

*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,
Brisbane,*

The Clerk of the Parliament.

25 May

2016.

In the name and on behalf of the Queen, I assent to this Bill.

Paul de Jersey

Government House,

Brisbane,

25 May 2016



Queensland

No.21 of 2016

A BILL for

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



Queensland

Retail Shop Leases Amendment Bill 2016

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
10	Replacement of ss 13 to 17	12
	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)	14
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	15
	20 Application of Act, s 27—timing and bases of rent reviews	17
	20A Application of Act to short term retail shop leases	18

Contents

	20B	Application of Act to particular government leases . .	18
	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.	19
	Division 2	Disclosure for entering into or renewing lease	
	21A	Application of div 2	19
	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	25
	22A	Prospective lessee's disclosure obligation to lessor. .	25
	Division 3	Disclosure for entering into assignment of lease	
	22AA	Application of div 3	26
16		Amendment of s 22B (Assignor's and prospective assignee's disclosure obligations to each other)	26
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	27
18		Insertion of new pt 5, div 4, hdg	28
19		Amendment of s 22D (Financial and legal advice reports).	28
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)	29
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)	30
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) 32	
30	Amendment of s 36 (Certain rent review provisions of leases void)	32
31	Amendment of s 36A (Ratchet rent provision void)	33
32	Replacement of s 37 (Requirements when lessee to pay lessor's outgoings)	33
	36B Definitions for div 5	33
	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)	34
	38A Annual estimate of apportionable outgoings	35
	38B Audited annual statement of outgoings	36
	38C Lessor does not give outgoings estimate or audited annual statement	38
34	Amendment of s 40 (Sinking fund for major maintenance and repairs)	38
35	Insertion of new s 40A	38
	40A Marketing plan for promotion and advertising	38
36	Amendment of s 41 (Promotion and advertising)	39
37	Insertion of new s 41A	39
	41A Definition for div 7	39
38	Amendment of s 42 (Compensation provisions implied in particular leases)	40
39	Amendment of s 43 (When compensation is payable by lessor) .	40
40	Insertion of new ss 43AA to 43AD	40
	43AA When compensation is payable by lessor—false or misleading statements etc.	41
	43AB No liability for compensation—emergency responses and statutory compliance	41
	43AC No liability for compensation—trading hours	41
	43AD Lessor's liability for relocation or demolition	42
41	Amendment of s 44 (Amount of compensation)	42
42	Insertion of new s 44A	42
	44A Limitation of compensation amount	42
43	Amendment of s 45 (Lessee's right to deal with lease and business assets)	43
44	Amendment of s 46 (Lessor's notice about when option to renew or extend must be exercised)	43

Contents

45	Insertion of new s 46AB	44
	46AB Application of div 8A	44
46	Replacement of s 46C (Provisions implied in retail shop lease). .	44
	46C Requirements for relocation of lessee's business . . .	44
47	Amendment of s 46D (How lessor takes relocation action)	44
48	Amendment of s 46J (Termination by lessee)	45
49	Amendment of s 48 (Lessee's liability for costs associated with preparation etc. of lease)	45
50	Replacement of s 49 (Lessee's right to join or form commercial associations)	46
	49 Lessee's right to join or form commercial associations	46
51	Replacement of s 50A (Release of assignor from lease)	47
	50A Release of assignor and any guarantor from lease . .	47
	50B Refurbishment and refitting	48
52	Amendment of s 51 (Definitions)	48
53	Replacement of s 53 (Trading hours)	48
	53 Trading hours	48
54	Insertion of new s 53A	49
	53A Outgoings for trading outside core trading hours	49
55	Amendment of s 83 (QCAT orders)	49
56	Amendment of s 97 (Mediators' jurisdiction)	49
57	Amendment of s 103 (QCAT's jurisdiction).	50
58	Omission of pt 12, divs 1, 2 and 4	50
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 2016	
	136 Definitions for div 3	51
	137 Proposed retail shop leases before commencement—when lease entered into.	51
	139 Proposed retail shop leases before commencement— lessor's disclosure obligation	52
	140 Proposed retail shop leases before commencement— prospective lessee's disclosure obligation	52
	141 Proposed assignment of retail shop leases before commencement—assignor's disclosure obligation to prospective assignee	53
	143 Timing and bases of rent reviews of proposed retail shop leases—major lessees	53

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

2016

A Bill

for

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

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Retail Shop Leases Amendment Act 2016*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Retail Shop Leases Act 1994*.

4 Amendment of pt 3, div 2, hdg (Extended definitions)

Part 3, division 2, heading—

omit, insert—

Division 2 Key concepts

5 Insertion of new ss 5A–5C

Part 3, division 2—

insert—

5A Meaning of *retail shop lease*

- (1) A *retail shop lease* is a lease of a retail shop.
- (2) However, a *retail shop lease* does not include a lease of any of the following—
 - (a) a retail shop with a floor area of more than 1000m²;
 - (b) a retail shop within the South Bank corporation area if the lease is entered into

or granted by the South Bank Corporation and is either—

- (i) a perpetual lease; or
 - (ii) another lease for a term, including renewal options, of at least 100 years;
 - (c) premises used wholly or predominantly for the carrying on of a business by a lessee for a lessor as the lessor's employee or agent;
 - (d) premises in a theme or amusement park;
 - (e) premises at a flea market, including an arts and crafts market;
 - (f) a temporary retail stall at—
 - (i) an agricultural or trade show; or
 - (ii) a carnival, festival or cultural event;
 - (g) premises that, if the premises were not leased, would be premises within a common area of a retail shopping centre, but only if the premises are used for 1 or more of the following—
 - (i) an information, entertainment, community or leisure facility;
 - (ii) telecommunication equipment;
 - (iii) an automatic teller machine;
 - (iv) a vending machine;
 - (v) an advertisement display;
 - (vi) storage;
 - (vii) parking.
- (3) Also, a *retail shop lease* does not include a lease of premises located in a retail shopping centre if—

[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
- (b) used wholly or predominantly for the carrying on of a retail business.

5C Meaning of *retail business*

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

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

- (1) Section 7(1)(a), from ‘of—’—

omit, insert—

of the centre or building and areas (***associated areas***)
used in association with the centre or building; and

- (2) Section 7(3)—

insert—

(da) payment of an excess in relation to a claim
on the lessor’s insurance policy for the
centre or building or associated areas; and

- (3) Section 7(3)(g)—

omit.

- (4) Section 7(3)(da) to (f)—

renumber as section 7(3)(e) to (g).

- (5) Section 7(3), example 1, from ‘area’ to ‘building,’—

omit, insert—

associated areas,

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

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

insert—

[s 8]

under the *Body Corporate and Community Management Act 1997*

(2) Section 8(2)—

omit.

(3) Section 8, *relocate* and *renumber* as section 5D.

8 Insertion of new pt 4, div 1, hdg

Part 4, before section 10—

insert—

Division 1 General application of Act and former Act

9 Replacement of s 11 (Application of Act—when lease entered into)

Section 11—

omit, insert—

11 Application of Act—when lease entered into

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

- (a) the first date by which the lease is signed by all of the parties to the lease;
- (b) the date the lessee enters into possession of the retail shop under the lease;
- (c) the date the lessee first pays rent under the lease, other than as a deposit to secure the premises for the lease.

10 Replacement of ss 13 to 17

Sections 13 to 17—

omit, insert—

13 Application of Act to leases—general

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—

- (a) section 14;
- (b) section 19(1);
- (c) section 20;
- (d) section 20A;
- (e) section 20B;
- (f) section 20C;
- (g) section 21;
- (h) section 42;
- (i) section 45(3);
- (j) section 46AB;
- (k) part 7.

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

- (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—
 - (a) the lease; or
 - (b) an assignment of the lease; or
 - (c) a renewal of the lease under an option under the lease.

Example for subsection (1)(a)—

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

[s 11]

business. Under this subsection, this Act does not apply to the lease even though the premises become a retail shop on this second date.

- (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—
- (a) the lease; or
 - (b) an assignment of the lease; or
 - (c) a renewal of the lease under an option under the lease.

Example for subsection (2)(a)—

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.

Division 2 Relationship of Act to retail shop leases

11 Renumbering of s 18 (Act's provisions implied in leases)

Section 18—

renumber as section 15.

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

- (1) Section 19, 'shop lease'—

omit, insert—

shop lease, or another agreement entered into for a retail shop lease,

- (2) Section 19—

renumber as section 16.

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

Section 20—

renumber as section 17.

14 Insertion of new pt 4, div 3

Part 4, after section 17, as renumbered—

insert—

**Division 3 Particular retail shop
leases**

18 Definition for div 3

In this division—

former Act lease means—

- (a) a retail shop lease entered into or renewed before 28 October 1994; or
- (b) a retail shop lease entered into, or renewed, under an option under an agreement entered into before 28 October 1994; or
- (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 apply as if the *Retail Shop Leases Amendment Act 2006* had not been enacted—see section 129.

- (3) In this section—

1999 amendment Act means the *Retail Shop Leases Amendment Act 1999*.

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

20A Application of Act to short term retail shop leases

- (1) Only the following provisions apply in relation to a short term retail shop lease entered into on or after 3 April 2006—
 - (a) part 1;
 - (b) part 2;
 - (c) part 3;
 - (d) part 7;
 - (e) part 12 to the extent it is relevant to parts 1, 2, 3 or 7.
- (2) In this section—

right to extend, a lease, does not include a holding over by the lessee with the lessor's consent.

short term retail shop lease means a retail shop lease for which the sum of the following periods is not more than 6 months—

 - (a) the lease's original term;
 - (b) any periods for which the lessee has a right to extend the lease.

20B Application of Act to particular government leases

- (1) Despite section 10, sections 22A, 22D and 46 do not apply in relation to a government lease.
- (2) In this section—

government lease means a retail shop lease for which the State, Commonwealth, another State or a local government is the lessee or prospective lessee.

20C Application of Act to leases of service stations

- (1) This Act does not apply to a retail shop lease for the carrying on of the business of a service station if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.
- (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 *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) does not apply to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.

15 Replacement of ss 21 to 22A

Sections 21 to 22A—

omit, insert—

Division 1 Preliminary**21 Application of pt 5**

This part does not apply to a retail shop lease for a periodic tenancy or tenancy at will.

Division 2 Disclosure for entering into or renewing lease**21A Application of div 2**

This division does not apply to an assignment of a retail shop lease.

21B Lessor's disclosure obligation to prospective lessee

- (1) At least 7 days before a prospective lessee of a retail shop enters into a retail shop lease (the *prescribed disclosure date*), the lessor must give the prospective lessee—
 - (a) a draft of the lease; and
 - (b) a disclosure statement.
- (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—
 - (a) the lessor gives the prospective lessee the disclosure statement; and
 - (b) the prospective lessee gives the lessor—
 - (i) a waiver notice; and
 - (ii) unless the prospective lessee is a major lessee—a legal advice report for the lease under section 22D which states the lawyer has given the prospective lessee advice about the legal meaning and effect of the waiver.
- (3) Also, this section does not apply to a renewal of a retail shop lease under an option.
- (4) In this section—

waiver notice, for a prospective retail shop lease, means a written notice signed by the prospective lessee stating that the prospective lessee agrees to waive the lessor's obligation to give a disclosure statement for the lease by the prescribed disclosure date.

21C Sublessor's disclosure obligation to sublessee

- (1) For the purposes of complying with section 21B in relation to a sublease of a retail shop lease, a prospective sublessor may request a disclosure statement (a *head lessor disclosure statement*) from the lessor.
- (2) On request by the prospective sublessor under subsection (1)—
 - (a) the lessor must, within 28 days of receiving the request, give the prospective sublessor a head lessor disclosure statement that is updated to the date it is given; and
 - (b) the prospective sublessor must pay the lessor's reasonable expenses incurred for preparation of the head lessor disclosure statement.
- (3) In applying section 21B in relation to the sublease—
 - (a) a reference to a prospective lessee is taken to be a reference to a prospective sublessee; and
 - (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 retail shop; and
 - (b) the franchisor proposes to grant a licence (the *licence*) to another person (the *franchisee*) to occupy and use, for the carrying on of a business, all or part of the retail shop; and

Note—

If the franchisor proposes to grant a sublease, see section 21C.

- (c) the 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 licence, the franchisor may request a disclosure statement (a *head lessor disclosure statement*) from the lessor.
- (3) On request by the franchisor under subsection (2)—
- (a) the lessor must, within 28 days of receiving the request, give the franchisor a head lessor disclosure statement that is updated to the date it is given; and
 - (b) the franchisor must pay the lessor's reasonable expenses incurred for preparation of the head lessor disclosure statement.
- (4) In applying section 21B in relation to the licence—
- (a) a reference to a prospective lessee is taken to be a reference to a franchisee; and

- (b) a reference to a lessor is taken to be a reference to a franchisor; 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 franchisee;
 - (ii) a written statement detailing any matters of which the franchisor is aware, or could reasonably be aware, that affect the information in the head lessor disclosure statement.

21E Lessor's disclosure obligation to lessee for renewal

- (1) This section applies in relation to a renewal of a retail shop lease under an option.
- (2) The lessor must give the lessee a current disclosure statement within 7 days after the day on which the lessor receives the lessee's notice exercising the option to renew (the ***renewal notice***).
- (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) 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.
- (5) In this section—
current disclosure statement, in relation to a lessor and lessee, means—

- (a) in any case—a disclosure statement that is updated to the date it is given; or
- (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.

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.

21F Lessor's failure to comply with disclosure obligation

- (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—
 - (a) the lessor does not comply with section 21B or 21E; or
 - (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) 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.
- (6) In this section—
disclosure statement includes—
 - (a) a statement mentioned in section 21C(3)(c)(ii) or 21D(4)(c)(ii); and
 - (b) a written statement given under section 21E that updates the details of an earlier disclosure statement.

22 Lessor to give lessee the lease document or a certified copy of lease

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.

22A Prospective lessee's disclosure obligation to lessor

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.

Division 3 Disclosure for entering into assignment of lease

22AA Application of div 3

This division applies only to an assignment of a retail shop lease.

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

(1) Section 22B(1)—

omit, insert—

- (1) An assignor of a retail shop lease for a leased shop must give a prospective assignee a disclosure statement and a copy of the current lease at least 7 days before the earlier of the following (the *prescribed disclosure date*)—

 - (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;
 - (b) the day the lessor is asked to consent to the assignment.
- (1A) However, for the purposes of complying with subsection (1) it is sufficient if, after the prescribed disclosure date but before the day mentioned in subsection (1)(a) or (b)—

 - (a) the assignor gives the prospective assignee a disclosure statement and a copy of the current lease; and
 - (b) the prospective assignee gives the assignor a waiver notice.
- (1B) If the prospective assignee is not a major lessee, a waiver notice given by the prospective assignee is valid and effective even if a lawyer has not given the prospective assignee advice about the legal meaning and effect of the waiver.

(2) Section 22B—

insert—

- (3) The assignor must give the lessor a copy of the disclosure statement given to the assignee under subsection (1) or (1A) on the day the lessor is asked to consent to the assignment.
- (4) In this section—
 - waiver notice***, for a prospective assignment of a retail shop lease, means a written notice signed by the prospective assignee stating—
 - (a) the prospective assignee agrees to waive the assignor's obligation to give a disclosure statement for the lease and a copy of the current lease by the prescribed disclosure date; and
 - (b) if the prospective assignee is not a major lessee—a lawyer has given the prospective assignee advice about the legal meaning and effect of the waiver.

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

Section 22C—

omit, insert—

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

- (1) At least 7 days before an assignment of a retail shop lease is entered into (the ***prescribed disclosure date***), the lessor must give the prospective assignee a disclosure statement and a copy of the lease.
- (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—

[s 18]

- (a) the lessor gives the prospective assignee the disclosure statement; and
- (b) the prospective assignee gives the lessor—
 - (i) a waiver notice; and
 - (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.
- (3) The prospective assignee must give a disclosure statement to the lessor before the assignment is entered into.
- (4) In this section—
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.

18 Insertion of new pt 5, div 4, hdg

After section 22C—

insert—

Division 4 General provisions

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

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

insert—

, other than a prospective franchisee,

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

Section 23—

omit.

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

Section 24(2), example, 'section 20'—

omit, insert—

section 17

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

Section 25(3) and (4)—

omit.

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

Section 26(1), from '(whether' to '25)'—

omit.

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

(1) Section 27(1)—

omit, insert—

- (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.

(2) Section 27(8)(b)—

omit, insert—

[s 25]

- (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.
- (3) Section 27(11), definition *invalid review*, paragraph (c), '36(d)'—
omit, insert—
36(1)(d)

25 Amendment of s 27A (Lessee may require early determination of current market rent)

- (1) Section 27A(1A)(b)—
omit, insert—
 - (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
- (2) Section 27A(3), '29'—
omit, insert—
28A to 35
- (3) Section 27A(6), from 'the earlier'—
omit, insert—
the day that is 21 days after the lessee receives written notice of the current market rent determined under this section.

26 Amendment of s 28 (Rent review on basis of current market rent)

- Section 28(2), 'nominated'—
omit, insert—
appointed

27 Replacement of s 28A (Parties' submissions to specialist retail valuer)

Section 28A—

omit, insert—

28A Parties' submissions to specialist retail valuer

- (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.
- (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 *submission date*).
- (3) The submission date must be not less than 14 days after the valuer is agreed to or appointed under section 28.
- (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).
- (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.
- (6) A lessor or lessee who receives a copy of a submission may give the valuer a written response to it.
- (7) The response must be given by a stated date decided by the valuer (the *response date*) that is reasonable in the circumstances.
- (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).

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

- (1) Section 29(a)(i), from ‘use for’—

omit, insert—

same or a substantially similar use for which the shop may be used under the lease; and

- (2) Section 29(c)(ii), after ‘submissions’—

insert—

and responses

- (3) Section 29—

insert—

- (2) In this section—

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

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

Section 32(b) and (c)—

omit, insert—

- (b) the submission date under section 28A(2);
- (c) if a submission is made to the valuer under section 28A—the response date under section 28A(7);

30 Amendment of s 36 (Certain rent review provisions of leases void)

Section 36—

insert—

- (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.

31 Amendment of s 36A (Ratchet rent provision void)

- (1) Section 36A—

insert—

- (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.

- (2) Section 36A(2A) and (3)—

renumber as section 36A(3) and (4).

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

Section 37—

omit, insert—

36B Definitions for div 5

In this division—

apportionable outgoings, 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.

audited annual statement see section 38B(1).

maintenance amounts see section 40(1).

outgoings estimate see section 38A(1).

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

37 Lessee's liability to pay amount for outgoings

- (1) A lessee under a retail shop lease is not liable to pay an amount to the lessor for outgoings unless the lease specifies—
 - (a) the outgoings payable by the lessee; and
 - (b) how the outgoings will be determined and apportioned to the lessee; and
 - (c) how the outgoings may be recovered by the lessor from the lessee.
- (2) In this section—

outgoings, 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.

33 Amendment of s 38 (Lessee's liability to pay proportion of lessor's apportionable outgoings)

- (1) Section 38(1)—

omit.
- (2) Section 38(2), after 'building that are'—

insert—

owned by the lessor and
- (3) Section 38(2), as amended—

renumber as section 38(1).
- (4) Section 38—

insert—

 - (2) In this section—

prescribed purpose means 1 or more of the following purposes—

 - (a) information, entertainment, community or leisure facilities;

- (b) telecommunication equipment;
- (c) automatic teller machines;
- (d) vending machines;
- (e) advertisement displays;
- (f) seating, tables and other furniture;
- (g) trade out areas;
- (h) storage;
- (i) parking.

total area, of all premises in a retail shopping centre or leased building, does not include areas of premises that, if the areas were not leased or licensed, would be areas within a common area of the centre or building but only if the areas are used for a prescribed purpose.

38A Annual estimate of apportionable outgoings

- (1) The lessor under a retail shop lease must give the lessee an annual estimate in the approved form of the lessor's apportionable outgoings and the proportion of those outgoings for which the lessee will be liable under the lease (the ***outgoings estimate***).
- (2) The lessor must give the outgoings estimate—
 - (a) at least 1 month before the start of the period to which the estimate relates; or
 - (b) if the lessee enters into the lease during the period to which the estimate relates or within 1 month before the start of the period—when the lessee enters into the lease.
- (3) If the shop is in a retail shopping centre, the outgoings estimate must also include a breakdown of the estimated fees to be paid by the lessee towards the administration costs of

running the centre and any other fees to be paid to a centre management entity.

- (4) The outgoings shown in the outgoings estimate must be itemised so that the amount shown for each item is not more than 5% of the total outgoings shown in the estimate.
- (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 a person becomes the owner of a retail shopping centre, or building containing a retail shop, the first outgoings estimate given by the person may be made for a period of less than 1 year.

38B Audited annual statement of outgoings

- (1) The lessor under a retail shop lease must give the lessee a statement in the approved form of the lessor's apportionable outgoings (the *audited annual statement*).
- (2) The audited annual statement must be given to the lessee within 3 months after the end of the period to which the outgoings relate.
- (3) The audited annual statement must—
 - (a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and
 - (b) contain the auditor's opinion on whether the statement presents fairly the lessor's apportionable outgoings for the accounting

-
- period to which it relates in accordance with the lessor's financial records and this Act; and
- (c) compare the annual estimates of the lessor's apportionable outgoings with the amount actually spent by the lessor for the outgoings during the period; and
 - (d) compare the total amount actually spent by the lessor for apportionable outgoings during the period with the total amounts actually paid by lessees to the lessor during the period.
- (4) The outgoings shown in the audited annual statement must be itemised so that the amount shown for each item is not more than 5% of the total outgoings shown in the statement.
 - (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
-

[s 34]

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.

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

Section 40(3), (4) and (7), penalties—
omit.

35 Insertion of new s 40A

After section 40—
insert—

40A Marketing plan for promotion and advertising

- (1) This section applies if a retail shop lease requires the lessee to pay amounts to the lessor for promotion and advertising.
- (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.

Example—

The lessor may publish the lessor's marketing plan on a website accessible to the lessee.

36 Amendment of s 41 (Promotion and advertising)

(1) Section 41(2), penalty—

omit.

(2) Section 41—

insert—

- (4) The lessor must make available to the lessee a written statement of the lessor's expenditure for promotion amounts (the ***audited annual statement***) within 3 months after the end of the period to which the statement relates.
- (5) The audited annual statement must—
 - (a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and
 - (b) contain the auditor's opinion on whether the statement presents fairly the lessor's expenditure during the accounting period for promotion amounts.
- (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.

37 Insertion of new s 41A

Part 6, division 7—

insert—

41A Definition for div 7

In this division—

lessee includes an assignee of the lease.

[s 38]

38 Amendment of s 42 (Compensation provisions implied in particular leases)

(1) Section 42(1), after ‘43,’—

insert—

43AA, 43AB, 43AC, 43AD,

(2) Section 42(2)(a)—

omit, insert—

- (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

39 Amendment of s 43 (When compensation is payable by lessor)

(1) Section 43, heading, ‘lessor’—

omit, insert—

lessor—business disturbance

(2) Section 43(2) to (6)—

omit, insert—

- (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.
- (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.

40 Insertion of new ss 43AA to 43AD

After section 43—

insert—

43AA When compensation is payable by lessor—false or misleading statements etc.

The lessor is liable to pay to the lessee reasonable compensation for loss or damage suffered by the lessee because—

- (a) the lessee entered into the lease, 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
- (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 lessor or anyone acting under the lessor's authority.

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

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—

- (a) as a reasonable response to an emergency; or
- (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.

43AC No liability for compensation—trading hours

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

[s 41]

during which the lessee keeps the leased shop open for trading.

43AD Lessor's liability for relocation or demolition

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

41 Amendment of s 44 (Amount of compensation)

Section 44(2)—

omit.

42 Insertion of new s 44A

Part 6, division 7, after section 44—

insert—

44A Limitation of compensation amount

- (1) An agreement under a retail shop lease or under an assignment of a retail shop lease about compensation payable under this division is void to the extent it limits the amount of compensation.
- (2) However, a provision of a retail shop lease may limit a claim for compensation for an anticipated disturbance that occurs within 1 year from the date the lease is entered into if, before the lease is entered into, the lessor gives the lessee a written notice.
- (3) The notice must include the following particulars—

- (a) a specific description of the nature of the anticipated disturbance on the lessee;
 - (b) a statement assessing the likelihood of the anticipated disturbance occurring, including an indication of the basis on which the assessment was reached;
 - (c) a statement of the timing, duration and effect of the anticipated disturbance, so far as they can be predicted.
- (4) A notice that includes a general statement to the effect that an anticipated disturbance may occur without setting out the particulars referred to in subsection (3) is not a notice for the purpose of subsection (2).
- (5) In this section—
- anticipated disturbance* 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).

43 Amendment of s 45 (Lessee's right to deal with lease and business assets)

- (1) Section 45(1), penalty—
omit.
- (2) Section 45(2), 'or from'—
omit.
- (3) Section 45(3), 'sections 19 and 20'—
omit, insert—
sections 16 and 17

44 Amendment of s 46 (Lessor's notice about when option to renew or extend must be exercised)

- (1) Section 46(2), penalty—

[s 45]

omit.

(2) Section 46(3)—

omit, insert—

(3) In this section—

option date, 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.

45 Insertion of new s 46AB

Part 6, division 8A, before section 46A—

insert—

46AB Application of div 8A

This division applies only in relation to a retail shop lease entered into on or after 24 June 2001.

46 Replacement of s 46C (Provisions implied in retail shop lease)

Section 46C—

omit, insert—

46C Requirements for relocation of lessee's business

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.

47 Amendment of s 46D (How lessor takes relocation action)

(1) Section 46D, heading—

omit, insert—

46D Lessor's relocation notices

(2) Section 46D(1)—

omit, insert—

-
- (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 *relocation notice*).
- (3) Section 46D—
insert—
- (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.

48 Amendment of s 46J (Termination by lessee)

Section 46J(2), '7 days'—

omit, insert—

1 month

49 Amendment of s 48 (Lessee's liability for costs associated with preparation etc. of lease)

- (1) Section 48, heading—

omit, insert—

48 Liability for costs associated with lease

- (2) Section 48(1)(b) and note—

omit, insert—

(b) obtaining the consent of a mortgagee of the lessor;

(c) the lessor's compliance with this Act.

- (3) Section 48(2), '1 or more of'—

omit.

- (4) Section 48(2)(b) and (c)—

omit.

- (5) Section 48(2)(d)—

[s 50]

renumber as section 48(2)(b).

(6) Section 48—

insert—

- (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—
- (a) the prospective lessor and prospective lessee agree to the terms of a proposed retail shop lease; and
 - (b) the prospective lessee gives the prospective lessor a written notice to prepare a final lease and the final lease is prepared; and
 - (c) the prospective lessee does not sign the final lease; and
 - (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.
- (4) In this section—
- final lease*** means a lease to be signed by the parties to give effect to the agreed terms of a proposed retail shop lease.

50 Replacement of s 49 (Lessee's right to join or form commercial associations)

Section 49—

omit, insert—

49 Lessee's right to join or form commercial associations

A provision of a retail shop lease is void to the extent that it has the effect of preventing or restricting the lessee from—

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

51 Replacement of s 50A (Release of assignor from lease)

Section 50A—

omit, insert—

50A Release of assignor and any guarantor from lease

- (1) This section applies to the assignment of a retail shop lease if—
 - (a) the assignor of the lease has complied with section 22B or any order mentioned in section 22E(2) imposed on the assignor; and
 - (b) the disclosure statement given by the assignor under section 22B or an order is not a defective statement.
- (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.
- (3) In this section—

defective statement, for a disclosure statement, means a statement that—

 - (a) is incomplete in a material particular; or
 - (b) contains information that is false or misleading in a material particular.

50B Refurbishment and refitting

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.

52 Amendment of s 51 (Definitions)

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

omit, insert—

the greatest number of lessees

53 Replacement of s 53 (Trading hours)

Section 53—

omit, insert—

53 Trading hours

- (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.
- (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).
- (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.
- (4) Also, for an existing lease, the lessor must not require the lessee to extend the hours that, immediately before the commencement of the

Trading (Allowable Hours) Amendment Act 1994, the lessee was required to keep the leased shop open for trading.

Maximum penalty—100 penalty units.

54 Insertion of new s 53A

Part 7—

insert—

53A Outgoings for trading outside core trading hours

- (1) A lessee under a retail shop lease (the *first lessee*) is not liable under the first lessee's lease for any additional outgoings of the lessor that are 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.
- (2) This section applies despite any provision of the first lessee's lease.

55 Amendment of s 83 (QCAT orders)

- (1) Section 83(2)(a), '(an *enforcement order*)'—
omit.
- (2) Section 83(2)(b), '(a *payment order*)'—
omit.

56 Amendment of s 97 (Mediators' jurisdiction)

- (1) Section 97(1)(b)(i)—
omit.
- (2) Section 97(1)(b)(ii) and (iii)—
renumber as section 97(1)(b)(i) and (ii).
- (3) Section 97(1)(c)—

[s 57]

omit, insert—

- (c) under a retail shop lease for the carrying on of the business of a service station, if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation; or
- (d) if the amount, value or damages in dispute is more than the monetary limit within the meaning of the *District Court of Queensland Act 1967*, section 68.

57 Amendment of s 103 (QCAT's jurisdiction)

- (1) Section 103(1)(b)(i)—

omit.

- (2) Section 103(1)(d)—

omit, insert—

- (d) under a retail shop lease for the carrying on of the business of a service station, if the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cwlth) applies to the carrying on of the business under a fuel re-selling agreement within the meaning of that regulation.

- (3) Section 103(2)(d)—

omit.

- (4) Section 103(1)(b)(ii) and (iii)—

renumber as section 103(1)(b)(i) and (ii).

58 Omission of pt 12, divs 1, 2 and 4

Part 12, divisions 1, 2 and 4—

omit.

59 Renumbering of pt 12, divs 3 and 5

Part 12, divisions 3 and 5—

renumber as part 12, divisions 1 and 2.

60 Insertion of new pt 12, div 3

Part 12—

insert—

**Division 3 Provisions for Retail Shop
Leases Amendment Act
2016**

136 Definitions for div 3

In this division—

amendment Act means the *Retail Shop Leases Amendment Act 2016*.

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.

139 Proposed retail shop leases before commencement—lessor’s disclosure obligation

- (1) This section applies in relation to a proposed retail shop lease if—
 - (a) the disclosure period under former section 22 for the proposed lease ends before the commencement; and
 - (b) the proposed lease is entered into on or after the commencement.
- (2) On and after the commencement, former section 22 continues to apply in relation to the proposed lease.

140 Proposed retail shop leases before commencement—prospective lessee’s disclosure obligation

- (1) This section applies in relation to a proposed retail shop lease if—
 - (a) a prospective lessee complies with former section 22A for the proposed lease before the commencement; and
 - (b) the proposed lease is entered into on or after the commencement.
- (2) The prospective lessee is taken to have complied with new section 22A.

141 Proposed assignment of retail shop leases before commencement—assignor’s disclosure obligation to prospective assignee

- (1) This section applies in relation to a proposed assignment of a retail shop lease if—
 - (a) the disclosure period under former section 22B(1) for the proposed assignment of the lease ends before the commencement; and
 - (b) the proposed assignment is entered into on or after the commencement.
- (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.
- (3) In this section—

disclosure period, 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.

143 Timing and bases of rent reviews of proposed retail shop leases—major lessees

- (1) This section applies in relation to a proposed retail shop lease if—
 - (a) a major lessee gives notice under former section 27(8)(b) for the proposed lease before the commencement; and
 - (b) the proposed lease is entered into on or after the commencement.
- (2) The notice is taken to be notice under new section 27(8)(b).

144 Early determination of current market rent of proposed retail shop leases—major lessees

- (1) This section applies in relation to a proposed retail shop lease if—
 - (a) a major lessee gives notice under former section 27A(1A)(b) for the proposed lease before the commencement; and
 - (b) the proposed lease is entered into on or after the commencement.
- (2) The notice is taken to be notice under new section 27A(1A)(b).

145 Current market rent determinations of specialist retail valuers agreed to or nominated before commencement

- (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.
- (2) On and after the commencement, former sections 28A and 29 continue to apply.

146 Certain rent review provisions and ratchet rent provisions—major lessee

- (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).
- (2) New sections 36(2) and 36A(3) do not apply.

147 Annual estimate of apportionable outgoings

- (1) This section applies in relation to a retail shop lease entered into within 1 month after the commencement.

- (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.

148 Marketing plans for promotion and advertising

- (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.
- (2) It is sufficient compliance with new section 40A if the lessor gives the marketing plan within 1 month after the accounting period starts.

149 Termination by lessee

- (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.
- (2) On and after the commencement, former section 46J continues to apply in relation to the lease.

150 Lessee's liability for costs associated with preparation of lease before commencement

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.

151 Release of assignor for particular assignments of leases

- (1) This section applies in relation to an assignment of a retail shop lease if—
 - (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

- (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
 - (c) the assignment is entered into on or after the commencement.
- (2) On and after the commencement, new section 50A applies in relation to the assignment and lease.

152 Particular leases in a retail shopping centre

- (1) This section applies in relation to a lease of premises in a retail shopping centre if—
 - (a) immediately before the commencement, the lease was a retail shop lease; and
 - (b) but for subsection (2), the lease would not be a retail shop lease under new section 5A(3).
- (2) Despite new section 5A(3), on and after the commencement, the lease continues to be a retail shop lease under this Act.

153 Transitional regulation-making power

- (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.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement.
- (3) A transitional regulation must declare it is a transitional regulation.

(4) This section and any transitional regulation expire 1 year after the commencement.

(5) In this section—

amended Act means this Act as in force after the commencement.

unamended Act means this Act as in force immediately before the commencement.

61 Amendment of schedule (Dictionary)

(1) Schedule, definitions *conviction*, *defective statement*, *effective rent basis*, *enforcement order*, *existing retail shop lease*, *maintenance amounts*, *payment order*, *promotion amounts*, *relocation action*, *retail business*, *retail shop*, *retail shop lease* and *retail shopping centre*—

omit.

(2) Schedule—

insert—

apportionable outgoings, for part 6, division 5, see section 36B.

audited annual statement, for part 6, division 5, see section 38B(1).

centre management entity, for a retail shopping centre, means an entity that manages the centre.

former Act lease, for part 4, division 3, see section 18.

maintenance amounts, for part 6, division 5, see section 36B.

outgoings estimate, for part 6, division 5, see section 38A(1).

promotion amounts, for part 6, division 5, see section 36B.

prospective franchisee 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).

retail business see section 5C.

retail shop see section 5B.

retail shop lease see section 5A.

retail shopping centre see section 5D.

- (3) Schedule, definition *legal advice report*, paragraph (c)—
insert—

(iii) a waiver notice to be given by the person; and

- (4) Schedule, definition *lessee*—
insert—

(c) for part 6, division 9, subdivisions 1 and 2, does not include a lessee, sublessee or franchisee mentioned in paragraph (b).

© State of Queensland 2016

Authorised by the Parliamentary Counsel