



New South Wales

# Retail Leases Amendment (Review) Act 2017 No 2

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New South Wales

# Retail Leases Amendment (Review) Act 2017 No 2

Act No 2, 2017

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An Act to amend the *Retail Leases Act 1994* to give effect to recommendations arising from the statutory review of that Act by making further provision for the application of the Act to retail shop leases, the rights and obligations of lessors and lessees, leasing procedures, dispute resolution and other matters. [Assented to 1 March 2017]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Retail Leases Amendment (Review) Act 2017*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Retail Leases Act 1994 No 46

**[1] Part 1, note**

Omit “section 5”. Insert instead “sections 5 and 6B”.

**[2] Section 3 Interpretation**

Omit the definitions of *assignor’s disclosure statement* and *Director-General*.

**[3] Section 3, definition of “lease preparation expenses”**

Omit “, except for registration fees under the *Real Property Act 1900*”.

Insert instead “including expenses incurred in connection with obtaining the consent of a mortgagee but does not include registration fees under the *Real Property Act 1900*”.

**[4] Section 3, definition of “outgoings”**

Omit the definition. Insert instead:

*outgoings*—see section 3A.

**[5] Section 3**

Insert in alphabetical order:

*permanent retail market*—see section 6B.

*premises* includes a defined area (for example, a stall in a market) in a building or other permanent structure.

*Secretary* means the Secretary of the Department of Industry, Skills and Regional Development.

**[6] Section 3, definition of “retail shop”**

Omit “Section 5 limits” from Note 1 to the definition.

Insert instead “Sections 5 and 6B limit”.

**[7] Section 3, definition of “retail shop lease” or “lease”**

Omit “or agrees to grant”.

**[8] Section 3, definition of “retail shopping centre”**

Insert “(not being the stalls in a market)” after “a cluster of premises”.

**[9] Section 3 (2)**

Insert at the end of section 3:

- (2) A reference in this Act to the lessor or the lessee, in the context of a provision that has application to a proposed retail shop lease, includes a reference to the proposed lessor or proposed lessee.

**[10] Sections 3A and 3B**

Insert after section 3:

**3A Definition of “outgoings”**

- (1) In this Act, *outgoings* means the following:
- (a) a lessor’s outgoings on account of expenses attributable to the management, operation, maintenance or repair of the retail shop building or land,

- (b) a lessor's outgoings on account of rates, taxes, levies, premiums or charges payable by the lessor because the lessor is the owner or occupier of the retail shop building or land or is the supplier of a taxable supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth) in respect of the retail shop building or land,
  - (c) fees charged by a lessor for services provided by the lessor in connection with the management, operation, maintenance or repair of the retail shop building or land.
- (2) In this section, ***retail shop building or land*** means the building in which the retail shop is located or (in the case of a retail shop in a retail shopping centre) any building in the retail shopping centre, and includes any areas used in association with any such building.

**3B Application of Act to agreements to lease**

- (1) This Act applies to and in respect of an agreement to lease in the same way as it applies to and in respect of a lease.
- (2) When a lease (the ***resulting lease***) is entered into pursuant to an agreement to lease:
  - (a) a lessor's disclosure statement given for the agreement to lease is deemed to have been given for the resulting lease, and
  - (b) a separate lessor's disclosure statement is not required or permitted to be given for the resulting lease.

**[11] Section 5 Certain retail shops excluded from the operation of this Act**

Omit "retail shops".

**[12] Section 5 (d)**

Omit the paragraph. Insert instead:

- (d) premises used only for any one or more of the purposes listed in Schedule 1A (Excluded uses),

**[13] Section 6A Application of Act to short-term leases**

Omit section 6A (3) and (4). Insert instead:

**(3) Operation of provisions for disclosure statements**

Sections 11–12A do not apply to the lease referred to in subsection (2) (a), but apply to any succeeding lease referred to in subsection (2) (b).

**[14] Section 6A (5)**

Omit "sections 11 and 16 (1) and (2)". Insert instead "section 11".

**[15] Section 6B**

Insert after section 6A:

**6B Application of Act to retail shops in markets**

- (1) This Act does not apply to a retail shop that is a stall in a market unless the market is a permanent retail market.
- (2) A ***permanent retail market*** is an assemblage of stalls, styled or described as a market, that are predominantly used for retail businesses and that operate in a

building or other permanent structure the sole or dominant use of which (or of the part in which the market operates) is the operation of the market.

**Note.** A stall in a permanent retail market is not a retail shop to which this Act applies unless it satisfies the definition of **retail shop** in section 3.

- (3) The regulations may make provision for or with respect to modifying the operation of this Act in its application to a retail shop in a permanent retail market.
- (4) Regulations under this section may include provision for a mandatory code of conduct for lessors and lessees under leases of retail shops in a permanent retail market (including provision for sanctions for non-compliance with the mandatory code).

**[16] Part 2, heading**

Omit the heading. Insert instead:

## **Part 2 Entering into a lease**

**[17] Section 11 Lessor's disclosure statement**

Omit section 11 (1) and the note at the end of the subsection. Insert instead:

- (1) At least 7 days before a retail shop lease is entered into, the lessor must give the lessee a disclosure statement for the lease (the **lessor's disclosure statement**) that complies with the following requirements:
  - (a) the lessor's disclosure statement is to be in writing and is to be in or to the effect of Parts A and B of the form in Schedule 2 (the **prescribed form**),
  - (b) the lessor's disclosure statement is to include Part B of the prescribed form for the purposes of Part B being completed by the lessee and provided to the lessor as the lessee's disclosure statement (under section 11A),
  - (c) the lessor's disclosure statement must contain the information and be accompanied by the material that is required to complete or accompany Part A of the prescribed form (but only to the extent that is relevant to the lease concerned),
  - (d) the form of the lessor's disclosure statement is not required to comply strictly with the prescribed form (including its layout) so long as it is substantially to the same effect as the prescribed form.

Maximum penalty: 50 penalty units.

**Note.** Because the lessor's disclosure statement need only include information relevant to the lease, if the retail shop is not in a retail shopping centre the disclosure statement need not include information that is relevant only to shops in retail shopping centres.

**[18] Section 11 (2A)**

Insert after section 11 (2):

- (2A) If the lessee terminates the lease in accordance with this section, the lessee is entitled to recover compensation from the lessor for costs reasonably incurred by the lessee in connection with the lessee entering into the lease, including compensation for expenditure by the lessee in connection with the fit-out of the retail shop.

**[19] Section 11 (6)**

Omit the subsection (including the penalty provision). Insert instead:

- (6) A lessor's disclosure statement may be amended with the agreement in writing of the lessor and the lessee before or after the lease is entered into and any such amendment has effect from the date specified in the agreement (which can be a date before the agreement is made).

**Note.** The Tribunal also has power to order the rectification of a lessor's disclosure statement. See section 72AB.

**[20] Section 11, note**

Omit the note from the end of the section.

**[21] Section 11A Lessee's disclosure statement**

Omit section 11A (1). Insert instead:

- (1) No later than 7 days after receiving the lessor's disclosure statement from the lessor (or within such longer period as may be agreed with the lessor), the lessee must give the lessor a statement in writing (as the *lessee's disclosure statement*) that is in or to the effect of Part B of the form set out in Schedule 2 and completed as required by that Part.

Maximum penalty: 50 penalty units.

**[22] Section 11A (3)**

Omit the subsection (including the penalty provision).

**[23] Section 11A, note**

Omit the note from the end of the section.

**[24] Section 12 Lessee not required to pay undisclosed contributions**

Omit "the cost of any finishes, fixtures, fittings, equipment or services".

Insert instead "the cost of providing any finishes, fixtures, fittings, equipment or services in or for the shop".

**[25] Section 12 (2)**

Insert at the end of section 12:

- (2) To remove doubt, this section does not apply to outgoings.

**[26] Section 12A**

Insert after section 12:

**12A Lessee not required to pay undisclosed outgoings**

- (1) The lessee under a retail shop lease is not liable to pay any amount to the lessor in respect of any outgoings unless the liability to pay the amount was disclosed in the lessor's disclosure statement for the lease.
- (2) If the lessor's disclosure statement provided an estimate of the amount of any outgoing and the estimated amount is less than the actual amount, the following provisions apply:
- (a) if there was no reasonable basis for the estimate when the lessor's disclosure statement was given, the lessee's liability for any payment in respect of the outgoing is to be determined on the basis of the amount

estimated (instead of the actual amount) and is to be reduced accordingly,

- (b) if the lessee's liability to pay an amount (the **actual amount**) in respect of an outgoing is reduced because there was no reasonable basis for an estimate of the outgoing, any liability of the lessee in respect of any subsequent increase in the outgoing is to be reduced in the same proportion as the actual amount was reduced.
- (3) This section does not apply to an outgoing in the nature of a tax, rate or levy that is imposed by or under an Act after the lessor's disclosure statement is given and that was not an outgoing of the lessor when the lessor's disclosure statement was given.
- (4) A lessee is entitled to recover from the lessor any amount paid to the lessor that the lessee was not liable to pay because of this section.
- (5) Costs associated with the advertising or promotion of a retail shop or retail shopping centre, or of any business carried on there, are not outgoings for the purposes of this section.

**[27] Section 13 Costs before fit-out**

Omit section 13 (4).

**[28] Sections 15 and 16**

Omit the sections. Insert instead:

**15 Lessee to be provided with executed copy of lease**

- (1) A retail shop lease is taken to include a provision to the effect that the lessor must provide the lessee with an executed copy of the lease within 3 months after the lease is returned to the lessor or the lessor's lawyer or agent following its execution by the lessee.
- (2) That 3-month period is to be extended for any delay attributable to the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent).

**16 Certain leases must be registered**

- (1) If a retail shop lease is for a term of more than 3 years or if the parties to the lease have agreed that the lease is to be registered, the lessor must lodge the lease for registration in accordance with the *Real Property Act 1900* within 3 months after the lease is returned to the lessor or the lessor's lawyer or agent following its execution by the lessee.  
Maximum penalty: 50 penalty units.
- (2) The 3-month period within which a lease must be lodged for registration is to be extended for any delay attributable to:
  - (a) the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent), or
  - (b) requirements arising under the *Real Property Act 1900* that are beyond the control of the lessor.

- (3) For the purposes of this section, the term of a retail shop lease includes any term for which the lease may be extended or renewed at the option of the lessee.

**Note.** For example, a retail shop lease is for a term of more than 3 years if it is for a term of 1 year with an option to renew for a further term of greater than 2 years.

- (4) This section does not affect the operation of the *Real Property Act 1900*.

**[29] Sections 16A (1), 16C (2)–(4), 16D (2) and (4), 16E (1), 16F, 16G (1) and (3), 16H, 16I (1) and (3), 16J (1) and (2), 16K (2) and (3), 16L, 16N (1) and (4), 16Q (3), 16U (1), 16W, 16ZA (2), 16ZB, 16ZC (1) and 82B**

Omit “Director-General” wherever occurring. Insert instead “Secretary”.

**[30] Section 16A Definitions**

Omit the definition of *money* from section 16A (1).

**[31] Section 16B Guarantees and other forms of security**

Insert “(except section 16BA)” after “Part” in section 16B (2).

**[32] Section 16BA**

Insert after section 16B:

**16BA Return of bank guarantees**

- (1) A lessor who receives a bank guarantee for a lease must return the original bank guarantee to the lessee within 2 months (the *maximum return period*) after the lessee completes performance of the obligations under the lease for which the bank guarantee is provided as security.  
Maximum penalty: 50 penalty units.
- (2) A lessor is not required to return a bank guarantee if it has expired or been cancelled.
- (3) The maximum return period does not run for any period during which the matter of the lessor’s entitlement to claim or realise the bank guarantee is the subject of proceedings pending in a court or the Tribunal.
- (4) A lessor who is unable to return an original bank guarantee is able to satisfy the requirement under this section or an order of the Tribunal to return the bank guarantee by providing any consent or release necessary to have the bank guarantee cancelled.
- (5) A lessor is liable to pay to the lessee compensation for:
- (a) any loss or damage suffered by the lessee as a result of any failure by the lessor to return a bank guarantee in compliance with this section or an order of the Tribunal, and
  - (b) reasonable costs incurred by the lessee in connection with the cancellation of a bank guarantee because the lessor was unable to return the original bank guarantee in compliance with this section or an order of the Tribunal.
- (6) In this section, *bank guarantee* means a guarantee from an authorised deposit-taking institution in satisfaction of any requirement to provide a security bond or other bond or a third party guarantee for the performance of the lessee’s obligations under the lease.

**[33] Part 2A, Division 2, heading**

Omit “**Director-General**”. Insert instead “**Secretary**”.

**[34] Section 16C Deposit of security bonds with Secretary**

Omit “Minister” from section 16C (6). Insert instead “Secretary”.

**[35] Section 16D Deposit of existing security bonds with Secretary**

Omit section 16D (1). Insert instead:

- (1) If a lessor under a lease or proposed lease to which this Act does not apply received a deposit or payment of money as a security bond and this Act subsequently becomes applicable to the lease (because of the operation of section 6A or for any other cause) this Part then applies to the security bond and the *relevant day* is the day when this Act becomes applicable to the lease.

**[36] Section 16E Provisions in leases relating to security bonds**

Omit section 16E (2).

**[37] Section 16G Application for payment**

Omit section 16G (2). Insert instead:

- (2) An application is to be in or to the effect of the approved form and may be made at any time.

**[38] Section 16H Payment on application**

Omit section 16H (6).

**[39] Section 16I Payment after prescribed proceedings**

Omit section 16I (2). Insert instead:

- (2) If mediation of a retail tenancy dispute about a security bond has been successful, the Secretary must pay out in conformity with the resulting agreement an amount of money held by the Secretary on deposit in respect of the lease concerned, and for that purpose the Secretary is entitled to require:
  - (a) a copy of a certificate issued under section 16N (3) setting out the terms of the resulting agreement, or
  - (b) a notice in writing, in a form approved by the Secretary, that is signed by the parties and sets out the terms of the resulting agreement.

**[40] Section 16K Appeal rights**

Omit section 16K (1). Insert instead:

- (1) The Secretary may, after receiving notice of a judgment or order relating to a security bond, pay out money in respect of the judgment or order no earlier than the expiry of the period within which any right of appeal against the judgment or order must be exercised but must not pay money out if an appeal has been lodged.

**[41] Section 16M Payment out of amount equivalent to interest**

Omit the section.

**[42] Section 16P Penalty notices**

Omit the section.

**[43] Section 16Q Offences and penalty**

Insert “(other than under section 16BA (1) or 16WA (3))” after “Part” in section 16Q (2).

**[44] Section 16V Retail Leases Security Bonds Interest Account**

Omit section 16V (5).

**[45] Section 16WA**

Insert before section 16X:

**16WA Arrangements for online delivery of services**

- (1) The Secretary may establish an *online retail bond service* comprising online facilities and systems that can be used for any of the following purposes:
  - (a) to deposit a security bond with the Secretary,
  - (b) to make a claim for the payment of a security bond,
  - (c) to make a payment of an amount of a security bond,
  - (d) to give any notice or receipt authorised or required to be given under this Part,
  - (e) to do or facilitate the doing of any other thing authorised or required under this Part.
- (2) Use of the online retail bond service is subject to any terms and conditions imposed by the Secretary.
- (3) A lessor, lessor’s agent or any other person must not require a lessee or another person to use the online rental bond service.  
Maximum penalty: 50 penalty units.

**[46] Section 16Z Annual report**

Omit “Department of State and Regional Development”.

Insert instead “Department of Industry, Skills and Regional Development”.

**[47] Section 16ZA Service of notices and other documents on Secretary**

Omit section 16ZA (1). Insert instead:

- (1) Any notice, summons, writ or other proceeding relating to or connected with this Part to be served on the Secretary may be served:
  - (a) by being left at an office of the Department of Industry, Skills and Regional Development with a person apparently employed there, or
  - (b) in the case of a notice, by posting it addressed to the Secretary at an office of that Department, or
  - (c) in a manner authorised by the Secretary for electronic service.

**[48] Section 16ZC Regulations**

Omit section 16ZC (3).

**[49] Sections 19 and 19A**

Omit the sections.

**[50] Section 20 Turnover rent**

Insert after section 20 (1) (l):

- (m) the amount of revenue from online transactions, other than online transactions where the goods or services concerned are delivered or provided from or at the retail shop (or the retail shopping centre of which the shop forms part) or where the transaction takes place while the customer is at the retail shop (whether or not the goods or services concerned are delivered from or at the retail shop).

**[51] Section 21A Rent variations for short-term leases**

Omit the section.

**[52] Section 22 Recovery of outgoings from lessee**

Insert at the end of section 22 (1):

**Note.** A lessee has no liability in respect of outgoings unless the liability was disclosed in the lessor's disclosure statement. See section 12A.

**[53] Section 27 Outgoings estimates**

Omit "prescribed" from section 27 (a). Insert instead "that is the prescribed form".

**[54] Section 31 Determination of current market rent**

Omit "A retail shop lease that provides an option to renew or extend the lease at current market rent" from section 31 (1).

Insert instead "A retail shop lease that provides for rent to be changed to current market rent or that provides an option to renew or extend the lease at current market rent".

**[55] Section 31 (1) (b) and (1A)**

Omit "Tribunal" wherever occurring. Insert instead "Registrar".

**[56] Section 32A Review of current market rent determinations**

Omit "Tribunal" from section 32A (1) and (13) wherever occurring.

Insert instead "Registrar".

**[57] Section 32A (1)**

Omit "section 19 or 31". Insert instead "section 31".

**[58] Section 32A (4)**

Omit the subsection. Insert instead:

- (4) Sections 31 and 31A apply (with any necessary adaptations) to and in respect of the specialist retail valuers in the same way as those provisions apply to and in respect of the original specialist retail valuer.

**[59] Section 32B**

Insert after section 32A:

**32B Appointment of specialist retail valuers**

- (1) The Registrar may appoint specialist retail valuers on application under this Act.
- (2) The appointment of a specialist retail valuer is to be made from separate lists of nominees prepared separately by or on behalf of the persons for the time

being holding or acting in the offices of President of the Australian Property Institute Limited (NSW Division), Chief Executive Officer of the Royal Institution of Chartered Surveyors, President of the Australian Valuers Institute and President of the Real Estate Institute of New South Wales Limited.

- (3) The parties to the retail shop lease concerned are to pay the costs of the application to the Registrar in equal shares.
- (4) The Registrar may attach such conditions as the Registrar considers appropriate to the appointment of a specialist retail valuer, including conditions about the fees that may be charged by the valuer in connection with valuations under this Act.
- (5) No matter or thing done or omitted to be done by a specialist retail valuer appointed by the Registrar subjects the valuer to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of a determination of rent by valuation carried out by a specialist retail valuer under a provision of this Act.

**[60] Section 35 Demolition**

Insert “or any part of the building” after “demolition of the building” in section 35 (1).

**[61] Section 35 (1) (a)**

Omit “to demolish that building”. Insert instead “for demolition”.

**[62] Section 35 (1) (a1)**

Insert after section 35 (1) (a):

- (a1) The lease cannot be terminated by the lessor on that ground unless the proposed demolition cannot be carried out practicably without vacant possession of the shop.

**[63] Section 35 (3)**

Omit “demolition of the building”. Insert instead “the proposed demolition”.

**[64] Section 35 (3)**

Omit “the premises”.

**[65] Section 35 (3A)**

Omit “demolition of the building”. Insert instead “proposed demolition”.

**[66] Section 35 (4)**

Omit the subsection. Insert instead:

- (4) For the purposes of this section, *demolition* includes repair, renovation and reconstruction.

**[67] Section 37 Employment restriction**

Insert after section 37 (a):

- (a1) a provision specifying requirements in the nature of police and security checks and clearances for persons employed in the shop or other persons (such as contractors) doing work in the shop, but only if the provision is included in the lease with the approval in writing of the Registrar given in a particular case,

**[68] Section 39 Grounds on which consent to assignment can be withheld**

Insert after section 39 (1) (d):

- (e) in the case of a retail shop lease that has been awarded by public tender, if the assignee fails to meet any criteria of the tender.

**[69] Sections 41 and 41A**

Omit the sections. Insert instead:

**41 Procedure for obtaining consent to assignment**

The following procedure applies to the assignment of a retail shop lease that requires the consent of the lessor:

- (a) A request for the lessor's consent to an assignment of the lease must be made by the lessee in writing.
- (b) The lessee must provide the lessor with such information as the lessor may reasonably require to be satisfied that the financial resources and retailing skills of the proposed assignee are not inferior to those of the lessee.
- (c) The lessee must provide the proposed assignee with an **updated lessor's disclosure statement** (comprising a copy of the lessor's disclosure statement given to the lessee in respect of the lease together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the lessee).
- (d) For the purpose of enabling the lessee to provide the proposed assignee with the required updated lessor's disclosure statement, the lessor must provide the lessee with an updated lessor's disclosure statement within 14 days after being requested to do so by the lessee.
- (e) If the lessor fails to provide the updated lessor's disclosure statement, it is sufficient compliance with the requirement to provide the proposed assignee with an updated lessor's disclosure statement if the lessee instead provides a lessor's disclosure statement completed by the lessee to the best of the lessee's knowledge (but with information as to current outgoings in place of information as to estimated outgoings).
- (f) The lessor must deal expeditiously with a request for consent to assignment of the lease.
- (g) The lessor has 28 days (the **decision period**) to decide whether to consent or to refuse consent to assignment. The decision period starts from when the request for consent was made by the lessee or from when the lessee has complied with the requirements of this section (whichever is later).
- (h) The lessor is taken to have consented to assignment if the lessee has complied with this section and the lessor has not, within the decision period, given notice in writing to the lessee either consenting or withholding consent to assignment.
- (i) The regulations may prescribe a period that is to replace the period of 28 days as the decision period in this section.

**41A Protection of assignor of lease for ongoing business**

- (1) A person (the **assignor**) who assigns a retail shop lease in connection with the continued use of the shop for the conduct of an ongoing business has no liability to the lessor in respect of amounts payable under the lease by the

assignee after the lease is assigned if the lessee complies with the requirements of this section.

- (2) The assignor must, at least 7 days before the assignment of lease:
  - (a) provide the assignee with an **updated lessor's disclosure statement** (comprising a copy of the lessor's disclosure statement given to the assignor in respect of the lease together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the assignor), and
  - (b) provide the assignee with an assignor's disclosure statement in or to the effect of the form set out in Part A of Schedule 2A, and
  - (c) provide the lessor with a copy of the assignor's disclosure statement (as provided to the assignee for the purposes of paragraph (b)) together with a document signed by the assignor and assignee that is in or to the effect of the form set out in Part B of Schedule 2A (the **disclosure confirmation**).
- (3) For the purpose of enabling the lessee to provide the proposed assignee with the required updated lessor's disclosure statement, the lessor must provide the lessee with an updated lessor's disclosure statement within 14 days after being requested to do so by the lessee, but if the lessor fails to do so:
  - (a) it is sufficient compliance with the requirement to provide the proposed assignee with an updated lessor's disclosure statement if the lessee instead provides a lessor's disclosure statement completed by the lessee to the best of the lessee's knowledge (but with information as to current outgoings in place of information as to estimated outgoings), and
  - (b) the assignor and assignee can sign the disclosure confirmation on the basis that the lessor's disclosure statement completed and provided by the lessee constitutes the updated lessor's disclosure statement.
- (4) The protection from liability afforded by this section to the assignor extends to any guarantor or covenantor of the assignor.
- (5) The assignor (and any guarantor or covenantor of the assignor) is not entitled to the protection of this section if the assignor's disclosure statement contains information that is materially false or misleading.

**[70] Section 47**

Insert after section 46:

**47 Information about turnover from online transactions**

- (1) The lessee under a retail shop lease cannot be required to provide the lessor with information concerning the turnover of the business of the lessee that is turnover from online transactions, and a provision of the lease is void to the extent that it purports to require the provision of information concerning turnover from online transactions.
- (2) This section does not apply to information concerning turnover from online transactions where the goods or services concerned are delivered or provided from or at the retail shop (or the retail shopping centre of which the shop forms part) or where the transaction takes place while the customer is at the retail shop (whether or not the goods or services concerned are delivered from or at the retail shop).

**[71] Section 48 Independent legal advice**

Omit section 48 (3).

**[72] Section 63 Interpretation**

Omit “19 (1) (b) or” from the definition of *retail tenancy dispute* in section 63 (1).

**[73] Section 65 Functions of Registrar**

Omit “19 (3), 19A (3),” from section 65 (1) (a1).

**[74] Section 70 Definitions**

Omit paragraph (a) (vii) of the definition of *retail tenancy claim*.

Insert instead:

- (vii) a claim for the rectification of the lease or the lessor’s disclosure statement,

**[75] Section 70, definition of “retail tenancy claim”**

Omit paragraphs (b)–(e) of the definition. Insert instead:

- (d) an application by a specialist retail valuer under section 31 (3) (including as applied by section 32A),
- (e) a claim against a specialist retail valuer under section 31A (3) (including as applied under section 32A) for compensation for loss or damage suffered as a consequence of the use or communication or divulging of information.

**[76] Section 72 Powers of Tribunal relating to retail tenancy claims**

Omit section 72 (1) (e). Insert instead:

- (e) an order (as permitted by section 72AB) requiring the rectification of the lease or the lessor’s disclosure statement,
- (e1) an order (as permitted by section 72AB) deeming a disclosure statement given by the lessor after the lease is entered into (with or without amendments specified by the Tribunal) to have been given in compliance with section 11 before the lease was entered into,

**[77] Section 72AB**

Omit the section. Insert instead:

**72AB Power of Tribunal to order rectification of lease or disclosure statement**

In proceedings for a retail tenancy claim lodged with the Tribunal under this Part, the Tribunal is not to make an order requiring the rectification of the lease or the lessor’s disclosure statement or deeming a disclosure statement to have been given (as provided by section 72 (1) (e) or (e1)) unless:

- (a) the order is made with the consent of the parties, or
- (b) the Tribunal is satisfied that the order is necessary to correct an error or omission, or
- (c) the Tribunal is satisfied that the order is necessary to give effect to the intention of the parties when the lease was entered into, or
- (d) the Tribunal is satisfied that the order is necessary to give effect to the actual disclosure of information between the parties.

**[78] Section 73 Monetary limit on Tribunal’s jurisdiction**

Omit “\$400,000” from section 73 (1). Insert instead “\$750,000”.

**[79] Section 82B Delegation by Secretary**

Omit “Department of State and Regional Development” from section 82B (1) (a).

Insert instead “Department of Industry, Skills and Regional Development”.

**[80] Section 83A**

Insert after section 83:

**83A Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.  
**Note.** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, *authorised officer* means a member of staff of the Department of Industry, Skills and Regional Development authorised in writing by the Secretary as an authorised officer for the purposes of this section.

**[81] Section 85 Regulations**

Insert “(including experience and training)” after “qualifications” in section 85 (2) (a).

**[82] Section 85 (3) and (4)**

Insert after section 85 (2):

- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (4) The regulations may prescribe a form to replace the form in Schedule 2 or 2A or may prescribe modifications to the form in Schedule 2 or 2A.

**[83] Schedule 1A**

Insert after Schedule 1:

**Schedule 1A Excluded uses**

(Section 5 (d))

Automatic teller machine

Car parking (not being car parking provided as part of the business of a car park)

Children’s ride machine

Communication towers  
Digital display screens  
Display of signage (not including the use of premises from which signage is sold)  
Internet booth (not being an internet cafe or similar use)  
Private post boxes  
Public tables and seating  
Public telephone  
Renewable energy generation  
Renewable energy storage batteries  
Self-storage units  
Storage of goods for use or sale in a retail shop (not including storage on premises from which goods are sold)  
Storage lockers  
Vending machine

**[84] Schedule 2, Part 1 Lessor's disclosure statement**

Omit the heading to the lessor's disclosure statement. Insert instead:

**Part A Lessor's disclosure statement**

**[85] Schedule 2, Part 5**

Omit the Part. Insert instead:

**Part 5 Outgoings**

**13 Contribution by lessee towards outgoings**

13.1 Is the lessee required to pay or contribute to outgoings?

No

Yes—fixed amount [per annum/other period] of \$

Yes—floating amount [per annum/other period] in respect of outgoings for which an estimate is provided in item 14

13.2 Describe any period during which the lessee is not required to pay outgoings:

13.3 Date on which payment in respect of outgoings is to commence:

/ /20

13.4 Formula(e) for apportioning outgoings or determining lessee's contribution to the total outgoings for the building/centre:

*[insert formula(e)]*

13.5 The outgoings that the lessee is required to pay or contribute to as a floating amount are each of the outgoings listed in item 14 for which an estimate of the outgoing is provided.

**14 Outgoings that the lessee is required to pay or contribute towards:**

*[Provide estimates for whichever of the following outgoings the lessee is liable to pay or contribute to. Estimates are for the first 12 months of the lease or, if the lease is for less than 12 months, for the term of the lease.]*

Estimates (including GST):

14.1 **Administration**

Administration (excluding management fees and wages): \$

Audit fees: \$

Management fees: \$

14.2 **Air conditioning/temperature control**

Maintenance: \$

Operating costs: \$

14.3 **Building/centre management**

Body corporate/strata levies: \$

Building intelligence services: \$

Customer traffic flow services: \$

Energy management services: \$

Gardening and landscaping: \$

Insurance: \$

Pest control: \$

Ventilation: \$

14.4 **Building/centre security**

Caretaking: \$

Emergency systems: \$

Fire levy: \$

Fire protection: \$

Security services: \$

14.5 **Cleaning**

Cleaning consumables: \$

Cleaning costs (excluding consumables): \$

14.6 **Communications**

Post boxes: \$

Public telephones: \$

14.7 **Customer facilities**

Car parking: \$

Child minding: \$

Escalators: \$

Lifts: \$

Uniforms: \$

14.8 **Customer information services**

Information directories: \$

Public address/music: \$

Signage: \$

14.9 **Government rates and charges**

Local government rates and charges: \$

Water sewerage and drainage rates and charges: \$

Land tax: \$

**14.10 Repairs**

Repairs and maintenance: \$

Sinking fund for repairs and maintenance: \$

**Note.** Under section 23 of the *Retail Leases Act 1994*, the lessor may not recover the capital costs of the building/centre from the lessee.

**14.11 Utility services**

Electricity: \$

Gas: \$

Oil: \$

Water: \$

**14.12 Waste management**

Sewage disposal: \$

Waste collection and disposal: \$

**14.13 Other outgoings [list]: \$**

14.14 Total estimated outgoings for the building/centre: \$

14.15 Total estimated lessee contribution to outgoings: \$

**[86] Schedule 2, item 18**

Omit “or building/centre” from item 18.2.

**[87] Schedule 2, Part 2 Lessee’s disclosure statement**

Omit the heading to the lessee’s disclosure statement. Insert instead:

**Part B Lessee’s disclosure statement**

**[88] Schedule 2A**

Omit the Schedule. Insert instead:

**Schedule 2A Assignor’s disclosure statement**

(Section 41A)

*[The information in Part A is to be provided to the assignee (together with an updated lessor’s disclosure statement) and the signed statement in Part B is to be provided to the lessor if the lessee requires the protection of section 41A.]*

**Part A Information to be provided to assignee**

The assignor (the lessee under the lease to be assigned) provides the following information about the lease to the assignee (the proposed new lessee):

- (a) There are/are no outstanding notices in respect of the lease.  
*[insert details of any outstanding notices]*
- (b) There are/are no outstanding notices from any authority in respect of the retail shop.  
*[insert details of any outstanding notices]*
- (c) There are/are no encumbrances on the lease.  
*[insert details of any encumbrances]*
- (d) There are/are no encumbrances on, or outside ownership of, any of the fixtures and fittings within the retail shop.  
*[insert details of any encumbrances or outside ownership]*

- (e) The lessor has/has not conferred rent concessions or other benefits on the assignor during the term of the lease.  
[insert details of any rent concessions or benefits]
- (f) Total (aggregate) sales figures for the past 3 years (or for such period as the lease has been in operation if that period is less than 3 years) are as follows:
  - (i) [insert period/year] \$
  - (ii) [insert period/year] \$
  - (iii) [insert period/year] \$

#### **Part B Certification and acknowledgement**

I certify that I have provided the assignee with the information indicated in paragraphs (a)–(f) and an updated lessor’s disclosure statement.

Assignor:

Date:

I acknowledge receipt from the lessee of the information indicated in paragraphs (a)–(f) and an updated lessor’s disclosure statement.

Assignee:

Date:

#### **[89] Schedule 3 Savings and transitional provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

#### **[90] Schedule 3, clause 20**

Omit the clause.

#### **[91] Schedule 3, Part 7**

Insert after Part 6:

### **Part 7 Retail Leases Amendment (Review) Act 2017**

#### **37 Meaning of “2017 amending Act”**

In this Part:

*2017 amending Act* means the *Retail Leases Amendment (Review) Act 2017*.

#### **38 General operation of amendments**

An amendment made by the 2017 amending Act extends to a lease entered into, and a disclosure statement given, before the commencement of the amendment except as otherwise provided by this Schedule.

#### **39 Disclosure statement amendments**

- (1) Section 12A does not apply to a lease entered into before the commencement of that section.
- (2) Section 11 (2A) extends to the termination of a lease that was entered into before the commencement of the subsection but does not apply to the termination of a lease that occurs before that commencement.
- (3) An amendment made to Schedule 2 or 2A by the 2017 amending Act does not apply to a disclosure statement given before the commencement of the amendment.

**40 Execution and registration of lease**

The amendment made by the 2017 amending Act that substitutes sections 15 and 16 does not apply to a lease entered into before the commencement of the amendment.

**41 Security bonds**

- (1) The amendment of section 16G by the 2017 amending Act does not apply to an application made before the commencement of the amendment.
- (2) The amendment of section 16H by the 2017 amending Act does not apply to an application made before the commencement of the amendment.
- (3) The amendment of section 16K by the 2017 amending Act extends to notice of a judgment or order received before the commencement of the amendment.
- (4) The repeal of section 16M does not affect an entitlement to interest under that section in respect of any period before that repeal and that section (and sections 16E (2) and 16V (5)) continue to apply despite their repeal to the payment of interest in respect of any period during which a security bond was held by the Secretary before that repeal.

**42 Return of bank guarantees**

Section 16BA does not apply to a bank guarantee given in respect of a lease entered into before the commencement of the section.

**43 Specialist retail valuers**

- (1) After the commencement of the amendments that provide for the appointment of specialist retail valuers by the Registrar instead of by the Tribunal, a specialist retail valuer appointed by the Tribunal is taken to have been appointed by the Registrar.
- (2) A determination of current market rent completed or pending under and for the purposes of provisions of a lease implied by section 19 (a *section 19 determination*) becomes a determination of current market rent completed or pending under those provisions as implied by section 31 (a *section 31 determination*) and accordingly:
  - (a) the appointment of a specialist retail valuer for the purposes of a section 19 determination is taken to be an appointment for the purposes of a section 31 determination, and
  - (b) information supplied to a specialist retail valuer for the purposes of a section 19 determination is taken to have been supplied for the purposes of a section 31 determination, and
  - (c) a pending claim against a specialist retail valuer under section 19A (3) is taken to be a claim under section 31A (3).
- (3) A protection from liability conferred by section 32B (5) on a specialist retail valuer appointed by the Registrar extends to a specialist retail valuer appointed by the Tribunal before the commencement of that section.

**44 Minimum 5-year lease term**

- (1) Sections 6A (4), 16, 21A and 48 (3) as in force before their repeal or substitution by the 2017 amending Act continue to apply to a retail shop lease in force immediately before their repeal or substitution.
- (2) An election under section 6A (4) to have the benefit of section 16 cannot be made after the substitution of section 16 by the 2017 amending Act.

**45 Expenses of obtaining consent of mortgagee**

Sections 14 and 45 do not apply to the seeking or accepting of payment of expenses incurred in connection with obtaining the consent of a mortgagee before the commencement of the amendment made by the 2017 amending Act to the definition of *lease preparation expenses* in section 3.

**46 Turnover rent**

The amendment of section 20 by the 2017 amending Act does not apply in respect of a determination of rent or a component of rent made before the commencement of the amendment.

**47 Consent to assignment**

The amendment of section 39 by the 2017 amending Act does not apply in respect of the withholding of consent to an assignment of lease before the commencement of the amendment.

**48 Change to monetary limit of Tribunal's jurisdiction**

The amendment made to section 73 by the 2017 amending Act does not apply to a retail tenancy claim or unconscionable conduct claim in respect of a lease entered into before the commencement of the amendment.

## **Schedule 2 Amendment of other legislation**

### **2.1 Civil and Administrative Tribunal Act 2013 No 2**

#### **Schedule 4 Consumer and Commercial Division**

Omit clause 11.

### **2.2 Public Authorities (Financial Arrangements) Regulation 2013**

#### **Schedule 2 Authorities having Part 2 investment powers**

Omit “Director-General of the Department of Trade and Investment, Regional Infrastructure and Services” from the matter relating to the *Retail Leases Act 1994*.

Insert instead “Secretary of the Department of Industry, Skills and Regional Development”.

[Second reading speech made in—

Legislative Assembly on 8 November 2016

Legislative Council on 21 February 2017]