

# Landlords and tenants be prepared: Amendments to the Retail Shop Leases Act 1994 (Qld) passed by Queensland parliament

11 May 2016

6 min. read

Worthwhile read for: landlords, tenants

On 10 May 2016, some five years after the original review of the *Retail Shop Leases Act 1994* (Qld) began, the *Retail Shop Leases Amendment Bill 2015* (Qld) was passed with amendments by the Queensland parliament.

The Bill was amended from its original form as a result of the parliament adopting some of the recommendations contained in a committee report tabled to the Government. The committee report considered submissions from various stakeholders concerning the Bill.

The Bill has the effect of amending several key provisions within the *Retail Shop Leases Act 1994* (Qld) which will not only exclude some leases from the operation of the Act, but also change the manner in which landlords and tenants deal with specific issues under retail shop leases. Some of the amendments also bring the Act into line with the position adopted by other States under their retail shop lease legislation.

The following summary identifies the more important changes made to the Act by the Bill:

## Application of the Act

- The Act will not apply to leases with a floor area of more than 1000m<sup>2</sup>.
- The Act will not apply to leases for non-retail uses in retail shopping centres where only 25% or less of the total lettable area of the relevant level of the centre is used for retail purposes.

## Disclosure

- Tenants are required to give a disclosure statement to the landlord at least seven days before it enters into a lease.
- Landlords are to provide disclosure on the exercise of an option to renew by a tenant, with the tenant being able to withdraw from the option within 14 days of receipt of the disclosure for any reason.
- Tenants may waive the benefit of disclosure periods (but not the obligation for the landlord to give a disclosure)
- Landlords are to provide an updated disclosure upon request to enable tenants to give a disclosure statement on the grant of a sublease or licence.
- The assignee has the ability to waive the disclosure period for an assignor disclosure statement.

## Financial

- Market rent reviews are to be conducted by specialist retail valuers on an effective rent basis.
- Where a tenant exercises its right under the Act to have an early determination of the market rent before exercising an option to renew, the “window” for the tenant to exercise

the option will close 21 days after the market rent is agreed or determined, even if that date extends beyond the expiry date of the retail shop lease.

- Outgoings may only be recovered from a tenant if the lease specifies the outgoings payable by the tenant, how the outgoings will be determined and apportioned to the tenant and how the outgoings may be recovered by the landlord.
- Outgoings estimates and annual audited statements of outgoings will need to provide a detailed breakdown of the administration costs of running the centre and fees to be paid to any centre management entity.
- A tenant has the right to withhold payment of outgoings until the estimate or audited statement is given by the landlord.
- A landlord will not be able to include areas within a common area of the centre used for a *prescribed purpose* when calculating the total area of the centre for the purposes of calculating the *apportionable outgoings* payable by tenants.
- Where a tenant is required to pay turnover rent, the Act no longer obliges a tenant to give a landlord monthly turnover certificates and annual audited statements of turnover. This means that landlords will need to specifically include obligations within their retail shop leases (if not already included) concerning the timing and delivery of turnover certificates and statements by tenants.
- If a retail shop lease requires the tenant to pay amounts to the landlord for promotion and advertising, the landlord must make available to the tenant a marketing plan and an audited annual statement within specified time periods.
- Where lease negotiations have been finalised and a tenant requests the landlord to produce a lease for execution, if the tenant subsequent to that request does not proceed with the lease, the landlord can recover the fees for preparation of the lease from the tenant.
- Landlords are not permitted to recover mortgagee consent costs from tenants.

## **Compensation**

- The compensation provisions have been clarified to provide that a landlord is not liable to a tenant for compensation for business disruption where the landlord's actions are in response to an emergency.
- A tenant is required to give a landlord written notice of the loss or damage suffered as soon as practicable after it has occurred, failing which the delay can be considered when deciding the amount of compensation payable to the tenant.
- A retail shop lease may limit a tenant's claim for compensation if a business disturbance occurs during the first year of the lease, and before the lease was entered into, the landlord gave the tenant written notice of the potential business disturbance.
- The compensation provisions will now apply to a tenant who is holding over under an expired retail shop lease with the landlord's consent.

## **Miscellaneous**

- The guarantors of a tenant are also released from liability upon the assignment of a retail shop lease where various conditions have been satisfied.
- Any provision in a retail shop lease requiring the tenant to refurbish or refit the premises will be void unless general details of the nature, extent and timing of the refurbishment or refitting required is set out.
- The relocation provisions of the Act will apply to all relocations, not just those where vacant possession is required to facilitate a refurbishment, extension or redevelopment of the centre.

The Bill as passed does not, however, include the following matters which were contained in the original Bill:

- A provision determining when an assignment of a retail shop lease is entered into. This was due to possible issues associated with the number of ways in which an assignment of a lease may be effected under the general law.
- The ability for a landlord to issue an objection notice to a tenant as a result of the termination of a retail shop lease by a tenant under the Act due to the landlord failing to comply with its disclosure obligations or providing a defective statement. The parliament considered there are already appropriate avenues for a landlord to object to any such termination by a tenant.

The amendments to the Act will only take effect from a date yet to be set. Previously, the Government has intimated that the amendments would not commence until six months after the Bill is given assent and the Property Council of Australia has stated it believes this will be the timing for the amendments.

Despite this anticipated time period for the amendments to take effect, it would be prudent for landlords and tenants to be aware of the changes and where necessary, amend their lease documents and internal systems in readiness for the commencement of those amendments.

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

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