



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

---

Record of Proceedings, 10 May 2016

**RETAIL SHOP LEASES AMENDMENT BILL**

**Second Reading**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.14 pm): I move—

That the bill be now read a second time.

I thank the Education, Tourism, Innovation and Small Business Committee for its report and for its consideration of the submissions it received. I also thank the stakeholders who contributed to the committee process through their submissions. I can inform the House that I tabled the Queensland government response to the committee report on 4 May 2016. The committee has recommended that the Retail Shop Leases Amendment Bill 2015 be passed.

The purpose of the bill is to give effect to the consultation outcomes from a comprehensive statutory review of the Retail Shop Leases Act 1994 conducted pursuant to section 122 of the act. Section 122 directs that the relevant minister must carry out a review of the act to determine whether the provisions of the act remain appropriate. The act in its present form provides a framework for addressing imbalance in negotiating power and access to information between major shopping centre lessors and small retail lessees through mandatory minimum standards for retail shop leases and a low-cost dispute resolution process for retail tenancy disputes.

This statutory review of the bill was directed to streamlining the act and reducing the regulatory burden for the Queensland retail sector while continuing to safeguard the interests of retail lessees. The review included considerable stakeholder consultation, including public consultation through the release of a discussion paper in late 2011 and an options paper in 2013. After speaking to the Leader of the House, I understand that negotiations for this bill have gone back to 2009, so no-one can argue on this particular bill that there has not been adequate consultation.

In June 2013 a reference group was established comprising key retail sector and professional stakeholders to consider the options paper and submissions and to make recommendations to assist in deciding the outcomes of the review. The reference group comprised representatives from the Queensland Law Society, the National Retail Association, the Property Council of Australia, the Shopping Centre Council of Australia, the Australian Retailers Association, the Australian Property Institute, Lease1, the Queensland Newsagents Federation, the Queensland branch of the Pharmacy Guild of Australia, the Large Law Firm Group and the Chamber of Commerce and Industry Queensland. The reference group also assisted by identifying areas of consensus, difference and possible compromise. The group provided technical input, including most importantly from retail businesses operating in Queensland and nationally. The reference group was also consulted in the drafting of this bill. I again thank the reference group for its work in reviewing the bill.

The key objectives of the statutory review were to identify opportunities to improve the act's efficiency and effectiveness, reduce red tape, reduce compliance costs for retail lessees and lessors, continue to address imbalance in access to information and negotiating power between relevant parties without unnecessary interference in commercial arrangements, and alignment with other eastern seaboard states where possible to enhance efficiency and legal certainty for stakeholders operating across jurisdictions. The reference group's final report detailing the recommendations and outcomes of the reference group process was completed in December 2013. The report on the statutory review of the act was tabled on 24 November 2014 upon the introduction of the Retail Shop Leases Amendment Bill 2014, which unfortunately lapsed upon the calling of the 2015 general state election.

The bill contains the following significant amendments, the first being the exclusion of certain leases from the operation of the act. The definition of a retail shop lease presently in the act provides that 1,000 square metre-plus retail tenancies are excluded from the operation of the act only if the lessee is a listed corporation or a listed corporation subsidiary. This bill extends this exclusion to all leases with a floor area greater than 1,000 square metres. This bill does this because these lessees are predominantly sophisticated businesses not requiring the protection of this act. The bill excludes from the operation of the act certain leases not used wholly or predominantly for the carrying on of a retail business, otherwise known as a non-retail lease.

A non-retail lease in a multilevel building is excluded where, at the time the lease is entered into, 25 per cent or less of the total lettable area of the level on which the leased premises are located is used for retail business purposes. A non-retail lease in a single-level building is excluded where, at the time the lease is entered into, 25 per cent or less of the total lettable area of the building in which the leased premises are located is used for retail business purposes, otherwise known as a non-retail lease exclusion.

The bill also excludes from the act retail shop leases for a business conducted from the premises and operated by the lessee on behalf of the lessor. The definition of 'retail shop lease' in the act currently excludes premises within a common area of a retail shopping centre if the premises are used for information, entertainment, community or leisure facilities. The bill clarifies that automatic teller machines and vending machines are excluded for the purposes of the act.

The bill enhances protection and addresses inequity issues for retail lessees by requiring lessor disclosure to an existing lessee on renewal of a lease under an option; facilitating appropriate disclosure to franchisees; making a lessee liable to refurbish the leased shop during the lease term only where the lease gives sufficient details of the nature, extent and timing of the required refurbishment; requiring a lessor's annual estimate and audited statement of outgoings to provide a breakdown of centre management fees; requiring the lessor to make available to the lessee a marketing plan detailing the lessor's proposed advertising or promotion expenditure; providing for the release of the assignor lessee to include the assignor lessee's guarantors; making the lessor liable for mortgagee consent costs; and enhancing protection for prospective purchasers of retail businesses through assignor disclosure.

The bill includes the following measures to the benefit of lessors: excluding all leases with a floor area greater than 1,000 square metres and the non-retail precinct exclusion; clarification about when a lessor disclosure statement cannot be considered defective; provision for lessor recovery of lease preparation costs in circumstances where the lessee has negotiated but does not ultimately proceed with the final lease after permitting it to be prepared; provision for the lessor's liability for compensation for business disruption to not apply where the lessor's action is a reasonable response to an emergency; and increased flexibility for a lease to limit a lessee's compensation claim for some specific disturbances notified by the lessor.

The bill also reduces red tape by simplifying procedural requirements by providing greater flexibility for lessee waiver of the lessor disclosure period; simplifying the waiver of the lessor disclosure period and implied rent provisions by a lessee with five or more retail shops in Australia; excluding unnecessary procedural requirements where the state, the Commonwealth or local government is the lessee of a premises situated in a retail shopping centre; providing for reasonable required time frames under the act; removing unnecessary offences; clarifying excluded areas for the purposes of apportioning a lessor's outgoings; clarifying the accounting and reporting obligations by lessors to lessees for promotion or advertising and sinking fund contributions; clarifying the operation of various definitions and provisions; clarifying and improving the efficiency of the current market rent determination process; and streamlining the jurisdiction of the Queensland Civil and Administrative Tribunal in retail shop lease matters.

All of those measures enhance the present objectives of the act, which are to promote efficiency and equity in the conduct of retail businesses. These protections and red-tape-reduction measures will increase retail business confidence, which is consistent with the Palaszczuk government's determined focus on jobs for Queenslanders.

I inform the House that while key industry stakeholders—both retailer and lessor—support and have sought the passage of the bill in its current form, the Queensland Law Society raised in its submission to the committee some issues in relation to the drafting and operation of certain provisions of the bill. Recommendations 4 to 6 of the committee report relate to the Queensland Law Society's issues in relation to the bill. Firstly, the Queensland Law Society has recommended a technical amendment to new section 11A of the bill relating to when an assignment of lease is entered into under the act. The society's concern is that the present drafting is unclear, given the range of ways in which a lease assignment may be effected under the general law.

When an assignment of lease is entered into is important for both the requirement for lessor disclosure to a prospective assignee under section 22C of the act and also the statutory release of an assignor—and, should the bill be given passage, the assignor's guarantors—from their liabilities under the lease under section 50A of the act. Based on the society's concerns and associated technical and commercial issues raised during further consultation with the society and key industry reference group stakeholders, I foreshadow that I will be seeking to amend the bill during the consideration in detail to omit new section 11A so that the status quo under the act is maintained. Future consideration may, of course, be given to a provision to clarify when an assignment is entered into under the act if sought and agreed by key stakeholders and subject to appropriate consultation and parliamentary processes.

Secondly, the Queensland Law Society has recommended the removal of the new lessor objection and dispute resolution provisions in clause 15, new sections 21F(5) to 21F(9) of the bill. This matter was not raised by the society in earlier consultation on the draft bill. The objection and dispute resolution provisions were included in the bill—with the support of key industry stakeholders—with a view to ensuring the practical efficacy of a lessee's entitlement to terminate their lease on the grounds of defective disclosure by the lessor and also to assist in narrowing termination disputes and protecting lessees from adverse wrongful termination outcomes.

However, the society's concern is that the objection provisions may result in significant adverse commercial and costs impacts for lessees seeking to terminate a lease of premises in a new or redeveloped shopping centre based on defective lessor disclosure before entry into possession. On balance, given this significant lessee protection concern—and noting that termination disputes that are not resolved between the lease parties themselves may be dealt with by QCAT under the existing dispute resolution provisions in the act—I foreshadow that I will be seeking to amend the bill during the consideration in detail to omit the objection provisions so that the status quo under the act continues to apply by omitting the objection provisions in clause 15, new sections 21F(5) to 21F(9).

The Queensland Law Society has also made certain recommendations regarding the drafting of the new sections 21C and 21D at clause 15 of the bill. These provisions, which give effect to recommendations by the reference group, are directed to clarifying how the existing lessor disclosure obligation in the act may be complied with in practice by a sublessor or franchisor so that an incoming sublessee or franchisee receives current disclosure to inform their business decision to enter into the sublease or relevant licence arrangement. Having considered the committee's report, the society's submissions and the reference group recommendations, I propose that new section 21C be enacted in its present form with minor amendments to clarify the application of new section 21D to be moved during consideration in detail.

The committee report also recommends that I inform the House of what consideration is being given to concerns expressed by North Queensland Airports about potential limits on the hours of operation of retail businesses and the potential to erode existing lease provisions. As well as being outside the scope of the bill, trading hour matters are not within my portfolio responsibility. Issues raised by NQA regarding trading hours have been referred to the Hon. Grace Grace, the Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs. Following consultation by the Department of Justice and Attorney-General with NQA on its submission to the committee, I am not persuaded that the amendments in the bill would impact the retail operations of NQA relative to other major retail lessors under the act or that any special provision or carve-out from the operation of the act for the NQA is warranted.

Finally, based on further consultation, I foreshadow that I propose to seek a further amendment to the bill during consideration in detail to waive the existing seven-day assignor disclosure period in section 22B of the act. This proposed amendment, which is sought by the Queensland Law Society, will facilitate commercial flexibility for buyers and sellers of retail businesses in line with other key state

jurisdictions while sufficiently safeguarding unsophisticated incoming retail business operators by requiring a statement from the assignee that they have received appropriate legal advice on the waiver. I also foreshadow seeking a minor technical amendment to the bill during the consideration in detail to ensure that an assignee of a retail shop lease is given a copy of the current lease for the leased premises at the same time as the assignor disclosure statement.

For the benefit of the House, I reiterate that the purpose of the bill is to give effect to consultation outcomes of the statutory review of the act. As a member of the Palaszczuk Labor government, I am proud to present a bill to the House that will reduce red tape and provide enhanced protections and benefits for both retail shop lessees and lessors. Given the benefit of the reforms in this bill for the Queensland retail sector, I look forward bipartisan support for this bill. I commend the bill to the House.