

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Leases (Commercial and Retail) Bill
2000 [Nº 2]

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2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Leases (Commercial and Retail) Bill 2000

A BILL

FOR

**An Act to regulate commercial and retail leases and
tenancies, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Leases (Commercial and Retail) Act 2000*.

2 Commencement

(1) This Act commences on 1 July 2001.

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Note The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

5 (2) Section 10E (Automatic commencement of postponed law) of the *Interpretation Act 1967* does not apply to this Act.

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

PART 2—INTERPRETATION

4 Dictionary

The dictionary at the end of this Act is part of this Act.

5 *Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*GST—see the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth), dictionary.*' means that the expression '*GST*' is defined in the dictionary to that Act and the definition applies to this Act.

10 *Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

5 When is a lease *entered into* to work out timing for obligations under this Act?

15 If something is required to be done under this Act within a stated time before or after someone enters into a lease, the lease is taken to have been *entered into* when the earliest of the following happens:

- (a) the execution of the lease by the parties to it;
 - (b) the entering into possession of the premises by the tenant under the lease.
- 20

6 When is a lease taken to be renewed for this Act?

(1) A new lease is taken to be a *renewal* of another lease (the *existing lease*) for this Act if the new lease is between the same parties as the existing lease and relates to the same premises and the premises are to be put to the same or similar use.

25

(2) This section does not apply to a renewal mentioned in section 16 (Application of Act to pre-existing leases on registration of units plans).

7 When are premises commercial or retail premises?

(1) Premises under a lease or proposed lease are *commercial premises* if—

30

- (a) the use of the premises under the lease or proposed lease is for commercial business; or

- (b) if there is nothing in the lease about the use the premises are to be put to—a commercial business may be carried on on the premises under the Territory lease for land that includes the premises.
- (2) In addition, premises mentioned in Schedule 1 are taken to be
5 **commercial premises**.
- (3) Premises under a lease or proposed lease are **retail premises** if—
- (a) the use of the premises under the lease or proposed lease is for retail business; or
- (b) if there is nothing in the lease about the use the premises are to be
10 put to—a retail business may be carried on on the premises under the lease granted under the Territory lease for land that includes the premises.
- (4) However, **retail premises** do not include commercial premises.
- (5) For this section:
- 15 **commercial business** means a business not involving—
- (a) the sale or hire of goods by retail; or
- (b) the supply of services by retail.
- retail business** means a business involving—
- (a) the sale or hire of goods by retail; or
- 20 (b) the supply of services by retail.
8. What are **shopping centres**?
- (1) A **shopping centre** is a group of premises where—
- (a) at least 5 of the premises are—
- (i) retail premises; or
- 25 (ii) small commercial premises; or
- (iii) premises prescribed under the regulations for paragraph 12 (1) (d); or
- (iv) a mixture of the premises mentioned in subparagraphs (i) to (iii); and
- 30 (b) the premises—

- (i) have, or would have if leased, the same lessor or same head lessor; or
 - (ii) are units in a single unit plan under the *Unit Titles Act 2000* and are managed by a single person; and
- 5 (c) the premises are—
- (i) in a single building; or
 - (ii) in buildings that adjoin, or are separated only by areas owned by the lessor of the premises; and
- 10 (d) the group of premises is promoted as, or generally regarded as making up, a shopping centre, shopping mall, shopping court or shopping arcade.

(2) In addition, a **shopping centre** is a group of premises prescribed under the regulations for this subsection.

9 What is a *change of use lease*?

15 A lease for premises is a **change of use lease** if—

- (a) this Act did not apply to the lease when the lease was entered into; and
- (b) the permitted use of the premises changes during the lease term by agreement between the parties; and
- 20 (c) this Act would have applied to the lease if the lease had had the changed use when it was entered into.

10 What is a *continuous occupation lease*?

A **continuous occupation lease** is a lease for premises for a term of less than 6 months if—

- 25 (a) the tenant was in occupation of the premises with the owner's consent when the lease was entered into; and
- (b) the tenant has been in continuous occupation of the premises with the owner's consent for at least 6 months.

11 What is an *excluded area*?

- 30 (1) An **excluded area** is an area of a shopping centre—

- (a) without retail premises, small commercial premises and premises prescribed under the regulations for paragraph 12 (1) (d); and
 - (b) that is geographically distinct (even if it is in the same building) from the areas in the shopping centre containing premises mentioned in paragraph (a).
- 5
- (2) However, an *excluded area* does not include a common area within the shopping centre adjacent to premises mentioned in paragraph (1) (a).

PART 3—APPLICATION

12 What leases does this Act apply to?

(1) This Act applies to a lease for premises, in the Territory, of the following kinds:

- 5 (a) retail premises other than large excluded premises;
- (b) premises located in the retail area of a shopping centre other than large excluded premises;
- (c) small commercial premises;
- (d) premises prescribed under the regulations for this subsection.

10 *Note* **Large excluded premises** is defined at the end of the section, and **small commercial premises** is defined in the dictionary.

(2) However, this Act does not apply to a lease if—

- (a) the lease is for premises prescribed under the regulations for this paragraph; or
- 15 (b) the lease is prescribed under the regulations for this paragraph; or
- (c) the lease is for less than 6 months, unless the lease is a continuous occupation lease.

(3) Also, section 126 (Changing core trading hours) applies in relation to each lease for premises in the retail area of a shopping centre.

20 (4) For this section, it does not matter whether the lease was entered into outside the Territory or purports to be governed by the law of a jurisdiction other than the Territory.

(5) For this section, a *lease* includes—

- 25 (a) an agreement, whether in writing or not, that provides for the occupation of premises exclusively or otherwise, whether for a fixed term, periodically or at will; and

(b) a sublease or licence.

(6) However, a *lease* does not include—

- (a) an agreement relating to the common area of a shopping centre that would be included only because it provides for someone to use a part of the area; or
 - (b) a Territory lease; or
 - 5 (c) a lease of vacant land; or
 - (d) a right to occupy land to build on the land.
- (7) For this section:

10 **large excluded premises** means premises with a lettable area larger than 1000m² that are leased to a listed public company or a subsidiary of a listed public company.

13 How to work out the lettable area of premises

- (1) If it is necessary to work out the lettable area of premises for this Act, the premises must be measured in a way, and by someone, agreed between the parties.
- 15 (2) However, if the parties cannot agree how the premises are to be measured, the Magistrates Court may, on application by a party, decide the way in which the premises are to be measured or appoint someone to measure the premises.
- (3) Unless the Magistrates Court decides otherwise—
- 20 (a) the lessor must pay for the first measurement of premises; and
- (b) the lessor and tenant must pay equal shares for any further measurement.

14 Application to change of use leases

25 This Act applies to a change of use lease from the time of the change of use.

15 Is assignment the same as entering into lease for working out application of Act?

- 30 (1) In working out whether this Act applies to a lease, a person (the *assignee*) is not taken to have entered into the lease only because the lease was assigned to the person.

- 5 (2) However, if this Act applied to the lease immediately before the lease was assigned, subsection (1) has the effect of ceasing the application of this Act to the lease, or to a dispute in relation to the lease, only if the Act would not have applied to the lease if the assignee had been the original tenant.

16 Application of Act to pre-existing leases on registration of units plans

(1) This section applies if—

- 10 (a) a person leases premises (the *original lease*) that are subsequently registered as part of a units plan under the *Unit Titles Act 2000*; and
- (b) because of the registration, the person enters a new lease (the *new lease*) that contains essentially the same terms as the original lease apart from any changes made because of the registration.

- 15 (2) In working out whether this Act applies to the new lease, the new lease is taken to have been entered into when the original lease was entered into.

17 Disputes

20 This Act applies to a dispute about a matter mentioned in column 1 in the following table if—

- (a) the lease, or provision of the lease, to which the dispute relates was entered into, extended under an option, renewed or, for a provision only, varied, at or after the corresponding time mentioned in column 2 (if applicable); and
- 25 (b) the conduct that caused the dispute complained of happened at or after the corresponding time mentioned in column 3.

TABLE OF DISPUTES TO WHICH ACT APPLIES

item	column 1 type of disputed matter	column 2 time lease entered etc	column 3 time of conduct
1	key money in relation to a lease or to negotiations for entering into a lease	any time	1 January 1995
2	a discretionary rent review clause of a lease	1 January 1994	(a) for a dispute about a discretionary rent review clause that has the effect of reserving to a party to the lease complete discretion about the rate of rent to apply—commencement day; or (b) in any other case—1 January 1995
3	a lease that was varied, or inserted as part of a variation, if the variation happens on or after commencement day and this Act would apply to the dispute if the lease had been entered into or extended under an option on or after commencement day	any time	any time
4	a claim by a party to a lease (the <i>first party</i>) that another party to the lease has engaged in unconscionable or harsh and oppressive conduct towards the first party, if the conduct would be a contravention of subsection 22 (1)	any time	1 January 1995
5	a claim by a party to a lease for recovery of possession, relief against forfeiture or recovery of rent	any time	any time

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item	column 1 type of disputed matter	column 2 time lease entered etc	column 3 time of conduct
6	a claim by a party to a lease that the party is entitled to compensation under section 37, 78, 81, 91 or 123	any time	commencement day
7	a matter in relation to which an application may be made under section 57, 58, 84, 85, 87, 98, 99 or 105	unless this Act states otherwise, any time	unless this Act states otherwise, any time
8	any other dispute about a lease if the disputed matter is of a kind prescribed under the regulations as suitable for resolution under this Act	the date prescribed under the regulations in relation to the kind of dispute or, if prescribed under the regulations, any time	the date prescribed under the regulations in relation to the kind of dispute or, if prescribed under the regulations, any time
9	a claim by a party to a lease that another party to the lease has breached or is breaching this Act if the breach does not give rise to a dispute or claim under another item (other than item 10)	commencement day	commencement day
10	any other matter not covered in column 1 of items 1 to 9 in relation to a lease or negotiations for entering into a lease or in relation to the use or occupation of premises to which the lease relates	any time	any time

Note for item 6 The sections mentioned in the item deal with the following:

- section 37—compensation for negotiation misrepresentations
- section 78—demolition
- section 81—compensation for disturbance
- 5 • section 91—compensation for incomplete repair
- section 123—relocation clauses.

Note for item 7 The sections mentioned in the item deal with the following:

- section 57—an application to appoint a new valuer if conflict of interest disclosed
- section 58—an application to appoint a new valuer in other cases

- section 84—an application about nonpayment of rent or outgoings
- section 85—an application about payment of rent or outgoings
- section 87—an application for a declaration about useability of premises
- section 98—an application about an unreasonable refusal of consent
- 5 • section 99—an application about the lessor presenting the Territory lease to allow endorsement of an assignment or sublease
- section 105—an application to vary the terms of a lease extended because it was less than 5 years.

18 Disputes about leases no longer in force

10 A dispute in relation to a lease that is no longer in force may be decided under this Act only if—

- (a) the lease was a lease to which this Act applies; and
 - (b) an application in relation to the dispute is made within 6 years after the day, or the last day, the conduct giving rise to the dispute happened.
- 15

PART 4—RELATIONSHIP BETWEEN ACT AND LEASES

19 Void provisions

If a provision in a lease is inconsistent with this Act, the provision is void to the extent of the inconsistency.

5 20 Included provisions

(1) If a provision of this Act, other than this section, requires a provision to be included in a lease, the lease is taken for all purposes to contain the provision required to be included.

10 *Note* Under section 14 (Application to change of use leases), subsection (1) applies to a change of use lease from the time of the change of use of the lease.

(2) An obligation imposed on a party to a change of use lease that, because of the application of subsection (1), requires the party to take action before the lease is entered into, is taken to be satisfied if the party complies with the obligation to the extent possible within 14 days after this
15 Act starts to apply to the lease.

Note A disclosure statement is required to be provided under this Act (see s 30), not under a provision taken to be included in the lease under subsection (1). Accordingly, subsection (2) does not apply to the provision of disclosure statements.

(3) A lease entered into or renewed, or to which this Act begins to
20 apply, on or after commencement day is taken for all purposes to include the standard provisions prescribed under the regulations for this subsection except to the extent that the parties are bound by contrary provisions in the lease, or a contrary agreement (whether written or unwritten).

21 Recovery of GST

25 (1) This Act does not prevent a party to a lease requiring another party to pay an amount directly or indirectly attributable to GST payable for a taxable supply made by the party to the other party under the lease.

(2) For this section, it does not matter when the lease was entered into.

PART 5—CONDUCT OF PARTIES

22 Prohibited conduct in dealings

5 (1) A party to a lease, or a party to negotiations for a proposed lease, must not, in dealings with another party to the lease or negotiations, engage in conduct that is unconscionable or harsh and oppressive.

(2) Without limiting the matters the Magistrates Court may consider when making an order in relation to a dispute arising from an alleged contravention of subsection (1) in relation to unconscionable conduct, the court may consider any of the following matters:

- 10 (a) the relative strengths of the bargaining positions of the lessor and tenant;
- (b) whether, because of conduct engaged in by a party to the lease or negotiations, the other party was required to comply with conditions that were not reasonably necessary for the protection of
15 the legitimate interests of the party who engaged in the conduct;
- (c) whether the party to the lease or negotiations who did not prepare the lease or another document relating to the lease could understand the lease or other document;
- 20 (d) whether undue influence or pressure was exerted on, or unfair tactics were used against, a party to the lease or negotiations (or an agent) by the other party to the lease or negotiations (or an agent) in relation to the lease or negotiations;
- (e) the circumstances under which the tenant could have acquired a lease on similar terms over similar premises from someone other
25 than the lessor;
- (f) the extent to which the lessor's conduct towards the tenant was consistent with the lessor's conduct in similar lease transactions between the lessor and similar tenants;
- (g) the requirements of this Act;
- 30 (h) the extent to which a party to the lease or negotiations (the *failing party*) unreasonably failed to disclose to the other party (the *uninformed party*)—

- (i) any intended conduct of the failing party that might affect the interests of the uninformed party; or
- (ii) any risk to the uninformed party arising from the failing party's intended conduct that the failing party should have foreseen would not be apparent to the uninformed party;
- (i) the extent to which the lessor and the tenant acted honestly.
- (3) Without limiting subsection (1), a lessor is taken to have engaged in harsh and oppressive conduct if—
- (a) the lessor discriminates against a tenant because the tenant is a member of, or intends to become a member of, an association to represent or protect the interests of tenants, or intends to form such an association; or
- (b) the lessor's conduct has the effect of preventing a tenant from forming or joining, or compelling a tenant to form or join, an association to represent or protect the interests of tenants.
- (4) Without limiting subsection (1), someone is not taken to have engaged in unconscionable or harsh and oppressive conduct only because the person applied to the Magistrates Court under this Act.
- (5) When applying subsection (2), the Magistrates Court must not have regard to circumstances that were not reasonably foreseeable at the time of the alleged contravention.

23 Lease costs

- (1) Each party to a lease, or negotiations for a lease, must bear the party's own costs in relation to the preparation of the lease.
- (2) However, if a party requires the lease to be registered under the *Land Titles Act 1925*, the party must pay the following costs (if applicable):
- (a) the cost of preparing a new subleasing plan or an amendment to the existing subleasing plan (as the case requires);
- (b) the fee for registration of the new subleasing plan or amendment;
- (c) the fee for registration of the lease.
- (3) For this section, lessor's costs include—
- (a) any stamp duty related to the lease; and

- (b) if the lessor has a mortgagee—any fee for, or incidental to obtaining, the mortgagee's consent to the lease.

Note If the lessor requires the lease to be registered, the lessor must pay the costs under subsection (2) also.

5 **24 Notice of acceptance of lease offer**

(1) If a person accepts a lease offer, the person must tell the other party to the lease of the person's acceptance in writing as soon as practicable after acceptance but, in any case, not later than 7 days after acceptance.

10 (2) The lessor must take all reasonable steps to hasten registration of a lease under the *Land Titles Act 1925* if—

- (a) the lease offer is accepted; and
- (b) the tenant requires the lease to be registered.

25 Provision of copy of lease to tenant

15 If a lease, or a provision of a lease, is in writing signed by the tenant, the lessor must give the tenant a copy of the lease or provision signed by the lessor and tenant—

- (a) if the lease is not to be registered—within 21 days after the lease is stamped at the office of the commissioner for revenue; or
- 20 (b) if the lease is to be registered—within 21 days after the lease is registered by the registrar-general.

26 Independent legal advice

The lessor must not require the tenant to use the services of a lawyer nominated by the lessor.

27 Tenant not required to pay fees

25 If the tenant is required, in contravention of section 26, to use the services of a lawyer nominated by the lessor—

- (a) the tenant is not liable to pay fees for the lawyer's services in relation to the lease; and
- 30 (b) the lessor is liable to pay the tenant the amount of any fee paid by the tenant to the lawyer for the services; and

- (c) the lessor is liable to pay any unpaid fee for the lawyer's services that the tenant is not liable to pay because of paragraph (a).

PART 6—NEGOTIATIONS

28 Copy of proposed lease to be provided

(1) The lessor must give the tenant a copy of the proposed lease as early as practicable in negotiations for the lease.

- 5 (2) Subsection (1) does not require the lessor to give a copy of the proposed lease to a tenant if the tenant has given, or indicated an intention to give, a copy of the proposed lease to the lessor.

29 Notice—short minimum term

10 The lessor must tell the tenant in writing as early as practicable in negotiations for a proposed lease that the lease cannot be extended under section 104 (Minimum 5 year lease) if—

- (a) the proposed term of the lease is less than 5 years; and
- (b) it would be inconsistent with the head lease under which the lessor holds the lease to extend the term.

15 30 Disclosure statements

(1) This section applies to proposed leases and options to extend a lease.

(2) The lessor must give the tenant a disclosure statement for the proposed lease at least 14 days before the lease is entered into.

- 20 (3) If the lease contains an option to extend the lease, the tenant may, not earlier than 1 month before the tenant may exercise the option, require the lessor to give the tenant a disclosure statement.

(4) If the tenant requires the lessor to give the tenant a disclosure statement under subsection (3), the lessor must give the statement to the
25 tenant within 14 days.

(5) This section does not apply, or applies as modified, if the tenant provides the lessor with a certificate signed by a lawyer stating that the tenant is aware of the tenant's rights under this section and has chosen to waive those rights, or to vary them as set out in the certificate.

- 30 (6) Subsection (5) does not allow a tenant to require more notice from a lessor than would otherwise be required under this section.

31 Form of disclosure statements

- (1) A disclosure statement must be in the approved form.
- (2) A disclosure statement must—
- (a) if the lessor's accounting period is not a financial year—state the accounting period; and
 - (b) contain a written estimate of the outgoings the tenant is required to contribute to under the lease that itemises the outgoings for the first accounting period of the lessor under the lease.

32 Return of disclosure statement

- If the tenant is given a disclosure statement by the lessor, the tenant must—
- (a) note on the statement the date the tenant receives the statement; and
 - (b) sign the statement; and
 - (c) return it to the lessor on or before the earlier of—
 - (i) the time the tenant returns the signed copies of the lease to the lessor; or
 - (ii) 3 months after the lease has been entered into.

33 Disclosure statement and acknowledgment not lease or offer

- Neither the provision of a disclosure statement nor an acknowledgment of receipt of a disclosure statement constitutes a lease or an offer to lease.

34 Notice of material changes

- If the lessor has given the tenant a disclosure statement for a lease and becomes aware of a significant change in the information in the statement before the tenant has signed or extended the lease or entered into possession of the premises, the lessor must quickly tell the tenant of the change in writing.

35 Notice about handbook

- (1) The lessor must tell the tenant about the approved handbook—

- (a) if the lease is a change of use lease—as soon as practicable after the change of use; or
- (b) in any other case—as early as practicable in negotiations for the lease (but in any case not later than when the lease is entered into).

5

(2) For subsection (1), the commissioner for fair trading may approve a handbook that helps lessors and tenants to understand this Act.

36 False or misleading representations

10 A party to negotiations for a lease (the *representer*) must not make a representation to another party to the negotiations in the course of the negotiations (including a representation made in a disclosure statement) that the representer knows, or should reasonably know, is false or misleading in a material particular.

37 Compensation for negotiation misrepresentations

15 (1) This section applies if—

(a) a party to negotiations for a lease (the *representer*) makes a representation to another party to the negotiations (the *injured party*) during the negotiations (including a representation made in a disclosure statement) that the representer knows or should reasonably know is false or misleading in a material particular; and

20

(b) a lease is entered into because of the negotiations; and

(c) the injured party suffers damage because of the representation.

25 (2) In addition to any other right the injured party may have, the representer is liable to pay reasonable compensation to the injured party for damage suffered because of the representation.

38 Key money prohibited

The lessor must not ask for or accept key money for—

(a) the grant of a lease; or

30

(b) the extension of a lease under an option; or

(c) the renewal of a lease; or

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- (d) the consent to an assignment, sublease or mortgage of a lease; or
- (e) the assignment, sublease or mortgage of a lease.

PART 7—BONDS AND GUARANTEES

39 Maximum level of bond

5 The lessor must not require or accept as a bond an amount more than rent payable under the lease for any 3 month period nominated by the lessor.

40 Guarantees and indemnities

The lessor may accept a guarantee or indemnity for the performance of the tenant's obligations under the lease as well as, or instead of, a bond.

41 Bank guarantee as bond

10 The lessor must not unreasonably refuse to accept a bank guarantee in satisfaction of a requirement to provide a bond.

42 Dealings with bonds

If the lessor requires the tenant to pay a bond—

- 15 (a) the bond must be held by the lessor in trust for the tenant in an account that attracts interest; and
- (b) the lessor must account to the tenant for interest earned on the bond, but the lessor is entitled to keep the interest and deal with it as an amount paid by the tenant to the lessor as part of the bond; and
- 20 (c) the lessor may only use the bond money in accordance with section 43.

43 Deductions from bonds

25 The lessor may deduct an amount from a bond paid for a lease only if the amount is owed to the lessor under the lease and deduction of the amount is not contrary to this Act.

Examples of deductions from the lease that are not contrary to this Act

- 1 the cost of repairs to, or the restoration of, the premises, or goods leased with the premises, necessary because of damage (other than fair wear and tear) caused by the tenant
- 30 2 rent in accordance with the lease and recoverable outgoings

- 3 interest, at a reasonable rate, on an amount payable by the tenant but not paid
- 4 a reasonable amount (that is not more than the costs incurred) for the cost of any legal fees incurred by the lessor in assigning or transferring the tenant's rights under a lease
- 5 the amount of insurance premiums payable by the tenant but not paid.
- 5 *Note to examples Recoverable outgoings* are outgoings recoverable under section 70 (see dictionary).

44 Repayment of bonds

(1) This section applies if—

- (a) the lessor has required a bond from the tenant; and
- 10 (b) the tenant has provided the bond; and
- (c) the lease is not being extended under an option.

(2) The lessor must give the tenant the bond and the interest earned on it, less any amount deducted by the lessor in accordance with this Act, by the later of the following:

- 15 (a) 30 days after the lease expires;
- (b) the tenant vacating the premises.

45 Repayment of guarantees

(1) This section applies if—

- 20 (a) the lessor has required a guarantee to secure the tenant's obligations under the lease; and
- (b) the lease is not being extended under an option; and
- (c) the tenant has performed the obligations secured by the guarantee.

(2) The lessor must return the guarantee document to the tenant by the later of the following:

- 25 (a) 30 days after the lease expires;
- (b) the tenant vacating the premises.

PART 8—RENT

Division 8.1—General

46 Discretionary rent review

A discretionary rent review clause in a lease is void.

5 47 Frequency of rent reviews

(1) A lease provision is void if it allows a change to be made to rent more than once in each 12 month period after the first anniversary of the commencement of the lease.

(2) However, subsection (1) does not affect—

- 10 (a) a sublease provision that allows the sublessor to pass on to the subtenant an increase in the rent of the head lease; or
- (b) a provision that sets out the steps (whether by amount or percentage) that rent will increase by at predetermined times during the lease; or
- 15 (c) a provision that allows a change to be made to rent directly or indirectly attributable to GST; or
- (d) a provision that allows abatement of rent; or
- (e) a provision that allows review of rent on the exercise of an option to extend the lease; or
- 20 (f) an adjustment to turnover rent allowed under section 63 (Frequency of adjustments to turnover rent).

48 Commencement of payment for rent

The tenant may pay or provide, and the lessor may request or accept payment for, rent only if—

- 25 (a) the rent relates to a period from or after the handing over of possession of the premises; and
- (b) unless otherwise agreed, any finish required under the lease to be provided by the lessor has been substantially provided.

49 Rent setting or review if lease method void

(1) The rent under a lease is market rent if—

- 5 (a) the provision of the lease that provides the method of setting or reviewing rent under the lease is void because of section 46 (Discretionary rent review); and
- (b) the lessor or tenant has given the other party to the dispute notice in writing that the method is void; and
- 10 (c) the parties cannot, within 14 days after the notice is served, agree on an alternative basis for setting or reviewing the rent that would not be void if it were a provision in the lease.

(2) For subsection (1), the parties may use mediation to try to agree on an alternative basis of setting or reviewing the rent.

(3) Subsection (2) does not prevent the parties from using any other method to try to reach agreement.

15 **50 Lease to state date rent review due**

No change may be made to rent, and any purported rent change is void, if the lease does not—

- (a) state the date each rent review is due; or
- 20 (b) provide a mechanism so the date of each rent review can be easily worked out.

51 Rent on renewal

(1) This section applies if—

- 25 (a) the lessor proposes to renew the lease and makes an offer to the tenant in response to a notice under section 106 (Asking lessor's intention about renewal); or
- (b) the lessor otherwise makes a renewal offer to the tenant within 3 months after the end of the existing lease.

30 (2) The lessor must not propose that the rent to be charged initially under the renewed lease exceed the market rent for the premises (other than under an option to renew contained in the lease).

(3) In this section, a proposal or offer to renew the lease does not include an option to renew contained in the lease.

52 Market rent—rent reviews, options and renewals

(1) This section applies in relation to a lease if—

- (a) the lease states that market rent is to be charged for premises; or
- (b) market rent is to be charged for the premises because of section 49 (Rent setting or review if lease method void).

(2) The lessor or tenant may ask the Magistrates Court to refer a dispute about market rent for the lease for mediation if the lessor and tenant cannot agree on the market rent for the premises within 14 days after either tells the other that it disputes the proposed rent.

(3) The lessor or tenant may ask the Magistrates Court to refer a dispute about the rent to be paid under a renewal to mediation if—

- (a) the lessor—
 - (i) proposes to renew the lease (other than under an option to renew contained in the lease) and makes an offer to the tenant in response to a notice under section 106 (Asking lessor's intention about renewal); or
 - (ii) otherwise makes a renewal offer to the tenant before the end of 3 months after the end of the existing lease; and

- (b) the tenant wishes to renew the lease but considers that the rent proposed by the lessor in the offer is more than market rent.

(4) On request under subsection (2) or (3), the Magistrates Court must—

- (a) if the court considers that mediation would not be productive or if the parties agree—after consultation with the parties, appoint a valuer to work out the market rent; or
- (b) refer the dispute to a mediator for mediation.

(5) If the Magistrates Court refers a dispute for mediation, the mediator must report the result of the mediation to the court not later than 28 days after the dispute was referred.

(6) If the mediator reports to the Magistrates Court that the parties to the lease cannot agree on the market rent, the court must, after consultation with the parties, appoint a valuer to work out the market rent.

(7) In this section, a proposal or offer to renew the lease does not include an option to renew contained in the lease.

53 Valuation to work out market rent

5 (1) A valuer appointed under section 52 to work out market rent must report to the Magistrates Court within 28 days after the appointment.

(2) On receiving a report from the valuer, the Magistrates Court must tell the parties to the lease what the market rent worked out by the valuer is.

(3) The market rent worked out by the valuer is the initial rent under the new lease if—

- 10 (a) the parties to the lease are told by the Magistrates Court what the market rent worked out by the valuer is; and
- (b) the parties fail to agree on a different rent to be charged as initial rent within 14 days after being told.

15 (4) The lessor must not withdraw an offer to renew a lease after the earlier of—

- (a) the tenant accepting the lease; or
- (b) a dispute about the rent being referred to the Magistrates Court.

54 Working out market rent

20 A valuer working out the market rent for premises must work out the market rent in accordance with Schedule 2.

55 Rent pending valuation—rent reviews and options to extend

25 If the rent for premises is not worked out under section 52 (Market rent—rent reviews, options and renewals) or 53 (Valuation to work out market rent) before the extension of the lease is to commence or a rent review is due (the *relevant date*)—

- (a) the rent continues at the rate charged immediately before the relevant date until the rent has been worked out; and
- 30 (b) once the rent has been worked out and set, the party who owes the other party the difference between the rent paid and the rent that should have been paid must pay the difference to the party owed within 30 days after the rent is set.

56 Extension if rent on renewal to be worked out

(1) This section applies if—

- 5 (a) the rent to be charged under a renewed lease is being worked out under section 52 (Market rent—rent reviews, options and renewals); and
- (b) the lease that is being renewed (the *original lease*) expires before the rent has been worked out.

10 (2) The original lease is taken to continue on the same terms until 14 days after the rent for the renewed lease is worked out and the parties are told about it.

57 Appointment of new valuer if conflict of interest disclosed

15 (1) If a valuer appointed to work out the market rent for a lease has an interest that could conflict with the proper working out of the market rent for the lease, the valuer must tell the parties to the lease and the Magistrates Court, in writing, about the conflict within 5 days after being appointed to work out the rent.

(2) A party who has been told of a conflict may, within 14 days after being told, apply to the Magistrates Court for the appointment of a new valuer.

20 (3) On application under subsection (2), the Magistrates Court may disqualify the valuer and appoint a new valuer.

58 Appointment of new valuer in other cases

25 (1) A party to a lease may apply to the Magistrates Court for the appointment of a new valuer if the party has reasonable grounds for believing that—

- (a) the valuer appointed to work out the market rent for the lease has failed to comply with section 57; or
- (b) the valuer has failed to conduct a valuation in accordance with this Act.

30 (2) On application under subsection (1), the Magistrates Court may disqualify the valuer and appoint a new valuer.

59 Disclosure of rent concessions

(1) If a valuer working out market rent under this Act asks the lessor for information about any relevant rent concession the lessor has given to another tenant, the lessor must give the valuer the information.

5 (2) A valuer given information under subsection (1) must treat the information as confidential.

(3) If the lessor complies with subsection (1), the lessor—

(a) is not taken to have committed a breach of confidence or contract by complying with the subsection; and

10 (b) is not required to provide information that is otherwise readily available to the valuer.

60 Costs of valuations

(1) The costs of a valuation carried out for this Part must—

15 (a) be paid by or apportioned between the parties as the Magistrates Court directs; or

(b) if the court does not give a direction—be shared equally between the parties.

(2) In deciding whether it is appropriate to give a direction, the Magistrates Court must consider the following:

20 (a) the reasonableness of the actions of each party;

(b) if the valuer has been disqualified—whether the valuer should be paid in full, in part or not at all.

Division 8.2—Turnover rent

61 Combination of base and turnover rent acceptable

25 The lessor may charge a combination of base rent and turnover rent.

62 Adjustments to turnover rent

30 (1) A lease that provides for the payment of turnover rent must include a provision to the effect that, within 1 month after receiving a written request by the lessor or tenant for an adjustment, an underpayment or overpayment of turnover rent resulting from actual turnover differing from estimated turnover must be adjusted by the other party.

(2) If a party makes a request under subsection (1), the party must provide the party to whom the request was made with any information reasonably required to make the adjustment.

63 Frequency of adjustments to turnover rent

5 Unless the parties to a lease otherwise agree, a party may make a request under a provision included in a lease because of section 62 for adjustment of turnover rent—

- (a) only once in the first year of the lease term; and
- (b) at intervals of not less than 1 year after the first request for an
10 adjustment under the lease.

64 Working out turnover rent

In working out turnover rent under a lease, the lessor or tenant must take into account the amount of the tenant's turnover, less the following amounts:

- 15 (a) the amount of a loss incurred in the resale or disposal of goods reasonably purchased in the ordinary course of business from a customer as a trade-in;
- (b) deposits and instalments received for a lay-by, hire-purchase or credit sale, that are refunded to a customer;
- 20 (c) refunds on a transaction if the proceeds of the transaction have been included as part of turnover;
- (d) service, finance or interest charges payable by the tenant to a financier in relation to the provision of credit to customers other than commissions on credit or store cards;
- 25 (e) the price of merchandise exchanged between premises of the tenant if the exchange is made only for the convenient operation of the tenant's business and not to conclude a sale made at, in, from or on the leased premises;
- (f) the price of merchandise returns to shippers, wholesalers or
30 manufacturers;
- (g) the proceeds of sale of the tenant's fixtures and fittings after their use in the conduct of the business at or from the premises;
- (h) a discount allowed to a customer in the course of business;

- (i) written-off uncollected credit accounts;
- (j) an amount directly or indirectly attributable to GST;
- (k) the net amount paid or payable by the tenant directly or indirectly attributable to a purchase tax, receipt tax or other similar tax imposed at the point of sale or hire of goods or services;
- (l) delivery charges;
- (m) proceeds of goods sold on consignment, other than a commission kept in relation to a sale;
- (n) sales of lottery and similar tickets, other than commissions.

PART 9—OUTGOINGS

65 Outgoings—estimates and expenditure statements

(1) A lease that provides for payment of outgoings by the tenant must include a provision requiring the lessor—

- 5 (a) to give the tenant a written estimate (an *estimate*) of the outgoings the tenant is required to contribute to under the lease at least 1 month before the start of each accounting period of the lessor during the term of the lease; and
- 10 (b) to make a written expenditure statement (a *statement*) available for examination by the tenant within 1 month after the end of the accounting period it relates to.

(2) The estimate must itemise the outgoings using the same item descriptions used in the list of outgoings in the disclosure statement.

15 (3) The statement must contain details of expenditure by the lessor for outgoings to which the tenant contributes and must itemise the outgoings using the same item descriptions used in the list of outgoings in the disclosure statement.

66 Outgoings—reports

20 (1) A lease that provides for payment by the tenant for outgoings must include—

- (a) a provision requiring the lessor to give the tenant a written report (a *report*) within 3 months after the end of the accounting period the report relates to; and
- (b) provisions to the effect of subsections (2) to (4).

25 (2) A report must—

- (a) be prepared by an auditor on a cash accounting basis unless the disclosure statement or lease provides for another accounting method (for example, accrual accounting) to be used; and
- 30 (b) contain details of the lessor's spending on outgoings that the tenant contributed to in the accounting period; and
- (c) include a statement by the auditor about whether or not—

- (i) the outgoings the tenant contributed to were recoverable outgoings; and
 - (ii) the outgoings the tenant contributed to (that is, the estimated spending by the lessor on outgoings for the lease) was more than the amount spent by the lessor on outgoings in the accounting period.
- (3) A report may relate to more than 1 tenant provided that each tenant it relates to can work out from the report whether or not the amounts paid by the tenant in relation to outgoings were recoverable outgoings.
- (4) A report need not comply with paragraphs (2) (a) and (c) if—
 - (a) the report only relates to any or all of the following outgoings:
 - (i) land tax;
 - (ii) water, sewerage and drainage rates and charges;
 - (iii) other rates and statutory charges;
 - (iv) insurance;
 - (v) contributions to the general fund of the owners corporation under the *Unit Titles Act 2000*, to the extent that the money is used for an outgoing mentioned in subparagraphs (i) to (iv); and
 - (b) the report is accompanied by—
 - (i) copies of receipts for all expenditure by the lessor mentioned in subparagraphs (a) (i) to (iv); and
 - (ii) if the report relates to an outgoing mentioned in subparagraph (a) (v)—a copy of the minutes of the owners corporation that state the extent to which the contributions to the general fund are to be, or have been, used for an outgoing mentioned in subparagraphs (a) (i) to (iv), or equivalent evidence of the use of the contributions.

67 Adjustment of contributions to outgoings

- (1) If a lease requires the tenant to contribute to outgoings, the lease must include a provision to the effect that, within 3 months after the end of

each period for which the tenant contributes to outgoings under the lease (the *payment period*), there must be an adjustment between the lessor and the tenant to take account of an underpayment or overpayment (if any) by the tenant in relation to the outgoings.

5 (2) The lease must also provide that the adjustment is the difference between—

(a) the amount paid by the tenant for the estimated expenditure by the lessor on outgoings during the payment period; and

10 (b) the amount spent by the lessor for recoverable outgoings during the payment period to the extent that the lessor properly and reasonably incurred the expenditure.

(3) If the lessor is using an accrual method of accounting, a reference in paragraph (2) (b) to the *amount spent* by the lessor during a period includes a reference to a debt accrued by the lessor during the period.

15 **68 Methods of accounting**

(1) If a lease requires accounts to be produced for outgoings, the lease may include a provision (a *method provision*) stating whether the accounts must be produced using a cash or accrual method of accounting.

20 (2) If the lease does not include a method provision, accounts for outgoings under the lease must be produced using a cash method of accounting until the lessor tells the tenant otherwise in writing.

69 Commencement of payment for outgoings

The tenant may pay or provide, and the lessor may request or accept payment for, outgoings only if—

25 (a) the outgoings relate to a period from or after the handing over of possession of the premises; and

(b) unless otherwise agreed, any finish required under the lease to be provided by the lessor has been substantially provided.

70 Recoverable outgoings

30 (1) The lessor may only recover the following outgoings in relation to leased premises from the tenant:

- (a) an amount that is a reasonable expense directly related to the operation of, or a reasonable expense of repairing or maintaining—

5 (i) for premises located in the retail area of a shopping centre—an area used for or in connection with the retail area of the shopping centre that contains the premises; or

(ii) in any other case—the building that contains the premises;

10 (b) rates, taxes, levies or other statutory charges payable by the lessor because the lessor is the lessor or occupier of the building that contains the premises, or the lessor of the land on which the building is located;

(c) in relation to premises located in the retail area of a shopping centre—an amount that is a reasonable cost of promoting the premises or centre;

15 (d) an outgoing for expenditure incurred in obtaining statistical information.

(2) However, if the accounting system used by the lessor is a cash accounting system, the lessor may only recover from a tenant an outgoing mentioned in paragraph (1) (a) or (b) if the expenditure is made during the term of the lease.

(3) Also, a lessor may not recover an outgoing from a tenant in relation to premises if the lessor has already recovered the outgoing from a previous tenant of the premises under a different accounting system.

71 Recovery of outgoings

25 The tenant under a lease is liable to pay an amount to the lessor for outgoings only if—

(a) the nature of the outgoings was stated in the disclosure statement provided to the tenant; and

(b) the lease states—

30 (i) the outgoings that may be recovered by the lessor; and

(ii) how the amount of the outgoings will be worked out and apportioned to the tenant; and

(iii) how the outgoings or part of them may be recovered by the lessor from the tenant; and

(c) the outgoings are recoverable outgoings.

72 Retail areas of shopping centres—waiving auditor's report

5 (1) If a majority of the tenants in the retail area of a shopping centre agree to waive the requirement for the preparation of an auditor's report dealing with outgoings for a provision included in a lease because of section 65 (Outgoings—estimates and expenditure statements), the lessor is not required to provide an auditor's report under that provision for any
10 tenant in the shopping centre—

(a) for the period agreed by the tenants; or

(b) if no period is agreed by the tenants—for the accounting period in which the agreement is reached and subsequent accounting periods, until a majority of the tenants agree otherwise.

15 (2) For subsection (1)—

(a) a tenant is not taken to have agreed to waive the requirement for the preparation of an auditor's report only because the lease includes a term agreeing to the waiving of the requirement; and

20 (b) to work out whether a majority of the tenants agree to waive the requirement for the preparation of an auditor's report, 1 vote is counted for each lease for premises in the retail area of the shopping centre.

PART 10—BUILDING ALTERATIONS AND RELATED MATTERS

73 Employment restriction

(1) A lease provision is void if it limits, or has the effect of limiting, a tenant's right to employ people chosen by the tenant.

5 (2) Subsection (1) does not prevent a lease containing provisions to the effect of any of the following:

- (a) a provision specifying minimum standards of competence and behaviour for people employed on the premises or others (such as contractors) working on the premises;
- 10 (b) a provision prohibiting work being carried out on named property of the lessor;
- (c) a provision requiring the tenant to comply with the requirements of an industrial award, industrial agreement or enterprise agreement (for example, a construction site agreement) affecting
15 the shopping centre containing the premises.

74 Refurbishment of premises

A lease provision is void if it requires the tenant to refurbish or refit premises, but does not give the details necessary to generally indicate the nature, extent and timing of the refurbishment or refit.

20 75 Undisclosed contributions

A lease provision is void if it requires the tenant to pay for or contribute towards the cost of a finish, fixture, fittings, equipment or service, unless the requirement to make the payment or contribution was in the disclosure statement.

25 76 Capital costs

A lease provision is void if it requires the tenant to pay an amount for the capital costs—

- (a) of the building containing the leased premises; or
- 30 (b) for premises in the retail area of a shopping centre—of a building in the shopping centre or an area used in association with a building in a shopping centre.

77 Depreciation

A lease provision is void if it requires the tenant to pay an amount for depreciation.

78 Demolition

5 A lease that provides for termination of the lease because of the proposed demolition of the building containing the premises must include provisions to the effect of all of the following:

- 10 (a) the lease cannot be terminated because of the proposed demolition unless the lessor has given the tenant sufficient details of the proposed demolition to indicate a genuine proposal to demolish the building within a reasonable time after the lease is to be terminated;
- (b) the lease cannot be terminated by the lessor because of the proposed demolition unless—
 - 15 (i) if the lease is for a term of up to 1 year—the lessor has given the tenant at least 3 months written notice of the lessor's intention to terminate; or
 - (ii) in any other case—the lessor has given the tenant at least 6 months written notice of the lessor's intention to terminate;
- 20 (c) if the lease is terminated because of the proposed demolition before the end of the term of the lease—the lessor must pay the tenant reasonable compensation for any loss of the tenant arising from the termination of the lease whether or not the lessor goes ahead with the demolition of the building;
- 25 (d) in working out reasonable compensation for paragraph (c), regard must be had to any concession given to the tenant (for example, reduced rent) because of the existence in the lease of the clause allowing for termination because of the proposed demolition.

79 Alterations and refurbishments to or affecting premises

- 30 (1) Subject to section 80, the lessor must tell the tenant about alterations to, or the refurbishment of, the shopping centre or building containing the tenant's premises if the tenant is likely to be materially affected by the alterations or refurbishment.

(2) The lessor is taken to have told the tenant about an alteration or refurbishment if notice of the alteration or refurbishment—

- (a) is in writing; and
- (b) includes details of the proposed alterations or refurbishment and the measures (if any) that will be taken by the lessor to minimise the effect of the alterations or refurbishment on the tenant's premises; and
- (c) is given to the tenant at least 2 months before the alteration or refurbishment starts.

10 **80 Emergency alterations**

If an alteration or refurbishment results from an emergency, the lessor must give the affected tenant notice of the alteration or refurbishment that is reasonable in the circumstances.

81 Compensation for disturbance

15 (1) The lessor is liable to pay the tenant reasonable compensation for loss or damage (other than nominal loss or damage) suffered by the tenant if the lessor—

- (a) materially inhibits access by the tenant to the premises; or
- (b) takes action that would materially inhibit or alter the flow of customers to the premises; or
- (c) fails to fix a breakdown of plant or equipment under the lessor's care and maintenance as soon as practicable; or
- (d) for premises located in the retail area of a shopping centre—does not adequately clean, maintain or repair the shopping centre (including common areas); or
- (e) otherwise adversely affects the trade of the tenant by the lessor's conduct without reasonable cause, whether by act or omission.

(2) The lessor is not liable to pay the tenant compensation in relation to an action of the lessor mentioned in paragraph (1) (a) or (b) if—

- (a) the action was a reasonable response to an emergency or in compliance with a statutory requirement or a lawful direction of a government entity; and

- (b) the emergency was not caused by, or the requirement or lawful direction did not apply because of, any neglect or failure of the lessor.

82 Compensation to reflect any concessions

5 In working out reasonable compensation for section 81, any concession given to the tenant (for example, reduced rent) based on the disturbance, or likelihood of disturbance, of the tenant's trade must be taken into account.

83 Shopping centre enlargement not grounds for compensation

10 A tenant of premises in the retail area of a shopping centre is not entitled to compensation under section 81 (Compensation for disturbance) only because—

- (a) the shopping centre is enlarged; or
 - (b) there is a change in the mix of tenants who hold leases in the shopping centre.
- 15

84 Damaged premises unable to be used

(1) This section applies if—

- (a) leased premises are damaged; and
 - (b) the premises cannot be used for their normal purpose because they have been damaged.
- 20

(2) The tenant is not required to pay rent or outgoings under the lease while the premises cannot be used unless the Magistrates Court decides otherwise.

(3) The lessor may apply to the Magistrates Court for an order for payment (in full or in part) of rent or outgoings if—

25

- (a) the damage to the premises was caused (fully or partly) by an act or omission of the tenant; or
- (b) the lessor is unable to claim insurance for the damage because the tenant has invalidated the lessor's insurance.

30 (4) This section does not apply to the extent (if any) to which the lessor and tenant agree to the payment, or reduced payment, of rent or outgoings after the premises are damaged.

85 Damaged premises able to be used

(1) This section applies if—

- (a) leased premises have been damaged; and
- (b) the tenant is able to use the premises (fully or in part) for their normal purpose despite the damage.

(2) The tenant must not refuse to pay rent or outgoings while the premises are damaged unless the Magistrates Court decides otherwise.

(3) The tenant may apply to the Magistrates Court for an order for payment of a lower amount of rent or outgoings than is required by the lessor.

(4) This section does not apply to the extent (if any) to which the lessor and tenant agree to the payment, or reduced payment, of rent or outgoings after the premises are damaged.

86 Dispute about payment or nonpayment of rent and outgoings

(1) This section applies if—

- (a) the lessor applies to the Magistrates Court about nonpayment under section 84 (Damaged premises unable to be used); or
- (b) the tenant applies to the court about payment of rent under section 85.

(2) The Magistrates Court may decide the application on its merits and is not bound by section 84 or 85.

87 Dispute about useability of damaged premises

(1) If there is a dispute about whether leased premises have been damaged so that they cannot be used for their normal purpose, a party to the lease may apply to the Magistrates Court for a declaration about whether the premises can or cannot be used for their normal purpose because of the damage.

(2) For this section, premises can be used for their normal purpose if they can be used fully or partly for their normal purpose.

(3) This section does not apply in relation to the use of premises during a period (if any) for which the lessor and tenant have agreed to the payment, or reduced payment, of rent or outgoings.

88 Notice of lessor's intentions regarding repair

If leased premises are, or a building that contains the premises is, damaged in a material way, the lessor must tell the tenant in writing, within 2 months after the day, or last day, the damage happened—

- 5 (a) that the lessor considers repair of the premises or building is impracticable or undesirable, and intends not to repair the premises or building; or
- (b) that the lessor intends to repair or reinstate the premises or building between starting and finishing dates approximately stated
10 in the notice.

89 Termination by lessor because of damage

(1) The lessor may terminate a lease by giving at least 30 days notice of his or her intention to terminate if—

- 15 (a) the premises have, or a building containing the premises (the *building*) has, been damaged; and
- (b) the lessor has told the tenant under paragraph 88 (a) that the lessor does not intend to repair the premises or building; and
- (c) either—
 - 20 (i) the premises or building has to be, or has been, demolished because of the damage; or
 - (ii) the damage extends to more than 50% of the premises or building; or
 - 25 (iii) it is impracticable or undesirable for the lessor to repair or reinstate the premises or building, acting reasonably and promptly, within 1 year after the day, or last day, the damage happened; or
 - 30 (iv) the premises cannot be used because of the damage, the lease is due to expire within 2 years after the day, or last day, the damage happened and the lease contains no option for extension.

(2) No compensation is payable for termination under this section.

90 Termination by tenant because of damage

(1) The tenant may terminate a lease by giving at least 30 days notice of the tenant's intention to terminate if—

- 5 (a) the premises have, or a building containing the premises (the *building*) has, been damaged in a material way; and
- (b) either—
- 10 (i) the lessor tells the tenant under paragraph 88 (a) (Notice of lessor's intentions regarding repair) that the lessor does not intend to repair the damage; or
- (ii) the lessor tells the tenant under paragraph 88 (b) that the lessor intends to repair or reinstate the premises or building (the *plan*) but unreasonably departs from, or takes no reasonable action in relation to, the plan; or
- 15 (iii) the premises will not be able to be used for their normal purpose within a reasonable period, or for more than 1 year, after the day, or last day, the damage happened.

(2) No compensation is payable for termination under this section.

91 Compensation for incomplete repair

(1) This section applies if—

- 20 (a) the lessor fails to comply with section 88 (Notice of lessor's intentions regarding repair); or
- (b) the tenant relies on the lessor's advice under paragraph 88 (a) that the lessor intends to repair damage to premises or to a building containing the premises.

25 (2) The lessor is liable to pay the tenant compensation for loss or damage (other than nominal loss or damage) suffered because of the lessor's failure—

- (a) to comply with section 88; or
- 30 (b) to repair the premises within the period the lessor told the tenant the premises would be repaired, or within a reasonable time after the end of that period.

92 Agreement to terminate

Sections 88 (Notice of lessor's intentions regarding repair), 89 (Termination by lessor because of damage) and 91 do not prevent the parties to a lease terminating the lease by agreement if—

- 5 (a) the premises are, or a building containing the premises is, damaged or destroyed; and
- (b) the agreement is reached after the premises or building are damaged or destroyed.

PART 11—ASSIGNMENTS, SUBLEASES AND MORTGAGES

93 Provision of disclosure statement by tenant

(1) Before asking for the lessor's consent to assign or sublet a lease under section 95 (Request for consent to assignment, sublease or mortgage), the tenant must give a prospective assignee or subtenant a copy of the disclosure statement (if any) given to the tenant in relation to the lease, together with details of any material change that has happened in the information contained in the statement since it was given to the tenant.

(2) Subsection (1) only requires a tenant to give details of a material change of which the tenant is aware or could reasonably be expected to be aware.

94 Lessor to provide disclosure statement

If the tenant does not have, or have access to, a copy of a disclosure statement required to be given under section 93—

- (a) the tenant may ask the lessor to give the tenant a copy of the disclosure statement for the lease to allow the tenant to provide a copy to a proposed assignee or subtenant; and
- (b) the lessor must not, without reasonable excuse, fail to comply with the request within 14 days after receiving it.

95 Request for consent to assignment, sublease or mortgage

If the tenant complies with section 93 (Provision of disclosure statement by tenant), the tenant may, in writing, ask the lessor to agree to—

- (a) the assignment of the lease; or
- (b) the grant by the tenant of a sublease for the premises; or
- (c) the mortgage of the lease.

96 Lessor may require relevant information and documents

(1) Within 14 days after receiving a request under section 95, or after a further period agreed by the parties, the lessor may, in writing, ask the tenant to provide the lessor with further information or documents.

(2) If the tenant's request is for consent to an assignment or sublease, the lessor may only request any or all of the following information or documents:

- 5 (a) information about the financial standing of the prospective assignee or subtenant, including details of any approved finance of the prospective assignee or subtenant;
- (b) information about the financial standing of any prospective guarantor for the prospective assignee or subtenant;
- (c) a certificate of occupancy for the premises;
- 10 (d) information about the business skills of the prospective assignee or subtenant;
- (e) information about the proposed use of the premises by the prospective assignee or subtenant;
- 15 (f) references relating to the ability of the prospective assignee or subtenant to operate the business, or proposed business, on the premises.

(3) If the tenant's request is for consent to the mortgage of the lease, the lessor may only request any or all of the following information or documents:

- 20 (a) information about the identity and financial standing of the proposed mortgagee;
- (b) details of the loan or other obligation to be secured by the mortgage including, if applicable, the amount of the loan, the purpose to which it is proposed the loan amount be used, the term of the loan, the repayment schedule for the loan and the powers that may be exercised by the mortgagee under the mortgage.
- 25

97 Mortgagees and head lessors

(1) This section applies if the lessor—

- 30 (a) receives a request from the tenant under section 95 (Request for consent to assignment, sublease or mortgage); and
- (b) has a mortgagee, head lessor or both; and

(c) is required under the mortgage or head lease to obtain the consent of the mortgagee or head lessor to the assignment, sublease or mortgage of the lease.

5 (2) The lessor must tell the lessor's mortgagee, head lessor or both that the request has been made and of the terms of the request as soon as practicable after receiving the request.

10 (3) If the lessor's mortgagee or head lessor requires further information or documents that the lessor may request under section 96, the lessor must ask the tenant for the information or documents and give them to the person who required them.

(4) If the lessor's mortgagee or head lessor refuses to consent to the tenant's request, the mortgagee or head lessor must tell the lessor and tenant in writing within 14 days after being told of the request, or after a further period agreed between the parties.

15 (5) A refusal under subsection (4) must include the reason for refusal.

98 Unreasonable refusal by mortgagee or head lessor

20 (1) If the lessor's mortgagee or head lessor refuses to consent to the tenant's request under section 95 (Request for consent to assignment, sublease or mortgage), the lessor or tenant may, within 14 days after being given the refusal, apply to the Magistrates Court to have the refusal overturned.

(2) The only ground for overturning a refusal is that the refusal is unreasonable.

99 Lessor's consent or refusal

25 (1) This section applies if the tenant makes a request under section 95 (Request for consent to assignment, sublease or mortgage).

30 (2) The lessor must consent or refuse to consent to the request by written notice to the tenant within 28 days after receiving the request, or after a further period agreed between the parties, unless the lessor asks for further information or documents under subsection 96 (1) (Lessor may require relevant information and documents).

Note Sections 100 and 101 (Refusal to consent to mortgage of lease) set out the criteria for refusal to consent.

(3) If the lessor asks for further information or documents, the lessor must consent or refuse to consent by written notice to the tenant within 21 days after receiving the information requested, or after a further period agreed between the parties.

5 (4) However, the lessor is taken to have consented to the request if—

- (a) the lessor fails to give written notice of the lessor's consent or refusal to consent under subsection (1) or (2); and
- (b) the head lessor or mortgagee (if any) has not given a refusal notice to the tenant under section 97 (Mortgagees and head lessors).

10 (5) The Magistrates Court may, on application by the tenant, order the person in possession of the Territory lease for the land that includes the leased premises to present the lease to the registrar-general to allow endorsement of the assignment or sublease if—

- (a) the lessor is taken to consent to the request; and
- 15 (b) the Territory lease is necessary for registration.

100 Refusal to consent to assignment or sublease

(1) The lessor may refuse consent to the assignment of a lease or granting of a sublease requested under section 95 (Request for consent to assignment, sublease or mortgage) only if it is reasonable in all the
20 circumstances to do so.

(2) For subsection (1), the lessor's refusal is taken to be reasonable if the lessor has reasonable grounds for believing that—

- (a) the prospective assignee or subtenant intends to use the premises for a purpose not allowed under the lease; or
- 25 (b) the prospective assignee or subtenant (taking into consideration information about any proposed guarantor for the assignee or subtenant) does not have the financial resources to run the business; or
- (c) the tenant cannot produce a current certificate of occupancy for
30 the premises; or
- (d) the prospective assignee or subtenant does not have adequate skills to run the business; or

(e) the prospective assignee or subtenant, or the business conducted by the prospective assignee or subtenant, will not be compatible with other tenants in the building containing the premises; or

5 (f) the tenant has failed to rectify a breach of the lease (other than a breach that has been waived by the lessor).

(3) If the lessor withholds consent on a ground not mentioned in subsection (2), the lessor has the burden of establishing that refusal to consent is reasonable.

10 (4) This section does not authorise anything that would, if it were not authorised, contravene Part 4 of the *Trade Practices Act 1974* (Cwlth).

(5) In this section:

business includes proposed business.

101 Refusal to consent to mortgage of lease

15 The lessor may refuse to consent to the mortgage of a lease requested under section 95 (Request for consent to assignment, sublease or mortgage) only if the lessor has reasonable grounds for believing that the tenant—

(a) is not financially sound; or

(b) does not have the capacity to service the proposed loan; or

20 (c) cannot otherwise meet the tenant's obligations under the mortgage.

102 Lessor may recover costs

(1) The lessor may recover from the tenant the reasonable costs of legal or other expenses incurred in making a decision about whether to consent to an assignment, sublease or mortgage.

(2) A request for recovery under subsection (1) must be made in writing within 6 months after the giving, or refusing, of consent to the assignment, sublease or mortgage.

30 (3) If the tenant asks the lessor in writing to substantiate costs sought to be recovered, the lessor may not recover the costs until they are substantiated.

103 Tenant and guarantor released from liability

The tenant and any guarantor of the tenant are released from further obligations under the lease if the lease is assigned under this Part.

PART 12—EXTENSION, RENEWAL AND TERMINATION OF LEASES

Division 12.1—Extension and renewal

104 Minimum 5 year lease

- 5 (1) This section applies if—
- (a) the total term for which a lease is entered into is less than 5 years;
and
 - (b) the tenant was not, before entering into the lease, independently
advised about the effect of this section; and
 - 10 (c) an extension of the term of the lease would not be—
 - (i) inconsistent with the head lease under which the lessor
holds the lease; or
 - (ii) unlawful.
- 15 (2) The tenant has the right to the extension of the lease so that the total
term of the lease is 5 years, subject to this section.
- (3) The tenant may, not later than 90 days before the end of the term of
the lease—
- (a) exercise the right of extension by written notice to the lessor; and
 - (b) either—
- 20 (i) ask the lessor to take reasonable steps to register the
extended lease with the registrar-general; or
- (ii) lodge a caveat on the title of the land that contains the
premises under section 104 (Lodging caveats) of the *Land
Titles Act 1925*.
- 25 (4) The lessor must take all reasonable steps to register the extended
lease if asked to under subsection (3).
- (5) The extension of a lease under this section has no effect until the
tenant has made a request or lodged a caveat under subsection (3).
- (6) For this section—

- (a) a tenant is taken to have been independently advised about the effect of this section if, before entering into the lease, the tenant was so advised by a lawyer who was not acting for, or nominated by, the lessor; and
- 5 (b) in the absence of evidence to the contrary, a written statement by a lawyer certifying that the lawyer has, at the request of the tenant, explained the effect of this section to the tenant and, in particular, that the giving of the certificate will result in the tenant being unable to use this section to increase the total term of the lease to
10 5 years, is conclusive evidence of the facts in the statement.

(7) This section does not apply to—

- (a) a lease granted under an option to extend a previous lease if—
 - (i) there was no break in the entitlement of the tenant to possession of the premises; and
 - 15 (ii) the option was granted by the earlier lease or by an agreement entered into before or at the same time as the earlier lease was entered into; or
- (b) a change of use lease; or
- (c) a continuous occupation lease.

20 (8) In this section:

total term, for a lease, means the length of the term of the lease and—

- (a) any further term provided for by an agreement if the agreement was entered into before or at the same time the lease was entered into; and
- 25 (b) any further term to which the tenant is entitled by an extension of the lease, if the option was conferred before or at the same time the lease was entered into; and
- (c) any period, ending immediately before the beginning of the current term of the lease, during which the premises were
30 occupied by the same tenant.

105 Terms of extended leases

- (1) This section applies if a lease is extended under section 104.

(2) The lease has the same provisions as it had before the extension, subject to any change necessary because the lease has been extended, unless—

(a) the lessor and tenant agree otherwise; or

5 (b) the Magistrates Court orders otherwise.

(3) The Magistrates Court may make an order varying the terms of the extension on application by a party to the lease made within 14 days after the tenant exercises the right to extend the lease.

(4) The applicant must tell the other party about the application.

10 (5) If the Magistrates Court makes an order varying the provisions of the extension, the variation takes effect on the day stated in the order or, if no day is stated, when the order is made..

106 Asking lessor's intention about renewal

15 The tenant may, in writing, ask the lessor to tell the tenant whether the lessor intends to renew the tenant's lease if—

(a) for a lease for longer than 1 year—the lease is due to end in not less than 6 months and not longer than 1 year; or

(b) in any other case—the lease is due to end in not less than 3 months and not longer than 6 months.

20 107 Lessor's intentions about renewal

(1) If the lessor receives a request under section 106 (on *request day*), the lessor must tell the tenant, in writing within 1 month after request day, either that—

25 (a) the tenant may renew the lease on the terms (including the rent to be charged as initial rent) stated in the notice; or

(b) the lessor does not propose to offer the tenant a renewal of the lease.

30 (2) If the lessor fails to notify the tenant under subsection (1), the lease is extended by a period equal to the period starting 1 month after request day and ending when the lessor gives the tenant a notice that, apart from being late, complies with subsection (1).

(3) If the lessor tells the tenant that the tenant may renew the lease (the *original notification*) but, before the tenant has accepted the offer to renew

the lease, the lessor tells the tenant that the offer is no longer available (the *subsequent notification*), the lease is extended by a period equal to the period starting on the original notification and ending on the subsequent notification.

5 (4) If a lease is extended under subsection (2) or (3), the extension is on the same terms, including the terms about rent, as the lease extended.

(5) However, subsection (4) does not allow a term to be included in a lease that is void or inconsistent with this Act.

10 (6) If a lease is extended under subsection (3), the extension is in addition to any extension to the lease under subsection (2) or section 56 (Extension if rent on renewal to be determined).

(7) However, this section does not allow the extension of the term of a lease if the extension would be inconsistent with the head lease under which the lessor holds the lease.

15 ***Division 12.2—Termination***

108 Tenant's right to terminate extended lease

(1) If a lease is extended because of section 107, the tenant may terminate the lease by giving the lessor at least 1 month's written notice in writing of termination at any time after the day the lease would have
20 expired if it had not been extended.

(2) Subsection (1) does not prevent a tenant from terminating a lease by giving less than 1 month's written notice of termination if the lessor agrees to accept less notice.

109 Right to terminate—no disclosure statement etc

25 In addition to any other right the tenant has, the tenant may, within 3 months after the day the lease is entered into, terminate the lease by giving the lessor at least 14 days written notice of termination if the lessor—

- (a) fails to provide a disclosure statement; or
- (b) provides a disclosure statement that is false or misleading in a
30 material particular; or
- (c) omits a material particular from a disclosure statement.

110 Failure to notify material change in disclosure statement

In addition to any other right the tenant has, the tenant may, within 3 months after a lease is entered into, terminate the lease by giving the lessor 14 days written notice of termination if the lessor—

- 5 (a) failed to tell the tenant under section 34 (Notice of material changes) of a material change in information provided in a disclosure statement relating to the lease; or
- (b) provided notice under that section that omitted a material particular or contained information that the lessor knew, or should
10 reasonably have known, was false or misleading in a material particular.

111 Other rights etc unaffected by termination

The termination of a lease because of a termination notice does not affect a right, privilege or liability existing under, or because of, the lease
15 immediately before its termination.

112 Lessor may contest termination

- (1) The lessor may, within 14 days after being served with a termination notice, contest the termination by application to the Magistrates Court.
- (2) The only ground for contesting a termination under this section is
20 that—
 - (a) the lessor acted honestly and reasonably and ought reasonably to be excused for doing the thing that constituted the ground for termination under section 109 (Right to terminate—no disclosure statement etc) or 110 (Failure to notify material change in
25 disclosure statement); and
 - (b) the tenant is substantially in as good a position as the tenant would have been in had the lessor not done the thing.

113 Effect of uncontested termination notice

If the lessor does not contest a termination notice within 14 days
30 after the notice was served on the lessor, the notice takes effect 15 days after service.

114 Effect of contested termination notice

Despite sections 109 (Right to terminate—no disclosure statement etc) and 110 (Failure to notify material change in disclosure statement), if a termination notice is contested under this Part—

- 5 (a) the notice does not have effect unless it is confirmed by the Magistrates Court; and
- (b) if the notice is confirmed—the notice has effect on the day stated by the court or, if no day is stated, on confirmation.

PART 13—RETAIL AREAS OF SHOPPING CENTRES

115 Application of pt 13

This Part applies to leases for premises in the retail areas of shopping centres.

5 116 Provision and use of turnover figures

(1) The lessor must not require the tenant to supply periodic turnover figures unless the lease provides that rent is to be worked out by reference to turnover.

10 (2) The lessor must not divulge or communicate a tenant's periodic turnover figures to anyone except—

- (a) to the tenant or tenant's guarantor; or
- (b) with the consent of the tenant or the tenant's guarantor; or
- (c) in a document giving aggregate turnover information about a shopping centre or part of a shopping centre in a way that does not
15 disclose information about the turnover of an individual tenant's business; or
- (d) to a court or tribunal; or
- (e) for mediation, a hearing or valuation for this Act; or
- (f) in compliance with a requirement made under this or another law
20 or an order of a court; or
- (g) to the lessor's professional advisers (such as legal or financial advisers); or
- (h) to a financial institution to allow the lessor to obtain or continue to receive financial accommodation or to comply with a condition
25 imposed by the financial institution in relation to a financial accommodation; or
- (i) honestly to a prospective purchaser of the shopping centre or part of the shopping centre.

117 Statistical information to be available to tenant

If a lease requires the tenant to pay an amount for outgoings for expenditure incurred in obtaining statistical information, the lease must include a provision to the effect that the lessor must make the statistical analysis of the information obtained by the lessor available to the tenant in a form that does not identify a particular tenant.

118 Advertising and promotion levy—new leases

(1) This section applies to the lessor's first accounting period under a new lease, whether it is a full accounting period or the remainder of an accounting period.

(2) If the lease requires the tenant to pay an amount to the lessor for advertising and promotion costs, the amount can be levied only if, before the lease was entered into, the lessor made available to the tenant a marketing plan giving details of the lessor's proposed expenditure on advertising and promotion during the accounting period or remainder of the accounting period.

(3) If the lessor fails to substantially comply with subsection (2), the tenant is not liable to pay an amount for advertising and promotion costs and may recover any amount already paid for those costs.

119 Advertising and promotion levy—other leases

(1) This section applies to the lessor's accounting periods after the first accounting period under a lease.

(2) If the lease requires the tenant to pay an amount to the lessor for advertising and promotion costs, the lessor can only levy the amount if—

(a) at least 1 month before the start of each accounting period of the lessor—the lessor makes available to the tenant a marketing plan that gives details of the lessor's proposed expenditure on advertising and promotion during the accounting period and indicates the amount (if any) previously levied for advertising or promotional purposes but not spent; or

(b) if the amount relates to an opening promotion for the relevant shopping centre—at least 1 month before the opening promotion, the lessor makes details of the proposed expenditure on the promotion available to the tenant.

(3) If the lessor fails to substantially comply with subsection (2), the tenant is not liable to pay an amount for advertising and promotion costs and may recover any amount already paid for those costs—

5 (a) for costs relating to an opening promotion of the shopping centre—if the details were not made available to the tenant in accordance with paragraph (2) (b); or

(b) in any other case—if no expenditure plan has been provided.

120 Amount not spent to be kept for benefit of tenants

10 An amount paid by the tenant for an advertising and promotion levy that is not spent within the lessor's accounting period must be kept by the lessor in a fund for the benefit of tenants to be used for future expenditure on advertising or promotion of the shopping centre.

121 Non-specific outgoing contribution

15 (1) The tenant is only liable to contribute to an outgoing to the extent that it is referable to the tenant's premises.

(2) The tenant is not liable to contribute more than an amount calculated by multiplying the total amount of the outgoing by the ratio of the lettable area of the tenant's premises to the total of the lettable areas of all the premises in the retail area of the shopping centre to which the outgoing is referable.

20 (3) For this section, an outgoing is *referable* to premises if the premises benefit from, or share the benefit resulting from, the outgoing.

122 Consultation before redevelopment

25 (1) The lessor must not redevelop the shopping centre, or part of the shopping centre, unless the lessor has consulted with the tenants about the proposed redevelopment.

(2) The lessor is taken to have consulted about a proposed redevelopment if the lessor conducts a meeting about the proposal and—

(a) the tenants are invited to the meeting; and

30 (b) the lessor gives reasonable notice of the meeting; and

(c) the meeting takes place before a final decision is made to redevelop.

(3) The lessor is taken to have consulted about a proposed redevelopment if—

5 (a) the lessor gives a written summary of the proposed redevelopment to the tenants within a reasonable time before the decision is made to redevelop; and

(b) seeks submissions in relation to it.

(4) The lessor is taken to have consulted or invited tenants, or given them a summary, if the lessor has consulted or invited a representative body of a majority of the tenants in the centre or part, or given it a summary.

10 (5) For this section:

redevelop, for a shopping centre, means—

- (a) refurbish, if the refurbishment proposed is likely to cost more than 10% of the value of the shopping centre; or
- (b) substantially reconstruct the shopping centre; or
- 15 (c) construct additional retail space at the shopping centre so that the lettable area of the shopping centre is increased by more than 10%.

representative body includes a body—

- (a) whether incorporated or not; and
- 20 (b) whether specially created to consider the proposed redevelopment or not.

123 Relocation clauses

(1) A lease that allows the tenant to be relocated within the shopping centre must include provisions to the effect of the following:

- 25 (a) if the lessor intends to relocate the tenant—the lessor must give the tenant at least 3 months written notice of the relocation (the *relocation notice*) and include an offer to provide alternative comparable premises (the *alternative premises*) for a period equivalent to the unexpired term of the existing lease on terms no less favourable than those applying to the premises originally
- 30 leased;
- (b) the tenant may give written notice to the lessor within 1 month after receiving the relocation notice of the tenant's intention to

terminate the lease, and if the tenant does, the termination takes effect 3 months after the relocation notice was received by the tenant, unless the parties otherwise agree;

- 5 (c) if the tenant accepts the offer of the alternative premises made in the relocation notice—the lessor must give the tenant a new lease in accordance with the offer;
- (d) the lessor must pay the tenant's reasonable costs of relocation and pay reasonable compensation to the tenant for any other loss or damage incurred by the tenant because of the relocation;
- 10 (e) in working out what is reasonable compensation, consideration must be given to any concession given to the tenant, like reduced rent, because the lease contains a relocation provision.

(2) In subsection (1):

comparable premises include premises that have not yet been built.

15 **124 No relocation other than for repairs, refurbishment, redevelopment or extension**

A provision in a lease that allows the tenant to be relocated other than so the lessor can repair, refurbish, redevelop or extend the shopping centre is void.

20 **125 Relocation for repairs, refurbishment, redevelopment or extension**

(1) The lessor must not use a provision of a lease that allows the tenant to be relocated within the shopping centre because of proposed repairs or a proposed refurbishment, redevelopment or extension unless—

- 25 (a) the proposed repairs, refurbishment, redevelopment or extension of the shopping centre that contains the tenant's premises cannot practicably be carried out without vacant possession of the tenant's premises; and
- (b) the lessor presents the tenant with a plan for the repairs, refurbishment, redevelopment or extension.
- 30

(2) If the lessor uses a provision of a lease that allows the tenant to be relocated within the shopping centre, the lessor must ensure that the proposed repairs, refurbishment, redevelopment or extension is carried out within a reasonable time after the relocation of the tenant.

126 Changing core trading hours

(1) The lessor is not entitled to change the core trading hours of the shopping centre without the approval in writing of the majority of tenants of premises in the retail area of the shopping centre (whether or not the premises are premises to which this Act otherwise applies).

(2) The initial fixing of core trading hours in a new shopping centre is not a change to core trading hours and is not affected by this section.

127 Tenants trading outside core trading hours

(1) The tenant may trade outside the core trading hours of the shopping centre with the lessor's agreement provided that the tenant meets the costs associated with opening and operating the shopping centre for the additional hours, including any costs of advertising and promotion.

(2) A cost met by the tenant under subsection (1) must be proportionate having regard to the costs of opening and operating the shopping centre and the number of other tenants who are trading outside the core trading hours with the tenant.

128 Geographical restrictions void

(1) A provision of a lease that has the effect of preventing or restricting the tenant from carrying on business outside the shopping centre containing the tenant's premises during, or after the end of, the lease is void.

(2) Subsection (1) does not prevent a lease from containing a provision that prevents the use of the name of a shopping centre in connection with a business carried on outside the shopping centre.

129 No termination for inadequate sales

A provision in a lease that allows the lessor to terminate the lease because the tenant or the business of the tenant has failed to achieve adequate or stated sales or turnover performance is void.

PART 14—DISPUTE RESOLUTION

130 Definitions for pt 14

In this Part:

5 *dispute*, in relation to an application, means the dispute to which the application relates.

party, to an application, means a party to the proceeding on the application.

131 Jurisdiction

10 (1) The Magistrates Court has jurisdiction to decide applications under this Act.

(2) The jurisdiction of the Magistrates Court for this Act is not affected by the amount claimed in an application.

132 When can applications be made

15 (1) An application may be made in relation to a dispute to which this Act applies.

Note Section 17 (Disputes) sets out the disputes to which this Act applies.

(2) However, section 18 (Disputes about leases no longer in force) limits the making of applications in relation to leases that are no longer in force.

20 133 Action on receiving application

(1) The Magistrates Court must hold a case management meeting with the parties for each application it receives.

(2) The purpose of the case management meeting is—

25 (a) to assess the likelihood of the parties resolving the dispute before the proceeding is heard; and

(b) to direct the hearing of the application as a result of the assessment.

134 Resolution of dispute likely

If, at a case management meeting for an application, the Magistrates Court considers it likely that the parties may resolve the dispute, the court—

- 5 (a) must promote the settlement of the dispute (either at the meeting or by referral to other dispute resolution mechanisms); and
- (b) may adjourn the proceeding to a stated date, or for a stated period, to allow the parties to settle the dispute.

Examples of other dispute resolution mechanisms

- 10 1 mediation
- 2 conciliation
- 3 facilitation
- 4 early neutral evaluation
- 5 arbitration.

15 **135 Resolution of dispute unlikely**

- (1) If, at a case management meeting for an application, the Magistrates Court considers it unlikely that the parties may resolve the dispute, the court must give directions about how the proceeding will be conducted.
- (2) In deciding what direction to give for the proceeding, the
- 20 Magistrates Court must endeavour to facilitate—
- (a) hearing the dispute as promptly as practicable; and
- (b) keeping costs for the parties as low as practicable.

136 Hearings

The Magistrates Court must, when hearing a proceeding—

- 25 (a) act as quickly as possible; and
- (b) ensure, as far as practicable, that all relevant material is disclosed to the court to allow it to decide the matters in dispute.

137 Procedures

- (1) The Magistrates Court may decide its own procedures.

(2) Without limiting subsection (1), the Magistrates Court may adopt, either completely, in part or in a modified form, the procedures in the following parts of the *Magistrates Court (Civil Jurisdiction) Act 1982*:

- (a) Part 7 (Reply);
- 5 (b) Part 8 (Third party procedures);
- (c) Part 10 (Payment into court);
- (d) Part 12 (Pleadings and particulars);
- (e) Part 13 (Interlocutory matters);
- (f) Part 15 (Evidence).

10 (3) Without limiting subsection (1), the Magistrates Court may require evidence or argument to be provided in writing and may decide the matters on which it will hear oral evidence or argument.

(4) If the Magistrates Court does not decide its own procedures, the procedures in the provisions of the *Magistrates Court (Civil Jurisdiction) Act 1982* mentioned in subsection (2) apply.

138 Transfer to Supreme Court

The Magistrates Court may transfer a proceeding to the Supreme Court if the Magistrates Court considers it appropriate.

139 Notice of orders

20 The Magistrates Court must give each party to a proceeding written notice setting out the terms of any order made at the end of the hearing within 14 days after making the order.

140 Costs

The costs in a proceeding under this Act must—

- 25 (a) be paid by or apportioned between the parties as ordered by the Magistrates Court or Supreme Court (as the case requires); or
- (b) if the court does not make an order about costs—the successful party is entitled to be indemnified for party and party costs by the unsuccessful party.

141 Appeals

(1) A party to a proceeding under this Act may appeal to the Supreme Court on a question of law or fact from a decision of the Magistrates Court in the proceeding.

5 (2) The appeal must be begun within 28 days (the *appeal period*) after notice is given to the person under section 139 (Notice of orders) or within the further time (the *further time*) allowed by the Supreme Court.

(3) The Supreme Court may allow the further time before or after the end of the appeal period.

10 **142 Order by Supreme Court on appeal**

The Supreme Court may make any order it considers appropriate on an appeal under this Act, including the following orders:

- (a) an order affirming or setting aside the decision of the Magistrates Court;
- 15 (b) an order remitting the case to the Magistrates Court to be heard again, either with or without the hearing of further evidence, in accordance with the directions of the Supreme Court.

PART 15—MISCELLANEOUS

143 References to repealed Act or code

(1) In any Act, statutory instrument or document, a reference to the repealed Act or the code is, in relation to anything dealt with in this Act, a
5 reference to this Act.

(2) In any Act, statutory instrument or document, a reference to a particular provision of the repealed Act or code is, in relation to anything dealt with in this Act, a reference to the corresponding provision of this Act.

10 (3) In this section:

code means the code of practice approved under section 75 of the repealed Act as in force immediately before commencement day.

repealed Act means the *Tenancy Tribunal Act 1994* as in force immediately before commencement day.

15 144 Regulation-making power

(1) The Executive may make regulations for this Act.

(2) Without limiting subsection (1), the regulations may—

(a) regulate the practice and procedures to be followed by the Magistrates Court; and

20 (b) provide for the exercise of the powers of the court under this Act to be exercised by the registrar and deputy registrars of the court; and

(c) provide that words used in a lease, or a mortgage for leased premises, have a wider meaning than that set out in the mortgage
25 and may prescribe the meaning.

PART 16—TRANSITIONAL

Division 16.1—Transitional

145 Definitions for div 16.1

In this Division:

5 *code* means the code of practice approved under section 75 of the repealed Act as in force immediately before commencement day.

dispute means a dispute within the meaning of the repealed Act.

repealed Act means the *Tenancy Tribunal Act 1994* as in force immediately before commencement day.

10 *tribunal* means the Tenancy Tribunal established by section 60 of the repealed Act.

tribunal registrar means the registrar of the tribunal.

146 Pre-existing referrals

15 (1) This section applies if, immediately before commencement day, a person had referred a dispute to the tribunal registrar under section 12 of the repealed Act but the dispute had not been disposed of by the tribunal.

(2) This Act applies to the dispute as if the dispute were an application under this Act.

20 (3) This Act applies as if, for any step taken under the repealed Act in the proceeding on the dispute, the corresponding step under this Act had been taken in the proceeding on the claim.

(4) Any evidence given in the proceeding on the dispute is to be taken to have been given in the proceeding on the claim.

25 (5) If the dispute was a dispute mentioned in paragraph 6 (1) (b) of the repealed Act, section 22 (Prohibited conduct in dealings) of this Act applies to the dispute as if the reference in paragraph 22 (2) (g) to 'the requirements of this Act' were a reference to 'the requirements of this Act or the *Tenancy Tribunal Act 1994* as in force immediately before commencement day'.

147 Provisions required to be included—application to pre-existing leases

5 A provision of this Act requiring a provision to be included in a lease does not apply to leases in force immediately before commencement day.

148 Lessor's intentions about renewal

To avoid doubt, section 107 (Lessor's intentions about renewal) also applies to leases entered into before the commencement of this Act.

10 **149 Provisions taken to be included—application to pre-existing leases**

(1) This section applies to a lease in force immediately before the commencement day if the lease contains a provision (the *lease provision*) dealing with the same subject as a provision (the *Act provision*) that, apart from this section, would be taken to be included in the lease because of
15 section 20 (Included provisions).

(2) The Act provision is taken to be included in the lease only to the extent that the Act provision is not inconsistent with the lease provision.

150 Application of Act to disputes under code

20 (1) A party to a lease may apply to the Magistrates Court for resolution of a dispute, and the dispute must be dealt with for all purposes, as if it were a dispute under this Act if—

(a) immediately before the commencement day—

25 (i) a party to the lease engaged in conduct that gave rise to a dispute under paragraph 6 (1) (f) or (g) of the repealed Act but the conduct had not been referred to the tribunal registrar as a dispute; and

(ii) the code applied to the lease and the conduct at the time the conduct happened; and

30 (b) the party could not, apart from this section, apply to the Magistrates Court for resolution of the dispute under this Act.

(2) This section is subject to section 18 (Disputes about leases no longer in force).

151 Approved handbook and pre-existing leases

If a lease is in force immediately before commencement day, the lessor must tell the tenant about the approved handbook under section 35 (Notice about handbook) as soon as practicable after commencement day.

5 **152 Tribunal decisions**

A decision of the tribunal is taken to have been a decision of the Magistrates Court under this Act.

153 Application of this Act to leases code applied to

10 (1) This section applies to a lease in force immediately before the commencement day if the code applied to the lease at that time.

(2) Despite Part 3 (Application), this Act applies to the lease to the extent to which the code applied to the lease at that time.

154 Transitional regulations

15 (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

20 (2) Without limiting the scope of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provision of this Act instead of the provisions of the repealed Act.

(3) Regulations made for this section must not be taken to be inconsistent with this Act as far as they can operate concurrently with this Act.

(4) This section is additional to, and does not limit, section 155.

25 **155 Modification of pt 16's operation**

The regulations may modify the operation of this Part to make provision with respect to any matter that is not already, or is not adequately, dealt with in this Part.

156 Expiry of div 16.1

30 This Division expires 2 years after commencement day.

Division 16.2—Consequential repeals and amendments

157 Repeal

The *Tenancy Tribunal Act 1994* is repealed.

158 Amendment of Land Titles Act

5 The *Land Titles Act 1925* is amended by inserting after section 123A the following section:

“123B Part does not apply to leases under Leases (Commercial and Retail) Act

10 Despite section 123, this Part does not apply to a lease to which the *Leases (Commercial and Retail) Act 2000* applies.”.

159 Amendment of Magistrates Court Act

Section 248 of the *Magistrates Court Act 1930* is amended—

- (a) by omitting paragraph (h) of the definition of *relevant legislation* and substituting the following paragraph:

15 “(h) the *Leases (Commercial and Retail) Act 2000*;”; and

- (b) by omitting paragraph (j) of the definition *relevant legislation*; and

- (c) by omitting paragraph (e) of the definition *tribunal*.

160 Amendment of Magistrates Court (Civil Jurisdiction) Act

20 Section 12 of the *Magistrates Court (Civil Jurisdiction) Act 1982* is repealed and the following section substituted:

“12 Disputes under Leases (Commercial and Retail) Act

The court has no jurisdiction under this Act in relation to a dispute to which the *Leases (Commercial and Retail) Act 2000* applies.

25 *Note* The Magistrates Court may exercise jurisdiction in relation to a dispute under the *Leases (Commercial and Retail) Act 2000* under section 131 of that Act.”.

161 Expiry of div 16.2

This Division expires on commencement day.

SCHEDULE 1

(See s 7 (2))

EXAMPLES OF COMMERCIAL PREMISES

- 1 Boarding houses, hotels, guesthouses, hostels and similar accommodation facilities.
- 5 2 Premises used to operate a business agency such as a computer service, health insurance agency, real estate agency or travel agency.
- 3 Premises used for the business of providing accommodation at a caravan park or camping ground or in cabins or similar accommodation.
- 10 4 Premises that are primarily used to operate a craft workshop for profit.
- 5 Authorised deposit-taking institutions, finance companies and other financial establishments.
- 6 Premises used for a freight transport business.
- 7 Funeral parlours.
- 15 8 Premises (other than hospitals) used for the business of providing health care services, including diagnosis, preventative care and counselling, or for medical or surgical treatment for outpatients only.
- 9 Amusement arcades, casinos, cinemas, commercial theatres, concert and dance halls, discos, music halls, night clubs and other indoor entertainment facilities.
- 20 10 Premises used to operate as a business providing facilities for indoor sporting activity such as fitness centres, gymnasiums, indoor sports stadiums, indoor swimming pools and squash courts.
- 11 Premises used for industrial purposes.
- 25 12 Premises used for the bulk storage or wholesale distribution of petrol, oil, petroleum products or other inflammable liquids.
- 13 Mobile home parks.
- 14 Premises used for administration, clerical, technical, professional or like business activities.
- 30 15 Premises used for operating a business that provides outdoor recreation facilities such as archery, bowling greens, BMX, motorbike and similar tracks, croquet greens, equestrian facilities, golf courses,

SCHEDULE 1—continued

ski runs, facilities for the use of model aeroplanes, netball courts, racecourses, showgrounds, areas designed or intended for the use of skateboards, rifle ranges, sportsgrounds, stadiums, arenas, outdoor swimming pools, tennis courts and velodromes.

- 5 16 Premises for people to gather to attend functions where those premises are provided as a business, including auditoriums, convention centres, exhibition halls and reception rooms.
 - 17 Premises used for the business of collecting recyclable materials.
 - 18 Premises used as a recycling business.
 - 10 19 Premises primarily used for holding a market for selling animals and keeping animals before sale.
 - 20 Amusement parks and theme parks.
 - 21 Transport depots.
 - 22 Any part of a building set aside for car parking.
 - 15 23 Warehouses.
 - 24 Aquariums, oceanariums, wildlife sanctuaries and zoos.
 - 25 Boat sheds or boat landing facilities operated for profit.
-

SCHEDULE 2

(See s 54)

WORKING OUT MARKET RENT

5 (1) *Market rent*, of premises, is the amount that could reasonably be expected to be paid in rent for vacant possession of the premises on the open market if—

- (a) the premises were let by a willing but not anxious lessor to a willing but not anxious tenant; and
- (b) both parties acted knowledgeably and prudently; and
- 10 (c) the use to which the premises may be put under the lease is taken into consideration; and
- (d) the amount is worked out in accordance with this Schedule.

(2) The valuer must take into account the following in relation to the premises:

- (a) the gross cost of occupancy;
- 15 (b) market evidence about comparable premises, including the level of incentives or inducements to lease (if any) being offered in the marketplace for comparable premises;
- (c) the estimated gross occupancy costs that would be agreed, on valuation, between a willing lessor and a willing tenant in an arms
20 length transaction, after proper marketing of the premises, if the parties acted knowledgeably, prudently and without compulsion;
- (d) any covenant or restriction on the use of the premises or any covenant on adjacent premises that run with the premises;
- (e) court precedents about valuation practice;
- 25 (f) the proposed arrangements for rent review;
- (g) any building service or improvement offered by the lessor (other than a service or improvement that can be removed or withdrawn by an outgoing tenant or someone other than the people for whom market rent is being worked out);
- 30 (h) the condition of the premises, as provided by the lessor;

SCHEDULE 2—continued

- (i) particulars required to be disclosed in a disclosure statement that affect or potentially affect the value of premises, including particulars about a tenant's obligations, costs or responsibilities;
 - (j) the terms of the proposed lease;
 - 5 (k) any other relevant market evidence.
- (3) The valuer must not take into account the following in relation to the premises:
- (a) a special interest or concern of the lessor or tenant;
 - (b) the tenant's goodwill;
 - 10 (c) the tenant's fixtures and fittings;
 - (d) an advantage or disadvantage arising from the current lease agreement.
- (4) A party to the lease may, on the party's own initiative, make a submission to the valuer within 14 days after the appointment of the valuer and, if the party makes a submission within that time, the valuer must consider the submission.
- 15 (5) The valuer may, in writing, ask each party to the lease to make a submission in relation to the valuation.
- (6) A notice must require the parties to make their submissions within 14 days after the date of the notice and tell the parties that, if they do not make a submission in that time, a valuation may be made without their submission.
- 20 (7) The valuer may proceed with a valuation of a lease even if a party to the lease does not make the requested submission.
- (8) The valuation must give detailed reasons for the valuation and must include the matters that the valuer took into consideration in working out the valuation.
- 25 (9) The valuation must state whether any rental concession relevant to the valuation was disclosed to the valuer.
- 30 (10) For this Schedule:

SCHEDULE 2—continued

gross cost of occupancy, for premises, means the rent for the premises, plus recoverable outgoings (other than promotional levies or advertising commitments required by the lease).

DICTIONARY

(See s 4)

accounting period, for a lessor, means a financial year or other period included in a disclosure notice under section 31 (Form of disclosure statements) or otherwise agreed between the parties.

5 **bond** means an amount paid or payable by a tenant as security for the performance of his or her obligations under a lease.

certificate of occupancy means a certificate under section 53 of the *Building Act 1972*.

change of use lease—see section 9 (What is a *change of use lease*?).

10 **commencement day** means 1 July 2001.

commercial premises—see section 7 (When are premises commercial or retail premises?).

15 **conduct**, in relation to a lease or to negotiations for the entering into of a lease, means an act or omission in relation to the lease or negotiations.

Examples of acts and omissions in relation to leases or negotiations

1 Making a request or demand of a person in relation to the lease or negotiations.

2 Taking action to enforce the terms of the lease.

20 3 An action or omission that causes a breach of the lease.

25 **core trading hours**, for a shopping centre, means the hours when retail premises in the shopping centre are generally required to be open for business, whether the requirement is imposed by or under the lease or by or under another agreement or arrangement between the lessor and tenant or is imposed in another way.

demolition, in relation to premises, includes any repair, renovation or reconstruction of a building containing the premises that cannot be carried out practicably without vacant possession of the premises.

disclosure statement—see section 30 (Disclosure statements).

30 **discretionary rent review clause** means a provision in a lease that—

- (a) provides for rent to be set or changed in accordance with whichever of 2 or more methods of calculating the change would result in the highest rent; or

DICTIONARY—continued

rent includes a component of rent.

rent review includes a change to rent payable on the exercise of an option under a lease, but does not include a predetermined rent change.

retail area means the area of a shopping centre other than an excluded area.

shopping centre—see section 8 (What are *shopping centres*?).

small commercial premises means commercial premises with a lettable area of no more than 300m².

10 **taxable supply**—see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), dictionary.

tenant, of premises, means a person who has the right to occupy the premises under a lease, and includes—

- (a) a subtenant; and
- 15 (b) a person who receives the right to occupy the premises by assignment from the tenant or by operation of law; and
- (c) in relation to negotiations for a lease—a prospective tenant.

20 **termination notice** means a notice under section 109 (Right to terminate—no disclosure statement etc) or 110 (Failure to notify material change in disclosure statement).

Territory lease means—

- (a) a lease granted under the *Land (Planning and Environment) Act 1991*; or
- (b) a lease under the *Unit Titles Act 2000*;
- 25 but does not include a sublease.

turnover includes gross takings, gross receipts and gross income.

DICTIONARY—continued

turnover rent means rent, or the part of rent, based on the tenant's turnover.

valuer means a person who is competent in retail and commercial market rental valuations.

5

Endnote

Penalty units

See section 33AA of the *Interpretation Act 1967*.