C;	19
	(g) section 21;	20
	(h) section 42;	21
	(i) section 45(3);	22
	(j) section 46AB;	23
	(k) part 7.	24
	14 Application of Act—if premises become or cease to be a retail shop after commencement of lease	25 26 27
	(1) In relation to a lease of premises that become a retail shop only after the commencement of the lease, this Act does not apply to—	28 29 30

[s 11]

	(a) the lease; or	1
	(b) an assignment of the lease; or	2
	(c) a renewal of the lease under an option under the lease.	3 4
	<i>Example for subsection (1)(a)—</i>	5
	On 1 April 2016 a person enters into a 3-year lease for carrying on a business that is not a retail business from premises that are not in a retail shopping centre. Accordingly, the premises are not a retail shop as defined in the schedule. However, on 1 September 2016, the business is prescribed by regulation as a retail business. Under this subsection, this Act does not apply to the lease even though the premises become a retail shop on this second date.	6 7 8 9 10 11 12 13 14
	(2) In relation to a lease of premises that cease to be a retail shop after the commencement of the lease, this Act continues to apply to—	15 16 17
	(a) the lease; or	18
	(b) an assignment of the lease; or	19
	(c) a renewal of the lease under an option under the lease.	20 21
	<i>Example for subsection (2)(a)—</i>	22
	On 1 April 2016 a person enters into a 3-year lease for the conduct of a business that is not a retail business from premises in a retail shopping centre. On 1 September 2016, the cluster of premises in which the leased premises are situated ceases to be a retail shopping centre and the business is still not a retail business. Under this subsection, this Act continues to apply to the lease even though the premises are no longer a retail shop.	23 24 25 26 27 28 29 30 31
	Division 2	
	Relationship of Act to retail shop leases	32 33
Clause 11	Renumbering of s 18 (Act's provisions implied in leases)	34
	Section 18—	35

renumber as section 15. 1

Clause 12 Amendment of s 19 (Contracting out of Act prohibited) 2

(1) Section 19, ‘shop lease’— 3

omit, insert— 4

shop lease, or another agreement entered into for a 5

retail shop lease, 6

(2) Section 19— 7

renumber as section 16. 8

Clause 13 Renumbering of s 20 (Act prevails over inconsistent leases) 9

Section 20— 10

renumber as section 17. 11

Clause 14 Insertion of new pt 4, div 3 13

Part 4, after section 17, as renumbered— 14

insert— 15

Division 3 Particular retail shop leases 16

18 Definition for div 3 18

In this division— 19

former Act lease means— 20

(a) a retail shop lease entered into or renewed 21
before 28 October 1994; or 22

(b) a retail shop lease entered into, or renewed, 23
under an option under an agreement entered 24
into before 28 October 1994; or 25

[s 14]

- (c) a retail shop lease entered into under an agreement for lease entered into before 28 October 1994; or
- (d) an assignment of a retail shop lease mentioned in paragraph (a), (b) or (c).

19 Application of Act and former Act to former Act leases

- (1) The following provisions do not apply in relation to former Act leases—
 - (a) part 4, other than this section;
 - (b) part 5;
 - (c) part 6;
 - (d) section 120.
- (2) The following provisions of the former Act (to the extent that they applied immediately before 28 October 1994) continue to apply to a former Act lease as if this Act had not been enacted—
 - (a) part 1, other than section 5A;
 - (b) part 2;
 - (c) part 3, other than the following sections—
 - (i) section 10B;
 - (ii) section 10C;
 - (iii) section 15A;
 - (d) section 56;
 - (e) section 57;
 - (f) section 58;
 - (g) schedules 1 and 2.
- (3) For the purposes of applying a provision of the former Act in relation to a former Act lease, a reference in the provision to—

-
- (a) a specialist retail valuer is taken to be a reference to a specialist retail valuer under the *Valuers Registration Act 1992*; and
 - (b) the registrar is taken to be a reference to the chief executive; and
 - (c) a mediator is taken to be a reference to a mediator under this Act; and
 - (d) a retail shop leases tribunal or tribunal is taken to be a reference to QCAT.

20 Application of Act, s 27—timing and bases of rent reviews

- (1) Section 27, as in force immediately before 30 April 1999, continues to apply, as if the 1999 amendment Act had not been enacted, in relation to—
 - (a) a retail shop lease entered into on or after 28 October 1994 but before 30 April 1999; and
 - (b) any extension or renewal of a lease mentioned in paragraph (a).

Note—

Part 6 does not apply to a former Act lease—see section 19(1)(c).
- (2) Section 27, as in force immediately before 1 July 2000, continues to apply, as if the 2000 amendment Act had not been enacted, in relation to—
 - (a) a retail shop lease entered into on or after 30 April 1999 but before 1 July 2000; and
 - (b) any extension or renewal of a lease mentioned in paragraph (a).

Note—

In relation to a retail shop lease entered into before 3 April 2006 and any extension or renewal of the lease, section 27 (as in force on 1 July 2000) continues to

[s 14]

	apply as if the <i>Retail Shop Leases Amendment Act 2006</i>	1
	had not been enacted—see section 129.	2
(3)	In this section—	3
	<i>1999 amendment Act</i> means the <i>Retail Shop Leases Amendment Act 1999</i> .	4
		5
	<i>2000 amendment Act</i> means the <i>Retail Shop Leases Amendment Act 2000</i> .	6
		7
20A Application of Act to short term retail shop leases		8
		9
(1)	Only the following provisions apply in relation to a short term retail shop lease entered into on or after 3 April 2006—	10
		11
		12
	(a) part 1;	13
	(b) part 2;	14
	(c) part 3;	15
	(d) part 7;	16
	(e) part 12 to the extent it is relevant to parts 1, 2, 3 or 7.	17
		18
(2)	In this section—	19
	<i>right to extend</i> , a lease, does not include a holding over by the lessee with the lessor's consent.	20
		21
		22
	<i>short term retail shop lease</i> means a retail shop lease for which the sum of the following periods is not more than 6 months—	23
		24
		25
	(a) the lease's original term;	26
	(b) any periods for which the lessee has a right to extend the lease.	27
		28

20B Application of Act to particular government leases	1
	2
(1) Despite section 10, sections 22A, 22D and 46 do not apply in relation to a government lease.	3
	4
(2) In this section—	5
<i>government lease</i> means a retail shop lease for which the State, Commonwealth, another State or a local government is the lessee or prospective lessee.	6
	7
	8
	9
20C Application of Act to leases of service stations	10
(1) This Act does not apply to a retail shop lease for the carrying on of the business of a service station if the <i>Competition and Consumer (Industry Codes—Oilcode) Regulation 2006</i> (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.	11
	12
	13
	14
	15
	16
	17
(2) This Act (other than part 6) applies to a retail shop lease for the carrying on of the business of a service station, regardless of when the lease was entered into, if the <i>Competition and Consumer (Industry Codes—Oilcode) Regulation 2006</i> (Cwlth) does not apply to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.	18
	19
	20
	21
	22
	23
	24
	25
Clause 15 Replacement of ss 21 to 22A	26
Sections 21 to 22A—	27
<i>omit, insert—</i>	28

[s 15]

Division 1	Preliminary	1
21	Application of pt 5	2
	This part does not apply to a retail shop lease for a periodic tenancy or tenancy at will.	3 4
Division 2	Disclosure for entering into or renewing lease	5 6
21A	Application of div 2	7
	This division does not apply to an assignment of a retail shop lease.	8 9
21B	Lessor's disclosure obligation to prospective lessee	10 11
(1)	At least 7 days before a prospective lessee of a retail shop enters into a retail shop lease (the <i>prescribed disclosure date</i>), the lessor must give the prospective lessee—	12 13 14 15
	(a) a draft of the lease; and	16
	(b) a disclosure statement.	17
(2)	However, for the purposes of complying with subsection (1) in relation to a disclosure statement, it is sufficient if, after the prescribed disclosure date but before the prospective lessee enters into the lease—	18 19 20 21 22
	(a) the lessor gives the prospective lessee the disclosure statement; and	23 24
	(b) the prospective lessee gives the lessor—	25
	(i) a waiver notice; and	26
	(ii) unless the prospective lessee is a major lessee—a legal advice report for the lease under section 22D which states	27 28 29

-
- the lawyer has given the prospective 1
lessee advice about the legal meaning 2
and effect of the waiver. 3
- (3) Also, this section does not apply to a renewal of a 4
retail shop lease under an option. 5
- (4) In this section— 6
waiver notice, for a prospective retail shop lease, 7
means a written notice signed by the prospective 8
lessee stating that the prospective lessee agrees to 9
waive the lessor’s obligation to give a disclosure 10
statement for the lease by the prescribed 11
disclosure date. 12

**21C Sublessor’s disclosure obligation to 13
sublessee 14**

- (1) For the purposes of complying with section 21B 15
in relation to a sublease of a retail shop lease, a 16
prospective sublessor may request a disclosure 17
statement (a *head lessor disclosure statement*) 18
from the lessor. 19
- (2) On request by the prospective sublessor under 20
subsection (1)— 21
- (a) the lessor must, within 28 days of receiving 22
the request, give the prospective sublessor a 23
head lessor disclosure statement that is 24
updated to the date it is given; and 25
- (b) the prospective sublessor must pay the 26
lessor’s reasonable expenses incurred for 27
preparation of the head lessor disclosure 28
statement. 29
- (3) In applying section 21B in relation to the 30
sublease— 31
- (a) a reference to a prospective lessee is taken to 32
be a reference to a prospective sublessee; 33
and 34

[s 15]

- (b) a reference to a lessor is taken to be a reference to a prospective sublessor; and
- (c) a reference to giving a disclosure statement is taken to be a reference to giving both of the following documents—
 - (i) a head lessor disclosure statement that is updated to a date no more than 2 months before the date the statement is given to the prospective sublessee;
 - (ii) a written statement detailing any matters of which the prospective sublessor is aware, or could reasonably be aware, that affect the information in the head lessor disclosure statement.

21D Franchisor’s disclosure obligation to franchisee

- (1) This section applies if—
 - (a) a person (the *franchisor*) is the lessee of a leased shop; and
 - (b) the franchisor proposes to grant to another person (the *franchisee*) a licence or other similar contractual right to occupy and to use all or part of the leased shop wholly or predominantly for the carrying on of a retail business (both a *franchise licence*); and
 - (c) the retail business mentioned in paragraph (b) is to be carried on under a name or mark identifying, commonly associated with or controlled by the franchisor or an entity connected with the franchisor.
- (2) For the purposes of complying with section 21B in relation to the franchise licence, the franchisor may request a disclosure statement (a *head lessor disclosure statement*) from the lessor.

-
- | | | |
|-----|---|----|
| (3) | On request by the franchisor under subsection | 1 |
| | (2)— | 2 |
| | (a) the lessor must, within 28 days of receiving | 3 |
| | the request, give the franchisor a head lessor | 4 |
| | disclosure statement that is updated to the | 5 |
| | date it is given; and | 6 |
| | (b) the franchisor must pay the lessor's | 7 |
| | reasonable expenses incurred for | 8 |
| | preparation of the head lessor disclosure | 9 |
| | statement. | 10 |
| (4) | In applying section 21B in relation to the | 11 |
| | franchise licence— | 12 |
| | (b) a reference to a prospective lessee is taken to | 13 |
| | be a reference to a franchisee; and | 14 |
| | (a) a reference to a lessor is taken to be a | 15 |
| | reference to a franchisor; and | 16 |
| | (c) a reference to giving a disclosure statement | 17 |
| | is taken to be a reference to giving both of | 18 |
| | the following documents— | 19 |
| | (i) a head lessor disclosure statement that | 20 |
| | is updated to a date no more than 2 | 21 |
| | months before the date the statement is | 22 |
| | given to the franchisee; | 23 |
| | (ii) a written statement detailing any | 24 |
| | matters of which the franchisor is | 25 |
| | aware, or could reasonably be aware, | 26 |
| | that affect the information in the head | 27 |
| | lessor disclosure statement. | 28 |

21E Lessor's disclosure obligation to lessee for renewal 29
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- | | | |
|-----|--|----|
| (1) | This section applies in relation to a renewal of a | 31 |
| | retail shop lease under an option. | 32 |
| (2) | The lessor must give the lessee a current | 33 |
| | disclosure statement within 7 days after the day | 34 |

[s 15]

on which the lessor receives the lessee's notice exercising the option to renew (the *renewal notice*). 1
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(3) However, subsection (2) does not apply if, at the time the renewal notice is given to the lessor, the lessee gives the lessor a waiver notice. 4
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(4) Within 14 days of receiving the current disclosure statement, the lessee may, whether or not the renewed lease period has commenced, give the lessor a written notice stating that the renewal notice is withdrawn. 7
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(5) In this section— 12

current disclosure statement, in relation to a lessor and lessee, means— 13
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(a) in any case—a disclosure statement that is updated to the date it is given; or 15
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(b) if a disclosure statement was given by the lessor to the lessee during the term of the lease—a written statement that updates the details of the disclosure statement to the date it is given. 17
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waiver notice, for a renewal of a retail shop lease, means a written notice signed by the lessee stating that the lessee agrees to waive the lessor's obligation to give a disclosure statement for the lease. 22
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21F Lessor's failure to comply with disclosure obligation 27
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(1) A lessee may terminate a retail shop lease by giving written notice to a lessor within 6 months after the lessee enters into the lease if— 29
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(a) the lessor does not comply with section 21B or 21E; or 32
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-
- (b) a disclosure statement when given to the lessee under section 21B or 21E is a defective statement.
- (2) For the purposes of this section, a disclosure statement is a *defective statement* if it—
- (a) is incomplete in a material particular; or
- (b) contains information that is false or misleading in a material particular.
- (3) However, a disclosure statement is not a defective statement merely because—
- (a) it omits information that is irrelevant to the lease; or
- (b) its layout does not comply with that of the approved form.
- (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) Within 14 days after being given the notice under subsection (1), the lessor may give the lessee a written notice of objection to the termination (an *objection notice*) on the ground that—
- (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) Within 14 days after being given the objection notice, if the lessee does not accept the objection notice, the lessee must give the lessor a written notice stating the objection notice is not accepted.

[s 15]

(7)	The lessee is taken to have accepted the objection notice if the lessee does not give a notice under subsection (6).	1 2 3
(8)	If the lessee does not accept the objection notice, a retail tenancy dispute exists between the lessee and the lessor.	4 5 6
(9)	If the lessee accepts the objection notice, or the objection notice is upheld under part 8 through mediation or an order of QCAT, the lease does not terminate under subsection (1).	7 8 9 10
(10)	Termination of the lease under subsection (1) does not affect any right, privilege or liability acquired, accrued or incurred under the lease for any period before the termination.	11 12 13 14
(11)	In this section—	15
	<i>disclosure statement</i> includes—	16
(a)	a statement mentioned in section 21C(3)(c)(ii) or 21D(4)(c)(ii); and	17 18
(b)	a written statement given under section 21E that updates the details of an earlier disclosure statement.	19 20 21
22	Lessor to give lessee the lease document or a certified copy of lease	22 23
	Within 30 days after a retail shop lease is signed by the parties, the lessor must give the lessee the signed lease document or a certified copy of the signed lease.	24 25 26
22A	Prospective lessee’s disclosure obligation to lessor	27 28
	At least 7 days before a prospective lessee, other than a prospective franchisee, enters into a retail shop lease, the prospective lessee must give the lessor a disclosure statement.	29 30 31 32

	Division 3	Disclosure for entering into assignment of lease	1 2
	22AA Application of div 3		3
		This division applies only to an assignment of a retail shop lease.	4 5
Clause 16	Amendment of s 22B (Assignor's and prospective assignee's disclosure obligations to each other)		6 7
	(1) Section 22B(1)—		8
	<i>omit, insert—</i>		9
	(1) An assignor of a retail shop lease for a leased shop must give a prospective assignee a disclosure statement at least 7 days before the earlier of the following—		10 11 12 13
	(a) if the assignment is related to an agreement for sale to the assignee of the assignor's business carried on in the leased shop—the day on which the assignee enters into the agreement;		14 15 16 17 18
	(b) the day the lessor is asked to consent to the assignment.		19 20
	(2) Section 22B—		21
	<i>insert—</i>		22
	(1A) The assignor must give the lessor a copy of the disclosure statement given to the assignee under subsection (1) on the day the lessor is asked to consent to the assignment.		23 24 25 26
Clause 17	Replacement of s 22C (Lessor's and prospective assignee's disclosure obligations to each other)		27 28
	Section 22C—		29
	<i>omit, insert—</i>		30

22C Lessor’s and prospective assignee’s disclosure obligations to each other

- 1
2
- (1) At least 7 days before an assignment of a retail shop lease is entered into (the *prescribed disclosure date*), the lessor must give the prospective assignee a disclosure statement and a copy of the lease. 3
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- (2) However, for the purposes of complying with subsection (1) in relation to a disclosure statement, it is sufficient if, after the prescribed disclosure date but before the prospective assignee enters into the assignment— 8
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- (a) the lessor gives the prospective assignee the disclosure statement; and 13
14
- (b) the prospective assignee gives the lessor— 15
- (i) a waiver notice; and 16
- (ii) unless the prospective assignee is a major lessee—a legal advice report for the lease under section 22D which states the lawyer has given the prospective assignee advice about the legal meaning and effect of the waiver. 17
18
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22
- (3) The prospective assignee must give a disclosure statement to the lessor before the assignment is entered into. 23
24
25
- (4) In this section— 26
- waiver notice*, for an assignment of a retail shop lease, means a written notice signed by the prospective assignee stating that the prospective assignee agrees to waive the lessor’s obligation to give a disclosure statement for the lease by the prescribed disclosure date. 27
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Clause 18 **Insertion of new pt 5, div 4, hdg** 33
After section 22C— 34

insert—

1

Division 4 General provisions

2

Clause 19 Amendment of s 22D (Financial and legal advice reports)

3

Section 22D(1), after ‘prospective lessee’—

4

insert—

5

, other than a prospective franchisee,

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Clause 20 Omission of s 23 (Lessor to give lessee certified copy of lease)

7

8

Section 23—

9

omit.

10

Clause 21 Amendment of s 24 (Lessee’s obligations to make particular payments)

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12

Section 24(2), example, ‘section 20’—

13

omit, insert—

14

section 17

15

Clause 22 Amendment of s 25 (Requirements if rent a percentage of turnover)

16

17

Section 25(3) and (4)—

18

omit.

19

Clause 23 Amendment of s 26 (Lessor not to disclose turnover information)

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21

Section 26(1), from ‘(whether’ to ‘25)’—

22

omit.

23

Clause 24	Amendment of s 27 (Timing and bases of rent reviews)	1
(1)	Section 27(1)—	2
	<i>omit, insert—</i>	3
	(1) If a retail shop lease provides for a review of the rent payable under the lease 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.	4 5 6 7 8 9
(2)	Section 27(8)(b)—	10
	<i>omit, insert—</i>	11
	(b) before the lessee enters into the lease, the lessee gives the lessor a written notice stating the lessee agrees that subsections (2) to (7) do not apply in relation to the lease.	12 13 14 15
(3)	Section 27(11), definition <i>invalid review</i> , paragraph (c), ‘36(d)’—	16 17
	<i>omit, insert—</i>	18
	36(1)(d)	19
Clause 25	Amendment of s 27A (Lessee may require early determination of current market rent)	20 21
(1)	Section 27A(1A)(b)—	22
	<i>omit, insert—</i>	23
	(b) before the lessee enters into the lease, the lessee gives the lessor a written notice stating that the lessee agrees that this subdivision does not apply in relation to the lease; and	24 25 26 27 28
(2)	Section 27A(3), ‘29’—	29
	<i>omit, insert—</i>	30
	28A to 35	31
(3)	Section 27A(6), from ‘the earlier’—	32

omit, insert—

the day that is 21 days after the lessee receives written
notice of the current market rent determined under this
section.

		1
		2
		3
		4
Clause 26	Amendment of s 28 (Rent review on basis of current market rent)	5
		6
	Section 28(2), ‘nominated’—	7
	<i>omit, insert—</i>	8
	appointed	9
Clause 27	Replacement of s 28A (Parties’ submissions to specialist retail valuer)	10
		11
	Section 28A—	12
	<i>omit, insert—</i>	13
	28A Parties’ submissions to specialist retail valuer	14
	(1) This section applies if the current market rent under a retail shop lease is to be determined by a specialist retail valuer under section 28.	15
		16
		17
	(2) The valuer must advise the lessor and lessee that the lessor and lessee may give the valuer a submission about the current market rent of the leased shop by a stated date decided by the valuer (the <i>submission date</i>).	18
		19
		20
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		22
	(3) The submission date must be not less than 14 days after the valuer is agreed to or appointed under section 28.	23
		24
		25
	(4) If the lessor or lessee does not give a submission to the valuer by the submission date, the lessor or lessee is taken to have not made a submission for the purposes of this section or section 29(1)(c)(ii).	26
		27
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		30

[s 28]

- (5) A lessor or lessee who gives a submission to the valuer must also give a copy of it to the other party by the submission date. 1
2
3
- (6) A lessor or lessee who receives a copy of a submission may give the valuer a written response to it. 4
5
6
- (7) The response must be given by a stated date decided by the valuer (the *response date*) that is reasonable in the circumstances. 7
8
9
- (8) If the lessor or lessee does not give a response to the valuer by the response date, the lessor or lessee is taken to have not made a response for the purposes of this section or section 29(1)(c)(ii). 10
11
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Clause 28 Amendment of s 29 (Matters to be considered by specialist retail valuers) 15
16

- (1) Section 29(a)(i), from ‘use for’— 17
omit, insert— 18
 same or a substantially similar use for which the shop 19
 may be used under the lease; and 20
- (2) Section 29(c)(ii), after ‘submissions’— 21
insert— 22
 and responses 23
- (3) Section 29— 24
insert— 25
 - (2) In this section— 26
effective rent basis, for the determination of rent 27
under a retail shop lease, means determining the 28
rent on the basis of taking into account all 29
associated advantages and disadvantages under 30
arrangements made between the lessor and lessee 31
that reflect the net consideration from the lessee 32

	to the lessor under the lease and associated arrangements.	1 2
Clause 29	Amendment of s 32 (Valuer to give determination to lessor and lessee)	3 4
	Section 32(b) and (c)—	5
	<i>omit, insert—</i>	6
	(b) the submission date under section 28A(2);	7
	(c) if a submission is made to the valuer under section 28A—the response date under section 28A(7);	8 9 10
Clause 30	Amendment of s 36 (Certain rent review provisions of leases void)	11 12
	Section 36—	13
	<i>insert—</i>	14
	(2) However, if, under a retail shop lease, a major lessee gives a notice under section 27(8), a provision of the lease that would otherwise be void to a particular extent because of subsection (1)(d) or (e) is not void to that extent because of those provisions.	15 16 17 18 19 20
Clause 31	Amendment of s 36A (Ratchet rent provision void)	21
	(1) Section 36A—	22
	<i>insert—</i>	23
	(2A) However, if, under a retail shop lease, a major lessee gives a notice under section 27(8), a ratchet rent provision that would otherwise be void is not void.	24 25 26 27
	(2) Section 36A(2A) and (3)—	28
	<i>renumber</i> as section 36A(3) and (4).	29

[s 32]

Clause 32	Replacement of s 37 (Requirements when lessee to pay lessor's outgoings)	1 2
	Section 37—	3
	<i>omit, insert—</i>	4
	36B Definitions for div 5	5
	In this division—	6
	<i>apportionable outgoings</i> , for a retail shop lease, includes maintenance amounts and promotion amounts to the extent the amounts are treated as part of the lessor's outgoings under the lease.	7 8 9 10
	<i>audited annual statement</i> see section 38B(1).	11
	<i>maintenance amounts</i> see section 40(1).	12
	<i>outgoings estimate</i> see section 38A(1).	13
	<i>promotion amounts</i> see section 41(1)(a).	14
	37 Lessee's liability to pay amount for outgoings	15
	(1) A lessee under a retail shop lease is not liable to pay an amount to the lessor for outgoings unless the lease specifies—	16 17 18
	(a) the outgoings payable by the lessee; and	19
	(b) how the outgoings will be determined and apportioned to the lessee; and	20 21
	(c) how the outgoings may be recovered by the lessor from the lessee.	22 23
	(2) In this section—	24
	<i>outgoings</i> , for a retail shop lease, includes promotion amounts and maintenance amounts to the extent the amounts are treated as part of the lessor's outgoings under the lease.	25 26 27 28

Clause 33	Amendment of s 38 (Lessee’s liability to pay proportion of lessor’s apportionable outgoings)	1 2
	(1) Section 38(1)—	3
	<i>omit.</i>	4
	(2) Section 38(2), after ‘building that are’—	5
	<i>insert—</i>	6
	owned by the lessor and	7
	(3) Section 38(2), as amended—	8
	<i>renumber</i> as section 38(1).	9
	(4) Section 38—	10
	<i>insert—</i>	11
	(2) In this section—	12
	<i>prescribed purpose</i> means 1 or more of the	13
	following purposes—	14
	(a) information, entertainment, community or	15
	leisure facilities;	16
	(b) telecommunication equipment;	17
	(c) automatic teller machines;	18
	(d) vending machines;	19
	(e) advertisement displays;	20
	(f) seating, tables and other furniture;	21
	(g) trade out areas;	22
	(h) storage;	23
	(i) parking.	24
	<i>total area</i> , of all premises in a retail shopping	25
	centre or leased building, does not include areas	26
	of premises that, if the areas were not leased or	27
	licensed, would be areas within a common area	28
	of the centre or building but only if the areas are	29
	used for a prescribed purpose.	30

- 38A Annual estimate of apportionable outgoings** 1
- (1) The lessor under a retail shop lease must give the 2
lessee an annual estimate in the approved form of 3
the lessor's apportionable outgoings and the 4
proportion of those outgoings for which the 5
lessee will be liable under the lease (the 6
outgoings estimate). 7
- (2) The lessor must give the outgoings estimate— 8
- (a) at least 1 month before the start of the period 9
to which the estimate relates; or 10
- (b) if the lessee enters into the lease during the 11
period to which the estimate relates or 12
within 1 month before the start of the 13
period—when the lessee enters into the 14
lease. 15
- (3) If the shop is in a retail shopping centre, the 16
outgoings estimate must also include a 17
breakdown of the estimated fees to be paid by the 18
lessee towards the administration costs of 19
running the centre and any other fees to be paid 20
to a centre management entity. 21
- (4) The outgoings shown in the outgoings estimate 22
must be itemised so that the amount shown for 23
each item is not more than 5% of the total 24
outgoings shown in the estimate. 25
- (5) However, the amount shown for an item may be 26
more than 5% of the total outgoings if the item 27
relates to— 28
- (a) a charge, levy, rate or tax payable under an 29
Act; or 30
- (b) an outgoing that can not be further itemised 31
to comply with subsection (4). 32
- (6) If a person becomes the owner of a retail 33
shopping centre, or building containing a retail 34
shop, the first outgoings estimate given by the 35

person may be made for a period of less than 1 1
year. 2

38B Audited annual statement of outgoings 3

- (1) The lessor under a retail shop lease must give the 4
lessee a statement in the approved form of the 5
lessor's apportionable outgoings (the *audited* 6
annual statement). 7
- (2) The audited annual statement must be given to 8
the lessee within 3 months after the end of the 9
period to which the outgoings relate. 10
- (3) The audited annual statement must— 11
- (a) be prepared by a registered auditor in 12
accordance with auditing standards 13
generally accepted in the Australian 14
accounting profession; and 15
 - (b) contain the auditor's opinion on whether the 16
statement presents fairly the lessor's 17
apportionable outgoings for the accounting 18
period to which it relates in accordance with 19
the lessor's financial records and this Act; 20
and 21
 - (c) compare the annual estimates of the lessor's 22
apportionable outgoings with the amount 23
actually spent by the lessor for the outgoings 24
during the period; and 25
 - (d) compare the total amount actually spent by 26
the lessor for apportionable outgoings 27
during the period with the total amounts 28
actually paid by lessees to the lessor during 29
the period. 30
- (4) The outgoings shown in the audited annual 31
statement must be itemised so that the amount 32
shown for each item is not more than 5% of the 33
total outgoings shown in the statement. 34

[s 33]

- (5) 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) an outgoing that can not be further itemised to comply with subsection (4).
- (6) If the retail shop is in a retail shopping centre, the audited annual statement must also include the total management fees paid by the lessee broken down into fees paid by the lessee towards the administration costs of running the centre and any other fees paid to a centre management entity.
- (7) The audited annual statement may relate to more than 1 lessee as long as each lessee to which it relates is able to find out from the statement information that is relevant to the lessee.
- (8) If a person becomes the owner of a retail shopping centre, or building containing a retail shop, the first audited annual statement given by the person may be made for a period of less than 1 year.

38C Lessor does not give outgoings estimate or audited annual statement

- (1) This section applies if a lessor does not give the lessee an outgoings estimate or an audited annual statement.
- (2) The lessee may withhold payments in relation to apportionable outgoings until the lessor gives the outgoings estimate or audited annual statement to the lessee.

Clause 34	Amendment of s 40 (Sinking fund for major maintenance and repairs)	1
	Section 40(3), (4) and (7), penalties—	2
	<i>omit.</i>	3
		4
Clause 35	Insertion of new s 40A	5
	After section 40—	6
	<i>insert—</i>	7
	40A Marketing plan for promotion and advertising	8
	(1) This section applies if a retail shop lease requires the lessee to pay amounts to the lessor for promotion and advertising.	9
		10
		11
	(2) At least 1 month before the start of each accounting period of the lessor, the lessor must make available to the lessee a marketing plan that gives details of the lessor's proposed spending on promotion and advertising during that accounting period.	12
		13
		14
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	<i>Example—</i>	18
	The lessor may publish the lessor's marketing plan on a website accessible to the lessee.	19
		20
Clause 36	Amendment of s 41 (Promotion and advertising)	21
	(1) Section 41(2), penalty—	22
	<i>omit.</i>	23
	(2) Section 41—	24
	<i>insert—</i>	25
	(4) The lessor must make available to the lessee a written statement of the lessor's expenditure for promotion amounts (the <i>audited annual statement</i>) within 3 months after the end of the period to which the statement relates.	26
		27
		28
		29
		30
	(5) The audited annual statement must—	31

[s 37]

	(a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and	1 2 3 4
	(b) contain the auditor’s opinion on whether the statement presents fairly the lessor’s expenditure during the accounting period for promotion amounts.	5 6 7 8
	(6) If all or part of a promotion amount paid for a period by the lessee is not spent during the period, the lessor must carry forward the unspent promotion amount to be applied towards spending on promotion and advertising of the centre.	9 10 11 12 13 14
Clause 37	Insertion of new s 41A	15
	Part 6, division 7—	16
	<i>insert</i> —	17
	41A Definition for div 7	18
	In this division—	19
	<i>lessee</i> includes an assignee of the lease.	20
Clause 38	Amendment of s 42 (Compensation provisions implied in particular leases)	21 22
	(1) Section 42(1), after ‘43,’—	23
	<i>insert</i> —	24
	43AA, 43AB, 43AC, 43AD,	25
	(2) Section 42(2)(a)—	26
	<i>omit, insert</i> —	27
	(a) a periodic tenancy, other than a periodic tenancy created by the lessee holding over under the lease or with the lessor’s consent; or	28 29 30 31

Clause 39	Amendment of s 43 (When compensation is payable by lessor)	1 2
	(1) Section 43, heading, ‘lessor’—	3
	<i>omit, insert—</i>	4
	lessor—business disturbance	5
	(2) Section 43(2) to (6)—	6
	<i>omit, insert—</i>	7
	(2) The lessee must give the lessor written notice of the loss or damage mentioned in subsection (1) as soon as practicable after it is suffered.	8 9 10
	(3) If the lessee fails to give the lessor the notice, the failure does not affect any right of the lessee to compensation but must be considered when deciding the amount of compensation payable under section 44.	11 12 13 14 15
Clause 40	Insertion of new ss 43AA to 43AD	16
	After section 43—	17
	<i>insert—</i>	18
	43AA When compensation is payable by lessor—false or misleading statements etc.	19 20
	The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee because—	21 22 23
	(a) the lessee entered into the lease, including a renewal or assignment of the lease, 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	24 25 26 27 28
	(b) the leased shop was not available to the lessee for trading on the date specified in the disclosure statement given under section 21B or 22C because of a default of the	29 30 31 32

[s 40]

lessor or anyone acting under the lessor's
authority. 1
2

**43AB No liability for compensation—emergency
responses and statutory compliance** 3
4

The lessor is not liable to pay compensation under
section 43(1) for loss or damage suffered because the
lessor, or a person acting under the lessor's authority,
takes action— 5
6
7
8

(a) as a reasonable response to an emergency;
or 9
10

(b) in compliance with any duty imposed under
an Act or resulting from a requirement
imposed by an entity acting under the
authority of an Act. 11
12
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43AC No liability for compensation—trading hours 15

The lessor is not liable to pay compensation under
section 43(1) or 43AA 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. 16
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43AD Lessor's liability for relocation or demolition 22

(1) This section applies if the lessor causes the lessee
to vacate the leased shop in the circumstances
mentioned in section 43(1)(f). 23
24
25

(2) The lessor is not liable to pay compensation
under section 43(1) to the extent the lessee is
otherwise entitled to payment of relocation costs
under section 46G or reasonable compensation
under section 46K. 26
27
28
29
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Clause 41	Amendment of s 44 (Amount of compensation)	1
	Section 44(2)—	2
	<i>omit.</i>	3
Clause 42	Insertion of new s 44A	4
	Part 6, division 7, after section 44—	5
	<i>insert—</i>	6
	44A Limitation of compensation amount	7
	(1) An agreement under a retail shop lease or under	8
	an assignment of a retail shop lease about	9
	compensation payable under this division is void	10
	to the extent it limits the amount of	11
	compensation.	12
	(2) However, a provision of a retail shop lease may	13
	limit a claim for compensation for an anticipated	14
	disturbance that occurs within 1 year from the	15
	date the lease is entered into if, before the lease is	16
	entered into, the lessor gives the lessee a written	17
	notice.	18
	(3) The notice must include the following	19
	particulars—	20
	(a) a specific description of the nature of the	21
	anticipated disturbance on the lessee;	22
	(b) a statement assessing the likelihood of the	23
	anticipated disturbance occurring, including	24
	an indication of the basis on which the	25
	assessment was reached;	26
	(c) a statement of the timing, duration and	27
	effect of the anticipated disturbance, so far	28
	as they can be predicted.	29
	(4) A notice that includes a general statement to the	30
	effect that an anticipated disturbance may occur	31
	without setting out the particulars referred to in	32
	subsection (3) is not a notice for the purpose of	33
	subsection (2).	34

[s 43]

	(5) In this section—	1
	<i>anticipated disturbance</i> means an action or omission in relation to which a lessor is liable to pay the lessee compensation under section 43(1)(a) to (e).	2 3 4 5
Clause 43	Amendment of s 45 (Lessee’s right to deal with lease and business assets)	6 7
	(1) Section 45(1), penalty— <i>omit.</i>	8 9
	(2) Section 45(2), ‘or from’— <i>omit.</i>	10 11
	(3) Section 45(3), ‘sections 19 and 20’— <i>omit, insert—</i> sections 16 and 17	12 13 14
Clause 44	Amendment of s 46 (Lessor’s notice about when option to renew or extend must be exercised)	15 16
	(1) Section 46(2), penalty— <i>omit.</i>	17 18
	(2) Section 46(3)— <i>omit, insert—</i>	19 20
	(3) In this section— <i>option date</i> , for a retail shop lease, means the date under the lease by which the lessee must exercise an option to renew or extend the lease.	21 22 23 24
Clause 45	Insertion of new s 46AB	25
	Part 6, division 8A, before section 46A— <i>insert—</i>	26 27

	46AB Application of div 8A	1
	This division applies only in relation to a retail shop lease entered into on or after 24 June 2001.	2 3
Clause 46	Replacement of s 46C (Provisions implied in retail shop lease)	4 5
	Section 46C—	6
	<i>omit, insert—</i>	7
	46C Requirements for relocation of lessee's business	8 9
	A retail shop lease that provides for the relocation of the lessee's business during the term of the lease is taken to include sections 46D to 46G.	10 11 12
Clause 47	Amendment of s 46D (How lessor takes relocation action)	13
	(1) Section 46D, heading—	14
	<i>omit, insert—</i>	15
	46D Lessor's relocation notices	16
	(2) Section 46D(1)—	17
	<i>omit, insert—</i>	18
	(1) If, under the retail shop lease, the lessor requires the lessee's business to be relocated, the lessor must give the lessee a written notice under this section (a <i>relocation notice</i>).	19 20 21 22
	(3) Section 46D—	23
	<i>insert—</i>	24
	(4) If the leased shop is within a retail shopping centre, the alternative retail shop detailed in the relocation notice under subsection (2)(b) must be situated within the centre.	25 26 27 28

[s 48]

Clause 48	Amendment of s 46J (Termination by lessee)	1
	Section 46J(2), ‘7 days’—	2
	<i>omit, insert—</i>	3
	1 month	4
Clause 49	Amendment of s 48 (Lessee’s liability for costs associated with preparation etc. of lease)	5
	(1) Section 48, heading—	6
	<i>omit, insert—</i>	7
	48 Liability for costs associated with lease	8
	(2) Section 48(1)(b) and note—	9
	<i>omit, insert—</i>	10
	(b) obtaining the consent of a mortgagee of the lessor;	11
	(c) the lessor’s compliance with this Act.	12
	(3) Section 48(2), ‘1 or more of’—	13
	<i>omit.</i>	14
	(4) Section 48(2)(b) and (c)—	15
	<i>omit.</i>	16
	(5) Section 48(2)(d)—	17
	<i>renumber</i> as section 48(2)(b).	18
	(6) Section 48—	19
	<i>insert—</i>	20
	(3) Also, subsection (1) does not prevent the prospective lessee from being required to pay for the prospective lessor’s reasonable legal or other expenses incurred for preparation of a final lease if—	21
	(a) the prospective lessor and prospective lessee agree to the terms of a proposed retail shop lease; and	22
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	(b) the prospective lessee gives the prospective lessor a written notice to prepare a final lease and the final lease is prepared; and	1 2 3
	(c) the prospective lessee does not sign the final lease; and	4 5
	(d) the prospective lessor gives the prospective lessee a copy of the prospective lessor's invoice for expenses for the preparation of the final lease.	6 7 8 9
	(4) In this section—	10
	<i>final lease</i> means a lease to be signed by the parties to give effect to the agreed terms of a proposed retail shop lease.	11 12 13
Clause 50	Replacement of s 49 (Lessee's right to join or form commercial associations)	14 15
	Section 49—	16
	<i>omit, insert</i> —	17
	49 Lessee's right to join or form commercial associations	18 19
	A provision of a retail shop lease is void to the extent that it has the effect of preventing or restricting the lessee from—	20 21 22
	(a) joining any chamber of commerce, retail trade association or other commercial association; or	23 24 25
	(b) forming or joining a lessees' association to promote a retail shopping centre or for another purpose of mutual interest to lessees.	26 27 28 29
Clause 51	Replacement of s 50A (Release of assignor from lease)	30
	Section 50A—	31
	<i>omit, insert</i> —	32

50A Release of assignor and any guarantor from lease 1
2

- (1) This section applies to the assignment of a retail shop lease if— 3
4
- (a) the assignor of the lease has complied with section 22B or any order mentioned in section 22E(2) imposed on the assignor; and 5
6
7
 - (b) the disclosure statement given by the assignor under section 22B or an order is not a defective statement. 8
9
10
- (2) When the assignment is entered into, the assignor and any guarantor of the assignor are released from any liability under the lease resulting from a default by the assignee. 11
12
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14
- (3) In this section— 15
- defective statement*, for a disclosure statement, means a statement that— 16
17
- (a) is incomplete in a material particular; or 18
 - (b) contains information that is false or misleading in a material particular. 19
20

50B Refurbishment and refitting 21

A provision of a retail shop lease requiring the lessee to refurbish or refit the leased shop is void unless the lease gives general details of the nature, extent and timing of the refurbishment or refitting required. 22
23
24
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Clause 52 Amendment of s 51 (Definitions) 26

Section 51, definition *core trading hours*, paragraph (b)(ii), ‘the lessees’— 27
28

omit, insert— 29

the greatest number of lessees 30

Clause 53	Replacement of s 53 (Trading hours)	1
	Section 53—	2
	<i>omit, insert—</i>	3
	53 Trading hours	4
	(1) A provision of a retail shop lease that purports to impose on the lessee an obligation to open the leased shop for trading outside the core trading hours for the retail shopping centre is void.	5 6 7 8
	(2) However, a provision of a retail shop lease that permits the lessee to open the leased shop for trading outside the core trading hours for the retail shopping centre by written agreement between the lessee and the lessor is not void under subsection (1).	9 10 11 12 13 14
	(3) For an existing lease, a provision mentioned in subsection (1) is void only to the extent that it requires the lessee to open the leased shop for trading outside the core trading hours for the centre.	15 16 17 18 19
	(4) Also, for an existing lease, the lessor must not require the lessee to extend the hours that, immediately before the commencement of the <i>Trading (Allowable Hours) Amendment Act 1994</i> , the lessee was required to keep the leased shop open for trading.	20 21 22 23 24 25
	Maximum penalty—100 penalty units.	26
Clause 54	Insertion of new s 53A	27
	Part 7—	28
	<i>insert—</i>	29
	53A Outgoings for trading outside core trading hours	30 31
	(1) A lessee under a retail shop lease (the <i>first lessee</i>) is not liable under the first lessee's lease for any additional outgoings of the lessor that are	32 33 34

[s 55]

	incurred only because an eligible lessee's shop is open for trading outside the core trading hours at a time when the first lessee's shop is not open for trading.	1 2 3 4
	(2) This section applies despite any provision of the first lessee's lease.	5 6
Clause 55	Amendment of s 83 (QCAT orders)	7
	(1) Section 83(2)(a), '(an <i>enforcement order</i>)'— <i>omit.</i>	8 9
	(2) Section 83(2)(b), '(a <i>payment order</i>)'— <i>omit.</i>	10 11
Clause 56	Amendment of s 97 (Mediators' jurisdiction)	12
	(1) Section 97(1)(b)(i)— <i>omit.</i>	13 14
	(2) Section 97(1)(b)(ii) and (iii)— <i>renumber</i> as section 97(1)(b)(i) and (ii).	15 16
	(3) Section 97(1)(c)— <i>omit, insert—</i>	17 18
	(c) under a retail shop lease for the carrying on of the business of a service station, if the <i>Competition and Consumer (Industry Codes—Oilcode) Regulation 2006</i> (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation; or	19 20 21 22 23 24 25
	(d) if the amount, value or damages in dispute is more than the monetary limit within the meaning of the <i>District Court of Queensland Act 1967</i> , section 68.	26 27 28 29

Clause 57	Amendment of s 103 (QCAT's jurisdiction)	1
	(1) Section 103(1)(b)(i)—	2
	<i>omit.</i>	3
	(2) Section 103(1)(d)—	4
	<i>omit, insert—</i>	5
	(d) under a retail shop lease for the carrying on	6
	of the business of a service station, if the	7
	<i>Competition and Consumer (Industry</i>	8
	<i>Codes—Oilcode) Regulation 2006 (Cwlth)</i>	9
	applies to the carrying on of the business	10
	under a fuel re-selling agreement within the	11
	meaning of that regulation.	12
	(3) Section 103(2)(d)—	13
	<i>omit.</i>	14
	(4) Section 103(1)(b)(ii) and (iii)—	15
	<i>renumber</i> as section 103(1)(b)(i) and (ii).	16
Clause 58	Omission of pt 12, divs 1, 2 and 4	17
	Part 12, divisions 1, 2 and 4—	18
	<i>omit.</i>	19
Clause 59	Renumbering of pt 12, divs 3 and 5	20
	Part 12, divisions 3 and 5—	21
	<i>renumber</i> as part 12, divisions 1 and 2.	22
Clause 60	Insertion of new pt 12, div 3	23
	Part 12—	24
	<i>insert—</i>	25
	Division 3	Provisions for Retail Shop
		Leases Amendment Act
		2015
		26
		27
		28

136 Definitions for div 3

In this division—

amendment Act means the *Retail Shop Leases Amendment Act 2015*.

former, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the amendment Act.

new, in relation to a provision, means the provision as in force after the amendment of the provision under the amendment Act.

137 Proposed retail shop leases before commencement—when lease entered into

(1) This section applies in relation to a proposed retail shop lease if, immediately before the commencement, the prospective lessee and prospective lessor—

(a) have not, under the Act as then in force, entered into the proposed lease; but

(b) would have entered into the proposed lease under new section 11 if it had been in force.

(2) On and after the commencement, former section 11 continues to apply in relation to the proposed lease.

138 Proposed assignment of retail shop leases—when assignment entered into

(1) This section applies in relation to a proposed assignment of a retail shop lease if, immediately before the commencement, the prospective assignee and prospective assignor—

(a) have not, under the Act as in force immediately before the commencement, entered into the proposed assignment; but

(b) would have entered into the proposed assignment under new section 11A if it had been in force.	1 2 3
(2) On and after the commencement, for deciding whether the proposed assignment has been entered into, the former schedule, definition of <i>entered into</i> , continues to apply in relation to the proposed assignment, instead of new section 11A.	4 5 6 7 8 9
139 Proposed retail shop leases before commencement—lessor’s disclosure obligation	10 11 12
(1) This section applies in relation to a proposed retail shop lease if—	13 14
(a) the disclosure period under former section 22 for the proposed lease ends before the commencement; and	15 16 17
(b) the proposed lease is entered into on or after the commencement.	18 19
(2) On and after the commencement, former section 22 continues to apply in relation to the proposed lease.	20 21 22
140 Proposed retail shop leases before commencement—prospective lessee’s disclosure obligation	23 24 25
(1) This section applies in relation to a proposed retail shop lease if—	26 27
(a) a prospective lessee complies with former section 22A for the proposed lease before the commencement; and	28 29 30
(b) the proposed lease is entered into on or after the commencement.	31 32

[s 60]

(2)	The prospective lessee is taken to have complied with new section 22A.	1 2
141	Proposed assignment of retail shop leases before commencement—assignor’s disclosure obligation to prospective assignee	3 4 5
(1)	This section applies in relation to a proposed assignment of a retail shop lease if—	6 7
(a)	the disclosure period under former section 22B(1) for the proposed assignment of the lease ends before the commencement; and	8 9 10
(b)	the proposed assignment is entered into on or after the commencement.	11 12
(2)	On and after the commencement, the assignor and assignee are taken to have complied with new section 22B in relation to the proposed assignment.	13 14 15 16
(3)	In this section— <i>disclosure period</i> , for an assignment of a retail shop lease, means the period ending 7 days before an assignor of a retail shop lease asks the lessor to consent to the assignment.	17 18 19 20 21
142	Proposed assignment of retail shop leases before commencement—prospective assignee’s disclosure obligation to lessor	22 23 24
(1)	This section applies in relation to a proposed assignment of a retail shop lease if—	25 26
(a)	a prospective assignee complies with former section 22C(3) for the proposed assignment of the lease before the commencement; and	27 28 29
(b)	the assignment is entered into on or after the commencement.	30 31
(2)	The prospective assignee is taken to have complied with new section 22C(3).	32 33

143 Timing and bases of rent reviews of proposed retail shop leases—major lessees	1
	2
(1) This section applies in relation to a proposed retail shop lease if—	3
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(a) a major lessee gives notice under former section 27(8)(b) for the proposed lease before the commencement; and	5
	6
	7
(b) the proposed lease is entered into on or after the commencement.	8
	9
(2) The notice is taken to be notice under new section 27(8)(b).	10
	11
144 Early determination of current market rent of proposed retail shop leases—major lessees	12
	13
(1) This section applies in relation to a proposed retail shop lease if—	14
	15
(a) a major lessee gives notice under former section 27A(1A)(b) for the proposed lease before the commencement; and	16
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(b) the proposed lease is entered into on or after the commencement.	19
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(2) The notice is taken to be notice under new section 27A(1A)(b).	21
	22
145 Current market rent determinations of specialist retail valuers agreed to or nominated before commencement	23
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	25
(1) This section applies in relation to a retail shop lease if, before the commencement, a specialist retail valuer is agreed to or nominated under former section 28.	26
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(2) On and after the commencement, former sections 28A and 29 continue to apply.	30
	31

146 Certain rent review provisions and ratchet rent provisions—major lessee	1 2
(1) This section applies in relation to a retail shop lease if, before the commencement, a major lessee gives a lessor a notice under former section 27(8)(b).	3 4 5 6
(2) New sections 36(2) and 36A(3) do not apply.	7
147 Annual estimate of apportionable outgoings	8
(1) This section applies in relation to a retail shop lease entered into within 1 month after the commencement.	9 10 11
(2) It is sufficient compliance with new section 38A(2) if the lessor gives the outgoings estimate within 1 month after the lease is entered into.	12 13 14
148 Marketing plans for promotion and advertising	15
(1) This section applies if, within 1 month after the commencement, an accounting period for a retail shop lease mentioned in new section 40A starts.	16 17 18
(2) It is sufficient compliance with new section 40A if the lessor gives the marketing plan within 1 month after the accounting period starts.	19 20 21
149 Termination by lessee	22
(1) This section applies if, before the commencement, a lessor gives a lessee a lessor’s termination notice for a retail shop lease under former section 46I.	23 24 25 26
(2) On and after the commencement, former section 46J continues to apply in relation to the lease.	27 28

150 Lessee's liability for costs associated with preparation of lease before commencement	1 2
New section 48(3) applies to a retail shop lease, or a proposed retail shop lease, whether or not the lessee and lessor, or prospective lessee and lessor, enter into the lease.	3 4 5 6
151 Release of assignor for particular assignments of leases	7 8
(1) This section applies in relation to an assignment of a retail shop lease if—	9 10
(a) before the commencement, the assignor had complied with former section 22B or any order mentioned in former section 22E(2) that was imposed on the assignor; and	11 12 13 14
(b) the disclosure statement given under that section or in compliance with that order by the assignor is not a defective statement under former section 50A; and	15 16 17 18
(c) the assignment is entered into on or after the commencement.	19 20
(2) On and after the commencement, new section 50A applies in relation to the assignment and lease.	21 22 23
152 Particular leases in a retail shopping centre	24
(1) This section applies in relation to a lease of premises in a retail shopping centre if—	25 26
(a) immediately before the commencement, the lease was a retail shop lease; and	27 28
(b) but for subsection (2), the lease would not be a retail shop lease under new section 5A(3).	29 30 31

[s 61]

- (2) Despite new section 5A(3), on and after the commencement, the lease continues to be a retail shop lease under this Act. 1
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153 Transitional regulation-making power 4

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for which it is necessary to make provision to allow or facilitate the change from the operation of the unamended Act to the operation of the amended Act. 5
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- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement. 11
12
13
- (3) A transitional regulation must declare it is a transitional regulation. 14
15
- (4) This section and any transitional regulation expire 1 year after the commencement. 16
17
- (5) In this section— 18
- amended Act* means this Act as in force after the commencement. 19
20
- unamended Act* means this Act as in force immediately before the commencement. 21
22

Clause 61 Amendment of schedule (Dictionary) 23

- (1) Schedule, definitions *conviction, defective statement, effective rent basis, enforcement order, entered into, existing retail shop lease, maintenance amounts, payment order, promotion amounts, relocation action, retail business, retail shop, retail shop lease* and *retail shopping centre*— 24
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28
- omit.* 29
- (2) Schedule— 30
- insert*— 31

<i>apportionable outgoings</i> , for part 6, division 5, see section 36B.	1 2
<i>audited annual statement</i> , for part 6, division 5, see section 38B(1).	3 4
<i>centre management entity</i> , for a retail shopping centre, means an entity that manages the centre.	5 6
<i>former Act lease</i> , for part 4, division 3, see section 18.	7 8
<i>maintenance amounts</i> , for part 6, division 5, see section 36B.	9 10
<i>outgoings estimate</i> , for part 6, division 5, see section 38A(1).	11 12
<i>promotion amounts</i> , for part 6, division 5, see section 36B.	13 14
<i>prospective franchisee</i> means a franchisee who is to be granted a franchise licence under section 21D(1)(b) and is to carry on a retail business in the way mentioned in section 21D(1)(c).	15 16 17 18
<i>retail business</i> see section 5C.	19
<i>retail shop</i> see section 5B.	20
<i>retail shop lease</i> see section 5A.	21
<i>retail shopping centre</i> see section 5D.	22
(3) Schedule, definition <i>legal advice report</i> , paragraph (c)—	23
<i>insert</i> —	24
(iii) a waiver notice to be given by the person; and	25 26
(4) Schedule, definition <i>lessee</i> —	27
<i>insert</i> —	28
(c) for part 6, division 9, subdivisions 1 and 2, does not include a lessee, sublessee or franchisee mentioned in paragraph (b).	29 30 31

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