

2000

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

LEASES (COMMERCIAL AND RETAIL) BILL 2000

EXPLANATORY MEMORANDUM

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Minister for Justice and Community Safety

Leases (Commercial and Retail) Bill 2000

Objectives

The objectives of the Bill are to:

- ensure that all parties to commercial and retail leases, and negotiations for those leases, are able to make fully informed decisions;
- ensure that there is an appropriate balance between the bargaining powers of the parties, particularly in the negotiation stages;
- encourage equitable conduct between parties to commercial and retail leases; and
- provide an effective dispute resolution process in relation to commercial and retail leases and the negotiation of such leases.

Outline

The *Leases (Commercial and Retail) Bill 2000* ("the new Act") consolidates and replaces the *Tenancy Tribunal Act 1994* ("the Tenancy Tribunal Act") and the Commercial and Retail Leases Code of Practice ("the Code") in regulating commercial and retail leases in the ACT.

The new Act makes comprehensive provision for the regulation of the relationships between lessors and tenants of commercial and retail premises in the ACT. The key reforms of the new Act are as follows.

Dispute Resolution

The new Act transfers jurisdiction with respect to commercial and retail tenancy matters from the Tenancy Tribunal to the ACT Magistrates Court. The new Act provides that the ordinary processes in the *Magistrates Court (Civil Jurisdiction) Act* would apply to disputes. The new Act clearly sets out the jurisdiction of the Magistrates Court in relation to disputes.

The new Act requires the court to actively manage disputes within a flexible framework that would accommodate both simple and complex disputes through a case management hearing process. At such a hearing, the court would be required to:

- assess the likelihood of the parties resolving issues in question before hearing and assisting or encouraging parties to do so by the most appropriate method (eg, by promoting early dispute resolution - including, but not limited to, mediation, conciliation, facilitation, early neutral evaluation and arbitration); and
- where settlement seems unlikely, give directions concerning the manner in which the proceedings will be pursued which, in the opinion of the court, will enable costs to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties to the proceedings

This approach has the flexibility to enable a sensitive response to the dispute resolution requirements of each dispute. Additionally, it will require the court to encourage the resolution of disputes by non-litigious means.

Conduct of the Parties

The new Act prohibits conduct that is unconscionable or harsh and oppressive. The opportunity has been taken in setting out the grounds the Court may consider when determining whether or not the parties have engaged in such conduct and to make it clear that both parties are capable of engaging in such conduct.

Information

The new Act confirms the requirement of lessors to provide tenants with a disclosure statement within specified time limits. Provision is also made for the publication of a handbook to be approved by the Commissioner of Fair Trading to assist lessors and tenants in their understanding of the legislation.

Bonds, Guarantees, Rent and Outgoings

More comprehensive provision is made with respect to bonds, including the manner of holding bond moneys and deductions which can be made from such moneys. The new Act also contains streamlined provisions relating to the determination of market rent in cases of rent reviews and lease renewals, where the parties cannot agree on the amount of rent. The new Act also makes it clear what outgoings may be recovered from a tenant.

Alterations and Other Interference

The new Act includes detailed provisions dealing with damaged premises, including the circumstances as to the kind of damage which may give rise to the right to terminate the lease.

Assignments, Subleases and Mortgages

New provisions deal with the need for consent to be obtained from the lessor's mortgagee or head lessor in relation to a proposed assignment by a tenant.

Provision has also been included allowing a lessor to withhold consent to a proposed assignment but only if to do so is reasonable in all the circumstances.

Extension, Renewal and Termination of Leases

The new Act confirms the requirement that tenants must be offered a lease for a minimum period of five years, unless independently advised by a legal practitioner. A lease for less than five years may be extended by the tenant as a matter of right in certain circumstances and, in such cases, provision is now made for the terms of such extended leases to be ascertained.

Additional requirements for premises in retail areas of shopping centres

The new Act requires lessors to consult with a majority of tenants or their representative body, in relation to a substantial redevelopment proposal for a shopping centre or part of a shopping centre.

Revenue/Cost Implications

The new Act has no revenue or cost implications for the Territory Budget.

Clause title	Clause notes
	PART 1 – PRELIMINARY
Name of Act	Formal.
Commencement	The commencement date is 1 July 2001.
Notes	Formal.
	PART 2 – INTERPRETATION
Dictionary	Formal (includes the dictionary in the new Act)
When is a lease entered into...	Formal (defines when a lease entered into for the purposes of the Act). The mere taking of a deposit or payment of rent in advance is not, of itself, the entering of a lease.
When is a lease taken to be renewed...	Formal (defines when a lease taken to be renewed for the purposes of the Act).
When are premises commercial or retail premises?	<p>Formal (defines commercial and retail premises by reference to use permitted under a lease or proposed lease, or, if none, the use to which the premises might be put under the Territory lease). Schedule 1 gives examples of commercial leases.</p> <p>Examples of commercial premises include banks, credit unions, industrial premises or boarding houses. Examples of retail premises include newsagents or supermarkets.</p>
What are shopping centres?	Formal (defines a shopping centre for the purposes of the Act). Regulations may also define a shopping centre.
What is a change of use lease?	Formal (defines a change of use lease for the purposes of the Act).
What is a continuous occupation lease?	Formal (defines a continuous occupation lease for the purposes of the Act).
What is an excluded area?	Formal (defines an excluded area in a shopping centre for the purposes of the Act).
	PART 3 – APPLICATION
What leases does this Act apply to?	<p>Provides that the legislation applies to retail premises or premises located in the retail area of a shopping centre (other than premises with a lettable area greater than 1000m² that are leased to a listed public company or a subsidiary of such); small commercial premises that are not included in a shopping centre and prescribed premises, including a class of prescribed premises.</p> <p>Note that</p> <ul style="list-style-type: none"> • the legislation does not apply to a lease where a tenant is the occupant for residential purposes; • regulations may include other premises (for example, oil

	<p>companies might be included in this manner); and</p> <ul style="list-style-type: none"> • regulations may exclude other premises (such as premises excluded under the former legislative scheme).
How to work out the lettable area of a lease	Provides that the lettable area may be measured by agreement or, in the event of no agreement, application to the Magistrate's Court.
Application to change of use leases	Provides that even though the Act may not apply to a lease initially, it may later apply to that lease if there is a change of use agreed between the parties. See also section 9, "What is a change of use lease".
Is assignment the same as entering into lease for working out application of Act?	Provides that the assignment of a lease (eg, the sale or transfer by law of a lease), by itself, does not normally change whether the Act applies to a lease or not. However, the Act ceases to apply to the lease if the Act would not have applied if the assignee was the original tenant.
Application of Act to pre-existing leases on registration of unit plans	Provides for the application of the new Act to pre-existing leases on registration of unit plans for the leases.
Disputes	Specifies the disputes to which the Act applies having regard to the type of dispute, the time the lease was entered into and the time of conduct.
Disputes about leases no longer in force	Provides that a dispute may be decided under the new Act if the Act applied to a former lease and the action is taken within 6 years of the conduct giving rise to the dispute.
	PART 4 – RELATIONSHIP BETWEEN ACT AND LEASES
Void provisions	Provides that where a provision in a lease (or an agreement to lease) to which the Act applies is inconsistent with the Act (or regulations made under the Act), that provision is void to the extent of the inconsistency.
Included provisions	Provides that where the Act requires a provision to be included in a lease or agreement to lease, the lease or agreement to lease shall be deemed for all purposes to contain that provision. Subclause 3 provides for the inclusion, in future leases, of any standard provisions prescribed by Regulation (unless excluded by the parties). Under this power, Regulations might provide for basic contractual provisions which would apply, for example, in a situation where no terms had been agreed between the parties.
Recovery of GST	The provision does not impose a requirement to pay GST, it removes any argument that the new Act might otherwise frustrate an agreement to that effect.

	PART 5 – CONDUCT OF PARTIES
Prohibited conduct in dealings	<p>Subclause (1) provides that a party to a lease or a party to proposed negotiations in relation to a proposed lease, shall not engage in conduct that is unconscionable or harsh and oppressive. This subclause derives from subsection 6(1) of the Tenancy Tribunal Act and clause 13 of the Code. Under clause 13, there was a prohibition on coercive, unconscionable or harsh and oppressive conduct. In view of the scope of the matters to which the Court may have regard under subclause (2) coercion has been removed as a separate head of behaviour in the new Act.</p> <p>Subclause (2) sets out, without limiting the matters which the Court may have regard, matters which the Court may consider in determining whether there has been unconscionable conduct. In addition, to ensure a more appropriate balance between the competing rights of lessors and tenants, the matters set out in subclause (2) have been framed so that they are capable of reflecting unconscionable conduct on the part of either party.</p> <p>Subclause (3) provides, without limiting the matters which the Court can have regard to under subclause (1), that discrimination against a tenant because the tenant is a member of or intends to become or a member of or intends to form an association to represent or protect the interests of tenants; or preventing a tenant from joining, or compels a tenant to join such an association will be taken to be harsh and oppressive conduct on the part of a lessor. (See also the House of Representatives Standing Committee on Industry, Science and Technology Report <i>'Finding a Balance: Towards Fair Trading in Australia'</i>, section 51AC of the <i>Trade Practices Act 1974</i> and section 60 of the <i>South Australian Retail and Commercial Leases Act 1995</i>)</p> <p>Subclause (4) provides that a party is not to be taken, for the purposes of this clause, to have been engaged in unconscionable or harsh and oppressive conduct by reason only of an application to the Court.</p> <p>Subclause (5) precludes the Court in the application of subclause (2) from having regard to any circumstances not reasonably foreseeable at the time of the alleged contravention.</p>
Lease costs	Provides that each party shall bear his or her own costs in relation to the preparation of the lease (other than the cost of registering a lease under the <i>Land Titles Act 1925</i>), including associated costs such as stamp duty.

Notice of acceptance of lease offer	Provides that where a person accepts a lease offer, he or she shall notify any other party to the lease, in writing, as soon as practicable after acceptance but, in any case, no later than seven days after the day of acceptance. Where a lease offer has been accepted, the lessor shall, where applicable, take all necessary steps to expedite the registration of the lease.
Provision of copy of lease to tenant	Requires the lessor to provide a copy of the executed lease, if in writing, to the tenant within twenty one days after the day it is stamped at the office of the ACT Commissioner for Revenue if it is not to be registered, and within twenty one days of registration by the Registrar-General, if it is to be registered.
Independent legal advice	Provides that a lessor shall not compel a tenant to use the services of a legal practitioner nominated by the lessor. (See also Part IV of the <i>Trade Practices Act 1974</i> .)
Tenant not required to pay fees	Provides for the situation where the tenant is compelled, contrary to the previous clause, to use the services of a legal practitioner nominated by the lessor. In such circumstances the tenant is not liable to pay any fees for the services of the legal practitioner, the lessor is liable to pay the tenant the amount of any fees paid by the tenant for the services and the lessor is liable to pay any unpaid fees which by virtue of this clause, the tenant is not liable to pay.
	PART 6—NEGOTIATIONS
Copy of proposed lease to be provided	Requires the lessor to provide the tenant with a copy of the form of a proposed lease as early as practicable in negotiation for the lease (save where the tenant is providing the lease).
Notice—short minimum term	Provides that where a proposed lease is to be for a term of less than five years, and to extend the lease would be inconsistent with the head lease under which the lessor holds the lease, then the lessor shall notify the tenant in writing as early as practicable in the lease negotiations that the lease cannot be extended under the Act.
Disclosure statements	Specifies the circumstances and time limit in which a lessor must give a tenant a disclosure statement.
Form of disclosure statements	Provides that a disclosure statement shall be in the form prescribed by regulation. It will be possible to simplify the current disclosure statement and provide separate statements for shopping centres and small commercial premises.
Return of disclosure statement	Provides for the tenant to sign and return the statement within a specified time.
Disclosure statement and acknowledgment not lease or offer	Neither the provision of a disclosure statement nor an acknowledgment constitute a lease or an offer to lease.

Notice of material changes	Provides that if a lessor who has provided a disclosure statement becomes aware of a material change in relation to the information provided in the statement before the person to whom the statement was provided has signed the relevant lease, renewed the lease or entered into possession of the premises, then the lessor should immediately notify that person about the change. The notification is required to be in writing.
Notice about handbook	It is intended that there will be a separate handbook which gives a clear and accurate explanation of the Act (something like that published in Queensland and NSW). A lessor is required to advise tenants of the handbook.
False or misleading representations	The clause provides that a party to negotiations for a lease shall not make representations to another party to those negotiations during the course of those negotiations, including a representation made in a disclosure statement, that the party knows or should reasonably know is false or misleading in a material particular.
Compensation for negotiation misrepresentations	Provides that where a lease is entered into as a result of a representation (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 the other party suffers damage as a result of the representation, then the representer is liable to pay reasonable compensation for any damage suffered by reason of the representation.
Key money prohibited	Provides that a lessor shall not request or accept, key money in relation to the granting of a lease, the extension of a lease under an option, the renewal of a lease, the consent to assignment, sublease or mortgage of a lease or the assignment, sublease or mortgage of a lease. Note that where key money is paid or provided in contravention of subclause (1), the tenant would be entitled to recover from the lessor the value of any money paid or the value of any benefit conferred.
	PART 7—BONDS AND GUARANTEES
Maximum level of bond	Provides that the lessor may only accept or require as a bond an amount not exceeding the first three months of rent payable under the lease.
Guarantees and indemnities	In addition to or in place of a bond, a lessor may accept either a guarantee or an indemnity for the performance of the tenant's obligations under the lease.
Bank guarantee as bond	Provides that a lessor may not unreasonably refuse to accept a bank guarantee in satisfaction of any requirement to provide a bond.

Dealings with bonds	<p>Provides that:</p> <ul style="list-style-type: none"> • the bond shall be held by the lessor on trust for the tenant in an account bearing interest; • the lessor shall account to the tenant for interest earned on the bond although the lessor is entitled to retain any such interest and deal with it as money paid by the tenant to the lessor to form part of the bond; and • the lessor may only appropriate moneys in accordance with the following clause.
Deductions from bonds	Provides for the circumstances in which the lessor is allowed to deduct moneys from the bond. See the examples included at the foot of this section in the new Act.
Repayment of bonds	Provides for the repayment of the bond and interest not appropriated by the lessor in accordance with the Act at the expiration of the lease. Payment must be made within 30 days of a specified event.
Repayment of guarantees	Provides for the return of the guarantee document where the tenant has performed the obligations secured by the guarantee at the expiration of the lease. Return must be within 30 days of the expiration of a specified event.
	PART 8—RENT
<p>General</p> <p>Discretionary rent review</p>	<p>Provides that a provision of a lease setting rent is void to the extent that it:</p> <ul style="list-style-type: none"> • provides for the rent to be in accordance with whichever of two or more methods of calculating the rent would result in the higher or highest rent, • has the effect of reserving to a party to the lease a discretion as to which of two or more methods of calculating rent is to apply; or • has the effect of reserving to a party to the lease complete discretion as to the rate of rent to apply. <p>(These clauses are sometimes referred to as multiple rent review clauses or ratchet clauses.)</p>
Frequency of rent reviews	Provides that, subject to limited exceptions, rent may only be changed once every 12 months. This clause does not preclude the abatement of rent by a lessor.
Commencement of payment for rent	Provides that a tenant shall not pay or provide, and a lessor shall not request or accept, an amount on account of rent or outgoings in relation to a period prior to the handing over of possession of the premises, or unless any finishes required to be provided by the lessor in accordance with the lease have been substantially provided.

Rent setting or review if lease method void	Requires that, where a provision of a lease that provides for a method of rent setting or review that is void under the Act and the parties cannot agree on an alternative basis for setting or reviewing the rent, the rent shall be market rent.
Lease to state date rent review due	Provides that no change may be made to rent and any purported change is void where the lease does not state the date on which each rent review is due or provide a method for readily determining that date.
Rent on renewal	Provides that, where a lessor proposes to renew a lease and makes an offer to the tenant in response to a notice under the Act, the amount of rent charged initially under the new lease shall not exceed market rent.
Market rent—rent reviews, options and renewals	Provides that, where either a lease specifies that the rent to be charged for the premises shall be market rent, or market rent is to be charged for premises and the parties cannot agree on market rent for the premises, the lessor or tenant may refer a dispute to the Court. Unless the parties agree, the Court may refer the matter to mediation or appoint a valuer.
Valuation to work out market rent	Requires a valuer appointed to determine market rent to provide the determination to the Court within 28 days after appointment.
Working out market rent	Provides that a valuer must work out the market rent in accordance with Schedule 2.
Rent pending valuation—rent reviews and options to extend	Provides for the situation where rent has not been determined under earlier provisions before the date of a review of rent or of commencement of the extension of the lease. In these circumstances, the rent shall continue at the rate charged immediately prior to the relevant date until the rent has been set, and once the rent has been set, the party who owes the other party money having regard to rent which has and should have been paid, shall pay the difference to the other party within 30 days after the date on which the rent is set.
Extension if rent on renewal to be determined	Extends the term of a lease until 14 days after the day on which the rent is determined under clause 52 where the term of the lease would have expired, but for this provision, before the determination.
Appointment of new valuer if conflict of interest disclosed	A valuer is required to disclose any interest which creates a conflict of duty and interest. A party advised of the conflict may, within 14 days after being so notified, request the Court for the appointment of a new valuer. The Court may disqualify the valuer and appoint a new valuer.

Appointment of new valuer in other cases	A party may apply to the court where a valuer fails to disclose any interest which creates a conflict of duty and interest or does not conduct the valuation in accordance with the Act. The Court may disqualify the valuer and appoint a new valuer.
Disclosure of rent concessions	Requires the lessor, at the request of the valuer, to provide the valuer, in confidence, for the purposes of a valuation under the Act, details of rent concessions the lessor has given to other tenants. A lessor shall not be taken to have committed any breach of confidence or contract and is not required to provide information that is otherwise readily available.
Costs of valuations	Provides that the costs of a valuation shall be paid or apportioned between the parties in accordance with the Court's direction. If there is no direction from the Court, the costs are to be shared equally between the parties.
Turnover Rent Combination of base and turnover rent acceptable	Provides that a lessor may charge a combination of base and turnover rent (including turnover rent alone).
Adjustments to turnover rent	Provides that a lease which includes provisions for the payment of turnover rent shall include a provision to the effect that any underpayment or overpayment resulting from actual turnover differing from projected turnover shall be adjusted within one month after receipt of a written request by the lessor or tenant for such an adjustment. Provides that the party making a request under subclause (1) shall provide the party to whom the request was made with such information as might reasonably be required to make the adjustment.
Frequency of adjustments to turnover rent	Provides that unless the parties otherwise agree, a party may make a request for an adjustment of turnover rent under the Act not more than once in the first 12 months of the lease and at intervals of not less than 12 months after the first request for an adjustment.
Working out turnover rent	Excludes certain amounts from turnover rent calculations. Note in particular, paragraph (j) excludes GST from the calculation of turnover (failure to exclude GST from the calculation of turnover would result in unearned windfall profits to landlords).
	PART 9—OUTGOINGS
Outgoings—estimates and expenditure statements	Provides that a lease which provides for payment by a tenant in relation to outgoings shall include provisions requiring the lessor: <ul style="list-style-type: none"> • to provide a written estimate of the outgoings to which the tenant is required to contribute;

	<ul style="list-style-type: none"> to make available a written expenditure statement within one month of the period to which it relates. <p>These should be itemised as in the disclosure statement.</p>
Outgoings— reports	Sets out provisions which should be included in leases which provide for payment by the tenant in respect of outgoings.
Adjustment of contributions to outgoings	<p>Provides that where a lease requires the tenant to contribute to outgoings, the lease shall include a provision to the effect that within three months after to end of each accounting period with respect to outgoings under the lease, there is to be an adjustment between the lessor and the tenant to take account of any under or overpayment by the tenant.</p> <p>This adjustment is to be calculated on the basis of the difference between the amount paid by the tenant in relation to estimated expenditure by the lessor and the amount actually expended by the lessor during the period, to the extent that it was properly and reasonably incurred.</p>
Methods of accounting	Provides that where a lease requires the tenant to contribute to outgoings, it may specify whether those accounts should be produced using a cash or an accrual method of accounting. If it does not so specify, the cash method is to be used.
Commencement of payment for outgoings	Provides that a tenant shall not pay or provide, and a lessor shall not request or accept, payments for outgoings in relation to a period prior to the handing over of possession of the premises, or unless any finishes required to be provided by the lessor in accordance with the lease have been substantially provided.
Recoverable outgoings	Provides that a lessor may only recover specified outgoings in relation to the premises, having regard to the accounting system in use under the lease.
Recovery of outgoings	<p>Provides that a tenant is not liable to pay any amount to a lessor in respect of outgoings except where the outgoings are recoverable (under the previous clause), the nature of the outgoing was specified in the disclosure statement, and the lease specifies:</p> <ul style="list-style-type: none"> the outgoings; how the amount of those outgoings will be determined and how they will be apportioned to the tenant; and how those outgoings or any part of them may be recovered from the tenant.

Retail areas of shopping centres—waiving auditor's report	Provides that where a majority of the tenants of premises in retail area of a shopping centre agree to waive the requirement for the preparation of an auditor's report dealing with outgoings included in a lease, the lessor is not required to provide an auditor's report in relation to the next accounting period in respect of any tenant in the shopping centre.
	PART 10—BUILDING ALTERATIONS AND OTHER MATTERS
Employment restriction	Provides that a provision in a lease which limits or has the effect of limiting a tenant's right to employ persons of the tenant's choosing is void. Provides exceptions to subclause (1) in the case of provisions that: <ul style="list-style-type: none"> • specify minimum standards of competence and behaviour for person employed or other persons working on the premises; • prohibit work being carried out on specified items of the lessor's property; or • require the tenant to comply with the requirements of an industrial award, industrial agreement or enterprise agreement affecting a shopping centre in which the premises are located.
Refurbishment of premises	Provides that a provision in a lease requiring the lessee to refurbish or refit the leased premises is void unless it gives such details as are necessary to indicate generally the nature, extent and timing of the refurbishment or refitting.
Undisclosed contributions	Provides that a provision of a lease that requires a tenant to pay for or contribute towards the cost of any finishes, fixtures, fittings, equipment or services is void unless the liability to pay for such things was disclosed in the disclosure statement.
Capital costs	Provides that a provision of a lease that requires a tenant to pay any amount in respect of the capital costs of the building in which the premises to which the lease relates is located, or in relation to premises in the retail area of a shopping centre, of any building in the shopping centre or any area used in association with any such building, is void.
Depreciation	Provides that any provision in a lease that requires a tenant to pay any amount in respect of depreciation is void.
Demolition	Sets out four requirements that shall be included in a lease which provides for termination of the lease on the grounds of proposed demolition of the building in which the lease premises are located.

	<p>The first of these requirements is that the lease cannot be terminated on the ground of proposed demolition unless and until the lessor has provided the tenant with details of the proposed demolition sufficient to indicate a genuine proposal to demolish the building within a reasonable time after the termination of the lease.</p> <p>The second requirement is that the lease cannot be terminated by the lessor on the ground of proposed demolition unless, in relation to a lease of 12 months or less - the lessor has given the tenant not less than three months written notice of his or her intention to terminate, or in any other case, not less than six months notice.</p> <p>The third requirement is that where a lease is terminated on the ground of proposed demolition prior to the expiration of the term of the lease, the lessor shall pay the tenant reasonable compensation in respect of any loss arising from the termination regardless of whether the lessor proceeds with the demolition.</p> <p>Finally, the lease shall provide that, in determining 'reasonable compensation', regard shall be had to any concessions given to the tenant, including reduced rent, based on the existence of the clause for termination on the ground of proposed demolition.</p>
Alterations to, or affecting, premises	<p>Provides that, subject to clause 80, a lessor shall advise a tenant likely to be materially affected by alterations to, or refurbishment of, a shopping centre or building in which the tenant's premises are located.</p> <p>Provides that the notice under subclause (1) shall be in writing and include 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 premises of the tenant. The notice is to be given not less than two months before the commencement of the alterations or refurbishment.</p>
Emergency alterations	<p>Provides that, where an alternation or refurbishment results from an emergency, a lessor shall give each tenant such notice of the alteration or refurbishment as is reasonable in the circumstances.</p>
Compensation for disturbance	<p>Provides for the payment to the tenant of reasonable compensation for any loss or damage other than nominal loss or damage suffered by the tenant as a consequence by a lessor who:</p> <ul style="list-style-type: none"> • materially inhibits access by a tenant to the leased premises; • takes any action that would materially inhibit or alter the flow of customers to the leased premises; • fails to rectify, as soon as practicable, any breakdown of plant or equipment under the lessor's care and maintenance; • in relation to premises in the retail area of a shopping centre, neglects adequately to clean, maintain or repair the shopping

	<p>centre (including common areas); or</p> <ul style="list-style-type: none"> • otherwise adversely affects the trade of a tenant. <p>A lessor is not liable to compensation in relation to an action under subparagraphs (1)(a) or (b) if the action was a reasonable response to an emergency or, in compliance with a statutory requirement or a lawful direction of a government agency or authority, and the emergency or lawful direction did not arise from neglect or failure on the part the tenant.</p>
Compensation to reflect any concessions	Requires, in determining reasonable compensation, regard to be had to any concessions given to the tenant, including reduced rent, based on the likelihood or actual disturbance to the tenant's trade.
Shopping centre enlargement not grounds for compensation	Provides that a tenant of premises located in the retail area of a shopping centre is not entitled to compensation by reason of the fact that the shopping centre is enlarged or there is a change in the type of tenants who hold leases in the shopping centre.
Damaged premises unable to be used	<p>Provides that, subject to subclause (4), where leased premises have been damaged and the tenant is unable to use the premises for their normal purpose, the tenant is not required to pay any rent or outgoings due under the lease for the period for which the premises are unable to be used (unless the Court determines otherwise).</p> <p>Nothing in the section applies if, after damage has occurred, a lessor and tenant agree to the payment of a reduced rate of rent.</p>
Damaged premises able to be used	Provides that if leased premises has been damaged and the tenant is able to use the premises (wholly or in part) for their normal purpose notwithstanding the damage, then the tenant is not entitled to refuse to pay rent in accordance with the lease. Instead, the tenant may seek an order of the Court to pay a reduced rent.
Dispute about payment or nonpayment of rent and outgoings	The Court may determine a dispute about payment or nonpayment of rent and outgoings
Dispute about useability of damaged premises	Provides that, if there is a dispute as to whether leased premises have been damaged to such an extent that they are unusable, the Court may determine whether the premises are useable or are so damaged that they are not useable for their normal purpose.
Notice of lessor's intentions regarding repair	<p>Requires that where leased premises or a building in which the premises are located is damaged in a material way, the lessor is to give notice in writing to the tenant within 2 months of the damage.</p> <p>The lessor is obliged to advise the tenant, in writing, whether or he or she intends to repair the premises or the building in which the premises are located. If the premises are to be repaired, the notice must include details of the approximate time when the repairs are intended to start and finish.</p>

Termination by lessor because of damage	Relates to the circumstances in which a lessor may terminate a lease in the event of damage to the premises or to the building in which the premises are located. No compensation is payable in respect of a termination in accordance with the provision.
Termination by tenant because of damage	Relates to the circumstances in which a tenant may terminate a lease in the event of damage to the premises or to the building in which the premises are located. No compensation is payable in respect of a termination in accordance with the provision.
Compensation for incomplete repair	Provides that where either a tenant relies on a lessor's advice that he or she intends to repair damage, or a lessor fails to give notice of his or her intention to repair, and the tenant suffers damage or loss (other than nominal damage or loss) as a result of the lessor's failure, the lessor is liable to pay the tenant compensation in respect of that loss or damage.
Agreement to terminate	Provides that nothing in the preceding three clauses prevents the parties to a lease from terminating the lease by agreement if the premises or the building in which the premises are located is damaged or destroyed.
	PART 11—ASSIGNMENTS, SUBLEASES AND MORTGAGES
Provision of disclosure statement by tenant	Requires the tenant, before requesting the lessor's consent to assign or sublet a lease, to provide a prospective assignee or sublessee with a copy of any disclosure statement given to the tenant in relation to the lease, together with details of any material change that has occurred in relation to the information it contains since it was given to the tenant, being a change of which the tenant is aware or could reasonably have been aware.
Lessor to provide disclosure statement	Provides that, where the tenant does not have a copy of the disclosure statement in his or her possession or have access to a copy of it, the tenant may request a copy of the disclosure statement from the lessor who must, in the absence of reasonable excuse, provide it within 14 days of receiving the request.
Request for consent to assignment, sublease or mortgage	Provides that, where a tenant has provided a disclosure statement, the tenant may, by written request, seek the lessor's consent to an assignment, sublease or mortgage.
Lessor may require relevant information and documents	Provides that, within 14 days after receiving a request under the Act or such further period as the parties agree, the lessor may require the tenant to provide further information. Subclause (1) limits the information which the lessor may request in relation to the prospective assignee or sublessee to information concerning: <ul style="list-style-type: none"> • financial standing, including details of any finance for which there

	<p>is approval;</p> <ul style="list-style-type: none"> • business skills; • the financial standing of any prospective guarantor; • a certificate of occupancy for the premises; • information as to the proposed use of the premises; and • references relating to business ability. <p>Where the tenant's consent is to mortgage of the lease, the lessor may seek information concerning the identity and financial standing of the proposed mortgagee and details of the loan or other obligation to be secured by the mortgage. Where applicable, this may include the amount of the loan, the purpose for which it is proposed the loan moneys be applied, the term and the repayment schedule and the powers that may be exercised by the mortgagee under the mortgage.</p>
Mortgagees and head lessors	<p>Consent of a head-lessor or mortgagee is a necessary pre-requisite to the lessor's consent to an assignment, mortgage or sublease.</p> <p>Requires the lessor as soon as practicable after receiving a request in accordance with clause 95, to inform his or her mortgagee, headlessor or both that the request has been made and the terms of the request.</p> <p>Where a lessor's mortgagee or head lessor requests further information that the lessor may request under clause 96, the lessor shall request the information and provide to the person who requires it.</p> <p>Where consent is refused, the mortgagee or head lessor shall notify the lessor and tenant in writing within 14 days of being informed of the request, or such further period as the parties agree, that he or she does not consent to the request (and give reasons for refusal).</p>
Unreasonable refusal by mortgagee or head lessor	<p>An unreasonable refusal under the previous clause may be overturned by the Court.</p>
Lessor's consent or refusal	<p>Provides that, where no further information is sought by the lessor under clause 96, he or she has 28 days after receiving the request to give written notice of his or her consent or refusal to the request, or such further period as the parties agree.</p> <p>If further information is requested by the lessor, he or she shall give written notice of his or her consent or refusal to consent within 21 days after receiving the information or such further period as the parties agree.</p> <p>A lessor's consent is deemed to have been given in specified circumstances.</p>

<p>Refusal to consent to assignment or sublease</p>	<p>Provides that a lessor may withhold consent to the assignment of a lease or granting of a sublease under clause 95 only if to do so is reasonable in all the circumstances. The withholding of consent is taken to be reasonable in specified circumstances, including that the lessor has reasonable grounds for believing that the prospective assignee or sublessee:</p> <ul style="list-style-type: none"> • intends to change the use of the premises as permitted under the lease; • does not (taking into consideration information concerning any proposed guarantor for that person) have the financial standing to conduct the business; • possesses skills less than those of the existing tenant for the purposes the conducting of the business; or, • will not be compatible with the other tenants in the building. <p>Where a lessor withholds consent to an assignment on a ground other than one specified, then the onus is on the lessor to establish that the withholding of consent is reasonable in all the circumstances.</p>
<p>Refusal to consent to mortgage of lease</p>	<p>Provides that the lessor may withhold consent to the mortgage of a lease only where the lessor has reasonable grounds to believe that the tenant is not of sound financial standing, does not have the capacity to service the proposed loan or cannot otherwise meet his or her obligations under the mortgage.</p>
<p>Lessor may recover costs</p>	<p>Provides that a lessor is entitled to recover from a tenant the reasonable costs of any legal or other expenses incurred in connection with determining whether or not to consent to an assignment, sublease or mortgage in writing within six months of giving or refusing of consent.</p> <p>Where the tenant requires in writing for the lessor to provide substantiation for costs sought to be recovered by the lessor, the lessor may not recover those costs until they are substantiated.</p>
<p>Tenant and guarantor released from liability</p>	<p>Provides that a tenant and a tenant's guarantor are released from further obligations under the lease on assignment under the Act.</p>
	<p>PART 12—EXTENSION, RENEWAL AND TERMINATION OF LEASES</p>
<p>Extension and Renewal Minimum 5 year lease</p>	<p>Relates to the situation where the total term for which a lease is entered into is less than five years, the tenant was not, before entering into the lease, independently advised; and extension of the term of the lease would not be inconsistent with the headlease under which the lessor holds the lease or unlawful.</p> <p>In such circumstances, the tenant may, not later than 90 days before</p>

	<p>the expiration of the term of the lease, notify the lessor in writing that the tenant is exercising his or her right to extend the lease so that the total of the lease is five years, and request the lessor to take all reasonable steps to register the lease as extended with the Registrar-General.</p> <p>Where a lessor receives a request to register the lease with the Registrar-General, the lessor shall take all reasonable steps to register the lease as extended.</p>
Terms of extended leases	Provides that where a lease has been extended, unless otherwise agreed, the lease shall be on the same terms as before the extension, subject to any change necessary as a result of the extension. A party may apply to the Court for a variation of the terms of the lease.
Asking lessor's intentions about renewal	The tenant may seek the lessor's intention about renewal in specified circumstances.
Lessor's intentions about renewal	<p>The lessor must, within one month after the day on which he or she receives a notice under section 106,</p> <ul style="list-style-type: none"> • notify the tenant in writing that the tenant may renew the lease on the terms and conditions, including the amount of rent to be charged initially under the new lease, specified in the notice; or • that the lessor does not propose to offer the tenant a renewal of the lease. <p>Nothing in this clause allows the extension of the term of a lease that would be inconsistent with the terms of the headlease under which the lessor holds the lease.</p>
<p>Termination</p> <p>Tenant's right to terminate extended lease</p>	<p>Provides that, where a lease is extended under the preceding clause, the tenant may, at any time after the date when, but for the extension, the lease would have expired, terminate the lease by giving the lessor not less than one month's written notice of the tenant's intention to terminate.</p> <p>A period of less than one month's notice is allowed with the agreement of the lessor.</p>
Right to terminate—no disclosure statement etc	Provides that, in addition to any other right the tenant may have, if a lessor fails to provide a disclosure statement, provides a disclosure statement that is false or misleading, or omits a material particular, then the tenant may, within three months after the day on which the lease is entered into, terminate the lease by giving the lessor not less than 14 days written notice.
Failure to notify material change in disclosure statement	Provides that, in addition to any other right the tenant may have, if a lessor fails to notify the tenant in accordance with clause 34 of a material change in relation to information provided in a disclosure statement, or provides notification that omits a material particular or

	contains information that the lessor knows, or should reasonably know, is false or misleading in a material particular, and a lease is entered into, the tenant may within three months after the day on which the lease is entered into, terminate the lease by giving the lessor not less than 14 days written notice.
Other rights etc unaffected by termination	Provides that termination of a lease under clause 109 or 110 does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the lease during the period before its termination.
Lessor may contest termination	Provides that, within 14 days of service, a lessor may contest a notice of intention to terminate under clause 86 or 87 by application to the Court. The grounds for contesting termination under subclause (1) are that the lessor acted honestly and reasonably and ought reasonably to be excused for his or her failure to comply, and that the tenant is, substantially, in as good a position as he or she would have been if the lessor had complied with the relevant provision.
Effect of uncontested termination notice	Provides that, if a lessor does not contest a notice of intention to terminate within 14 days after service of the notice, the notice takes effect 15 days after service.
Effect of contested termination notice	If contested, the notice does not take effect unless confirmed by the Court.
	PART 13—RETAIL AREAS OF SHOPPING CENTRES
Application of Part 13	Formal (this Part applies to a lease for premises located in the retail area of a shopping centre).
Provision and use of turnover figures	Provides that a lessor shall not require periodic turnover figures to be supplied by the tenant to the lessor unless the lease provides that rent is to be determined by reference to turnover. The lessor shall not divulge or communicate to any person a tenant's periodic turnover figures save in specified circumstances, such as: <ul style="list-style-type: none"> • with the consent of the tenant; • in a document giving aggregate turnover information about a shopping centre or part of a shopping centre in a manner that does not disclose information relation to the turnover of an individual tenant's business; • to a Court or tribunal or for the purposes of any mediation, hearing or valuation for the purposes of the Act; • to the lessor's professional advisers or to the proper officer of any financial institution for the purpose of enabling the lessor to obtain financial accommodation; or • in good faith, to a prospective purchaser of the shopping centre.

Statistical information to be available to tenant	Provides that, if a lease requires the tenant to pay any amount to the lessor in respect of outgoings on account of expenditure incurred in obtaining statistical information, the lease shall provide that the lessor shall make any information so obtained by the lessor available to the tenant.
Advertising and promotion levy—new leases	In relation to the first accounting period of a new lease, unless the lessor has made available to the tenant a marketing plan giving details of the lessor's proposed expenditure on advertising and promotion before a lease, such moneys cannot be recovered under the lease.
Advertising and promotion levy—other leases	In relation to the subsequent accounting periods of a lease, this clause provides what information must be provided by a lessor to the tenant before such moneys cannot be recovered under the lease.
Amount not spent to be kept for benefit of tenants	Provides for the retention by the lessor of any moneys paid by a tenant under an advertising and promotion levy that are not spent during the lessor's accounting period, in a fund for the benefit of tenants to be applied towards future expenditure on advertising and promotion.
Non-specific outgoings contribution	Provides that a tenant leasing premises in the retail area of a shopping centre is not liable to contribute to an outgoing: <ul style="list-style-type: none"> • save to the extent that the outgoing benefits the tenant's premises; and • an amount in excess of 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 all the lettable areas of all the premises in the retail area of the shopping centre to which the outgoing is referable.
Consultation before redevelopment	Provides that a lessor shall not redevelop a shopping centre or part of a shopping centre unless the lessor has consulted a majority of the tenants or a representative body of a majority of tenants in the centre or part of the centre.. <p>Provides that it is sufficient compliance with a lessor's obligation under subclause (1) with respect to consultation if the lessor:</p> <ul style="list-style-type: none"> • conducts a meeting about the proposed redevelopment; or • provides a written summary of the proposed redevelopment and seeks submissions in relation to it.
Relocation clauses	Provides that, where a lease contains a provision enabling the tenant's business to be relocated within the shopping centre, the lease shall also include provisions: <ul style="list-style-type: none"> • requiring the lessor to give not less than three months written

	<p>notice of the date of the relocation and including an offer to provide alternative comparable premises on terms no less favourable than those applying to the leased premises;</p> <ul style="list-style-type: none"> • giving the tenant the right to give written notice within one month after the giving of the relocation notice, of the tenant's intention to terminate the lease, with effect, unless the parties agree otherwise, three months from the tenant's receipt of the relocation notice; • requiring the grant of alternative comparable premises for a period equivalent to the unexpired term of the existing lease on terms and conditions no less favourable; • providing for the lessor to pay the tenant's reasonable costs of relocation and pay reasonable compensation to the tenant for any other loss or damage incurred as a result of the relocation; • requiring regard to be had when determining reasonable compensation to any concessions given to the tenant, including reduced rent, which are based on the existence in the lease of the relocation provision.
No relocation other than for repairs, refurbishment, redevelopment or extension	Provides that a provision in a lease that enables relocation other than so the lessor can refurbish, redevelop, repair or extend the premises is void.
Relocation for repairs, refurbishment, redevelopment or extension	<p>Provides that a lessor shall not use a lease relocation provision unless the proposed refurbishment, redevelopment or extension cannot be practicably be carried out without vacant possession of the tenant's premises, and the lessor presents a plan for the refurbishment, redevelopment or extension to the tenant.</p> <p>Provides that, where a lessor has recourse to a lease relocation provision, the lessor shall ensure that the proposed refurbishment, redevelopment or extension is carried out within a reasonable time after the relocation of the tenant.</p>
Changing core trading hours	<p>Provides that a lessor is not entitled to change core trading hours of a tenant without the approval in writing of the tenants of the majority of premises in a shopping centre, whether or not the premises are premises to which the Act otherwise applies.</p> <p>The initial fixing of trading hours in a new shopping centre is not a change to the core trading hours and is not affected by this clause.</p>
Tenants trading outside core trading hours	Provides a tenant may trade outside core trading hours with the lessor's agreement provided the tenant meets any additional costs associated with opening and operating the shopping centre for additional hours, including any costs in relation to advertising and promotion.

	Any cost met by a tenant under subclause (1) shall be proportionate having regard to the costs associated with opening and operating the shopping centre and the number of other tenants trading outside core trading hours with the tenant.
Geographical restrictions void	Provides that a clause in a lease which has the effect of preventing or restricting a tenant from carrying on business outside the shopping centre in which the tenant's premises are located during or after the expiration of the lease, is void. Clarifies that subclause (1) does not prevent a lease preventing the use of the name of a shopping centre in connection with a business carried on outside the shopping centre.
No termination for inadequate sales	Provides that a provision in a lease allowing a lessor to terminate a lease because of inadequate sales is void.
	Part 14—DISPUTE RESOLUTION
Definitions for part 12	Formal.
Jurisdiction	The Magistrates Court has jurisdiction under this Act.
When can applications be made	An application can be made in relation to a dispute to which the Act applies.
Action on receiving application	The clause sets out the manner in which the Court must proceed once an application is received.
Resolution of dispute likely	The Court must promote the settlement of disputes.
Resolution of dispute unlikely	If it is unlikely that a dispute will settle, the Court shall give directions about how the matter is to progress so as to ensure the matter is dealt with promptly and economically.
Hearings	The Court shall conduct hearings promptly and, as far as practicable, with access to all relevant material.
Procedures	The Court may adopt its own procedures.
Transfer to Supreme Court	Where the Court considers it appropriate, a matter may be transferred to the Supreme Court.
Notice of orders	The Court shall provide a notice of any order made at a hearing to each party within 14 days of the hearing.
Costs	Provides for costs to follow the event subject to an order of a court.
Appeals	Provides for appeals to the Supreme Court.
Order by Supreme Court on appeal	Provides for the orders that the Supreme Court may make on appeal.

	PART 15—MISCELLANEOUS
References to repealed Act or code	Provides for references to the repealed Act or code in statutory instruments and documents. The provision translates references in these places to a reference to the corresponding provision in the new Act.
Regulation-making power	Provides that the Executive may make regulations for the purposes of this Act. In particular, regulations may make provision regulating practice and procedures to be followed by the Court.
	PART 16—SAVINGS, TRANSITIONALS AND CONSEQUENTIAL AMENDMENTS
Part 16	<p>Formal: provides for transitional matters and consequential repeals and amendments. In particular, the Act provides that matters previously before the Tenancy Tribunal continue before the Court as proceedings under this Act.</p> <p>Attention is drawn to sections 154 and 155 which make provision for transitional regulations. At present, it is not anticipated that transitional regulations will be necessary. However, the power to deal with transitional matters is considered necessary to avoid disruptions. Note that the transitional regulation making power will sunset with sections 145 – 156 two years after commencement.</p>
	SCHEDULE 1
Examples of Commercial premises	The Schedule provides examples of commercial premises.
	SCHEDULE 2
Working out market rent	The Schedule constitutes the methodology a valuer must use to determine market rent (see section 54).
	DICTIONARY
Dictionary	Formal (defines the terms used in the Act).