



Queensland

Retail Shop Leases Amendment Bill 2014



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2014

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 *Retail Shop Leases Amendment Act 2014*.

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 *Retail Shop Leases Act 1994*.

8

Clause 4 Amendment of s 7 (Meaning of *outgoings*)

9

(1) Section 7(1)(a), from ‘of—’—

10

omit, insert—

11

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

12

13

(2) Section 7(3)—

14

insert—

15

(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

16

17

18

(3) Section 7(3)(g)—

19

omit.

20

(4) Section 7(3)(da) to (f)—

21

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

22

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

23

omit, insert—

24

associated areas,

25

Clause 5	Amendment of s 8 (Meaning of <i>retail shopping centre</i>)	1
	(1) Section 8(1)(b)(iii), after ‘scheme’—	2
	<i>insert—</i>	3
	under the <i>Body Corporate and Community Management Act 1997</i>	4
		5
	(2) Section 8(2)—	6
	<i>omit, insert—</i>	7
	(2) However, a retail shopping centre does not include—	8
		9
	(a) premises located on a level of a building if none of the premises located on the level are used for carrying on retail businesses; and	10
		11
		12
	<i>Example for paragraph (a)—</i>	13
	a level of commercial offices situated above 1 or more levels of a retail shopping centre	14
		15
	(b) if the centre consists of 2 or more buildings separated by common areas or a road—premises located in a building if none of the premises in the building are used for carrying on retail businesses.	16
		17
		18
		19
		20
	<i>Example for paragraph (b)—</i>	21
	a stand-alone medical centre or childcare centre within the parking area of a retail shopping centre	22
		23
Clause 6	Insertion of new pt 4, div 1, hdg	24
	Part 4, before section 10—	25
	<i>insert—</i>	26
	Division 1	27
	General application of Act and former Act	28
Clause 7	Replacement of s 11 (Application of Act—when lease entered into)	29
		30
	Section 11—	31

[s 8]

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;
- (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.

Clause 8 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 2 3
(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—	4 5 6
(a) the lease; or	7
(b) an assignment of the lease; or	8
(c) a renewal of the lease under an option under the lease.	9 10
<i>Example of subsection (1)(a)—</i>	11
On 1 April 2014 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 2014, 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.	12 13 14 15 16 17 18 19 20 21
(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—	22 23 24
(a) the lease; or	25
(b) an assignment of the lease; or	26
(c) a renewal of the lease under an option under the lease.	27 28
<i>Example of subsection (2)(a)—</i>	29
On 1 April 2014 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 2014, 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.	30 31 32 33 34 35 36 37 38 39

[s 9]

	Division 2	Relationship of Act to retail shop leases	1
			2
Clause 9	Renumbering of s 18 (Act's provisions implied in leases)		3
	Section 18—		4
	<i>renumber</i> as section 15.		5
Clause 10	Amendment of s 19 (Contracting out of Act prohibited)		6
	(1) Section 19, 'shop lease'—		7
	<i>omit, insert</i> —		8
	shop lease, or another agreement entered into for a retail shop lease,		9
			10
	(2) Section 19—		11
	<i>renumber</i> as section 16.		12
Clause 11	Renumbering of s 20 (Act prevails over inconsistent leases)		13
	Section 20—		14
	<i>renumber</i> as section 17.		15
			16
Clause 12	Insertion of new pt 4, div 3		17
	After section 17, as renumbered—		18
	<i>insert</i> —		19
	Division 3	Particular retail shop leases	20
			21
	18 Definition for div 3		22
	In this division—		23
	<i>former Act lease</i> means—		24

(a)	a retail shop lease entered into or renewed before 28 October 1994; or	1 2
(b)	a retail shop lease entered into, or renewed, under an option under an agreement entered into before 28 October 1994; or	3 4 5
(c)	a retail shop lease entered into under an agreement for lease entered into before 28 October 1994; or	6 7 8
(d)	an assignment of a retail shop lease mentioned in paragraph (a), (b) or (c).	9 10
19	Application of Act and former Act to former Act leases	11 12
(1)	The following provisions do not apply in relation to former Act leases—	13 14
(a)	part 4, other than this section;	15
(b)	part 5;	16
(c)	part 6;	17
(d)	section 120.	18
(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—	19 20 21 22
(a)	part 1, other than section 5A;	23
(b)	part 2;	24
(c)	part 3, other than the following sections—	25
(i)	section 10B;	26
(ii)	section 10C;	27
(iii)	section 15A;	28
(d)	section 56;	29
(e)	section 57;	30
(f)	section 58;	31

[s 12]

(g) schedules 1 and 2.	1
(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—	2 3 4
(a) a specialist retail valuer is taken to be a reference to a specialist retail valuer under the <i>Valuers Registration Act 1992</i> ; and	5 6 7
(b) the registrar is taken to be a reference to the chief executive; and	8 9
(c) a mediator is taken to be a reference to a mediator under this Act; and	10 11
(d) a retail shop leases tribunal or tribunal is taken to be a reference to QCAT.	12 13
20 Application of Act, s 27—timing and bases of rent reviews	14 15
(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—	16 17 18 19
(a) a retail shop lease entered into on or after 28 October 1994 but before 30 April 1999; and	20 21
(b) any extension or renewal of a lease mentioned in paragraph (a).	22 23
<i>Note—</i>	24
Part 6 does not apply to a former Act lease—see section 19(1)(c).	25 26
(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—	27 28 29 30
(a) a retail shop lease entered into on or after 30 April 1999 but before 1 July 2000; and	31 32

(b) any extension or renewal of a lease mentioned in paragraph (a).	1 2
<i>Note—</i>	3
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 <i>Retail Shop Leases Amendment Act 2006</i> had not been enacted— see section 129.	4 5 6 7 8
(3) In this section—	9
<i>1999 amendment Act</i> means the <i>Retail Shop Leases Amendment Act 1999</i> .	10 11
<i>2000 amendment Act</i> means the <i>Retail Shop Leases Amendment Act 2000</i> .	12 13
20A Application of Act to short term retail shop leases	14 15
(1) Only the following provisions apply in relation to a short term retail shop lease entered into on or after 3 April 2006—	16 17 18
(a) part 1;	19
(b) part 2;	20
(c) part 3;	21
(d) part 7;	22
(e) part 12 to the extent it is relevant to parts 1, 2, 3 or 7.	23 24
(2) In this section—	25
<i>right to extend</i> , a lease, does not include a holding over by the lessee with the lessor's consent.	26 27 28
<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—	29 30 31
(a) the lease's original term;	32

[s 13]

	(b) any periods for which the lessee has a right to extend the lease.	1 2
	20B Application of Act to particular government leases	3 4
	(1) Despite section 10, sections 22A, 22D and 46 do not apply in relation to a government lease.	5 6
	(2) In this section— <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.	7 8 9 10 11
	20C Application of Act to leases of service stations	12
	(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.	13 14 15 16 17 18 19
	(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.	20 21 22 23 24 25 26 27
Clause 13	Replacement of ss 21 to 22AA	28
	Sections 21 to 22A—	29
	<i>omit, insert—</i>	30

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

[s 13]

- 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; and
 - (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.

[s 13]

- (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 to 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
months before the date the statement is 21
given to the franchisee; and 22
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 29
renewal 30**

- (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

on which the lessor receives the lessee's notice
exercising the option to renew (the *renewal
notice*). 1 2 3

(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 5 6

(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 8 9 10 11

(5) In this section— 12
current disclosure statement, in relation to a
lessor and lessee, means— 13 14

(a) in any case—a disclosure statement that is
updated to the date it is given; or 15 16

(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 18 19 20 21

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 23 24 25 26

21F Lessor's failure to comply with disclosure obligation 27 28

(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 30 31

(a) the lessor does not comply with section 21B
or 21E; or 32 33

[s 13]

- (b) a disclosure statement when given to the lessee under section 21B or 21E is a defective statement. 1
2
3
- (2) For the purposes of this section, a disclosure statement is a *defective statement* if it— 4
5
 - (a) is incomplete in a material particular; or 6
 - (b) contains information that is false or misleading in a material particular. 7
8
- (3) However, a disclosure statement is not a defective statement merely because— 9
10
 - (a) it omits information that is irrelevant to the lease; or 11
12
 - (b) its layout does not comply with that of the approved form. 13
14
- (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. 15
16
17
18
19
- (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— 20
21
22
23
 - (a) the lessor acted honestly and reasonably and ought reasonably to be excused for giving the defective statement; and 24
25
26
 - (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. 27
28
29
30
- (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. 31
32
33
34
35

-
- (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
disclosure statement 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

[s 14]

Division 3	Disclosure for assignment of leases	1 2
22AA Application of div 3		3
	This division applies only to an assignment of a retail shop lease.	4 5
Clause 14	Amendment of s 22B (Assignor's and prospective assignee's disclosure obligations to each other)	6 7
	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 earliest of the following—	10 11 12 13
	(a) if the assignment of lease is related to an agreement for sale of the assignor's business carried on in the leased shop to the assignee—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
Clause 15	Replacement of s 22C (Lessor's and prospective assignee's disclosure obligations to each other)	21 22
	Section 22C—	23
	<i>omit, insert—</i>	24
	22C Lessor's and prospective assignee's disclosure obligations to each other	25 26
	(1) At least 7 days before an assignment of a retail shop lease is entered into (the <i>prescribed disclosure date</i>), the lessor must give the prospective assignee a disclosure statement and a copy of the lease.	27 28 29 30 31

	(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—	1 2 3 4 5
	(a)	the lessor gives the prospective assignee the disclosure statement; and	6 7
	(b)	the prospective assignee gives the lessor—	8
	(i)	a waiver notice; and	9
	(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.	10 11 12 13 14 15
	(3)	At least 7 days before the prospective assignee enters into an assignment of a retail shop lease, the prospective assignee must give a disclosure statement to the lessor.	16 17 18 19
	(4)	In this section—	20
		<i>waiver notice</i> , 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.	21 22 23 24 25 26
Clause 16		Insertion of new pt 5, div 4 hdg	27
		After section 22C—	28
		<i>insert</i> —	29
		Division 4 General provisions	30
Clause 17		Amendment of s 22D (Financial and legal advice reports)	31
		Section 22D(1), after ‘prospective lessee’—	32

[s 18]

insert—

1

, other than a prospective franchisee,

2

Clause 18 Omission of s 23 (Lessor to give lessee certified copy of lease)

3

4

Section 23—

5

omit.

6

Clause 19 Amendment of s 24 (Lessee's obligations to make particular payments)

7

8

Section 24(2), example, 'section 20'—

9

omit, insert—

10

section 17

11

Clause 20 Amendment of s 25 (Requirements if rent a percentage of turnover)

12

13

Section 25(3) and (4)—

14

omit.

15

Clause 21 Amendment of s 26 (Lessor not to disclose turnover information)

16

17

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

18

omit.

19

Clause 22 Amendment of s 27 (Timing and bases of rent reviews)

20

(1) Section 27(1)—

21

omit, insert—

22

- (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

23

24

25

26

	reviews and the basis on which each review is to be made.	1 2
(2)	Section 27(8)(b)— <i>omit, insert—</i>	3 4
	(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.	5 6 7 8
(3)	Section 27(11), definition <i>invalid review</i> , paragraph (c), '36(d)'— <i>omit, insert—</i>	9 10 11
	36(1)(d)	12
Clause 23	Amendment of s 27A (Lessee may require early determination of current market rent)	13 14
(1)	Section 27A(1A)(b)— <i>omit, insert—</i>	15 16
	(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	17 18 19 20 21
(2)	Section 27A(6), from 'the earlier'— <i>omit, insert—</i>	22 23
	the day that is 21 days after the lessee receives written notice of the current market rent determined under this section.	24 25 26
(3)	Section 27A(3), '29'— <i>omit, insert—</i>	27 28
	28A to 35	29

[s 24]

Clause 24	Amendment of s 28 (Rent review on basis of current market rent)	1 2
	Section 28(2), ‘nominated’—	3
	<i>omit, insert</i> —	4
	appointed	5
Clause 25	Replacement of s 28A (Parties’ submissions to specialist retail valuer)	6 7
	Section 28A—	8
	<i>omit, insert</i> —	9
	28A Parties’ submissions to specialist retail valuer	10
	(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.	11 12 13
	(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>).	14 15 16 17 18
	(3) The submission date must be not less than 14 days after the valuer is agreed to or appointed under section 28.	19 20 21
	(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).	22 23 24 25 26
	(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.	27 28 29
	(6) A lessor or lessee who receives a copy of a submission may give the valuer a written response to it.	30 31 32

	(7)	The response must be given by a stated date decided by the valuer (the <i>response date</i>) that is reasonable in the circumstances.	1 2 3
	(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).	4 5 6 7 8
Clause 26		Amendment of s 29 (Matters to be considered by specialist retail valuers)	9 10
	(1)	Section 29(a)(i), from ‘use for’— <i>omit, insert—</i> same or a substantially similar use for which the shop may be used under the lease; and	11 12 13 14
	(2)	Section 29(c)(ii), after ‘submissions’— <i>insert—</i> and responses	15 16 17
	(3)	Section 29— <i>insert—</i> (2) In this section— <i>effective rent basis</i> , 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.	18 19 20 21 22 23 24 25 26 27 28
Clause 27		Amendment of s 32 (Valuer to give determination to lessor and lessee)	29 30
		Section 32(b) and (c)—	31

[s 28]

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);

Clause 28 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.

Clause 29 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).

Clause 30 Replacement of s 37 (Requirements when lessee to pay lessor's outgoings)

Section 37—

omit, insert—

36B Definitions for div 5

In this division—

	<i>apportionable outgoings</i> , for a retail shop lease,	1
	includes maintenance amounts and promotion	2
	amounts to the extent the amounts are treated as	3
	part of the lessor's outgoings under the lease.	4
	<i>audited annual statement</i> see section 38B(1).	5
	<i>maintenance amounts</i> see section 40(1).	6
	<i>outgoings estimate</i> see section 38A(1).	7
	<i>promotion amounts</i> see section 41(1)(a).	8
	37 Lessee's liability to pay amount for outgoings	9
	(1) A lessee under a retail shop lease is not liable to	10
	pay an amount to the lessor for outgoings unless	11
	the lease specifies—	12
	(a) the outgoings payable by the lessee; and	13
	(b) how the outgoings will be determined; and	14
	(c) how the outgoings may be recovered by the	15
	lessor from the lessee.	16
	(2) In this section—	17
	<i>outgoings</i> , for a retail shop lease, includes	18
	promotion amounts and maintenance amounts to	19
	the extent the amounts are treated as part of the	20
	lessor's outgoings under the lease.	21
Clause 31	Amendment of s 38 (Lessee's liability to pay proportion	22
	of lessor's apportionable outgoings)	23
	(1) Section 38(1)—	24
	<i>omit.</i>	25
	(2) Section 38(2), after 'building that are'—	26
	<i>insert—</i>	27
	owned by the lessor and	28
	(3) Section 38(2), as amended—	29

[s 31]

<i>renumber</i> as section 38(1).	1
(4) Section 38—	2
<i>insert</i> —	3
(2) In this section—	4
<i>prescribed purpose</i> means 1 or more of the following purposes—	5 6
(a) information, entertainment, community or leisure facilities;	7 8
(b) telecommunication equipment;	9
(c) automatic teller machines;	10
(d) vending machines;	11
(e) advertisement displays;	12
(f) seating, tables and other furniture;	13
(g) trade out areas;	14
(h) storage;	15
(i) parking.	16
<i>total area</i> , 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.	17 18 19 20 21 22
38A Annual estimate of apportionable outgoings	23
(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 <i>outgoings estimate</i>).	24 25 26 27 28 29
(2) The lessor must give the outgoings estimate—	30

-
- (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 outgoing 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 outgoing shown in the outgoing estimate must be itemised so that the amount shown for each item is not more than 5% of the total outgoing shown in the estimate.
- (5) However, the amount shown for an item may be more than 5% of the total outgoing 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 1 or more retail shops, the first outgoing estimate given by the person may be made for a period less than 1 year.

38B Audited annual statement of outgoing

- (1) The lessor under a retail shop lease must give the lessee a statement in the approved form of the lessor's apportionable outgoing (the *audited annual statement*).

[s 31]

- (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. 1
2
3
- (3) The audited annual statement must— 4
- (a) be prepared by a registered auditor in accordance with auditing standards generally accepted in the Australian accounting profession; and 5
6
7
8
- (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 9
10
11
12
13
14
- (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 15
16
17
18
- (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. 19
20
21
22
23
- (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. 24
25
26
27
- (5) However, the amount shown for an item may be more than 5% of the total outgoings if the item relates to— 28
29
30
- (a) a charge, levy, rate or tax payable under an Act; or 31
32
- (b) an outgoing that can not be further itemised to comply with subsection (4). 33
34
- (6) If the retail shop is in a retail shopping centre, the audited annual statement must also include the 35
36

	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.	1 2 3 4 5
	(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.	6 7 8 9
	(8) If a person becomes the owner of a retail shopping centre, or building containing 1 or more retail shops, the first audited annual statement given by the person may be made for a period less than 1 year.	10 11 12 13 14
	(9) In this section— <i>registered auditor</i> means an entity registered as an auditor under the Corporations Act.	15 16 17
	38C Lessor does not give outgoings estimate or audited annual statement	18 19
	(1) This section applies if a lessor does not give the lessee an outgoings estimate or an audited annual statement.	20 21 22
	(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.	23 24 25 26
Clause 32	Amendment of s 40 (Sinking fund for major maintenance and repairs)	27 28
	Section 40(3), (4) and (7), penalties— <i>omit.</i>	29 30
Clause 33	Insertion of new s 40A	31
	After section 40—	32

[s 34]

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.

Clause 34 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.	1 2 3 4 5 6
Clause 35	Insertion of new s 41A	7
	Part 6, division 7—	8
	<i>insert—</i>	9
	41A Definition for div 7	10
	In this division—	11
	<i>lessee</i> includes an assignee of the lease.	12
Clause 36	Amendment of s 42 (Compensation provisions implied in particular leases)	13 14
	(1) Section 42(1), after ‘43,’—	15
	<i>insert—</i>	16
	43AA, 43AB, 43AC, 43AD,	17
	(2) Section 42(2)(a)—	18
	<i>omit, insert—</i>	19
	(a) a periodic tenancy, other than a periodic tenancy created by the lessee holding over under the lease or with the lessor’s consent;	20 21 22
	or	23
Clause 37	Amendment of s 43 (When compensation is payable by lessor)	24 25
	(1) Section 43, heading, ‘lessor’—	26
	<i>omit, insert—</i>	27
	lessor—business disturbance	28
	(2) Section 43(2) to (6)—	29

[s 38]

- omit, insert—* 1
- (2) The lessee must give the lessor written notice of 2
the loss or damage mentioned in subsection (1) as 3
soon as practicable after it is suffered. 4
- (3) If the lessee fails to give the lessor the notice, the 5
failure does not affect any right of the lessee to 6
compensation but must be considered when 7
deciding the amount of compensation payable 8
under section 44. 9

Clause 38 Insertion of new ss 43AA to 43AD 10

After section 43— 11

insert— 12

**43AA When compensation is payable by 13
lessor—false or misleading statements etc.** 14

The lessor is liable to pay to the lessee reasonable 15
compensation for loss or damage suffered by the 16
lessee because— 17

- (a) the lessee entered into the lease, including a 18
renewal or assignment of the lease, on the 19
basis of a false or misleading statement or 20
misrepresentation made by the lessor or any 21
person acting under the lessor's authority; or 22
- (b) the leased shop was not available to the 23
lessee for trading on the date specified in the 24
disclosure statement given under section 25
21B or 22C because of a default of the 26
lessor or anyone acting under the lessor's 27
authority. 28

**43AB No liability for compensation—emergency 29
responses and statutory compliance** 30

The lessor is not liable to pay compensation under 31
section 43(1) for loss or damage suffered because the 32

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
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.

Clause 39 Amendment of s 44 (Amount of compensation)

Section 44(2)—
omit.

Clause 40 Insertion of new s 44A

Part 5, division 7, after section 44—
insert—

44A Limitation of compensation amount

- 1
- (1) An agreement under a retail shop lease or under 2
an assignment of a retail shop lease about 3
compensation payable under this division is void 4
to the extent it limits the amount of 5
compensation. 6
- (2) However, a provision of a retail shop lease may 7
limit a claim for compensation for an anticipated 8
disturbance that occurs within 1 year from the 9
date the lease is entered into if, before the lease is 10
entered into, the lessor gives the lessee a written 11
notice. 12
- (3) The notice must include the following 13
particulars— 14
- (a) a specific description of the nature of the 15
anticipated disturbance on the lessee; 16
- (b) a statement assessing the likelihood of the 17
anticipated disturbance occurring, including 18
an indication of the basis on which the 19
assessment was reached; 20
- (c) a statement of the timing, duration and 21
effect of the anticipated disturbance, so far 22
as they can be predicted. 23
- (4) A notice that includes a general statement to the 24
effect that an anticipated disturbance may occur 25
without setting out the particulars referred to in 26
subsection (3) is not a notice for the purpose of 27
subsection (2). 28
- (5) In this section— 29
- anticipated disturbance* means an action or 30
omission in relation to which a lessor is liable to 31
pay the lessee compensation under section 32
43(1)(a) to (e). 33

Clause 41	Amendment of s 45 (Lessee's right to deal with lease and business assets)	1 2
	(1) Section 45(1), penalty—	3
	<i>omit.</i>	4
	(2) Section 45(2), 'or from'—	5
	<i>omit.</i>	6
	(3) Section 45(3), 'sections 19 and 20'—	7
	<i>omit, insert—</i>	8
	sections 16 and 17	9
Clause 42	Amendment of s 46 (Lessor's notice about when option to renew or extend must be exercised)	10 11
	(1) Section 46(2), penalty—	12
	<i>omit.</i>	13
	(2) Section 46(3)—	14
	<i>omit, insert—</i>	15
	(3) In this section—	16
	<i>option date</i> , for a retail shop lease, means the	17
	date under the lease by which the lessee must	18
	exercise an option to renew or extend the lease.	19
Clause 43	Insertion of new s 46AB	20
	Part 6, division 8A—	21
	<i>insert—</i>	22
	46AB Application of div 8A	23
	This division applies only in relation to a retail shop	24
	lease entered into on or after 24 June 2001.	25
Clause 44	Replacement of s 46C (Provisions implied in retail shop lease)	26 27
	Section 46C—	28

[s 45]

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.

Clause 45 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.

Clause 46 Amendment of s 46J (Termination by lessee)

Section 46J(2), '7 days'—

omit, insert—

1 month

Clause 47 Amendment of s 48 (Lessee's liability for costs associated with preparation etc. of lease)

(1) Section 48, heading—

<i>omit, insert—</i>	1
48 Liability for costs associated with lease	2
(2) Section 48(1)(b) and note—	3
<i>omit, insert—</i>	4
(b) obtaining the consent of a mortgagee of the lessor;	5 6
(c) the lessor’s compliance with this Act.	7
(3) Section 48(2), ‘1 or more of’—	8
<i>omit.</i>	9
(4) Section 48(2)(b) and (c)—	10
<i>omit.</i>	11
(5) Section 48(2)(d)—	12
<i>renumber</i> as section 48(2)(b).	13
(6) Section 48—	14
<i>insert—</i>	15
(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—	16 17 18 19 20
(a) the prospective lessor and prospective lessee agree to the terms of a proposed retail shop lease; and	21 22 23
(b) the prospective lessee gives the prospective lessor a written notice to prepare a final lease and the final lease is prepared; and	24 25 26
(c) the prospective lessee does not sign the final lease; and	27 28
(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.	29 30 31 32

[s 48]

	(4) In this section—	1
	<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.	2 3 4
Clause 48	Replacement of s 49 (Lessee’s right to join or form commercial associations)	5 6
	Section 49—	7
	<i>omit, insert</i> —	8
	49 Lessee’s right to join or form commercial associations	9 10
	A provision of a retail shop lease is void to the extent that it has the effect of preventing or restricting the lessee from—	11 12 13
	(a) joining any chamber of commerce, retail trade association or other commercial association; or	14 15 16
	(b) forming or joining a lessees’ association to promote a retail shopping centre or for another purpose of mutual interest to lessees.	17 18 19 20
Clause 49	Replacement of s 50A (Release of assignor from lease)	21
	Section 50A—	22
	<i>omit, insert</i> —	23
	50A Release of assignor and guarantor from lease	24
	When an assignment of a retail shop lease is entered into, the assignor and any guarantor of the assignor are released from any liability under the lease arising from any default by the assignee.	25 26 27 28
Clause 50	Insertion of new s 50B	29
	Part 6, division 9, subdivision 3—	30

insert—

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.

Clause 51 Amendment of s 51 (Definitions)

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

omit, insert—

the greatest number of lessees

Clause 52 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.

[s 53]

- (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.

Clause 53 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.

Clause 54 Amendment of s 83 (QCAT orders)

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

Clause 55 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). 1
- (3) Section 97(1)(c)— 2
- omit, insert*— 3
- (c) under a retail shop lease for the carrying on 4
of the business of a service station, if the 5
Competition and Consumer (Industry 6
Codes—Oilcode) Regulation 2006 (Cwlth) 7
applies to the carrying on of the business 8
under a fuel re-selling agreement within the 9
meaning of that regulation; or 10
- (d) if the amount, value or damages in dispute is 11
more than the monetary limit within the 12
meaning of the *District Court of 13*
Queensland Act 1967, section 68. 14

- Clause 56 Amendment of s 103 (QCAT's jurisdiction) 15**
- (1) Section 103(1)(b)(i)— 16
- omit.* 17
- (2) Section 103(1)(d)— 18
- omit, insert*— 19
- (d) under a retail shop lease for the carrying on 20
of the business of a service station, if the 21
Competition and Consumer (Industry 22
Codes—Oilcode) Regulation 2006 (Cwlth) 23
applies to the carrying on of the business 24
under a fuel re-selling agreement within the 25
meaning of that regulation. 26
- (3) Section 103(2)(d)— 27
- omit.* 28
- (4) Section 103(1)(b)(ii) and (iii)— 29
- renumber* as section 103(1)(b)(i) and (ii). 30

[s 57]

Clause 57	Omission of s 122 (Review of Act)	1
	Section 122—	2
	<i>omit.</i>	3
Clause 58	Omission of pt 12, divs 1, 2 and 4	4
	Part 12, divisions 1, 2 and 4—	5
	<i>omit.</i>	6
Clause 59	Renumbering of pt 12, divs 3 and 5	7
	Part 12, divisions 3 and 5—	8
	<i>renumber</i> as part 12, divisions 1 and 2.	9
Clause 60	Insertion of new pt 12, div 3	10
	Part 12—	11
	<i>insert</i> —	12
	Division 3	Provisions for Retail Shop
		Leases Amendment Act
		2014
		13
		14
		15
	136 Definitions for div 3	16
	In this division—	17
	<i>amendment Act</i> means the <i>Retail Shop Leases Amendment Act 2014</i> .	18
		19
	<i>former</i> , in relation to a provision, means the provision as in force immediately before the amendment of the provision under the amendment Act.	20
		21
		22
		23
	<i>new</i> , in relation to a provision, means the provision as in force after the amendment of the provision under the amendment Act.	24
		25
		26

137 Proposed retail shop leases before commencement—when lease entered into	1 2
(1) This section applies in relation to a proposed retail shop lease if, immediately before the commencement, the prospective lessee and prospective lessor—	3 4 5 6
(a) have not entered into the proposed lease under former section 11; but	7 8
(b) would have entered into the proposed lease under new section 11 if it had been in force.	9 10
(2) On and after the commencement, former section 11 continues to apply in relation to the proposed lease.	11 12 13
138 Proposed retail shop leases before commencement—lessor’s disclosure obligation	14 15 16
(1) This section applies in relation to a proposed retail shop lease if—	17 18
(a) the disclosure period under former section 22 for the proposed lease ends before the commencement; and	19 20 21
(b) the proposed lease is entered into on or after the commencement.	22 23
(2) On and after the commencement, former section 22 continues to apply in relation to the proposed lease.	24 25 26
139 Proposed retail shop leases before commencement—prospective lessee’s disclosure obligation	27 28 29
(1) This section applies in relation to a proposed retail shop lease if—	30 31

[s 60]

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

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- | | |
|---|----------------|
| (b) the assignment is entered into on or after the commencement. | 1
2 |
| (2) The prospective assignee is taken to have complied with new section 22C(3). | 3
4 |
| 142 Timing and bases of rent reviews of proposed retail shop leases—major lessees | 5
6 |
| (1) This section applies in relation to a proposed retail shop lease if— | 7
8 |
| (a) a major lessee gives notice under former section 27(8)(b) for the proposed lease before the commencement; and | 9
10
11 |
| (b) the proposed lease is entered into on or after the commencement. | 12
13 |
| (2) The notice is taken to be notice under new section 27(8)(b). | 14
15 |
| 143 Early determination of current market rent of proposed retail shop leases—major lessees | 16
17 |
| (1) This section applies in relation to a proposed retail shop lease if— | 18
19 |
| (a) a major lessee gives notice under former section 27A(1A)(b) for the proposed lease before the commencement; and | 20
21
22 |
| (b) the proposed lease is entered into on or after the commencement. | 23
24 |
| (2) The notice is taken to be notice under new section 27A(1A)(b). | 25
26 |
| 144 Current market rent determinations of specialist retail valuers agreed to or nominated before commencement | 27
28
29 |
| (1) This section applies in relation to a retail shop lease if, before the commencement, a specialist | 30
31 |
-

[s 60]

retail valuer is agreed to or nominated under former section 28.	1 2
(2) On and after the commencement, former sections 28A and 29 continue to apply.	3 4
145 Certain rent review provisions and ratchet rent provisions—major lessee	5 6
(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).	7 8 9 10
(2) New sections 36(2) and 36A(3) do not apply.	11
146 Annual estimate of apportionable outgoings	12
(1) This section applies in relation to a retail shop lease entered into within 1 month after the commencement.	13 14 15
(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.	16 17 18
147 Marketing plans for promotion and advertising	19
(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.	20 21 22
(2) It is sufficient compliance with new section 40A if the lessor gives the marketing plan within 1 month after the accounting period starts.	23 24 25
148 Termination by lessee	26
(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.	27 28 29 30

(2)	On and after the commencement, former section 46J continues to apply in relation to the lease.	1 2
149 Lessee's liability for costs associated with preparation of lease before commencement		3 4
	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.	5 6 7 8
150 Transitional regulation-making power		9
(1)	A regulation (a <i>transitional regulation</i>) 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.	10 11 12 13 14 15
(2)	A transitional regulation may have retrospective operation to a day not earlier than the commencement.	16 17 18
(3)	A transitional regulation must declare it is a transitional regulation.	19 20
(4)	This section and any transitional regulation expire 1 year after the commencement.	21 22
(5)	In this section—	23
	<i>amended Act</i> means this Act as in force after the commencement.	24 25
	<i>unamended Act</i> means this Act as in force immediately before the commencement.	26 27
Clause 61	Amendment of sch (Dictionary)	28
(1)	Schedule definitions <i>conviction</i> , <i>defective statement</i> , <i>effective rent basis</i> , <i>enforcement order</i> , <i>existing retail shop lease</i> ,	29 30

[s 61]

<i>maintenance amounts, payment order, promotion amounts, registered auditor and relocation action—</i>	1 2
<i>omit.</i>	3
(2) Schedule—	4
<i>insert—</i>	5
<i>apportionable outgoings</i> , for part 6, division 5, see section 36B.	6 7
<i>audited annual statement</i> , for part 6, division 5, see section 38B(1).	8 9
<i>centre management entity</i> , for a retail shopping centre, means an entity that manages the centre.	10 11
<i>former Act lease</i> , for part 4, division 3, see section 18.	12 13
<i>maintenance amounts</i> , for part 6, division 5, see section 36B.	14 15
<i>outgoings estimate</i> , for part 6, division 5, see section 38A(1).	16 17
<i>promotion amounts</i> , for part 6, division 5, see section 36B.	18 19
<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).	20 21 22 23
(3) Schedule, definition <i>legal advice report</i> , paragraph (c)—	24
<i>insert—</i>	25
(iii) a waiver notice to be given by the person; and	26 27
(4) Schedule, definition <i>lessee</i> —	28
<i>insert—</i>	29
(c) for part 6, division 9, subdivisions 1 and 2, does not include a lessee, sublessee or franchisee mentioned in paragraph (b).	30 31 32

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|------|---|-------------|
| (5) | Schedule, definition <i>retail shop lease</i> , paragraph (a), from
'by' to 'subsidiary'— | 1
2 |
| | <i>omit.</i> | 3 |
| (6) | Schedule, definition <i>retail shop lease</i> — | 4 |
| | <i>insert</i> — | 5 |
| | (ba) 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; or | 6
7
8 |
| (7) | Schedule, definition <i>retail shop lease</i> , paragraph (f)(iii)— | 9 |
| | <i>omit, insert</i> — | 10 |
| | (iii) automatic teller machines; | 11 |
| | (iiia) vending machines; | 12 |
| | (iiib) advertisement displays; | 13 |
| (8) | Schedule, definition <i>retail shop lease</i> , paragraph (f)(iiia) to
(v)— | 14
15 |
| | <i>renumber as retail shop lease</i> , paragraph (f)(iv) to (vii). | 16 |
| (9) | Schedule, definition <i>retail shop lease</i> , paragraph (g)— | 17 |
| | <i>omit.</i> | 18 |
| (10) | Schedule, definition <i>retail shop lease</i> , paragraphs (ba) to (f)— | 19 |
| | <i>renumber as definition retail shop lease</i> , paragraphs (c) to (g). | 20 |