

PROPOSED CHANGES TO RETAIL SHOP LEASES IN QUEENSLAND

Retail Shop Leases Amendment Bill 2015 (Qld) ("Bill") was introduced to Parliament on 13 October 2015 and makes a number of changes to the existing Retail Shop Leases Act 1994 (Qld) ("Act"). The changes are outlined below.

Provision	Current Act	Bill
LEASES EXCLUDED FROM ACT		
Large premises	Premises over 1000m ² AND tenant is a listed corporation or subsidiary of listed corporation	1000m ²
Commercial leases in retail shopping centre	Commercial leases included if in 'Retail Shopping Centre' – where there are 5 or more premises used for retail purposes	Non retail businesses to be excluded in multi-level building if the level of the building where premises are located has 25% or less retail area. Non retail in single level building excluded if 25% or less of the building is retail area. "retail area" defined as area used wholly or predominantly for carrying on retail business
Lessee carrying on business as agent of lessor	Not currently excluded	Premises used wholly or predominantly by lessee to carry on business of lessor as agent or employer of lessor will be excluded
Common area tenancies	ATMs and vending machines not currently excluded from Act	ATMs, vending machines and advertising displays will be excluded.
OTHER AMENDMENTS		

Date		
Date lease entered into	Earlier of date lease becomes binding on both parties or date lessee takes occupation	<p>Earlier of:</p> <ul style="list-style-type: none"> • First date by which lease is signed by all parties; or • Date lessee enters into possession; or • Date lessee first pays rent under the lease (excluding any deposit paid).
Date assignment of lease entered into	No provision	<p>Earlier of:</p> <ul style="list-style-type: none"> • First date by which deed of assignment is signed by Lessor, lessee and assignee; or • Date assignee enters into possession of premises with consent of the lessor.
Disclosure		
Defective lessor disclosure statements	May be defective if statement is incomplete or contains information that is false or misleading in a material particular	<p>Statement will not be defective because:</p> <ul style="list-style-type: none"> • It omits information irrelevant to lease or • Layout does not comply with the approved form. <p>Statement will be defective if it is incomplete in a material particular.</p>
Additional lessor disclosure statement upon exercise of option to renew	No disclosure requirement when option exercised	<p>Lessor will be required to give disclosure within 7 days of receiving notice of exercise of option unless lessee gives lessor a waiver notice when exercising option.</p> <p>Within 14 days of receiving disclosure statement, lessee can give lessor written notice withdrawing the renewal, regardless of whether renewed lease period has commenced.</p>

Waiver of timeframe to give lessor disclosure statement	Lessee cannot currently waive the 7 day period for lessor to provide disclosure	<p>Lessee can waive the 7 day period if lessee gives lessor a waiver notice containing certain information and legal advice report stating lessee's lawyer has provided legal advice re the waiver.</p> <p>The documents need to be exchanged prior to lessee entering into the lease.</p> <p>Waiver would also apply to assignments</p>
Tenant termination rights for defective lessor disclosure statements or statements given too late	<p>Lessee can terminate within first 6 months of lease for defective disclosure statement or 7 day period not complied with.</p> <p>No right for Lessor to object to the termination notice</p>	Termination rights still exist but lessor can object to termination notice and objection process set out.
Disclosure statement to franchisee	No requirement in Act	Franchisor tenant will be able to request Lessor provide a disclosure statement within 28 days. Franchisor to pay costs of provision of statement
Disclosure statement to sublessee	No requirement in Act	if the tenant intends to grant a sublease, the tenant may request that the landlord prepare and issue a lessor disclosure statement within 28 days. The tenant must pay the landlord's reasonable costs of preparing the lessor disclosure statement.
Lessee disclosure	No stipulated time frame for lessee to provide disclosure statement to Lessor	statement to be provided to Lessor at least 7 days prior to entering into the lease
Disclosure for assignment	Assignor to give disclosure to assignee at least 7 days prior to request lessor's consent to the assignment	<p>Disclosure to be given 7 days prior to the earlier of:</p> <ul style="list-style-type: none"> • The date which assignee enters into agreement for sale of business of assignor; or • The day lessor is asked to consent to the assignment

Disclosure for assignment	<p>Lessor is to give assignee disclosure statement and copy of lease at least 7 days before assignment entered into.</p> <p>Major lessee can waive disclosure requirement by giving written notice of obtaining appropriate financial and legal advice.</p> <p>Disclosure taken to be given if lessor gives disclosure statement to assignee prior to assignee entering into assignment</p>	<p>7 days requirement remains however, major lessee can waive requirement by giving a legal advice report re obtaining advice on the meaning and effect of the waiver.</p> <p>Disclosure is still taken to be given if lessor gives assignee disclosure statement before entering into assignment</p>
Financial and legal reports	Nothing in current Act	Excludes the requirement for franchisee to provide financial and legal advice reports to lessor
Rent and rent reviews		
Turnover certificates and statements	If turnover rent payable, Lessee to provide certificates monthly identifying turnover of the business. At end of each year and termination of lease statement of turnover to be prepared by registered auditor	No requirement for Lessee to provide both monthly certificates and registered auditor's statement.
Review on single basis	Can be waived if lessee gives written notice to lessor that it has obtained appropriate financial and legal advice	Can be waived by lessee giving notice to lessor that the relevant subsections do not apply
Void provisions	Provisions that reserve to a party a discretion to apply 1 of 2 or more rent calculation methods and that provide	These provisions no longer void in relation to a major lessee

	the for the rent of a leased shop to change in accordance with the higher of 2 or more methods of rent calculation are void	
Ratchet provisions	Void	No longer void for major lessees
Early determination of current market rent	Major lessee can waive the provision by confirming in writing that they have obtained appropriate financial and legal advice	Major lessee can waive by giving notice in writing that lessee agrees that the subdivision does not apply All provisions in relation to the determination of market rent apply to the early determination request
Market rent determination process	Submissions by lessor and lessee to the valuer are to be made within a reasonable time stipulated by the valuer	Valuer is to advise the date for provision of submissions. Date is to be not less than 14 days after the date the valuer is agreed to or appointed. If submissions not made by that date, then the party is taken not to have made a submission Clarity is provided on what an “effective rent basis” means.
Outgoings		
Apportionable outgoings	Calculated in accordance with area of leased premises bears to total area of all premises in the centre	Areas within common areas or used for “prescribed purposes” excluded from total area of the shopping centre. Prescribed areas include information, entertainment, community or leisure areas; telecommunication equipment; ATMs and vending machines; seating, tables and other furniture among others.
Apportionable outgoings	Include maintenance amounts	Includes maintenance amounts and promotion amounts to the extent that the amounts are treated as part of the lessor’s outgoings under the lease

Outgoings generally	If lessee required to pay outgoings then lease is to show outgoings payable, how they will be determined and apportioned and how they may be recovered from the lessee	Lessee not liable to pay outgoings unless the lease specified the outgoings payable, how they will be determined and apportioned and how they may be recovered from the lessee
Annual estimate of outgoings		New provisions in relation to where the shop is in a shopping centre, lessor must include breakdown of estimated fees to be paid towards administration costs of the shopping centre and fees to be paid to centre management
Audited annual statement		New provisions in relation to where the shop is in a shopping centre, lessor must include breakdown of estimated fees to be paid towards administration costs of the shopping centre and fees to be paid to centre management. Audited statement may refer to more than one lessee so long as it is possible for each lease to determine from the statement information relevant to that lessee
Failure to give estimate or audited annual statement	Not in current Act	Lessee may withhold payments in relation to apportionable outgoings until lessor provides lessee with the outgoings estimate or audited annual statement
Compensation		
What leases compensation provisions apply to	Provisions don't apply to periodic tenancies or tenancy at will (other than tenancy at will created by holding over provisions)	Will now apply to periodic tenancies created by holding over provisions of the lease
When compensation payable	No time frame for giving notice of damage.	Lessee to give notice as soon as practicable after damage suffered. Right to compensation not affected but delay in providing notice may affect amount of compensation payable

No 'double dipping'	No provision in Act	Clarification provided that lessor does not have to pay compensation under s43(1) if the lessee has been paid compensation under sections 46G (relocation costs) or 46K (early termination for demolition)
Compensation for emergency responses and statutory compliance	No exclusion in current Act	Lessor does not have to pay compensation where loss or damage is suffered because lessor takes action as a reasonable response to an emergency situation or in compliance with a statutory duty
Limitation of compensation	Not in current Act	provisions limiting the amount of compensation is void to the extent it limits the amount of compensation. Claim for compensation can be limited for a claim for an anticipated disturbance that occurs within the first year of the lease if, before the lease is entered into, the lessor gives lessee written notice. The notice must include a specific description of the nature of the anticipated disturbance, a statement assessing the likelihood of the disturbance occurring and details of the timing, duration and effect of the disturbance as far as they can be predicted.
Relocation and demolition		
Relocation provisions	Stipulates wording to be included in lease	Requires that lease just has to provide for relocation of business for the provisions to be implied into the lease
Alternative shop		Clarifies that alternative shop must be situated within the shopping centre
Termination by lessee due to demolition	Lessee's termination notice to be given 7 days prior to earlier termination date	Lessee's termination notice to be given 1 month prior to earlier termination date
Costs of lease		

Lessor's costs to be paid by lessee	Includes mortgagee's consent fees	<p>Lessee no longer required to pay mortgagee's consent fees. Also no requirement to pay for the lessor's compliance with the Act.</p> <p>Lessee can be required to pay lessor's legal costs or other expenses incurred for the preparation of a final lease when the lease has been prepared and the lessee does not sign it.</p>
General amendments		
Release of assignor	If all disclosure requirements met, when the assignment is entered into the assignor will be released from any liability on default by assignee	This is now extended to include releasing any guarantor of the assignor
Refurbishment	No requirement in Act	Provision in lease requiring lessee to refurbish or refit the premises is void unless the lease gives general details of the nature, extend and timing of the refurbishment or refitting required
Trading hours	Provisions purporting to impose an obligation on lessees to open premises for trading outside core hours is void.	Where lessee and lessor agree in writing that the lessee can open for trading outside the core trading hours the provision will not be void.