

Version No. 012
Retail Leases Act 2003
No. 4 of 2003

Version incorporating amendments as at 10 August 2007

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Main purpose	1
2 Commencement	1
PART 2—DEFINITIONS AND KEY CONCEPTS	2
3 Definitions	2
4 Meaning of <i>retail premises</i>	6
5 Minister may make determinations	9
6 Meaning of <i>common areas</i> of a shopping centre	10
7 When retail premises lease is entered into or assigned	11
8 Effect of assignment of retail premises lease	11
9 Meaning of <i>renewal</i> of a lease	11
10 Holding over under a retail premises lease	12
PART 3—APPLICATION OF THE ACT	13
11 Application generally	13
12 Application if lease term of less than a year	13
13 Act applies to retail premises in Victoria	14
14 Act binds the Crown	15
PART 4—ENTERING INTO OR RENEWING A RETAIL PREMISES LEASE	16
Division 1—Entering into a retail premises lease	16
15 Copy of lease to be provided at negotiation stage	16
16 Lease must be in writing and signed	16
17 Landlord's disclosure statement	17
18 Effect of notice of termination	19
19 Notices of termination	20
20 Tenant not required to pay undisclosed contributions	20
21 Minimum 5 year term	20

<i>Section</i>	<i>Page</i>
22 Tenant to be given copy of lease	23
23 Key-money and goodwill payments prohibited	23
24 Security deposits	25
25 Small Business Commissioner to be notified of lease	26
Division 2—Renewal of a retail premises lease	27
26 Landlord's disclosure on renewal of lease	27
27 Option to renew	29
28 Obligation to notify tenant of option to renew	29
PART 5—RENT AND OUTGOINGS	31
Division 1—The fit out of the premises	31
29 Meaning of <i>outgoings</i> to which a tenant contributes	31
30 Alterations to premises to enable fit out	31
31 Payment of rent when landlord's fit out not completed	32
32 Special rent—cost of fit out	33
Division 2—Determination of the rent	33
33 Rent based on turnover	33
34 Agreement about rent based on turnover	36
Division 3—Review of the rent	36
35 Rent reviews generally	36
36 Extended application of section 35	38
37 Rent reviews based on current market rent	38
38 Confidentiality of information supplied to valuer	40
Division 4—Outgoings	42
39 Recovery of outgoings from the tenant	42
40 Liability to contribute to non-specific outgoings	42
41 Capital costs not recoverable	43
42 Depreciation not recoverable	43
43 Tenant not liable to contribute to sinking fund	43
44 Interest etc. on landlord's borrowings not recoverable	43
45 Rent etc. associated with other land not recoverable	44
46 Estimate of outgoings	44
47 Statement of outgoings	45
48 Adjustment of contributions to outgoings	47
49 Limitation on recovery of management fees	48
50 Recovery of land tax	51
51 Liability for costs associated with lease	51
52 Landlord's liability for repairs	52

<i>Section</i>	<i>Page</i>
PART 6—REFURBISHMENT, RELOCATION AND OTHER INTERFERENCES WITH TENANCY	54
Division 1—Refurbishment, relocation etc.	54
53 Landlord to give notice of alterations and refurbishments	54
54 Tenant to be compensated for interference	54
55 Relocation of the tenant's business	56
56 Demolition	58
57 Damaged premises	59
58 Refurbishment and refitting	61
Division 2—Other interferences with tenancy	61
59 Restriction on whom the tenant employs or engages	61
PART 7—ASSIGNMENT AND TERMINATION OF A RETAIL PREMISES LEASE	62
60 When the landlord can withhold consent to an assignment	62
61 Procedure for obtaining consent to assignment	63
62 Protection of assignors and guarantors	64
63 Landlord may reserve the right to refuse a sub-lease, mortgage etc.	65
64 Notice of the landlord's intentions concerning renewal	65
PART 8—ADDITIONAL REQUIREMENTS FOR RETAIL SHOPPING CENTRES	67
65 Part only applies to retail shopping centres	67
66 Changes to core trading hours	67
67 Confidentiality of turnover information	67
68 Availability of statistical information about the retail shopping centre	68
69 Advertising and promotion requirements	69
70 Marketing plan for advertising and promotion	69
71 Statement and report on advertising and promotion expenditure	69
72 Unspent advertising and promotion contributions	70
73 Termination by landlord for inadequate sales prohibited	71
74 Geographical restrictions on tenant prohibited	71
75 Tenants' associations etc.	72
PART 9—UNCONSCIONABLE CONDUCT	73
76 Application of Part	73
77 Unconscionable conduct of a landlord	73
78 Unconscionable conduct of a tenant	75
79 Certain conduct is not unconscionable	78
80 Recovery of amount for loss or damage	78

<i>Section</i>	<i>Page</i>
PART 10—DISPUTE RESOLUTION	79
Division 1—Retail tenancy disputes	79
81 Meaning of <i>retail tenancy dispute</i>	79
82 Application of Part to retail premises	80
83 Part applies to current and former leases	80
Division 2—The Small Business Commissioner	80
84 Functions of Small Business Commissioner	80
Division 3—Alternative dispute resolution	82
85 What mediation and other alternative dispute resolution covers	82
86 Referral of retail tenancy disputes for alternative dispute resolution	82
87 Retail tenancy disputes must first be referred for alternative dispute resolution	84
88 Statements made during alternative dispute resolution not admissible	84
Division 4—The Tribunal	84
89 Jurisdiction of Tribunal	84
90 Parties to proceeding	85
91 Orders the Tribunal can make	86
92 Each party bears its own costs	87
PART 11—OTHER MATTERS	88
93 Indemnities	88
94 The Act prevails over retail premises leases, agreements etc.	89
94A Section 146 of the Property Law Act 1958 applies to retail premises leases	89
95 Occupation of residential area under a retail premises lease	90
96 Franchise arrangements	90
97 Service of documents	91
97A Validation of certain instruments	91
98 Limitation of Supreme Court jurisdiction	91
99 Regulations	92
PARTS 12, 13—Repealed	94
100–117 <i>Repealed</i>	94

<i>Section</i>	<i>Page</i>
PART 14—REPEAL OF 1998 ACT AND TRANSITIONAL PROVISIONS	95
118 Repeal of Retail Tenancies Reform Act 1998	95
119 General transitional and savings	95
120 Disclosure statements	96
121 Notification of amount of land tax	96
PART 15—<i>Repealed</i>	97
122, 123 <i>Repealed</i>	97
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	98
1. General Information	98
2. Table of Amendments	99
3. Explanatory Details	100

Version No. 012
Retail Leases Act 2003
No. 4 of 2003

Version incorporating amendments as at 10 August 2007

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Main purpose

The main purpose of this Act is to replace the scheme in the **Retail Tenancies Reform Act 1998** with a new scheme to enhance—

- (a) the certainty and fairness of retail leasing arrangements between landlords and tenants; and
- (b) the mechanisms available to resolve disputes concerning leases of retail premises.

2 Commencement

- (1) Section 1 and this section (other than subsection (4)) come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Part 12 comes into operation immediately before the commencement of section 118.
- (3) Sections 49 and 50 come into operation on 1 July 2003.
- (4) Part 13 is deemed to have come into operation at the last moment of 30 June 1998.
- (5) The remaining provisions of this Act (including subsection (4) of this section) come into operation on 1 May 2003.

PART 2—DEFINITIONS AND KEY CONCEPTS

3 Definitions

In this Act—

accountant means a member of—

- (a) the Institute of Chartered Accountants in Australia; or
- (b) CPA Australia (ACN 008 392 452); or
- (c) the National Institute of Accountants;

accounting period, in relation to a retail premises lease, means the period of 12 months specified in the lease as the accounting period for the purposes of the lease;

applicable industry code has the meaning given by section 51ACA of the Trade Practices Act 1974 of the Commonwealth;

assignment of a retail premises lease has a meaning affected by section 8;

building includes any structure;

common areas of a retail shopping centre has the meaning given by section 6;

dispute arising under or in relation to a retail premises lease includes a dispute arising under or in relation to the lease under a provision of this Act;

fit out of retail premises includes the provision or installation of finishes, fixtures, fittings, equipment and services;

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth;

S. 3 def. of
*accounting
period*
inserted by
No. 82/2005
s. 4.

industry code has the meaning given by section 51ACA of the Trade Practices Act 1974 of the Commonwealth;

key-money means money that a tenant is to pay, or a benefit that a tenant is to give, that is—

- (a) by way of a premium, or something similar in nature to a premium, in that there is no real consideration or no true consideration given for the payment or benefit (for example, it is so disproportionate to the benefit that it cannot be true consideration); and
- (b) in consideration of—
 - (i) a lease being granted or an agreement being made to grant a lease; or
 - (ii) the variation of a lease; or
 - (iii) the renewal of a lease or the granting of an option for the renewal of a lease; or
 - (iv) consent being given to the assignment of a lease or to the sub-leasing of the premises to which a lease relates;

landlord under a retail premises lease—

- (a) means the person who under the lease is entitled to the rent payable for the premises; and
- (b) in Part 10, includes a former landlord (because of section 83);

lease—

- (a) means a lease, sub-lease, or an agreement for a lease or sub-lease, whether or not in writing; and
- (b) in Part 10, includes a former lease (because of section 83);

legal practitioner means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

S. 3 def. of *legal practitioner* substituted by No. 18/2005 s. 18(Sch. 1 item 92).

outgoings means a landlord's outgoings on account of any of the following—

- (a) the expenses directly attributable to the operation, maintenance or repair of—
 - (i) the building in which the retail premises are located or any other building or area owned by the landlord and used in association with the building in which the retail premises are located; or
 - (ii) in the case of retail premises in a retail shopping centre, any building in the centre or any areas used in association with a building in the centre;
- (b) rates, taxes, levies, premiums or charges payable by the landlord because the landlord is—
 - (i) the owner or occupier of a building referred to in paragraph (a) or of the land on which such a building is erected; or

- (ii) 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 any such building or land;

renewal of a retail premises lease has the meaning given by section 9;

retail premises has the meaning given by section 4;

retail shopping centre means a cluster of premises that has all of these attributes—

- (a) at least 5 of the premises are retail premises;
- (b) the premises are all owned by the same person or have (or would have if leased) the same landlord or the same head landlord;
- (c) the premises are located—
 - (i) in a single building; or
 - (ii) in 2 or more buildings that are—
 - (A) adjoining; or
 - (B) separated only by common areas or other areas owned by the owner of the retail premises; or
 - (C) separated only by a road;
- (d) the cluster of premises is promoted as, or generally regarded as constituting, a shopping centre, shopping mall, shopping court or shopping arcade;

retail tenancy dispute in Part 10 has the meaning given by section 81;

Small Business Commissioner means the Small Business Commissioner appointed under the **Small Business Commissioner Act 2003**;

specialist retail valuer means—

- (a) for the purposes of a valuation relating to retail premises in a retail shopping centre, a valuer having not less than 5 years' experience in valuing retail premises located in regional or sub-regional shopping centres; or
- (b) for the purposes of a valuation relating to any other retail premises, a valuer having not less than 5 years' experience in valuing retail premises;

tenant under a retail premises lease—

- (a) means the person who under the lease is entitled to occupy the premises; and
- (b) in Part 10, includes a former tenant (because of section 83);

Tribunal means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

4 Meaning of *retail premises*

- (1) In this Act, ***retail premises*** means premises, not including any area intended for use as a residence, that under the terms of the lease relating to the premises are used, or are to be used, wholly or predominantly for—
 - (a) the sale or hire of goods by retail or the retail provision of services; or

S. 4(1)
amended by
No. 82/2005
s. 5(1)(2).

-
- (b) the carrying on of a specified business or a specified kind of business that the Minister determines under section 5 is a business to which this paragraph applies.
- (2) However, *retail premises* does not include the following premises—
- (a) premises in respect of which the occupancy costs (as defined in subsection (3)) under the lease concerned is more than the amount prescribed by the regulations for the purposes of this paragraph;
 - (b) premises that are used wholly or predominantly for the carrying on of a business by a tenant on behalf of the landlord as the landlord's employee or agent;
 - (c) premises the tenant of which is—
 - (i) a listed corporation (as defined in section 9 of the Corporations Act); or
 - (ii) a subsidiary (as defined in section 9 of the Corporations Act) of such a corporation;
 - (d) premises the tenant of which is—
 - (i) a body corporate whose securities are listed on a stock exchange, outside Australia and the external territories, that is a member of the World Federation of Exchanges; or
 - (ii) a subsidiary (as defined in section 9 of the Corporations Act) of such a body corporate;
 - (e) premises used wholly or predominantly for the carrying on of a specified business or a specified kind of business that the Minister determines under section 5 is a business to which this paragraph applies;

S. 4(2)(d)(i)
substituted by
No. 82/2005
s. 5(3).

Retail Leases Act 2003
No. 4 of 2003
Part 2—Definitions and Key Concepts

s. 4

S. 4(2)(f)
amended by
No. 82/2005
s. 5(4).

(f) premises of a kind that the Minister determines under section 5 are premises to which this paragraph applies;

S. 4(2)(g)
inserted by
No. 82/2005
s. 5(5).

(g) premises the tenant of which is a kind of tenant that the Minister determines under section 5 is a tenant to which this paragraph applies;

S. 4(2)(h)
inserted by
No. 82/2005
s. 5(5).

(h) premises the lease relating to which is a kind of lease that the Minister determines under section 5 is a lease to which this paragraph applies.

(3) In subsection (2)(a), *occupancy costs* means—

(a) the rent payable under the lease, not being rent (or any part of rent) that is to be determined by reference to the turnover of a business; and

S. 4(3)(b)
substituted by
No. 82/2005
s. 5(6).

(b) the outgoings, as estimated by the landlord, to which the tenant is liable to contribute under the lease; and

Note

Section 46 requires the landlord to give the tenant a written estimate of the outgoings to which the tenant is liable to contribute.

(c) any other costs of a prescribed kind that the tenant is liable to pay under the lease.

(4) Regulations made for the purposes of subsection (2)(a) may—

(a) prescribe an amount; or

(b) prescribe a method by which an amount may be calculated.

Note

This Act may not apply to certain premises because of Part 3 (Application of the Act).

5 Minister may make determinations

- (1) The Minister may, by notice published in the Government Gazette—
- (a) determine that a business is a business or a kind of business to which section 4(1)(b) applies; or
 - (b) determine that a business is a business or a kind of business to which section 4(2)(e) applies; or
 - (c) determine that a kind of premises are premises to which section 4(2)(f) applies; or S. 5(1)(c) amended by No. 82/2005 s. 6(1).
 - (d) determine that a kind of tenant is a tenant to which section 4(2)(g) applies; or S. 5(1)(d) inserted by No. 82/2005 s. 6(2).
 - (e) determine that a kind of lease is a lease to which section 4(2)(h) applies. S. 5(1)(e) inserted by No. 82/2005 s. 6(2).
- (1A) An instrument made under subsection (1) may leave any matter to be certified by a Minister. S. 5(1A) inserted by No. 82/2005 s. 6(3).
- (1B) An instrument made under subsection (1) may provide that it has effect on and from 1 May 2003 or such later date (whether before, on or after the date on which the instrument is made) as is specified in the instrument as the date on which it comes into effect. S. 5(1B) inserted by No. 82/2005 s. 6(3).
- (2) The powers conferred by subsection (1) to make an instrument are subject to the instrument being disallowed by the Parliament.

-
- (3) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply to an instrument made under subsection (1) as though—
- (a) the instrument were a statutory rule (within the meaning of that Act); and
 - (b) notice of the making of the statutory rule had been published in the Government Gazette when the instrument was published in the Government Gazette.

6 Meaning of *common areas* of a shopping centre

- (1) In this Act, the *common areas* of a retail shopping centre means the areas in or adjacent to the centre that are under the control of the landlord and are used or intended for use—
- (a) by the public; or
 - (b) in common by the tenants of premises in the centre relating to the carrying on of businesses on those premises—
- other than any areas in respect of which there is a retail premises lease to which this Act applies.
- (2) The *common areas* of a retail shopping centre include—
- (a) stairways, escalators and elevators; and
 - (b) malls and walkways; and
 - (c) parking areas; and
 - (d) toilets and rest rooms; and
 - (e) gardens and fountains; and
 - (f) information, entertainment, community and leisure facilities.

7 When retail premises lease is entered into or assigned

S. 7
substituted by
No. 82/2005
s. 7.

For the purposes of this Act, a retail premises lease is entered into or assigned when—

- (a) under the lease or assignment, the tenant enters into possession of the premises with the consent of the landlord; or
- (b) under the lease or assignment, the tenant begins to pay rent for the premises; or
- (c) the lease or assignment has been signed by all of the parties to it—

whichever first occurs.

8 Effect of assignment of retail premises lease

For the purposes of this Act, an assignment of a retail premises lease is taken to be a continuation of that lease (and not the entering into of a new lease).

9 Meaning of *renewal* of a lease

(1) In this Act, the *renewal* of a retail premises lease means the renewal of the lease—

- (a) under an option granted under the lease for a further term; or
- (b) under an agreement to renew the lease on substantially the same terms and conditions, except as to rent, for a further term entered into by all of the parties to the lease.

S. 9(1)(b)
amended by
No. 82/2005
s. 8.

(2) However, if—

- (a) after a retail premises lease expires, there is a break in the tenant's possession of the premises; and

-
- (b) the tenant resumes possession of the premises for a further term (whether or not on the same terms and conditions as under the expired lease)—

the resumption of possession of the premises is taken not to be a renewal of the expired lease and is instead taken to be the entering into of a new lease for the purposes of this Act.

- (3) The renewal of a retail premises lease is not to be taken to be the entering into of a retail premises lease for the purposes of section 17 (landlord's disclosure statement).

10 Holding over under a retail premises lease

If, in accordance with a retail premises lease, the tenant continues to be in possession of the retail premises for a period after the lease has expired, the lease is taken to continue for the purposes of this Act while the tenant is in possession of the premises.

PART 3—APPLICATION OF THE ACT

11 Application generally

- (1) This Act applies to a retail premises lease that is—
 - (a) entered into after the commencement of this section; or
 - (b) renewed after the commencement of this section, whether the lease was entered into before or after that commencement.
- (2) Except as provided by Part 10 (Dispute Resolution), this Act only applies to a lease of premises if the premises are retail premises (as defined in section 4) at the time the lease is entered into or renewed.

Note

Sections 36 and 76(1) extend the application of certain provisions of this Act to certain leases entered into or renewed before the commencement of this section.

12 Application if lease term of less than a year

- (1) This Act does not apply to a retail premises lease for a term of less than one year.
- (2) However, if the term of a retail premises lease is less than one year and as a result of either or both of the following—
 - (a) the lease being renewed (one or more times);
 - (b) the lease being continued—

S. 12(2)
amended by
No. 82/2005
s. 9(a)(b).

the tenant is continuously in possession of the retail premises for one year or more under the lease after the commencement of this section, this Act applies to the lease on and from the day on which the tenant has continuously been in possession of the retail premises for one year after that commencement.

-
- (3) If this Act applies to a lease because of subsection (2)—
- (a) section 17 (landlord's disclosure statement) does not apply to the lease; and
 - (b) section 26 (landlord's disclosure on renewal of lease) applies to the lease with these changes—
 - (i) section 26(1) is taken to provide that the landlord must give the tenant the disclosure statement referred to in that section within 60 days after this Act begins to apply to the lease;
 - (ii) section 26(3) is taken to provide that if the tenant has not been given the disclosure statement within that time, the tenant may give the landlord the notice referred to in that section no earlier than 7 days and no later than 90 days after this Act begins to apply to the lease;
 - (iii) section 26(5)(b) is taken to refer to when this Act begins to apply to the lease.

13 Act applies to retail premises in Victoria

Subject to this Part, this Act applies to a lease that provides for the occupation of retail premises in Victoria regardless of—

- (a) where the lease was entered into; and
- (b) whether the lease purports to be governed by a law other than the law of Victoria.

14 Act binds the Crown

This Act binds the Crown—

- (a) in right of the State of Victoria; and
 - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
-

**PART 4—ENTERING INTO OR RENEWING A RETAIL
PREMISES LEASE**

Division 1—Entering into a retail premises lease

S. 15
amended by
No. 82/2005
s. 10 (ILA
s. 39B(1)).

15 Copy of lease to be provided at negotiation stage

- (1) A person who, as landlord or on behalf of the landlord—
- (a) offers to enter into a retail premises lease; or
 - (b) advertises by any means that retail premises are for lease—

must, as soon as the person enters into negotiations with a person about the lease, give to that person a copy of the proposed lease in writing (but the copy need not include particulars of the tenant, the rent or the term of the proposed lease) and a copy of the information brochure (if any) about retail leases published by the Small Business Commissioner.

Penalty: 50 penalty units.

S. 15(2)
inserted by
No. 82/2005
s. 10.

- (2) Subsection (1) does not apply to a renewal of a lease.

16 Lease must be in writing and signed

- (1) A landlord or tenant must not enter into a retail premises lease that is not in writing and signed by all of the parties to it.

Penalty: 10 penalty units.

- (2) A failure to comply with this section does not make the retail premises lease illegal, invalid or unenforceable.

17 Landlord's disclosure statement

- (1) At least 7 days before entering into a retail premises lease, the landlord must give the tenant—
- (a) a disclosure statement in the form prescribed by the regulations (but the layout of the statement need not be the same as the prescribed disclosure statement); and
 - (b) a copy of the proposed lease in writing.

- (1A) In the application of subsection (1) to a sub-lease, a tenant who has been given a disclosure statement concerning a head-lease is only required to give a sub-tenant—

S. 17(1A)
inserted by
No. 82/2005
s. 11(1).

- (a) a copy of that disclosure statement; and
 - (b) details of any changes of which the tenant is aware, or could reasonably be expected to be aware, that have affected the information in the disclosure statement since it was given to the tenant.
- (2) If a tenant has not been given the disclosure statement before entering into a retail premises lease, the tenant may give the landlord, no earlier than 7 days and no later than 90 days after entering into the lease, a written notice that the tenant has not been given the disclosure statement.
- (3) If the tenant gives the landlord a notice in accordance with subsection (2)—
- (a) the tenant may withhold payment of the rent until the day on which the landlord gives the tenant the disclosure statement; and
 - (b) the tenant is not liable to pay the rent attributable to the period from and including the day on which the notice was given until and including the day on which the landlord gives the tenant the disclosure statement; and
-

s. 17

(c) the tenant may give the landlord a written notice of termination at any time before the end of 7 days after the landlord gives the tenant the disclosure statement.

S. 17(4)
amended by
No. 82/2005
s. 11(2).

(4) If the premises are not available for handover to the tenant on the date specified in the disclosure statement, the tenant is not liable to pay the rent attributable to a period before the date on which the premises are available for handover..

(5) If—

(a) any information provided by the landlord in the disclosure statement is misleading, false or materially incomplete; or

(b) the tenant is not given a copy of the proposed lease in accordance with subsection (1)(b)—

the tenant may give the landlord a written notice of termination.

(6) The tenant may give a notice of termination under subsection (5) at any time before the end of 28 days after—

(a) the tenant is given the disclosure statement;
or

(b) the tenant is given a copy of the proposed lease; or

S. 17(6)(b)
amended by
No. 82/2005
s. 11(3).

(c) the lease is entered into—

whichever happens last.

S. 17(7)
inserted by
No. 82/2005
s. 11(4).

(7) If a tenant has been given the disclosure statement before entering into an agreement for a retail premises lease, the landlord is not required to give a further disclosure statement before subsequently entering into a retail premises lease if that lease is substantially in accordance with the earlier agreement for the lease.

18 Effect of notice of termination

- (1) If a tenant under a retail premises lease gives the landlord a notice of termination under—
 - (a) section 17(3)(c) within the time allowed by that section; or
 - (b) section 17(5) within the time allowed by section 17(6)—the lease terminates 14 days after the notice is given unless the landlord gives the tenant a notice of objection to the termination.
 - (2) Within 14 days after being given the notice of termination the landlord may give the tenant a notice of objection to the termination on the ground that—
 - (a) the landlord has acted honestly and reasonably and ought fairly to be excused for the contravention; and
 - (b) the tenant is substantially in as good a position as the tenant would have been in if there had been no contravention.
 - (3) If the tenant advises the landlord that the tenant accepts the landlord's notice of objection or the notice is upheld under Part 10, the lease does not terminate in accordance with the notice of termination despite subsection (1).
 - (4) The tenant is taken to have accepted the notice of objection if the tenant does not advise (in writing) the landlord, within 14 days after being given the notice, whether or not the tenant accepts it.
 - (5) The operation of a notice of termination under section 17(3)(c) or (5) is suspended until the effect of a notice of objection to it is determined.
-

19 Notices of termination

The termination of a lease by a notice of termination given in accordance with this Act does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the lease before the date of termination, unless the landlord and tenant otherwise agree or it is otherwise provided by this Act or determined under Part 10.

20 Tenant not required to pay undisclosed contributions

A provision of a retail premises lease that requires the tenant to pay or contribute towards the cost of any fit out of the retail premises is void unless the liability to make the payment or contribution was disclosed in a disclosure statement given to the tenant in accordance with this Part.

21 Minimum 5 year term

- (1) The term of a retail premises lease, including any further term or terms provided for by an option for the tenant to renew the lease, must be at least 5 years or, if the term remaining under any head lease under which the landlord holds the retail premises is 5 years or less, the length of that remaining term less one day.

Note to
s. 21(1)
amended by
No. 82/2005
s. 12(1).

Note

The landlord or tenant may, in accordance with the lease or this Act, be able to terminate the lease before the end of the term if, for example, there has been default, relocation, demolition or damage to the retail premises.

- (2) In applying subsection (1), an option conferred after the lease was entered into must be disregarded.

- (2A) In applying subsection (1) to a retail premises lease to which this Act applies because of section 12(2), account must be taken of any period during which the tenant was continuously entitled to possession of the retail premises before the day on which this Act first applied to the lease.

S. 21(2A)
inserted by
No. 82/2005
s. 12(2).

Note

Section 8 provides that an assignment of a retail premises lease is taken to be a continuation of that lease.

- (3) This section does not apply to a renewal of a lease if there is no break in the tenant's entitlement to possession of the retail premises.

Note

This means that a renewal of a lease is not required to be for 5 years because the minimum 5 year term requirement applied to the lease when it was entered into and the availability of the renewal will have been taken into account in determining the term of the lease.

- (4) A lease that is entered into contrary to this section is not illegal, invalid or unenforceable because of that fact but the term of the lease is extended by the period that is necessary to ensure the lease complies with this section.

Note

For example, if a lease is entered into for a term of 3 years, its term is extended by 2 years to 5 years.
If a lease is entered into for a term of 2 years with an option for a further 1 year after the initial 2 years, the term of the lease is extended to 4 years (with the option for a further 1 year after the initial 4 years).

- (5) This section does not apply to a lease if—

- (a) at the request of the tenant or prospective tenant or prospective tenant, the Small Business Commissioner certifies in writing that he or she, or a person acting on his or her behalf, has explained to the tenant or prospective tenant—

S. 21(5)(a)
amended by
No. 82/2005
s. 12(3)(6).

Retail Leases Act 2003
No. 4 of 2003

Part 4—Entering Into or Renewing a Retail Premises Lease

s. 21

S. 21(5)(a)(ii)
amended by
No. 82/2005
s. 12(4)(6).

- (i) the effect of subsections (1) to (4); and
- (ii) that the giving of the certificate and the giving by the tenant or prospective tenant to the landlord of a copy of the certificate under paragraph (b) will result in this section not applying to the lease; and

S. 21(5)(b)
amended by
No. 82/2005
s. 12(5)(6).

- (b) after having been given a certificate under paragraph (a)(ii), the tenant or prospective tenant gives the landlord a copy of the certificate.

S. 21(5A)
inserted by
No. 82/2005
s. 12(7).

(5A) The Small Business Commissioner—

- (a) must consider a request under subsection (5) made by a tenant or a prospective tenant before a lease is entered into and within 90 days after a lease is entered into; and
- (b) may consider a request made at any other time under subsection (5).

S. 21(6)
amended by
No. 82/2005
s. 12(6).

- (6) The Small Business Commissioner must issue a certificate under subsection (5)(a)(ii) within 21 days after being requested to do so by the tenant or prospective tenant but a certificate issued later than that is not invalid because of that fact.

S. 21(7)
inserted by
No. 82/2005
s. 12(8).

- (7) If the term of a lease is extended under this section and no provision is made in the lease for a review of the rent payable in respect of the extended period, then the lease is taken to provide for a rent review to be made on the basis of the current market rent of the premises as at the beginning of that period.

Note

For reviews based on the current market rent of the retail premises, see section 37.

22 Tenant to be given copy of lease

- (1) Within 28 days, or such other period as is agreed in writing between the landlord and the tenant, after being given a copy of the retail premises lease signed by the tenant, the landlord must give the tenant a copy (which may be a photocopy) of the lease signed by the landlord and the tenant.
- (2) If the landlord contravenes subsection (1), the tenant may give the landlord a written notice of termination at any time within 28 days after—
 - (a) the tenant is given a copy of the lease signed by the landlord and the tenant; or
 - (b) entering into the lease—whichever happens last.
- (3) Subject to subsection (4), if a tenant gives the landlord a notice of termination in accordance with subsection (2), the lease terminates 14 days after the notice is given.
- (4) Section 18 applies to a notice of termination given under this section in the same way and to the same extent as it applies to a notice of termination given under section 17(3)(c) or (5).

S. 22(1)
amended by
No. 82/2005
s. 13(1).

S. 22(2)(a)
amended by
No. 82/2005
s. 13(2).

23 Key-money and goodwill payments prohibited

- (1) A person must not, as landlord or on behalf of a landlord, seek or accept the payment of—
 - (a) key-money; or
 - (b) any consideration for the goodwill of any business carried on at the retail premises.

Penalty: 50 penalty units.

-
- (2) A provision of a retail premises lease is void to the extent that it requires the payment of key-money or consideration for goodwill or has that effect.
- (3) However, subsections (1) and (2) do not prevent a landlord from—
- (a) recovering from the tenant costs which the landlord reasonably incurred in investigating a proposed assignee of the lease or sub-tenant of the premises; or
 - (b) recovering from the tenant costs which the landlord reasonably incurred in connection with—
 - (i) an assignment of the lease or a sub-lease; and
 - (ii) obtaining any necessary consents to the assignment or sub-lease; or
 - (c) claiming goodwill from the tenant in relation to the sale of a business that the landlord operated from the retail premises immediately before its sale, if the lease was granted to the tenant in the course of the sale of the business; or
 - (d) receiving payment of rent in advance; or
 - (e) securing the performance of the tenant's obligations under the lease by requiring a bond, security deposit or guarantee to be provided from the tenant or any other person (such as a requirement that the directors of a corporation guarantee performance of the corporation's lease obligations); or
 - (f) seeking and accepting payment for plant, equipment, fixtures or fittings that are sold by the landlord to the tenant in connection with the lease being granted; or
-

- (g) seeking and accepting payment for the grant of a franchise in connection with the lease being granted.
- (4) Any payment made, or the value of any benefit conferred, by the tenant and received by or on behalf of the landlord contrary to this section may be—
 - (a) recovered by the tenant from the landlord in a court of competent jurisdiction as a debt due; or
 - (b) otherwise recovered by the tenant from the landlord as determined under Part 10 (Dispute Resolution).

S. 23(4)(b)
substituted by
No. 82/2005
s. 14.

24 Security deposits

- (1) A retail premises lease is taken to provide that—
 - (a) money paid by the tenant to the landlord as a security deposit for the performance of the tenant's obligations under the lease must be held by the landlord on behalf of the tenant in an interest-bearing account; and
 - (b) the landlord must account to the tenant for interest earned on the deposit but the landlord is entitled to keep the interest and deal with it as money paid by the tenant to the landlord to form part of the security deposit; and
 - (c) the landlord is not entitled unreasonably to refuse to accept a guarantee from an ADI (within the meaning of the Banking Act 1959 of the Commonwealth) in satisfaction of any requirement to provide security in the form of a deposit, bond or third party guarantee for the performance of the tenant's obligations under the lease; and

S. 24(1)(c)
amended by
No. 82/2005
s. 15(1).

s. 25

S. 24(1)(d)
inserted by
No. 82/2005
s. 15(2).

(d) if the tenant performs all of the tenant's obligations under the lease the landlord must return the security deposit to the tenant as soon as practicable after the lease ends.

S. 24(2)
repealed by
No. 82/2005
s. 15(3).

* * * * *

(3) This section does not affect any lawful entitlement of the landlord to appropriate security deposits.

S. 25
amended by
No. 82/2005
s. 16(1).

25 Small Business Commissioner to be notified of lease

Within 14 days (or such other period as is agreed between the landlord and the Small Business Commissioner) after a retail premises lease is signed by all of the parties to it, or renewed, the landlord must notify (in writing) the Small Business Commissioner of—

- (a) the address of the retail premises; and
- (b) the landlord's name and address (and, if the landlord is not a natural person, the name and address of a person who can be contacted about the lease); and
- (c) the tenant's name and address; and

S. 25(ca)
inserted by
No. 82/2005
s. 16(2).

(ca) the date when the lease was signed by all of the parties to it, or renewed; and

(d) such other matters (if any) as are prescribed by the regulations.

Penalty: 10 penalty units.

Division 2—Renewal of a retail premises lease

26 Landlord's disclosure on renewal of lease

- (1) If—
- (a) a tenant has exercised, or is entitled to exercise, an option to renew a retail premises lease granted under the lease; or
 - (b) all of the parties to a retail premises lease enter into an agreement to renew the lease—

S. 26(1)
amended by
No. 82/2005
s. 17(1).

the landlord must (at least 21 days before the end of the current term of the lease in the circumstances referred to in paragraph (a) and no later than 14 days after the entering into of the agreement in the circumstances referred to in paragraph (b)) give the tenant a disclosure statement in the form prescribed by the regulations (but the layout of the statement need not be the same as the prescribed disclosure statement).

Note

Section 12(3) changes the way that this section applies to certain leases (for example, the time limit in subsection (1) is changed).

- (2) The disclosure statement must include information that is current from a specified date that is within 3 months before the statement is given.
- (3) If the tenant has not been given the disclosure statement before the expiration of the relevant period specified in subsection (1), the tenant may, no later than 90 days after the expiration of the relevant period, give the landlord a written notice that the tenant has not been given the disclosure statement.

S. 26(3)
substituted by
No. 82/2005
s. 17(2).

-
- (4) If the tenant gives the landlord a notice in accordance with subsection (3)—
- (a) the tenant may withhold payment of the rent until the day on which the landlord gives the tenant the disclosure statement; and
 - (b) the tenant is not liable to pay the rent attributable to the period from and including the day on which the notice was given until and including the day on which the landlord gives the tenant the disclosure statement; and
 - (c) the tenant may give the landlord a written notice of termination at any time before the end of 7 days after the landlord gives the tenant the disclosure statement.
- (5) If any information provided by the landlord in the disclosure statement is misleading, false or materially incomplete, the tenant may give the landlord a written notice of termination at any time before the end of 28 days after—
- (a) the tenant is given the disclosure statement;
or
 - (b) the lease is renewed—
- whichever happens last.
- (6) Section 18 applies to a notice of termination given under subsection (4)(c) or (5) in the same way and to the same extent as it applies to a notice of termination given under section 17(3)(c) or (5).

Note

This section applies to the renewal, on or after its commencement, of a lease entered into before its commencement, see section 11(1).

27 Option to renew

- (1) If a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term, the lease must state—
 - (a) the date until which the option is exercisable; and
 - (b) how the option is to be exercised; and
 - (c) the terms and conditions on which the lease is renewable under the option; and
 - (d) how the rent payable during the term for which the lease is renewed is to be determined.
- (2) If a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term, the only circumstances in which the option is not exercisable is if—
 - (a) the tenant has not remedied any default under the lease about which the landlord has given the tenant written notice; or
 - (b) the tenant has persistently defaulted under the lease throughout its term and the landlord has given the tenant written notice of the defaults.

28 Obligation to notify tenant of option to renew

- (1) If a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term, the landlord must notify the tenant in writing of the date after which the option is no longer exercisable—
 - (a) at least 6 months; and

(b) no more than 12 months—

before that date but is not required to do so if the tenant exercises, or purports to exercise, the option before being notified of the date.

(2) If subsection (1) requires the landlord to notify the tenant but the landlord fails to do so within the time specified by that subsection—

(a) the retail premises lease is taken to provide that the date after which the option is no longer exercisable is instead 6 months after the landlord notifies the tenant as required; and

(b) if that date is after the term of the lease ends, the lease continues until that date (on the same terms and conditions as applied immediately before the lease term ends); and

(c) the tenant, whether or not the landlord has by then notified the tenant as required, may give written notice to the landlord terminating the lease from a specified day that is—

(i) on or after the date on which the term of the lease ends; and

(ii) before the date until which the lease would otherwise have continued because of paragraph (b).

(3) If the tenant gives the landlord a notice of termination under subsection (2)(c), the lease terminates on the day specified in the notice.

(4) If an option to renew is exercised because of subsection (2)(b) after the term of the lease ends, the lease for the further term commences on the expiry of the previous lease, disregarding for this purpose any period during which that lease continued because of that subsection.

S. 28(2)(c)
amended by
No. 82/2005
s. 18.

PART 5—RENT AND OUTGOINGS

Division 1—The fit out of the premises

29 Meaning of *outgoings* to which a tenant contributes

In this Part, *outgoings* to which a tenant under a retail premises lease contributes or is liable to contribute means any outgoings (as defined in section 3) in respect of which the tenant is liable under the lease to make any payment to the landlord.

30 Alterations to premises to enable fit out

- (1) A retail premises lease where the retail premises are located in a retail shopping centre is taken to provide as set out in this section if the tenant is liable under the lease to pay an amount for the costs of, or associated with, carrying out works to alter any of the following to enable the proposed fit out of the premises—
 - (a) the electrical reticulation at the premises;
 - (b) the automatic sprinkler system at the premises;
 - (c) the power or gas supply to the premises;
 - (d) the layout of air-conditioning ducts or registers;
 - (e) the location of exhausts;
 - (f) telephone or electrical cabling;
 - (g) such other things as are prescribed by the regulations.
- (2) The works must be carried out by a person or persons with suitable skills and experience engaged, or approved, by the landlord.

-
- (3) The maximum cost of the works, or a basis or formula with respect to those costs, is to be agreed in writing by the landlord and tenant before the works begin.
 - (4) If the landlord and tenant cannot agree on the maximum cost of the works or a basis or formula with respect to those costs, the maximum cost is to be determined by an independent quantity surveyor appointed by—
 - (a) agreement between the landlord and tenant;
or
 - (b) if there is no agreement, the Small Business Commissioner—and the landlord and tenant are to pay the costs of the independent quantity surveyor in equal shares.
 - (5) The tenant is not liable to pay an amount in respect of the works that is more than the maximum cost agreed by the landlord and tenant, or determined by the independent quantity surveyor, as the case may be.

31 Payment of rent when landlord's fit out not completed

- (1) This section applies to a retail premises lease if—
 - (a) the liability of the tenant to pay rent under the lease starts when the tenant enters into possession of the retail premises (whether or not the tenant is required to enter into possession by a specified date); and
 - (b) the landlord has obligations under the lease concerning the fit out of the premises (that is, the landlord is required to provide some or all of the fit out before the tenant enters into possession of the premises).
-

-
- (2) The retail premises lease is taken to provide that—
- (a) the tenant is not liable to pay rent, or any other amount payable under the lease by the tenant (such as an amount payable for outgoings), in respect of any period before the landlord has substantially complied with the landlord's obligations concerning the fit out of the premises; and
 - (b) except on reasonable grounds of safety, the landlord is not entitled to deny the tenant possession of the premises merely because the landlord has not complied with those obligations.

32 Special rent—cost of fit out

Apart from section 30, nothing in this Act prevents a retail premises lease from providing for the payment of a special rent (in addition to any other rent) to cover the landlord's costs relating to the fit out of the premises.

Division 2—Determination of the rent

33 Rent based on turnover

- (1) A provision in a retail premises lease that the rent is to be determined either fully or partly by reference to the turnover of the business is void unless the lease specifies how the rent is to be determined.

Note

If the provision is void, see section 34.

- (2) If a retail premises lease specifies how the rent is to be determined fully or partly by reference to the turnover of the business, the tenant must give the landlord—

-
- (a) within 14 days after the end of each month for which the rent is to be determined in that way or such longer period as the lease provides, a statement in writing giving the turnover during that month or other period to which the statement relates; and
- (b) within 28 days after the end of each year for which the rent is to be determined in that way or such longer period as the lease provides and at the end of the lease or on an assignment of the lease—
- (i) a statement of the turnover; and
 - (ii) an audit report from an independent accountant stating that in his or her opinion the statement fairly presents the turnover of the business during that year or other period to which the statement relates.
- (3) A tenant who gives the landlord statements for a period in accordance with subsection (2) satisfies any obligation under the lease to provide turnover figures or statements for that period.
- (4) For the purposes of subsections (2) and (3) and any provision of a retail premises lease about the determination of rent by reference to turnover, **turnover** does not include any of the following—
- (a) the net amount of discounts reasonably and properly allowed to any customer in the usual course of business;
 - (b) the amount of losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business;
-

-
- (c) the amount of uncollected credit accounts written off by the tenant (except to the extent that amounts of a credit account previously written off by the tenant are recovered);
 - (d) the amount of any cash or credit refund allowed on a transaction the proceeds of which have previously been included as turnover, if the merchandise is returned and the sale is cancelled or some or all of the fees for the services are refunded;
 - (e) the amount of any instalment of purchase money refunded to customers where a lay-by transaction is cancelled;
 - (f) the amount of any purchase, receipt or other similar tax (including GST) imposed on the purchase price or cost of hire of merchandise or services at the point of sale or hire;
 - (g) the amount of delivery charges;
 - (h) the price of merchandise exchanged between stores of the tenant made solely for the convenient operation of business and not for the purpose of concluding a sale made at or from the retail premises to which the lease relates;
 - (i) the price of merchandise returned to shippers, wholesalers or manufacturers;
 - (j) the amount received from the sale of the fixtures and fittings of the tenant from the premises;
 - (k) money received for entries in any public lottery within the meaning of the **Gambling Regulation Act 2003**, other than amounts derived as commission or fees on those entries;

S. 33(4)(k)
amended by
No. 114/2003
s. 12.1.3
(Sch. 6
item 11).

-
- (l) any other matter which the landlord and the tenant agree is not included as turnover.

34 Agreement about rent based on turnover

- (1) If—

- (a) a provision of a retail premises lease that the rent is to be determined either fully or partly by reference to the turnover of the business is void because of section 33; and
- (b) the lease makes no other provision for determining the rent—

the rent is to be as agreed in writing between the landlord and tenant.

- (2) If the landlord and tenant do not agree on an amount of rent within 30 days of the landlord giving the tenant a written notice specifying an amount, the amount of the rent is to be determined by a valuation carried out by a specialist retail valuer appointed by—

- (a) agreement between the landlord and tenant;
or
- (b) if there is no agreement, the Small Business Commissioner—

and the landlord and tenant are to pay the costs of the valuation in equal shares.

Division 3—Review of the rent

35 Rent reviews generally

- (1) If a retail premises lease provides for a review of the rent payable under the lease or under a renewal of the lease, the lease must state—
- (a) when the reviews are to take place; and
- (b) the basis or formula on which the reviews are to be made.
-

-
- (2) The basis or formula on which a rent review is to be made must be one of the following—
- (a) a fixed percentage;
 - (b) an independently published index of prices or wages;
 - (c) a fixed annual amount;
 - (d) the current market rent of the retail premises;
 - (e) a basis or formula prescribed by the regulations.

Note

For reviews based on the current market rent of the retail premises, see section 37.

**Note to
s. 35(2)
amended by
No. 82/2005
s. 19(1).**

- (3) A provision in a retail premises lease is void to the extent that it purports to preclude, or prevents or enables a person to prevent, the reduction of the rent or to limit the extent to which the rent may be reduced.
- (4) However, subsection (3) does not apply to a provision that uses—
- (a) a basis or formula referred to in subsection (2)(a), (b) or (c); or
 - (b) a prescribed basis or formula referred to in subsection (2)(e) that is also prescribed as a basis or formula to which subsection (3) does not apply.
- (5) A rent review is to be conducted as early as practicable within the time provided by the lease. If the landlord has not initiated the review within 90 days after the end of that time, the tenant may initiate the review.
-

S. 35(7)
amended by
No. 82/2005
s. 19(2).

- (6) A rent review provision in a retail premises lease is void if the lease does not specify how the review is to be made.
- (7) If a provision in a retail premises lease that provides for a review of the rent payable under the lease does not comply with subsection (2) or is void under subsection (6), the rent is to be—
 - (a) as agreed between the landlord and tenant; or
 - (b) if there is no agreement within 30 days after the landlord gives the tenant, or the tenant gives the landlord, a written notice specifying an amount of rent for the purposes of the review, the amount determined by a specialist retail valuer appointed by the Small Business Commissioner as the current market rent of the retail premises.
- (8) The landlord and tenant are to pay the costs of a valuation referred to in subsection (7)(b) in equal shares.

36 Extended application of section 35

In addition to a retail premises lease to which section 35 applies because of Part 3, that section also applies to the determination on a rent review (conducted after the commencement of section 11) of the commencing rent for the renewed term of a retail premises lease that was entered into before that commencement, and to any subsequent review of the rent payable under the renewed lease, if this Act would have applied to the lease had it been entered into after that commencement.

37 Rent reviews based on current market rent

- (1) A retail premises lease that provides for a rent review to be made on the basis of the current market rent of the premises is taken to provide as set out in subsections (2) to (6).

-
- (2) The current market rent is taken to be the rent obtainable at the time of the review in a free and open market between a willing landlord and willing tenant in an arm's length transaction having regard to these matters—
- (a) the provisions of the lease;
 - (b) the rent that would reasonably be expected to be paid for the premises if they were unoccupied and offered for lease for the same, or a substantially similar, use to which the premises may be put under the lease;
 - (c) the landlord's outgoings to the extent to which the tenant is liable to contribute to those outgoings;
 - (d) rent concessions and other benefits offered to prospective tenants of unoccupied retail premises—
- but the current market rent is not to take into account the value of goodwill created by the tenant's occupation or the value of the tenant's fixtures and fittings.
- (3) If the landlord and tenant do not agree on what the amount of that rent is to be, it is to be determined by a valuation carried out by a specialist retail valuer appointed by—
- (a) agreement between the landlord and tenant;
or
 - (b) if there is no agreement, the Small Business Commissioner—
- and the landlord and tenant are to pay the costs of the valuation in equal shares.
- (4) The landlord must, within 14 days after a request by the specialist retail valuer, supply the valuer with relevant information about leases for retail premises located in the same building or retail
-

shopping centre to assist the valuer to determine the current market rent.

Penalty: 50 penalty units.

- (5) In determining the amount of the rent, the specialist retail valuer must take into account the matters set out in subsection (2).
- (6) The valuation must—
- (a) be in writing; and
 - (b) contain detailed reasons for the specialist retail valuer's determination; and
 - (c) specify the matters to which the valuer had regard in making the determination.
- (7) The specialist retail valuer—
- (a) must carry out the valuation within 45 days after accepting the appointment, or within such longer period as may be agreed between the landlord and tenant, or if there is no agreement, as determined in writing by the Small Business Commissioner; and
 - (b) may seek to enforce under Part 10 (Dispute Resolution) an obligation of the landlord under subsection (4).

S. 37(7)
substituted by
No. 82/2005
s. 20.

38 Confidentiality of information supplied to valuer

- (1) A specialist retail valuer who is supplied with information by a landlord or tenant for the purpose of determining under section 37 the current market rent for a retail premises lease must not—
- (a) use or permit the use of the information for any purpose other than to determine the current market rent for the lease concerned; or

S. 38(1)
amended by
No. 82/2005
s. 21.

-
- (b) communicate or divulge that information to any other person or permit that information to be communicated or divulged to any other person.

Penalty: 50 penalty units.

- (2) However, subsection (1) does not prevent the specialist retail valuer—
- (a) communicating or divulging the information to a court, the Tribunal or the Small Business Commissioner, or permitting another person to do so; or
 - (b) using, communicating or divulging the information or permitting another person to do so—
 - (i) in accordance with the consent of both the landlord and tenant; or
 - (ii) in a way that does not disclose information identifying a particular lease or tenant, or relating to a tenant's business, for the purpose of specifying the matters to which the valuer had regard in making the determination concerned.
- (3) A specialist retail valuer who contravenes this section is liable to pay to the landlord or tenant concerned compensation for any loss or damage suffered by the landlord or tenant as a result of the information being used, communicated or divulged.
- (4) The amount of the compensation is the amount that is—
- (a) agreed between the valuer and the person seeking compensation; or
 - (b) if there is no agreement, determined under Part 10 (Dispute Resolution).
-

Division 4—Outgoings

39 Recovery of outgoings from the tenant

- (1) The tenant under a retail premises lease is not liable to pay an amount to the landlord in respect of outgoings except in accordance with provisions of the lease that specify—
 - (a) the outgoings that are to be regarded as recoverable; and
 - (b) in a manner consistent with the regulations, how the amount of those outgoings will be determined and how they will be apportioned to the tenant; and
 - (c) how those outgoings or any part of them may be recovered by the landlord from the tenant.
- (2) The regulations may prescribe the manner in which the amount of outgoings may be determined and apportioned to a tenant.

40 Liability to contribute to non-specific outgoings

- (1) A tenant under a retail premises lease where the retail premises are located in a retail shopping centre is only liable to contribute towards an outgoing of the landlord that benefits specific retail premises in the centre if the retail premises are one of the premises that benefit from the outgoing.
- (2) A tenant is not liable to contribute towards an outgoing of the landlord in accordance with subsection (1) in excess of an amount calculated as prescribed by the regulations.

41 Capital costs not recoverable

- (1) Subject to subsection (2), a provision in a retail premises lease is void to the extent that it requires the tenant to pay an amount in respect of the capital costs of—
- (a) the building in which the retail premises are located; or
 - (b) any building in a retail shopping centre in which the retail premises are located; or
 - (c) any areas used in association with a building referred to in paragraph (a) or (b); or
 - (d) plant in a building referred to in paragraph (a) or (b).

S. 41
amended by
No. 82/2005
s. 22(1)(2) (ILA
s. 39B(1)).

- (2) Subsection (1) does not operate to render void a provision in a retail premises lease requiring the tenant to undertake capital works at the tenant's own cost.

S. 41(2)
inserted by
No. 82/2005
s. 22(2).

42 Depreciation not recoverable

A provision in a retail premises lease is void to the extent that it requires the tenant to pay an amount in respect of depreciation.

43 Tenant not liable to contribute to sinking fund

A provision in a retail premises lease is void to the extent that it requires the tenant to make a contribution to a sinking fund to provide for capital works.

44 Interest etc. on landlord's borrowings not recoverable

A provision in a retail premises lease is void to the extent that it requires the tenant to pay an amount in respect of interest or other charges incurred by the landlord in respect of amounts borrowed by the landlord.

45 Rent etc. associated with other land not recoverable

A provision in a retail premises lease is void to the extent that it requires the tenant to pay an amount in respect of—

- (a) rent payable under any head lease under which the landlord holds the retail premises; or
- (b) rent or other costs associated with any other land including—
 - (i) land on which the building or retail shopping centre of which the retail premises forms part is located; and
 - (ii) land of the landlord used by, or for the benefit of, the tenants conducting business in that building or retail shopping centre or in connection with trading in that building or retail shopping centre.

46 Estimate of outgoings

- (1) A retail premises lease is taken to provide as set out in this section.
- (2) The landlord must give the tenant a written estimate of the outgoings to which the tenant is liable to contribute under the lease that itemises those outgoings.
- (3) The tenant must be given the estimate of outgoings—
 - (a) before the lease is entered into; and
 - (b) in respect of each of the landlord's accounting periods during the term of the lease, at least one month before the start of that period.

-
- (4) The tenant is not liable to contribute to any outgoings of which an estimate is required to be given to the tenant as set out in this section until the tenant is given that estimate.

47 Statement of outgoings

- (1) A retail premises lease is taken to provide as set out in this section.
- (2) The landlord must prepare a written statement that details all expenditure by the landlord, in each of the landlord's accounting periods during the term of the lease, on account of outgoings to which the tenant is liable to contribute.
- (3) The landlord must—
- (a) make the statement available to the tenant at least once in relation to expenditure during each of the landlord's accounting periods during the term of the lease; and
 - (b) give the tenant the statement within 3 months after the end of the accounting period to which it relates.
- (4) The outgoings statement may relate to more than one tenant as long as each tenant to which it relates can ascertain from the statement the details relevant to the tenant.
- (5) The outgoings statement must be—
- (a) prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards (in force from time to time) made by the Australian Accounting Standards Board; and

-
- (b) in the case of a statement given under subsection (3)(b), accompanied by a report prepared by a registered company auditor (within the meaning of the Corporations Act) that states whether—
- (i) the statement correctly states the landlord's expenditure during the accounting period in respect of the total amount of outgoings, and each individual outgoing that comprises more than the prescribed percentage of the total amount of outgoings, to which the tenant is liable to contribute; and
 - (ii) the total amount of estimated outgoings for that period (as shown in the estimate of outgoings given to the tenant) exceeded the total actual expenditure by the landlord in respect of those outgoings during that period.
- (6) However, the outgoings statement given under subsection (3)(b) need not be accompanied by an auditor's report if it—
- (a) does not relate to any outgoings other than—
 - (i) GST; and
 - (ii) water, sewerage and drainage rates and charges; and
 - (iii) municipal council rates and charges; and
 - (iv) insurance; and
 - (v) any other outgoing of a kind prescribed by the regulations; and
 - (b) is accompanied by copies of assessments, invoices, receipts or other proof of payment for all expenditure by the landlord included in the statement.
-

-
- (7) An auditor preparing a report under subsection (5)(b) must ensure that the tenant is given a reasonable opportunity to make a written submission to the auditor on the accuracy of the outgoings statement.

48 Adjustment of contributions to outgoings

- (1) A retail premises lease is taken to provide as set out in this section.
- (2) There is to be an adjustment between the landlord and tenant for each of the landlord's accounting periods during the term of the lease to take account of any underpayment or overpayment by the tenant in respect of outgoings during that period.
- (3) The adjustment is to take place—
- (a) within one month after the landlord gives the tenant the outgoings statement under section 47 for the period; or
 - (b) within 4 months after the end of the period—
- whichever is earlier.
- (4) The adjustment is to be calculated on the basis of the difference between—
- (a) the total amount of outgoings in respect of which the tenant contributed (that is, the estimated total expenditure by the landlord on outgoings during the period); and
 - (b) the total actual expenditure by the landlord in respect of those outgoings during the period, but taking into account only expenditure properly and reasonably incurred by the landlord in the payment of those outgoings.

49 Limitation on recovery of management fees

- (1) A provision of a retail premises lease is void to the extent that it makes the tenant liable to pay an amount for management fees unless—
- (a) the management fees relate to the management of the building in which the retail premises are located or, if the retail premises are located in a retail shopping centre, that centre; and
 - (b) the lease, or a disclosure statement given to the tenant in accordance with Part 4, specifies—
 - (i) the amount of the management fees for any accounting period of the landlord during the term of the lease; and
 - (ii) a rate, or a method for calculating a rate, for working out the amount for which the tenant is liable for that period.
- (2) If, subject to subsection (1), a tenant was liable under a retail premises lease to pay an amount for management fees for the landlord's previous accounting period, the amount that the tenant is liable under that lease to pay for the landlord's current accounting period must not exceed the greater of the following amounts—
- (a) the amount for management fees that the tenant was liable to pay for the previous accounting period;

S. 49(1)(a)
substituted by
No. 82/2005
s. 23(1).

- (b) the amount calculated using this formula (as adjusted, if appropriate, by subsection (3))—

$$A \times \frac{B}{C}$$

where—

- A** is the amount for management fees that the tenant was liable to pay for the previous accounting period; and
- B** is the All Groups Consumer Price Index number (for Melbourne) published by the Australian Statistician for the quarter in which the current accounting period started; and
- C** is the All Groups Consumer Price Index number (for Melbourne) published by the Australian Statistician for the quarter in which the previous accounting period started.
- (3) The amount calculated using the formula in subsection (2)(b) is adjusted—
- (a) if the tenant was liable for management fees for only part of the previous accounting period, by—
- (i) multiplying the amount by the total number of days in the previous accounting period; and
- (ii) dividing that result by the number of days in the part of the previous accounting period for which the tenant was liable for management fees; and

-
- (b) if the tenant is liable for management fees for only part of the current accounting period, by—
- (i) multiplying the amount by the number of days in the part of the current accounting period for which the tenant is liable for management fees; and
 - (ii) dividing that result by the total number of days in the current accounting period.
- (4) Where the retail premises are located in a retail shopping centre, if one-half of the tenants in the centre who are liable under retail premises leases to pay an amount for management fees for an accounting period of the landlord agree in writing that subsection (2) is not to apply in respect of that period, that subsection does not apply to any of the tenants in that centre in respect of that period.
- (5) If the Australian Statistician changes the reference base for the All Groups Consumer Price Index number (for Melbourne) for a quarter mentioned in subsection (2), the new reference base is to be used after the change.
- (6) For the purposes of subsections (2) and (3) only, the amount for management fees does not include salaries and other administrative costs related to the operation of the building in which the retail premises are located or, if the retail premises are located in a retail shopping centre, in that centre.

S. 49(6)
inserted by
No. 82/2005
s. 23(2).

50 Recovery of land tax

S. 50
amended by
No. 82/2005
s. 24(1)(2) (ILA
s. 39B(1)).

- (1) A provision of a retail premises lease is void to the extent that it makes the tenant liable to pay an amount for tax for which the landlord or head landlord is liable under the **Land Tax Act 2005**.

S. 50(1)
amended by
No. 88/2005
s. 117(Sch. 2
item 5).

Note

The application of this section is affected by section 121 (notification of amount of land tax).

- (2) Subsection (1) does not apply, in the case of a lease entered into at any time on or after 1 May 2003 and before 1 July 2003, in respect of any period before 1 July 2003.

S. 50(2)
inserted by
No. 82/2005
s. 24(2).

51 Liability for costs associated with lease

- (1) A landlord under a retail premises lease is not able to claim from any person (including the tenant) the landlord's legal or other expenses relating to—
- (a) the negotiation, preparation or execution of the lease; or
 - (b) obtaining the consent of a mortgagee to the lease; or
 - (c) the landlord's compliance with this Act.
- (2) However, subsection (1) does not prevent a landlord from claiming the reasonable legal or other expenses incurred by the landlord in connection with an assignment of the lease or a sub-lease, including investigating a proposed assignee or sub-tenant and obtaining any necessary consents to the assignment or sub-lease.

52 Landlord's liability for repairs

- (1) A retail premises lease is taken to provide as set out in this section.
- S. 52(2)
amended by
No. 82/2005
s. 25(1).
- (2) The landlord is responsible for maintaining in a condition consistent with the condition of the premises when the retail premises lease was entered into—
- S. 52(2)(a)
amended by
No. 82/2005
s. 25(2)(a).
- (a) the structure of, and fixtures in, the retail premises; and
- S. 52(2)(b)
amended by
No. 82/2005
s. 25(2)(b).
- (b) plant and equipment at the retail premises; and
- S. 52(2)(c)
amended by
No. 82/2005
s. 25(2)(c).
- (c) the appliances, fittings and fixtures provided under the lease by the landlord relating to the gas, electricity, water, drainage or other services.
- S. 52(3)
amended by
No. 82/2005
s. 25(3).
- (3) However, the landlord is not responsible for maintaining those things if—
- (a) the need for the repair arises out of misuse by the tenant; or
- (b) the tenant is entitled or required to remove the thing at the end of the lease.
- S. 52(4)
amended by
No. 82/2005
s. 25(4).
- (4) The tenant may arrange for urgent repairs (for which the landlord is responsible under this section or under the terms and conditions of the lease) to be carried out to those things if—
- (a) the repairs are necessary to fix or remedy a fault or damage that has or causes a substantial effect on or to the tenant's business at the premises; and
-

-
- (b) the tenant is unable to get the landlord or the landlord's agent to carry out the repairs despite having taken reasonable steps to arrange for the landlord or agent to do so.
- (5) If the tenant carries out those repairs—
- (a) the tenant must give the landlord written notice of the repairs and the cost within 14 days after the repairs are carried out; and
- (b) the landlord is liable to reimburse the tenant for the reasonable cost of the repairs and may not recover that cost or any part of it as an outgoing.

S. 52(5)(b)
amended by
No. 82/2005
s. 25(5).

Note

Section 39 regulates the ability of the landlord to recover outgoings (including the cost of repairs). Section 41 provides that capital costs are not recoverable from a tenant.

Note to
s. 52(5)
inserted by
No. 82/2005
s. 25(6).

**PART 6—REFURBISHMENT, RELOCATION AND OTHER
INTERFERENCES WITH TENANCY**

Division 1—Refurbishment, relocation etc.

**53 Landlord to give notice of alterations and
refurbishments**

A retail premises lease is taken to provide that the landlord must not start to carry out any alteration or refurbishment of the building or retail shopping centre in which the retail premises are located which is likely to affect adversely the business of the tenant unless—

- (a) the landlord has notified the tenant in writing of the proposed alteration or refurbishment at least 60 days before it is started; or
- (b) the alteration or refurbishment is necessary because of an emergency and the landlord has given the tenant the maximum period of notice that is reasonably practicable in the circumstances.

54 Tenant to be compensated for interference

- (1) A retail premises lease is taken to provide as set out in this section.
- (2) The landlord is liable to pay to the tenant reasonable compensation for loss or damage (other than nominal damage) suffered by the tenant because the landlord or a person acting on the landlord's behalf—
 - (a) substantially inhibits the tenant's access to the retail premises; or
 - (b) unreasonably takes action that substantially inhibits or alters the flow of customers to the retail premises; or

-
- (c) unreasonably takes action that causes significant disruption to the tenant's trading at the retail premises; or
 - (d) fails to take reasonable steps to prevent or stop significant disruption within the landlord's control to the tenant's trading at the retail premises; or
 - (e) fails to rectify as soon as practicable—
 - (i) any breakdown of plant or equipment that is not under the tenant's care or maintenance; or
 - (ii) any defect in the retail premises or in the building or retail shopping centre in which the retail premises are located, other than a defect due to a condition that would have been reasonably apparent to the tenant when entering into or renewing the lease or when the tenant accepted assignment of the lease; or
 - (f) neglects adequately to clean, maintain or repair the building or retail shopping centre in which the retail premises are located (but not the retail premises themselves).
- (3) The tenant must give the landlord written notice of the loss or damage as soon as practicable after it is suffered but a failure to do this does not affect any right of the tenant to compensation.
- (4) This section does not apply to action taken by a landlord—
- (a) as a reasonable response to an emergency; or
 - (b) in compliance with any duty imposed by or under an Act or resulting from a requirement imposed by a body acting under the authority of an Act.
-

- (5) The amount of the compensation is the amount that is—
- (a) agreed between the landlord and the tenant; or
 - (b) if there is no agreement, determined under Part 10 (Dispute Resolution).

55 Relocation of the tenant's business

- (1) A retail premises lease that provides for—
- (a) relocation of the tenant's business; or
 - (b) termination of the lease and offer of a new lease of alternative retail premises—
- is taken to provide as set out in this section.
- (2) The landlord cannot require the tenant's business to be relocated or terminate the lease and offer a new lease of alternative retail premises unless the landlord has provided the tenant with details of a proposed refurbishment, redevelopment or extension that are sufficient to indicate a genuine proposal that—
- (a) is to be carried out within a reasonably practicable time after the relocation; and
 - (b) cannot be carried out practicably without vacant possession of the retail premises.
- (3) The landlord cannot require the tenant's business to be relocated or terminate the lease and offer a new lease of alternative retail premises unless the landlord has given the tenant at least 3 months' written notice of the relocation with details of reasonably comparable alternative retail premises to be made available to the tenant.
- (4) The tenant is entitled to be offered a new lease of the alternative retail premises on the same terms and conditions as the existing lease except that—

S. 55(3)
amended by
No. 82/2005
s. 26.

-
- (a) the term of the new lease is to be the same as the remaining term of the existing lease; and
- (b) the rent for the alternative retail premises is to be the same as the rent for the existing retail premises, adjusted to take into account the difference in the commercial values of the premises at the time of relocation.
- (5) Within one month after being given a relocation notice, the tenant may give the landlord a written notice of termination and the lease terminates 3 months after the relocation notice was given or at such other time as the landlord and tenant agree.
- (6) If the tenant does not give a notice of termination in accordance with subsection (5), the tenant is taken to have accepted the offer of a lease—
- (a) on the terms and conditions referred to in subsection (4); or
- (b) on the terms and conditions that are agreed by the landlord and tenant.
- (7) The tenant is entitled to payment by the landlord of the tenant's reasonable costs of the relocation, including (but not limited to) the costs of dismantling and reinstalling or modifying or replacing any fixtures and fittings and legal costs.
- (8) If the landlord and tenant cannot agree on the amount to which the tenant is entitled under subsection (7), that amount is to be determined by an independent quantity surveyor appointed by—
- (a) agreement between the landlord and tenant; or
- (b) if there is no agreement, the Small Business Commissioner—
- and the landlord and tenant are to pay the costs of the independent quantity surveyor in equal shares.
-

- (9) The landlord is not liable to pay an amount under subsection (7) that is more than the amount agreed by the landlord and tenant, or determined by the independent quantity surveyor, as the case may be.

Note

This section sets out what the tenant is entitled to but does not prevent the tenant from accepting other arrangements when the details of a relocation are being negotiated.

56 Demolition

- (1) A retail premises lease that provides for termination of the lease on the ground of proposed demolition of the building in which the retail premises are located is taken to provide as set out in this section.
- (2) The landlord cannot terminate the lease on that ground unless the landlord has—
- (a) provided the tenant with details of the proposed demolition that are sufficient to indicate a genuine proposal to demolish the building within a reasonably practicable time after the lease is to be terminated; and
 - (b) given the tenant at least 6 months' written notice of the termination date.
- (3) If the landlord gives the tenant a notice of termination in accordance with subsection (2), the tenant may terminate the lease before the termination date by giving the landlord not less than 7 days' written notice.
- (4) If the lease is terminated by the landlord in accordance with subsection (2), or by the tenant in accordance with subsection (3), the landlord is liable to pay the tenant reasonable compensation—

S. 56(4)
amended by
No. 82/2005
s. 27.

-
- (a) if the demolition of the building is not carried out, or not carried out within a reasonably practicable time after the termination date, for damage suffered by the tenant as a consequence of the early termination of the lease; and
 - (b) whether or not the demolition of the building is carried out, for the fit out of the retail premises to the extent that the fit out was not provided by the landlord.
- (5) However, the landlord is not liable to pay compensation for the damage mentioned in subsection (4)(a) if the landlord establishes that when the notice was given there was a genuine proposal to demolish the premises within a reasonably practicable time after the termination date.
- (6) The amount of the compensation is the amount that is—
- (a) agreed between the landlord and the tenant;
or
 - (b) if there is no agreement, determined under Part 10 (Dispute Resolution).
- (7) For the purposes of this section, *demolition* of the building in which retail premises are located includes any substantial repair, renovation or reconstruction of the building that cannot practicably be carried out without vacant possession of the premises.

57 Damaged premises

- (1) A retail premises lease is taken to provide the following if the retail premises, or the building in which the premises are located, is damaged—

-
- (a) except where the tenant caused the damage, the tenant is not liable to pay rent, or any amount in respect of outgoings or other charges, that is attributable to any period during which the premises cannot be used under the lease or are inaccessible due to that damage; and
 - (b) except where the tenant caused the damage, if the premises can be used under the lease but that use is reduced to some extent by the damage, the tenant's liability for rent, and any amount in respect of outgoings or other charges, that is attributable to any period during which the use is reduced is decreased to the same extent; and
 - (c) if the landlord reasonably considers that the extent of damage makes its repair impracticable or undesirable and notifies the tenant in writing of that, the landlord or tenant may terminate the lease by giving not less than 7 days' written notice of termination to the other party; and
 - (d) if the landlord fails to repair the damage within a reasonable time after the tenant asks the landlord in writing to do so, the tenant may terminate the lease by giving not less than 7 days' written notice of termination to the landlord; and
 - (e) this subsection does not affect any right of the landlord to recover damages from the tenant in respect of any damage covered by this subsection.
- (2) A provision of a retail premises lease is void to the extent that it has the effect of limiting the liability of a party to the lease to pay compensation to another party to the lease in
-

respect of damage to the retail premises or the building in which the premises are located.

- (3) Nothing in this section prevents the parties to a lease from terminating the lease by agreement if the retail premises or the building in which the premises are located is damaged or destroyed.

58 Refurbishment and refitting

A provision in a retail premises lease requiring the tenant to refurbish or refit the retail premises is void unless it gives such details of the refurbishment or refitting as are necessary to indicate generally its nature, extent and timing.

Division 2—Other interferences with tenancy

59 Restriction on whom the tenant employs or engages

- (1) A provision in a retail premises lease is void to the extent that it limits or has the effect of limiting the tenant's right to employ or engage persons the tenant chooses.
- (2) However, subsection (1) does not prevent the lease from containing provisions that—
- (a) specify minimum standards of competence and behaviour for persons employed in the retail premises or other persons (such as contractors) doing work there; or
 - (b) prohibit work from being carried out on specified items of the landlord's property; or
 - (c) if the retail premises are located in a retail shopping centre, require the tenant to comply with any award or agreement (for example, a construction site agreement) affecting the centre.
-

**PART 7—ASSIGNMENT AND TERMINATION OF A RETAIL
PREMISES LEASE**

**60 When the landlord can withhold consent to an
assignment**

- (1) A landlord is only entitled to withhold consent to the assignment of a retail premises lease if one or more of the following applies—
- (a) the proposed assignee proposes to use the retail premises in a way that is not permitted under the lease;
 - (b) the landlord considers that the proposed assignee does not have sufficient financial resources or business experience to meet the obligations under the lease;
 - (c) the proposed assignor has not complied with reasonable assignment provisions of the lease;
 - (d) the assignment is in connection with a lease of retail premises that will continue to be used for the carrying on of an ongoing business and the proposed assignor has not provided the proposed assignee with business records for the previous 3 years or such shorter period as the proposed assignor has carried on business at the retail premises.
- (2) Section 144 of the **Property Law Act 1958** does not apply to or with respect to a retail premises lease to which this Act applies.

S. 60(1)(d)
amended by
No. 82/2005
s. 28.

61 Procedure for obtaining consent to assignment

- (1) A retail premises lease is taken to provide as set out in this section.
- (2) A request for the landlord's consent to an assignment of the lease must be in writing and the tenant must provide the landlord with such information as the landlord reasonably requires about the financial resources and business experience of the proposed assignee.
- (3) Before requesting the landlord's consent, the tenant must give the proposed assignee—
 - (a) a copy of any disclosure statement given to the tenant concerning the lease; and
 - (b) details of any changes of which the tenant is aware, or could reasonably be expected to be aware, that have affected the information in the disclosure statement since it was given to the tenant.

Penalty: 10 penalty units.

* * * * *

**S. 61(4)
repealed by
No. 82/2005
s. 29(1).**

- (5) For the purpose of complying with subsection (3), the tenant may ask the landlord to give the tenant a disclosure statement that is current from a specified date that is within 3 months before the statement is given and, if the landlord does not give the tenant such a statement within 14 days—
 - (a) the tenant is not required to comply with that subsection; and
 - (b) the landlord is guilty of an offence and liable to a fine not exceeding 10 penalty units.

s. 62

S. 61(5A)
inserted by
No. 82/2005
s. 29(2).

- (5A) If the assignment is in connection with the lease of retail premises that will continue to be used for the carrying on of an ongoing business, the tenant must give the landlord and the proposed assignee a disclosure statement in the form prescribed by the regulations (but the layout of the statement need not be the same as the prescribed disclosure statement).
- (6) The landlord must deal expeditiously with a request for consent and is taken to have consented to the assignment if—
- (a) the tenant has complied with this section; and
 - (b) the landlord has not, within 28 days after the request was made, given written notice to the tenant consenting or withholding consent.

62 Protection of assignors and guarantors

- (1) This section applies if—
- (a) a tenant gives a landlord and proposed assignee a copy of a disclosure statement in accordance with section 61(4); and
 - (b) the disclosure statement does not contain any information that is false, misleading or materially incomplete.
- (2) None of the following persons are liable to perform any obligations under the lease or to pay to the landlord any money in respect of amounts payable by the proposed assignee—
- (a) the tenant;
 - (b) a guarantor or covenantor of the tenant.

S. 62(2)
amended by
No. 82/2005
s. 30.

63 Landlord may reserve the right to refuse a sub-lease, mortgage etc.

A retail premises lease may contain a provision which allows the landlord an absolute discretion to refuse consent to—

- (a) the grant of a sub-lease, licence or concession in respect of all or part of the retail premises; or
- (b) the tenant parting with occupancy rights to all or part of the retail premises; or
- (c) the tenant mortgaging or otherwise charging or encumbering the tenant's estate or interest in the lease.

64 Notice of the landlord's intentions concerning renewal

- (1) This section applies if the tenant under a retail premises lease does not have an option under the lease to renew the lease for a further term.
- (2) The landlord must, at least 6 months but no more than 12 months before the lease term ends, give written notice to the tenant—
 - (a) offering the tenant a renewal of the lease on the terms specified in the notice (including a term setting out the rent); or
 - (b) informing the tenant that the landlord does not propose to offer the tenant a renewal of the lease.
- (3) An offer to renew the lease cannot be revoked without the tenant's consent for 60 days after it is made.

-
- (4) If the landlord fails to comply with subsection (2)—
- (a) the landlord must give the tenant a notice containing the same information as the notice the landlord was required to give under subsection (2); and
 - (b) the lease continues (on the same terms and conditions as applied immediately before the lease term ends) until—
 - (i) the day specified in the notice that the landlord is required to give under paragraph (a) (which must be at least 6 months after the notice is given to the tenant); or
 - (ii) if the tenant gives the landlord a notice under subsection (5), the day specified in that notice.
- (5) If the landlord fails to comply with subsection (2), the tenant may, whether or not the landlord has given the tenant a notice as required under subsection (4)(a), give written notice to the landlord terminating the lease from a day that is not earlier than the day on which the term of the lease expires.
-

S. 64(5)
amended by
No. 82/2005
s. 31.

PART 8—ADDITIONAL REQUIREMENTS FOR RETAIL SHOPPING CENTRES

65 Part only applies to retail shopping centres

This Part only applies to retail premises located in retail shopping centres (and applies in addition to the other provisions of this Act).

66 Changes to core trading hours

A retail premises lease that provides that the tenant's business must be open for trading during the core trading hours of the retail shopping centre is taken to provide that the landlord cannot change those hours unless a majority of the tenants in the retail shopping centre who hold a retail premises lease agree in writing to the landlord doing so.

67 Confidentiality of turnover information

- (1) A landlord under a retail premises lease must not divulge or communicate to any person any information about the turnover of the tenant's business provided by the tenant in accordance with the lease.

Penalty: 20 penalty units.

- (2) However, subsection (1) does not prevent the landlord communicating or divulging any information—
- (a) with the tenant's consent; or
 - (b) in a document giving aggregate turnover information about the retail shopping centre in which the retail premises are located in a way that does not disclose information relating to the turnover of a particular tenant's business; or

-
- (c) to a court, the Tribunal or the Small Business Commissioner, or for the purposes of any dispute resolution or valuation, for the purposes of this Act or the lease; or
 - (d) in compliance with a requirement of or under an Act; or
 - (e) in good faith to any of the following persons in a way that does not disclose information identifying a particular lease or tenant, or relating to a tenant's business—
 - (i) the landlord's professional advisers (such as legal or financial advisers); or
 - (ii) the proper officer of any financial institution for the purpose of enabling the landlord to obtain financial accommodation; or
 - (iii) a prospective purchaser of the retail premises or the building in which the premises are located.

68 Availability of statistical information about the retail shopping centre

If a retail premises lease requires the tenant to pay an amount in respect of outgoings on account of expenditure incurred by the landlord in obtaining statistical information about the operation or performance of the retail shopping centre in which the premises are located, the lease is taken to provide that the landlord must, at the request of the tenant, make the statistical information available to the tenant.

69 Advertising and promotion requirements

- (1) A provision in a retail premises lease is void to the extent that it requires the tenant to undertake any advertising or promotion of the tenant's business.
- (2) However, subsection (1) does not apply to a provision that requires a payment to the landlord for advertising or promotion costs incurred or to be incurred by the landlord.

70 Marketing plan for advertising and promotion

- (1) A retail premises lease that requires the tenant to pay an amount to the landlord for advertising or promotion costs is taken to provide as set out in this section.
- (2) At least one month before the start of each accounting period of the landlord, the landlord must make available to the tenant a marketing plan that gives details of the landlord's proposed expenditure on advertising and promotion during that accounting period.
- (3) If the tenant's payment relates to an opening promotion, at least one month before that opening promotion the landlord must make available to the tenant details of the proposed expenditure on the promotion.

71 Statement and report on advertising and promotion expenditure

- (1) A retail premises lease is taken to provide as set out in this section.
- (2) The landlord must prepare a written statement that details all expenditure by the landlord in each accounting period of the landlord during the term of the lease on account of advertising or promotion costs to which the tenant is required to contribute under the lease.

-
- (3) The advertising and promotion statement must be—
- (a) made available to the tenant at least once for expenditure during each of the landlord's accounting periods during the term of the lease; and
 - (b) given to the tenant within 3 months after the end of the accounting period to which it relates; and
 - (c) in the case of a statement given under paragraph (b), accompanied by a report prepared by a registered company auditor (within the meaning of the Corporations Act) that confirms whether the statement correctly states the landlord's expenditure during the accounting period in respect of advertising or promotion costs to which the tenant is required to contribute.
- (4) The advertising and promotion statement must be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards (in force from time to time) made by the Australian Accounting Standards Board.

72 Unspent advertising and promotion contributions

- (1) A retail premises lease is taken to provide that an amount that is—
- (a) contributed, under a retail premises lease, by a tenant in the retail shopping centre in which the retail premises are located in respect of the landlord's advertising or promotion costs; and

-
- (b) not spent in respect of those costs—
must be carried forward by the landlord to be applied towards future expenditure on advertising or promotion of the centre.
- (2) When the lease ends, there is to be an adjustment between the landlord and tenant for the term of the lease to take account of any underpayment or overpayment by the tenant in respect of expenditure on advertising or promotion of the centre.
- (3) The adjustment is to be made—
- (a) in accordance with the regulations; and
 - (b) within 4 months after the end of the lease.

73 Termination by landlord for inadequate sales prohibited

A provision in a retail premises lease is void to the extent that it permits or otherwise provides for the termination of the lease by the landlord on the ground that the tenant or the tenant's business has failed to achieve specified sales or turnover performance.

74 Geographical restrictions on tenant prohibited

- (1) A provision in a retail premises lease is void to the extent that it has the effect of preventing or restricting the tenant from carrying on business outside the retail shopping centre in which the retail premises are located, either during the term of the lease or after its expiry.
- (2) Subsection (1) does not prevent a lease or other agreement from containing a provision that prevents the use of the name of the retail shopping centre in connection with a business carried on outside the centre.

75 Tenants' associations etc.

- (1) A provision in a retail premises lease is void to the extent that it has the effect of preventing or restricting the tenant from forming, joining or taking part in any activities of a tenants' association, chamber of commerce or similar body.
- (2) A landlord under a retail premises lease must not treat or propose to treat a tenant who—
 - (a) forms or joins; or
 - (b) proposes to form or join—a tenants' association, chamber of commerce or similar body less favourably than a tenant in similar circumstances who does not do or propose to do any of those things.

PART 9—UNCONSCIONABLE CONDUCT

76 Application of Part

- (1) In addition to a retail premises lease to which this Part applies because of Part 3, this Part also applies to a retail premises lease that was entered into or renewed before the commencement of this section if this Act would have applied to the lease had it been entered into or renewed after that commencement.
- (2) This Part does not apply to conduct that occurred before the commencement of this section.

77 Unconscionable conduct of a landlord

- (1) A landlord under a retail premises lease or a proposed retail premises lease must not, in connection with the lease or proposed lease, engage in conduct that is, in all the circumstances, unconscionable.

S. 77(1)
amended by
No. 82/2005
s. 32(1)(a)(b).

Note

Section 78 deals with unconscionable conduct by a tenant.

- (2) Without limiting the matters to which the Tribunal may have regard for the purpose of determining whether a landlord has contravened subsection (1), the Tribunal may have regard to—
 - (a) the relative strengths of the bargaining positions of the landlord and tenant; and
 - (b) whether, as a result of conduct engaged in by the landlord, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the landlord's legitimate interests; and
 - (c) whether the tenant was able to understand any documents relating to the lease; and

S. 77(2)(d)(ii)
amended by
No. 82/2005
s. 32(2).

-
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the tenant or a person acting on the tenant's behalf by the landlord or a person acting on the landlord's behalf in relation to the lease, for example—
- (i) concerning trading on Sundays or days that are public holidays where the premises are located; or
 - (ii) to agree to a lease term of less than the minimum period provided by section 21; and
- (e) the amount for which, and the circumstances under which, the tenant could have acquired an identical or equivalent lease from a person other than the landlord; and
- (f) the extent to which the landlord's conduct towards the tenant was consistent with the landlord's conduct in similar transactions between the landlord and other similar tenants; and
- (g) the requirements of any applicable industry code; and
- (h) the requirements of any other industry code, if the tenant acted on the reasonable belief that the landlord would comply with that code; and
- (i) the extent to which the landlord unreasonably failed to disclose to the tenant—
- (i) any intended conduct of the landlord that might affect the tenant's interests; and
-

-
- (ii) any risks to the tenant arising from the landlord's intended conduct that are risks that the landlord should have foreseen would not be apparent to the tenant; and
 - (j) the extent to which the landlord was willing to negotiate the terms and conditions of any lease with the tenant; and
 - (k) the extent to which the landlord acted in good faith; and
 - (l) the extent to which the landlord was not reasonably willing to negotiate the rent under the lease; and
 - (m) the extent to which the landlord unreasonably used information about the turnover of the tenant's or a previous tenant's business to negotiate the rent; and
 - (n) the extent to which the landlord required the tenant to incur unreasonable fit out costs.
- (3) In considering whether a landlord has contravened subsection (1), the Tribunal—
- (a) must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.

78 Unconscionable conduct of a tenant

- (1) A tenant under a retail premises lease or a proposed retail premises lease must not, in connection with the lease or proposed lease, engage in conduct that is, in all the circumstances, unconscionable.

S. 78(1)
amended by
No. 82/2005
s. 33(a)(b).

-
- (2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a tenant has contravened subsection (1), the Tribunal may have regard to—
- (a) the relative strengths of the bargaining positions of the tenant and landlord; and
 - (b) whether, as a result of conduct engaged in by the tenant, the landlord was required to comply with conditions that were not reasonably necessary for the protection of the tenant's legitimate interests; and
 - (c) whether the landlord was able to understand any documents relating to the lease; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the landlord or a person acting on the landlord's behalf by the tenant or a person acting on the tenant's behalf in relation to the lease; and
 - (e) the amount for which, and the circumstances under which, the landlord could have granted an identical or equivalent lease to a person other than the tenant; and
 - (f) the extent to which the tenant's conduct towards the landlord was consistent with the tenant's conduct in similar transactions between the tenant and other similar landlords; and
 - (g) the requirements of any applicable industry code; and
 - (h) the requirements of any other industry code, if the landlord acted on the reasonable belief that the tenant would comply with that code; and
-

-
- (i) the extent to which the tenant unreasonably failed to disclose to the landlord—
 - (i) any intended conduct of the tenant that might affect the landlord's interests; and
 - (ii) any risks to the landlord arising from the tenant's intended conduct that are risks that the tenant should have foreseen would not be apparent to the landlord; and
 - (j) the extent to which the tenant was willing to negotiate the terms and conditions of any lease with the landlord; and
 - (k) the extent to which the tenant acted in good faith; and
 - (l) the extent to which the tenant was not reasonably willing to negotiate the rent under the lease; and
 - (m) the extent to which the tenant unreasonably used information about the turnover of the tenant's or a previous tenant's business to negotiate the rent; and
 - (n) the extent to which the tenant was willing to incur reasonable fit out costs.
- (3) In considering whether a tenant has contravened subsection (1), the Tribunal—
- (a) must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.
-

79 Certain conduct is not unconscionable

A person is not to be taken for the purposes of section 77 or 78 to engage in unconscionable conduct in connection with a retail premises lease merely because—

- (a) the person institutes proceedings in relation to the lease or refers a dispute, application or claim relating to the lease to arbitration, conciliation, mediation or some other form of alternative dispute resolution; or
- (b) the person fails to renew the lease or enter into a new lease; or
- (c) the person does not agree to having an independent valuation of current market rent carried out.

80 Recovery of amount for loss or damage

- (1) A landlord or tenant, or former landlord or tenant, who suffers loss or damage because of unconscionable conduct of another person that contravenes section 77 or 78 may recover the amount of the loss or damage by lodging a claim with the Tribunal against the other person.
 - (2) The claim must be lodged within 6 years after the alleged unconscionable conduct occurred.
 - (3) If the matter of the loss or damage arises in connection with proceedings in the Tribunal, the Tribunal may proceed to decide the matter and award a sum that it considers appropriate.
-

PART 10—DISPUTE RESOLUTION

Division 1—Retail tenancy disputes

81 Meaning of *retail tenancy dispute*

- (1) In this Part, *retail tenancy dispute* means a dispute between a landlord and tenant—
- (a) arising under or in relation to a retail premises lease to which—
 - (i) this Act applies or applied because of Part 3; or
 - (ii) the **Retail Tenancies Reform Act 1998** or the **Retail Tenancies Act 1986** applies or applied; or
 - (b) arising under a provision of the **Retail Tenancies Reform Act 1998** or the **Retail Tenancies Act 1986** in relation to a lease to which that Act applies or applied; or
 - (c) arising under a lease that provides for the occupation of retail premises in Victoria to which none of those Acts apply or applied—

despite anything to the contrary in this Act (apart from subsection (2) and section 119(2)).

Note

If proceedings were in progress under the **Retail Tenancies Reform Act 1998** when this Act commenced, see section 119(2) (general transitional and savings).

- (2) However, *retail tenancy dispute* does not include a dispute solely relating to the payment of rent or a dispute that is capable of being determined by a specialist retail valuer under section 34, 35 or 37 of this Act or under section 12A or 13A of the **Retail Tenancies Reform Act 1998** or section 10 or 11A of the **Retail Tenancies Act 1986**.

S. 81(2)
amended by
No. 82/2005
s. 34.

82 Application of Part to retail premises

In this Part, a lease of retail premises includes a lease of premises that are retail premises at any time during the lease but before a referral under section 86 is made in relation to that lease (whether or not the premises are retail premises when that referral is made).

83 Part applies to current and former leases

In this Part—

landlord includes a former landlord;

lease includes a former lease;

tenant includes a former tenant.

Division 2—The Small Business Commissioner

84 Functions of Small Business Commissioner

- (1) The Small Business Commissioner has the following functions under this Act—
 - (a) to make arrangements to facilitate the resolution by mediation, or by another appropriate form of alternative dispute resolution, of retail tenancy disputes (whether or not a dispute has been formally referred under this Act to the Commissioner);
 - (b) to take proceedings for an offence against this Act;
 - (c) to report to the Minister on the operation of this Act;

-
- (d) to authorise, if the Commissioner considers it appropriate to do so, a body to represent that the form of a standard lease that the body is to make available to the public (whether or not for a fee) is endorsed by the Commissioner;
- (e) to confirm whether a certificate has been given in accordance with section 21(5);
- (f) to prepare and publish an information booklet or guidelines about retail leases that may be purchased on demand by members of the public;
- (g) to create and maintain a register of the information provided under section 25;
- (h) such other functions as may be conferred or imposed on the Commissioner by or under this Act.
- (1A) The Small Business Commissioner may use a register created and maintained under subsection (1)(g) for the purposes only of the performance by the Commissioner of his or her functions under this or any other Act.
- (2) In arranging for the resolution of retail tenancy disputes, the Commissioner is to have regard to the need for the mediation or other form of alternative dispute resolution to be conducted by persons who are experienced in the field of retail premises leases.
- (3) The Commissioner may himself or herself conduct a mediation or other form of alternative dispute resolution and is entitled to be paid his or her fees and expenses for doing so, which must not be more than the maximum amount (if any) prescribed by the regulations.

S. 84(1)(g)
amended by
No. 82/2005
s. 35(1).

S. 84(1A)
inserted by
No. 82/2005
s. 35(2).

- (4) The Commissioner may charge a fee for giving an authorisation under subsection (1)(d), which must not be more than the maximum fee (if any) prescribed by the regulations.
- (5) The Commissioner is not subject to the Minister's control or direction in exercising functions under subsection (1)(a) or (b).

Division 3—Alternative dispute resolution

85 What mediation and other alternative dispute resolution covers

Mediation and other forms of alternative dispute resolution under this Part are not limited to formal mediation procedures but extend to preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that—

- (a) the parties are fully aware of their rights and obligations; and
- (b) there is full and open communication between the parties concerning the matter.

86 Referral of retail tenancy disputes for alternative dispute resolution

- (1) Any or all of the parties to a retail premises lease may refer a retail tenancy dispute to the Small Business Commissioner for mediation.
- (2) The referral must be accompanied by the application fee, which must not be more than the maximum fee (if any) prescribed by the regulations.

Note

The parties may ask the Commissioner for preliminary assistance before referring the retail tenancy dispute (see section 85).

-
- (2A) The Small Business Commissioner may join any person that he or she considers it appropriate to join as a party to the mediation.
- (3) The Commissioner must arrange for each retail tenancy dispute referred in accordance with this section to be the subject of—
- (a) mediation by a mediator; or
 - (b) another appropriate form of alternative dispute resolution by a suitably qualified person.
- (4) A party to a mediation or another form of alternative dispute resolution may be represented by a legal practitioner but the mediator or person conducting the other form of alternative dispute resolution may, if he or she considers it appropriate to do so, meet with the party (alone or together with any other party) without their legal representative being present.
- (5) The costs of, and associated with, mediation by a mediator, or another form of alternative dispute resolution by a suitably qualified person (including the fees and expenses of the mediator or person conducting the other form of alternative dispute resolution) are to be determined by the mediator or that other person and paid by the parties in the proportions that they agree among themselves or, if they cannot agree, in equal shares.
- (6) A mediator or person conducting another form of alternative dispute resolution is not civilly or criminally liable in respect of the performance, in good faith, of the functions of a mediator or such a person under this Act.

S. 86(2A)
inserted by
No. 82/2005
s. 36.

87 Retail tenancy disputes must first be referred for alternative dispute resolution

- (1) A retail tenancy dispute may only be the subject of proceedings before the Tribunal (whether under this Act, the **Fair Trading Act 1999** or any other Act) if the Small Business Commissioner has certified in writing that mediation or another appropriate form of alternative dispute resolution under this Part has failed, or is unlikely, to resolve it.
- (2) This section does not apply to proceedings for an order in the nature of an injunction.
- (3) This section does not affect the validity of any decision made by the Tribunal.

88 Statements made during alternative dispute resolution not admissible

A statement or admission made in the course of a mediation or another form of alternative dispute resolution under this Part is not admissible in proceedings under Division 4 or in any other legal proceedings.

Division 4—The Tribunal

89 Jurisdiction of Tribunal

- (1) The Tribunal has jurisdiction to hear and determine an application by a landlord or tenant under a retail premises lease, or by a specialist retail valuer, seeking resolution of a retail tenancy dispute.
- (2) In an application under subsection (1) for forfeiture or relief against forfeiture (whether or not for non-payment of rent), the Tribunal has the same jurisdiction, including equitable jurisdiction, and powers as the Supreme Court has in relation

to proceedings for forfeiture or relief against forfeiture.

- (3) The Tribunal's powers under subsection (2) are subject to section 92 (which provides that each party to the application is to bear its own costs).
- (4) Subject to section 23(4) (key-money and goodwill payments prohibited), a retail tenancy dispute other than—
 - (a) an application for relief against forfeiture; or
 - (b) a claim under Part 9 (Unconscionable Conduct)—

is not justiciable before any other tribunal or a court or person acting judicially within the meaning of the **Evidence Act 1958**.

- (5) The Tribunal also has jurisdiction to hear and determine any other application that under this Act, the **Retail Tenancies Reform Act 1998** or the **Retail Tenancies Act 1986** may be made to the Tribunal.

90 Parties to proceeding

The parties to a proceeding before the Tribunal on an application under section 89(1) are—

- (a) the applicant; and
- (b) the other party to the dispute; and
- (c) any person the Tribunal considers it appropriate to join as a party to the proceeding.

91 Orders the Tribunal can make

- (1) The Tribunal may, in a proceeding under this Part, make one or more orders—
 - (a) requiring a party to do, or not to do, anything including to provide specified facilities, services, fixtures or fittings under a retail premises lease or to return specified fixtures or fittings to another party; or
 - (b) requiring a party to pay money, by way of restitution or compensation or otherwise, to a specified person; or
 - (c) rectifying a retail premises lease or other document; or
 - (d) granting recovery of possession of the retail premises to the landlord; or
 - (e) requiring anything else to be done that it—
 - (i) is empowered to require to be done under this Act or the **Victorian Civil and Administrative Tribunal Act 1998**; or
 - (ii) considers necessary or desirable to resolve the matter concerned.
- (2) In ordering the payment of a sum of money by a party, the Tribunal may order the payment of interest on that sum by the party at the rate fixed from time to time under section 2 of the **Penalty Interests Rates Act 1983** or at any lesser rate it thinks appropriate.

92 Each party bears its own costs

- (1) Despite anything to the contrary in Division 8 of Part 4 of the **Victorian Civil and Administrative Tribunal Act 1998**, each party to a proceeding before the Tribunal under this Part is to bear its own costs in the proceeding.
 - (2) However, at any time the Tribunal may make an order that a party pay all or a specified part of the costs of another party in the proceeding but only if the Tribunal is satisfied that it is fair to do so because—
 - (a) the party conducted the proceeding in a vexatious way that unnecessarily disadvantaged the other party to the proceeding; or
 - (b) the party refused to take part in or withdrew from mediation or other form of alternative dispute resolution under this Part.
 - (3) In this section, *costs* includes fees, charges and disbursements.
-

PART 11—OTHER MATTERS

93 Indemnities

- (1) A provision in a retail premises lease is void to the extent that it purports to indemnify, or require the tenant to indemnify, the landlord against any action, liability, penalty, claim or demand for or to which the landlord would otherwise be liable or subject.
- (2) A provision in a retail premises lease is void to the extent that it purports to make the tenant liable for or subject to any action, liability, penalty, claim or demand in respect of any act, matter or thing done or omitted to be done by the landlord or any other person if the tenant would not otherwise be liable for or subject to that action, liability, penalty, claim or demand.
- (3) The landlord must indemnify the tenant for any amount recoverable from the tenant by a public statutory authority for charges, rates or taxes payable under any Act for the retail premises.
- (4) Subsection (3) does not apply to—
 - (a) charges for the supply of water by measure in excess of the minimum amount payable for it relating to a period during which the tenant occupied the retail premises; or
 - (b) charges, rates or taxes for which, under the terms of the retail premises lease, the tenant is liable.

94 The Act prevails over retail premises leases, agreements etc.

- (1) A provision of a retail premises lease or of an agreement (whether or not the agreement is between parties to a retail premises lease) is void to the extent that it is contrary to or inconsistent with anything in this Act (including anything that the lease is taken to include or provide because of a provision of this Act).
- (2) A provision of a retail premises lease or of an agreement (whether or not the agreement is between parties to a retail premises lease) is void to the extent that it purports—
 - (a) to exclude the application of a provision of this Act; or
 - (b) to limit the right of a party to the lease to seek resolution of a retail tenancy dispute under Part 10 or otherwise to limit the application of that Part.
- (3) A provision contained in any other agreement or arrangement (whether or not between parties to a retail premises lease) is void if that provision would be void under this Act if it were contained in a retail premises lease.

94A Section 146 of the Property Law Act 1958 applies to retail premises leases

S. 94A
inserted by
No. 82/2005
s. 37.

To avoid doubt, section 146 of the **Property Law Act 1958** applies to a retail premises lease.

Note

Section 146 of the **Property Law Act 1958** provides that a lessor must give a lessee notice before exercising a right of re-entry or forfeiture.

95 Occupation of residential area under a retail premises lease

If—

- (a) a retail premises lease confers a right on the tenant to occupy a residential area in the building in which the retail premises are located; and
- (b) the **Residential Tenancies Act 1997** does not apply to the lease to the extent that it provides for the occupation of the residential area—

the retail premises lease is taken to provide that the landlord must ensure that the residential area is maintained in good repair.

96 Franchise arrangements

- (1) This section applies if a person proposes to grant a licence to another person to use all or part of any retail premises wholly or predominantly for the carrying on of a business under a name or mark identifying, commonly associated with or controlled by the tenant or a person or corporation (as defined in section 57A of the Corporations Act) connected with the tenant.
- (2) The proposed licensor must give the proposed licensee, within 7 days before the grant of the licence—
 - (a) a copy of any disclosure statement given to the tenant concerning the lease; and
 - (b) details of any changes of which the proposed licensor is aware, or could reasonably be expected to be aware, that have affected the information in the disclosure statement since it was given to the tenant.

Penalty: 10 penalty units.

97 Service of documents

A document under this Act may be served on, or given to, a person in or out of Victoria—

- (a) by delivering it personally to the person; or
- (b) by leaving it at the person's usual or last known place of residence or business with someone who is apparently—
 - (i) over the age of 16 years; and
 - (ii) residing at that place or, in the case of a place of business, in charge of or employed at that place; or
- (c) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
- (d) in any other way authorised by the retail premises lease concerned or by or under any other Act.

97A Validation of certain instruments

An instrument made under section 5(1) before the day on which the **Retail Leases (Amendment) Act 2005** received the Royal Assent that would have been validly made had section 6 of that Act been in operation at the time at which the instrument was made or purportedly made has, and is deemed always to have had, the same force and effect as it would have had if section 6 of that Act had been in operation at the time at which the instrument was made or purportedly made.

S. 97A
inserted by
No. 82/2005
s. 38.

98 Limitation of Supreme Court jurisdiction

It is the intention of section 89(4) to alter or vary section 85 of the **Constitution Act 1975**.

99 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) the form of the disclosure statements referred to in sections 17, 26 and 61, in particular the information that the disclosure statement must contain and any material that must accompany it; and
 - (b) establishing codes of conduct with which landlords or tenants under retail premises leases, or parties to a lease or licence of premises that under the terms of the lease or licence are used, or are to be used, wholly or predominantly for a purpose referred to in paragraph (a) or (b) of section 4(1), must comply (including concerning casual leasing arrangements in retail shopping centres); and
 - (c) matters of a transitional nature (including matters of an application or savings nature) arising as a result of the enactment of this Act (including the repeals and amendments made by this Act); and
 - (d) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A code of conduct may apply, adopt or incorporate, wholly or partially or as amended in the code of conduct, the provisions of any document issued or published by any body whether—
 - (a) as issued or published before or when the code of conduct is made; or
 - (b) as amended from time to time.

-
- (3) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
-

Retail Leases Act 2003
No. 4 of 2003

s. 100

Pt 12 * * * * *
(Heading and
ss 100–109)
amended by
No. 82/2005
ss 39(2),
40(1)(2), 41,
42(1)(2), 43(1)–
(4),
repealed by
No. 28/2007
s. 3(Sch.
item 58).

Pt 13 * * * * *
(Heading and
ss 110–117)
amended by
No. 82/2005
ss 40(3),
42(3)(4),
43(5)–(8),
repealed by
No. 28/2007
s. 3(Sch.
item 58).

PART 14—REPEAL OF 1998 ACT AND TRANSITIONAL PROVISIONS

118 Repeal of Retail Tenancies Reform Act 1998

The **Retail Tenancies Reform Act 1998** is repealed.

119 General transitional and savings

- (1) Despite the repeal of the **Retail Tenancies Reform Act 1998** but subject to Part 10 of this Act, that Act continues to apply, and from 1 November 2003 applies as amended by Part 12 of this Act, to a retail premises lease to which it applied immediately before its repeal.
- (2) However, if proceedings under Part 3 of the **Retail Tenancies Reform Act 1998** have been commenced but are not completed before that Act is repealed, Part 3 of that Act continues to apply to those proceedings despite that repeal and despite Part 10 of this Act.
- (3) Sections 39 and 52 of the **Retail Tenancies Reform Act 1998**, as in force immediately before the repeal of that Act, continue to have effect despite that repeal.
- (4) For the avoidance of doubt it is declared that the effect of section 4(1) of the **Retail Tenancies Reform Act 1998** is, and always has been, to apply that Act to a retail premises lease within the meaning of that Act that was entered into on or after 1 July 1998 including one entered into under an option provided under such a lease that was entered into before that date.

120 Disclosure statements

A disclosure statement given under section 8 of the **Retail Tenancies Reform Act 1998** that provides information about each of the matters set out in the Schedule to that Act is taken to be, and to have been at all times, in the form of that Schedule regardless of whether it has the same layout as the disclosure statement set out in that Schedule.

121 Notification of amount of land tax

(1) Despite anything to the contrary in this Act, section 50 of this Act does not apply to—

S. 121(1)(a)
amended by
No. 82/2005
s. 44(1).

(a) a retail premises lease entered into before the commencement of this section; or

S. 121(1)(b)
amended by
No. 82/2005
s. 44(1).

(b) an assignment of such a retail premises lease.

S. 121(2)
amended by
No. 82/2005
s. 44(2).

(2) If—

S. 121(2)(a)
amended by
No. 82/2005
s. 44(1).

(a) section 50 of this Act does not apply to a retail premises lease or an assignment of a retail premises lease; and

S. 121(2)(b)
amended by
Nos 82/2005
s. 44(1)(2),
88/2005
s. 117(Sch. 2
item 5).

(b) the tenant is liable under the retail premises lease to pay an amount in respect of tax under the **Land Tax Act 2005** for which the landlord or head landlord is liable; and

(c) the landlord or head landlord receives an assessment of that tax on or after the commencement of this section—

S. 121(2)(c)
amended by
No. 82/2005
s. 44(2).

within 21 days of receiving the assessment, the landlord or head landlord must give written notice to the tenant of the amount of the assessment.

Penalty: 10 penalty units.

(3) A landlord or head landlord is not required to give notice to a tenant under subsection (2) if an estimate of the amount of land tax which the tenant is liable to pay has been given to the tenant as required by section 46 of this Act, section 20A of the **Retail Tenancies Reform Act 1998** or section 14A of the **Retail Tenancies Act 1986**.

S. 121(3)
amended by
No. 82/2005
s. 44(2)(3).

* * * * *

Pt 15
(Heading and
ss 122, 123)
repealed by
No. 28/2007
s. 3(Sch.
item 58).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 February 2003

Legislative Council: 27 March 2003

The long title for the Bill for this Act was "to provide a new regulatory scheme for retail leases, to amend and repeal the **Retail Tenancies Reform Act 1998**, to amend the **Retail Tenancies Act 1986** and make minor amendments to certain other Acts and for other purposes."

The **Retail Leases Act 2003** was assented to on 15 April 2003 and came into operation as follows:

Sections 110–117 at the last moment of 30 June 1998: section 2(4); sections 1 and 2(1)–(3)(5) on 16 April 2003: section 2(1); sections 100–109 immediately before section 118: section 2(2); sections 2(4), 3–48, 51–99 and 118–123 on 1 May 2003: section 2(5); sections 49 and 50 on 1 July 2003: section 2(3).

2. Table of Amendments

This Version incorporates amendments made to the **Retail Leases Act 2003** by Acts and subordinate instruments.

Gambling Regulation Act 2003, No. 114/2003

Assent Date: 16.12.03
Commencement Date: S. 12.1.3(Sch. 6 item 11) on 1.7.04: Government Gazette 1.7.04 p. 1843
Current State: This information relates only to the provision/s amending the **Retail Leases Act 2003**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 92) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Retail Leases Act 2003**

Retail Leases (Amendment) Act 2005, No. 82/2005

Assent Date: 22.11.05
Commencement Date: Ss 39–43 on 15.4.03: s. 2(4); ss 4–11, 12(1)–(6)(8), 13–15, 18–22, 24–36, 38, 44 on 1.5.03: s. 2(6); ss 12(7), 16, 17, 23, 37 on 23.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retail Leases Act 2003**

Land Tax Act 2005, No. 88/2005

Assent Date: 29.11.05
Commencement Date: S. 117(Sch. 2 item 5) on 1.1.06: s. 2
Current State: This information relates only to the provision/s amending the **Retail Leases Act 2003**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 58) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retail Leases Act 2003**

Endnotes

3. Explanatory Details

No entries at date of publication.