

Bill introduced to amend the Retail Shop Leases Act 1994 (Qld)

15 October 2015

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On 13 October 2015, a bill to amend the *Retail Shop Leases Act 1994* (Qld) was introduced into Parliament. The bill has been referred to the Legal Affairs Parliamentary Committee for consideration and members of the public will be given an opportunity to make submissions to that committee. As yet, a date for submissions has not been published.

A copy of the bill may be [accessed here](#).

Interested stakeholders should note some of the key proposals, which include:

- *Revised definition of what a retail shop lease is* – to exclude premises with a floor area greater than 1000m², and premises used for non retail purposes either located on a level of a multilevel building or in a single level building where 25% or less of the total lettable area of that level or building as the case may be is used for retail.
- Clarifying when a lease is “entered into”.
- *Additional disclosure obligations* – upon exercise of an option to renew and to provide for headlessor disclosure statements to subtenants and franchisees (at the Tenant’s cost). Tenants may waive strict compliance with the time frames for giving disclosure. Tenants are also granted a right to withdraw their exercise of option following receipt of the disclosure statement. The consequences of failure to comply or giving a defective statement have also been amplified.
- *Turnover* – removing the obligation on the Tenant to give monthly statements and annual audited statements.
- *Option* – where a Tenant requests an early determination of market rent prior to the exercise of an option, the date for exercise of that option is extended until 21 days after a Tenant receives written notice of that rent (meaning the date to exercise an option may be after the expiry date of the lease).
- *Outgoings* – outgoings estimates and statements to be provided by Landlords now have additional requirements. The estimate must include the proportion of the outgoings for which the Tenant will be liable and a breakdown of the estimated fees to be paid by the Tenant towards the administration costs of running the centre and fees to be paid to a centre management entity. The audited annual statement must compare the annual estimate with the amount actually spent and also compare the total amount actually spent with the total amounts actually paid by Tenants during the period.
- If an outgoings estimate or audited annual statement is not given the Tenant will have the right to withhold payment of outgoings until the estimate or statement is given.
- *Promotion and advertising* – if the lease requires the Tenant to pay amounts to the Landlord for promotion and advertising, the Landlord is to make available to the Tenant a marketing plan and an audited annual statement.
- *Compensation* – no liability by a Landlord to pay compensation due to an emergency situation or compliance with any duty imposed under an Act. The lease may limit a compensation claim for an anticipated disturbance that occurs within one year from the date the lease is entered into, if before the lease is entered into the Landlord gives a written notice which must contain certain detailed information about the anticipated disturbance.
- *Costs* – mortgagee consent costs will not be payable by a Tenant however a tenant may be

required to pay the reasonable legal costs of the Landlord for preparation of a final lease where that lease is not ultimately signed by the Tenant.

- *Assignment* – amended to clarify the previous “grey area” so that both an assignor and any guarantor of the assignor are released from liability.
- *Refurbishment* – any provision in a lease requiring the tenant to refurbish or refit the leased shop will be void unless general details of the nature, extent and timing of the refurbishment or refitting required is set out.

For more information or discussion, please contact HopgoodGanim Lawyers' [Commercial and Retail Leasing](#) team.

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