NORTHERN TERRITORY OF AUSTRALIA

BUSINESS TENANCIES (FAIR DEALINGS) ACT 2003

As in force at 1 July 2022

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2022

BUSINESS TENANCIES (FAIR DEALINGS) ACT 2003

An Act to make provision in relation to leases of certain retail shops and other business premises, the rights and obligations of landlords and tenants of those shops and premises, to repeal the *Commercial Tenancies Act 1979* and for other purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Business Tenancies (Fair Dealings) Act 2003*.

2 Commencement

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3 Objects

The main objects of this Act are to enhance:

(a) the certainty and fairness of retail shop leasing arrangements between landlords and tenants; and

(b) the mechanisms available to resolve disputes concerning retail shop leases; and

(c) the certainty and fairness of certain other aspects of business tenancies.

4 Act binds Crown

This Act binds the Crown in right of the Northern Territory and, to the extent the power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Interpretation

(1) In this Act:

accountant means:

(a) a member of the Institute of Chartered Accountants in Australia who holds a current Certificate of Public Practice issued by the Institute; or

(b) a member of CPA Australia Ltd ACN 008 392 452 who holds a current Public Practice Certificate in accordance with the by-laws of CPA Australia Ltd; or

(c) a person registered as an auditor under the Corporations Act 2001.

assignor's disclosure statement means a statement mentioned in section 56.

business lease means:

(a) a retail shop lease; or

(b) any other agreement or contract (including a tenancy and sublease) under which business premises are let or hired to a person:

(i) whether or not the right is a right of exclusive occupation; and

(ii) whether the agreement is express or implied; and

(iii) whether the agreement is oral or in writing, or partly oral and partly in writing.

business premises means:

(a) a retail shop; or

(b) premises leased primarily for business purposes, whether or not the premises may be used as a residence under the business lease.

Commissioner means the Commissioner of Business Tenancies under section 12.

conveyancing agent means a person who is authorised under the *Agents Licensing Act 1979* to carry out the functions of a conveyancing agent as defined in section 5(2)(c) of that Act.

COVID-19, for Part 1A, see section 11A.

COVID-19 public health emergency, for Part 1A, see section 11A.

EMA declaration, for Part 1A, see section 11A.

emergency period, for Part 1A, see section 11B(1).

fitout obligations, in relation to a retail shop, means finishes, fixtures, fittings, equipment or services that the landlord is required to provide before the tenant enters into possession of the shop.

key-money means money to be paid or a benefit to be given:

(a) by way of a premium, or something similar in nature to a premium, where there is no real consideration given for the payment or benefit; and

(b) in consideration of a benefit in connection with the granting, renewal, extension or assignment of a retail shop lease.

landlord, in relation to a retail shop lease, means the person who grants or proposes to grant the right to occupy a retail shop under a retail shop lease and includes a sublandlord and a landlord's or sublandlord's heirs, executors, administrators and assigns.

landlord's disclosure statement, see section 19.

modification notice, for Part 1A, see section 11B(2).

occupation arrangement, for Part 1A, see section 11B(2)(b)(ii).

outgoings, in relation to a retail shop lease, means a landlord's outgoings on account of any of the following:

(a) the expenses directly attributable to the operation, maintenance or repair:

(i) of the building in which the retail shop is located; or

(ii) if the retail shop is in a retail shopping centre – of any building in the retail shopping centre and of any areas used in association with any building in the retail shopping centre;

(b) rates, taxes, levies, premiums or charges payable by the landlord because the landlord is the owner or occupier:

(i) of the building in which the retail shop is located; and

(ii) if the retail shop is in a retail shopping centre – of any building in the retail shopping centre or the land on which the building is erected.

party, in relation to a retail shop lease, means the landlord or the tenant under that lease.

renewal, in relation to a retail shop lease, see section 11.

retail shop means premises that are used wholly or predominantly for:

(a) the sale or hire of goods by retail or the retail provision of services (whether or not in a retail shopping centre); or

(b) the carrying on of a business in a retail shopping centre; or

(c) the carrying on of a business of a class or description that is prescribed by the Regulations.

retail shop lease means an agreement under which a person grants or agrees to grant to another person, for valuable consideration, a right of occupation of premises for the use of the premises as a retail shop:

(a) whether or not the right is a right of exclusive occupation; and

(b) whether the agreement is express or implied; and

(c) whether the agreement is oral or in writing, or partly oral and partly in writing.

retail shopping centre means a cluster of premises that has all of the following attributes:

(a) at least 5 of the premises are used wholly or predominantly for the sale or hire of goods by retail or the retail provision of services;

(b) the premises:

(i) are all owned by the same person; or

(ii) all have (or, if leased, would have) the same landlord or the same head landlord; or

(iii) all comprise lots within a single units plan under the *Unit Titles Act 1975* or within a single unit title scheme under the *Unit Title Schemes Act 2009*;

(c) the premises are located:

(i) in one building; or

(ii) in 2 or more buildings that are either adjoining or separated only by common areas or other areas owned by the owner of the retail shops;

(d) the cluster of premises is promoted as, or generally regarded as constituting, a shopping centre, shopping mall, shopping court or shopping arcade.

specialist retail valuer means a valuer having not less than 5 years experience in valuing retail shops.

tenant, in relation to a retail shop, means the person who has the right to occupy the retail shop under a retail shop lease and includes a subtenant and a tenant's or subtenant's heirs, executors, administrators and assigns.

tenant's disclosure statement, see section 21.

(2) In the interpretation of this Act, a court is to have regard to accepted practices and interpretations within the industry concerning the leasing of retail shops or other business premises to which this Act applies.

6 Certain retail shops excluded from operation of Act

This Act (other than Part 13) does not apply to any of the following retail shops:

(a) a shop that has a lettable area of 1 000 square metres or more;

(b) a shop that is used wholly or predominantly for the carrying on of a business by the tenant on behalf of the landlord;

(c) a shop within premises where the principal business carried on at the premises is the operation of a cinema or bowling alley and the shop is operated by the person who operates the cinema or bowling alley;

(d) a shop that is leased to:

(i) a listed corporation (as defined in section 9 of the Corporations Act 2001); or

(ii) a subsidiary (as defined in section 9 of the Corporations Act 2001) of a listed corporation; or

(iii) a body corporate whose securities are listed on a financial market outside Australia and the external territories that is a member of the World Federation of Exchanges; or

(iv) a subsidiary (as defined in section 9 of the Corporations Act 2001) of a body corporate mentioned in subparagraph (iii);

(e) premises of a class or description prescribed by the Regulations to be exempt from this Act.

7 Leases to which Act does not apply

(1) This Act (other than Part 13) does not apply to any of the following retail shop leases:

(a) leases for a term of less than 6 months, where there is no right for the tenant to extend the lease (whether by means of an option to extend or renew the lease or otherwise);

(b) leases for a term of 25 years or more (with the term of a lease taken to include any term for which the lease may be extended or renewed at the option of the tenant);

(c) leases entered into before the commencement of this section;

(d) leases entered into under an option that was granted, or an agreement that was made, before the commencement of this section;

(e) a lease of a class or description prescribed by the Regulations to be exempt from this Act or a provision of this Act.

(2) This Act (other than Part 13) does not apply to:

(a) a lease mentioned in this section that is assigned to another person after the commencement of this section; or

(b) a holding over by the tenant after the end of the term of a lease mentioned in subsection (1)(c).

(3) For subsection (1)(a), a provision of a lease that provides for holding over by the tenant at the end of the term of the lease is not taken to confer a right on the tenant to extend the lease if it operates, in effect, at the discretion of the landlord.

(4) Despite this section:

(a) if the term of a retail shop lease is less than 6 months; and

(b) the tenant is continuously in possession of the retail shop for 6 months or more under the lease because of the lease being renewed one or more times or being continued (or both);

this Act applies to the lease on and from the day on which the tenant has continuously been in possession of the retail shop for 6 months.

8 Exemptions from Act

The Regulations may exempt from the operation of this Act or a provision of this Act:

(a) a specified person, retail shop lease or retail shop; or

(b) a specified class of persons, retail shop leases or retail shops;

either unconditionally or subject to conditions.

9 Act overrides retail shop leases

(1) This Act operates despite the provisions of a retail shop lease.

(2) A provision of a retail shop lease is void to the extent that the provision is inconsistent with a provision of this Act.

(3) A provision of an agreement or arrangement between the parties to a retail shop lease is void to the extent that the provision would be void if it were in the lease.

10 When lease is entered into

(1) For this Act, a retail shop lease is taken to have been entered into when a person:

(a) enters into possession of the retail shop as tenant under the lease; or

(b) begins to pay rent as tenant under the lease;

whichever happens first.

(2) Despite subsection (1), if both parties execute the retail shop lease before the tenant enters into possession under the lease or begins to pay rent under the lease, the lease is taken to have been entered into as soon as both parties have executed the lease.

11 Meaning of *renewal* of lease

(1) A reference in this Act to the renewal of a retail shop lease is a reference to 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 for a further term entered into by all the parties to the lease.

(2) If:

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

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

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

Part 1A Minister's power in emergency

11A Definitions

In this Part:

COVID-19 means the Coronavirus disease named "COVID-19" by the World Health Organization.

COVID-19 public health emergency means:

(a) the public health emergency initially declared by notice entitled "Declaration of Public Health Emergency" dated 18 March 2020 and published in *Gazette* S10 of 18 March 2020; and

(b) if an extension of that declaration, or a subsequent declaration, is made – that public health emergency as extended or re-declared.

EMA declaration means any of the following:

(a) a declaration under section 18 of the *Emergency Management Act 2013* that an emergency situation exists in relation to COVID-19;

(b) a declaration of a state of emergency under section 19 of the *Emergency Management Act 2013* in relation to COVID-19;

(c) a declaration of a state of disaster under section 21 of the *Emergency Management Act 2013* in relation to COVID-19.

emergency period, see section 11B(1).

modification notice, see section 11B(2).

occupation arrangement, see section 11B(2)(b)(ii).

11B Minister's power in emergency period

(1) Subsection (2) has effect during the following periods (the ***emergency period***):

(a) while the COVID-19 public health emergency is declared under section 48 of the *Public and Environmental Health Act 2011*;

(b) while an EMA declaration is in force.

(2) The Minister may, by *Gazette* notice (a ***modification notice***), do any or all of the following:

(a) suspend or modify all or part of this Act and regulations made under it;

(b) make provisions to regulate the following:

(i) a business premises or a business lease to which this Act applies;

(ii) an arrangement (an ***occupation arrangement***) for the occupation of premises for business purposes that is an arrangement to which this Act, but for this section, does not apply.

(3) To avoid doubt:

(a) without limiting subsection (2)(a), that subsection extends to setting aside all or part of sections 6 to 8, and any regulations made under those sections, as the Minister considers appropriate; and

(b) without limiting subsection (2)(b), that subsection empowers the Minister to make provisions:

(i) in relation to aspects of business leases or occupation arrangements to which this Act does not otherwise apply; and

(ii) in relation to matters ancillary to business premises, business leases or occupation arrangements, such as limitations or other modifications regarding the awarding of costs in court or tribunal proceedings hearing and determining disputes.

(4) A modification notice may apply to any of the following:

(a) a specified person, business lease or business premises;

(b) a specified occupation arrangement;

(c) a specified class of person, business lease or business premises;

(d) a specified class of occupation arrangement;

(e) all business leases.

(5) Without limiting subsection (2), a modification notice may require that a landlord must engage in a minimum period, not longer than 30 business days, of good faith negotiation with a tenant before the landlord issues a notice to quit premises.

(6) A modification notice may, by reference, incorporate in whole or in part, an Act, subordinate instrument or other document as in force at a particular time or from time to time.

(7) A modification notice has effect for the period specified in the notice, which may be any period during the emergency period.

Note for subsection 7

Section 11G provides for ongoing effect of certain aspects of a modification notice.

(8) The Minister must table a modification notice in the Legislative Assembly on the next sitting day after it is published in the *Gazette*.

11C Notice overrides business leases and other arrangements

(1) A modification notice operates despite the provisions of a business lease or an occupation arrangement.

(2) A provision of a business lease or occupation arrangement is, for the period during which a modification notice is in force, set aside to the extent that the provision is inconsistent with a provision of the notice.

(3) A provision of an agreement or arrangement between the parties to a business lease or occupation arrangement is set aside to the extent that the provision would be set aside if it were in the lease or arrangement.

11D Effect of modification notice

This Act must be applied with any modifications made by a modification notice as if the Act had been altered in that way.

11E Interaction with *Law of Property Act 2000*

(1) Subsection (2) has effect if:

(a) a modification notice sets aside all or part of section 6, 7 or 8 or a regulation made under any of those sections; and

(b) as a result, an occupation arrangement that was excluded from the operation of this Act immediately before the notice came into effect became subject to this Act.

(2) Section 114 of the *Law of Property Act 2000* applies in relation to the occupation arrangement while the arrangement is subject to this Act.

(3) Subsection (4) applies in relation to a breach of a term or condition of an occupation arrangement that is subject to this Act if the breach occurs after the commencement of this section.

(4) Costs and expenses recoverable by a lessor in accordance with section 140 of the *Law of Property Act 2000* do not include legal costs in proceedings commenced during the emergency period.

(5) Subsection (6) applies if:

(a) a business lease is for a period of 3 months or more; and

(b) a modification notice requires that the landlord engage in negotiations with a tenant for a minimum period, as mentioned in section 11B(5), before a notice to quit premises can be issued.

(6) A time for giving notice under Part 8, Division 5 of the *Law of Property Act 2000* is extended by the same period as that required for the negotiations.

(7) Section 152 of the *Law of Property Act 2000* does not apply in relation to a lease that ends during the emergency period unless, at the date of commencement of this section:

(a) a demand has been made and notice has been given in writing to a person for delivery of possession of premises as mentioned in section 152(1)(a) of that Act; or

(b) a person has given a notice of intention to quit premises as mentioned in section 152(1)(b) of that Act.

11F Acquisition on just terms

If the operation of a modification notice would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

(a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and

(b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

11G Continuing effect of notice

(1) Despite the expiry or revocation of a modification notice, any time period set by the notice that has not expired continues in effect until the time period expires.

Example for subsection (1)

This Act sets a time period of 30 days for a thing to be done. A modification notice modifies that time period to 120 days. After 60 days the modification notice expires. The time for doing the thing still has 60 days to run, despite the expiry of the notice.

(2) If a modification notice expires or is revoked, on the expiry of the time period as set by the notice and continued in effect by subsection (1), the original time period applicable under this Act is restored in effect.

Example for subsection (2)

In the example for subsection (1), after the 120 day period as modified by the modification notice has expired, the time period reverts to the 30 day period set by this Act.

(3) If a modification notice makes provision in relation to costs of proceedings in a court or tribunal, the provision continues to apply to proceedings that had commenced during the emergency period but were not completed before the end of the emergency period.

11H Disallowance by Legislative Assembly

(1) A modification notice is subject to disallowance by a resolution of the Legislative Assembly passed within 3 sitting days after the notice has been tabled in the Assembly under section 11B(8).

(2) If a resolution disallows the modification notice or provisions of it, the disallowance has, subject to subsection (3), the same effect as a revocation of the notice or provisions.

(3) If a provision of a disallowed notice (the ***disallowed provision***) amended or set aside a provision of this Act or the Regulations in force immediately before the making of the disallowed provision, the disallowance revives the other provision from the date of the disallowance as if the disallowed provision had not been made.

Part 2 Commissioner of Business Tenancies

12 Commissioner of Business Tenancies

(1) The Commissioner of Consumer Affairs as defined in section 4(1) of the *Consumer Affairs and Fair Trading Act 1990* is the Commissioner of Business Tenancies, except during the period of an appointment under subsection (2).

(2) The Minister may, by *Gazette* notice, appoint a person to be the Commissioner of Business Tenancies for a period of not more than 3 years specified in the notice.

(3) The Commissioner has the following functions:

(a) investigating and researching matters affecting the interests of parties to retail shop leases;

(b) publishing reports and information relating to retail shop leases;

(c) providing information to the public about this Act and retail shop leases;

(d) investigating suspected infringements of this Act or the Regulations and taking appropriate action to ensure the enforcement of this Act and the Regulations;

(e) reporting to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act;

(f) producing model retail shop leases for viewing or sale;

(g) other functions conferred on the Commissioner under this or any other Act.

(4) The Commissioner has the powers necessary to enable him or her to carry out his or her functions or exercise his or her powers under this or any other Act.

13 Delegation by Commissioner

The Commissioner may, in writing, delegate to a specified person or a person from time to time holding, acting in or performing the duties of a specified office, designation or position any of his or her powers and functions under this Act, other than this power of delegation.

14 Annual report

(1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the previous 30 June.

(2) The Minister must, within 6 sitting days of the Legislative Assembly after receiving a report under subsection (1), lay a copy of the report before the Assembly.

(3) A report under subsection (1) may be included in a report prepared by the Commissioner under the *Consumer Affairs and Fair Trading Act 1990.*

(4) If a report under subsection (1) is included in a report prepared by the Commissioner under the *Consumer Affairs and Fair Trading Act 1990*, subsection (2) does not apply to the report.

15 Protection from liability

(1) This section applies to a person who is or has been:

(a) the Commissioner; or

(b) a delegate of the Commissioner; or

(c) a person authorised by the Commissioner.

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

16 Commissioner is enforcement agency for *Fines and Penalties (Recovery) Act 2001*

The Commissioner is an enforcement agency for the *Fines and Penalties (Recovery) Act 2001*.

Part 3 Rights and duties before retail shop lease entered into

17 Copy of retail shop lease to be provided at negotiation stage

A person must not, as landlord or on behalf of the landlord, offer to enter into a retail shop lease, invite an offer to enter into a retail shop lease or indicate by written or broadcast advertisement that a retail shop is for lease, unless:

(a) the person has in his or her possession a copy of the proposed retail shop lease (in written form, but not necessarily including particulars of the tenant, the rent or the term of the lease) available for inspection by a prospective tenant; and

(b) the person makes a copy of the proposed lease available to a prospective tenant as soon as the person enters into negotiations with the prospective tenant concerning the lease.

Maximum penalty: 100 penalty units.

18 Right to compensation for pre-lease misrepresentations

(1) A party to a retail shop lease is liable to pay another party to the lease (the ***injured party***) reasonable compensation for damage suffered by the injured party that is attributable to the injured party's entering into the lease as a result of:

(a) a false or misleading statement; or

(b) a false or misleading representation;

knowingly made by the party or a person acting under the party's authority.

(2) The giving of a landlord's disclosure statement to a prospective tenant under a retail shop lease is taken to be the making of a representation by the landlord to the tenant as to the information in the disclosure statement.

(3) The making of a representation by a prospective tenant in a tenant's disclosure statement given to a prospective landlord under a retail shop lease:

(a) that the prospective tenant has sought independent advice; or

(b) as to statements or representations relied on by the prospective tenant in entering the lease;

is taken to be the making of a representation by a tenant to the landlord.

(4) This section extends to apply to a statement or representation made before the commencement of this section.

19 Tenant to be given landlord's disclosure statement

(1) Unless subsection (6) applies, the landlord must ensure that the tenant is given a landlord's disclosure statement for a retail shop lease at least 7 days before the retail shop lease is entered into by the tenant.

Maximum penalty: 100 penalty units.

(2) A landlord's disclosure statement is a written statement that contains or has attached the information or material specified in the form prescribed by the Regulations (but only to the extent that is relevant to the lease concerned).

(3) The layout of a landlord's disclosure statement is not required to comply with the layout of the prescribed form.

(4) Despite subsection (3), a landlord's disclosure statement is complete for the purposes of this section only if it contains or has attached the information or material that the prescribed form specifies is to be provided by the tenant.

(5) If a retail shop lease is entered into by way of the renewal of a lease, a written statement (a ***landlord's disclosure update***) that updates the provisions of an earlier landlord's disclosure statement given to the tenant is, in conjunction with that earlier landlord's disclosure statement, taken to be a landlord's disclosure statement given at the time the landlord's disclosure update is given.

(6) The time limit imposed by subsection (1) does not apply if a legal practitioner, who is not acting for the landlord, certifies in writing that he or she has, at the request of the prospective tenant, explained to the prospective tenant:

(a) the effect of this section; and

(b) that the giving of the certificate will result in a waiver of that time limit.

20 Tenant may terminate for landlord's failure to disclose

(1) A tenant may terminate a retail shop lease by notice in writing to the landlord at any time within 6 months after the lease was entered into if:

(a) the tenant has not been given a landlord's disclosure statement under section 19(1); or

(b) subject to subsection (2), the landlord's disclosure statement given to the tenant is incomplete or contains information that at the time it was given was materially false or misleading.

(2) A tenant cannot terminate the lease under subsection (1)(b) if:

(a) the landlord has acted honestly and reasonably and ought reasonably to be excused for giving an incomplete landlord's disclosure statement or information that is materially false or misleading; and

(b) the tenant is in substantially as good a position as the tenant would have been if the landlord's disclosure statement had been complete or the information had not been materially false or misleading.

(3) The termination of a lease under this section does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the lease in respect of any period before its termination.

21 Tenant's disclosure statement

(1) Not later than 7 days after receiving a landlord's disclosure statement, or within a further period to which the prospective landlord agrees, the tenant under a retail shop lease must give the landlord a tenant's disclosure statement.

Maximum penalty: 100 penalty units.

(2) A tenant's disclosure statement is a statement in writing that contains or has attached the information or material specified in the form prescribed by the Regulations (but only to the extent that it is relevant to the lease concerned).

(3) The layout of the tenant's disclosure statement is not required to comply with the layout of the prescribed form.

(4) If a lease is entered into by way of the renewal of a lease, a written statement (a ***tenant's disclosure update***) that updates the provisions of an earlier tenant's disclosure statement given to the landlord is, in conjunction with that earlier tenant's disclosure statement, taken to be the tenant's disclosure statement given at the time the tenant's disclosure update is given.

22 Tenant not required to pay undisclosed contributions

A provision of a retail shop lease that requires the tenant to pay or contribute towards the cost of any finishes, fixtures, fittings, equipment or services is void unless the liability to make the payment or contribution is disclosed in a landlord's disclosure statement given to the tenant in accordance with this Part.

23 Lease preparation costs

(1) A tenant is not liable to pay an amount to the landlord for legal or other expenses incurred by the landlord in connection with the preparation of a retail shop lease unless:

(a) the landlord provides the tenant with a copy of the account presented to the landlord for those expenses; and

(b) the amount of the charges, or the method of calculation of those charges, is included in the landlord's disclosure statement given to the tenant in accordance with this Part.

(2) Despite a provision of the retail shop lease or another agreement, the tenant is not liable to pay more than a reasonable sum for legal or other expenses incurred in connection with the preparation of the retail shop lease by the landlord.

(3) This section does not preclude any right the landlord may have to recover, from a person who enters into and then withdraws from negotiations with the landlord in respect of the retail shop lease, a reasonable sum for legal or other expenses incurred in connection with the preparation of the lease by the landlord.

(4) In this section:

other expenses includes expenses relating to:

(a) the negotiation, preparation and execution of the retail shop lease; and

(b) the obtaining of any necessary consents from mortgagees or government Agencies; and

(c) any surveys or compliance with a requirement made by or under an Act.

24 Key-money prohibited

(1) A person must not, as landlord or on behalf of the landlord, seek or accept key-money in connection with the granting of a retail shop lease.

Maximum penalty: 100 penalty units.

(2) A provision of a retail shop lease is void to the extent that it requires or has the effect of requiring key-money in connection with the granting of the lease.

(3) If a person contravenes this section then, whether or not the person is found guilty of an offence against subsection (1), the tenant is entitled to recover from the landlord as a debt:

(a) a payment made by; or

(b) the value of any benefit conferred by;

the tenant and accepted by or on behalf of the landlord in contravention of this section.

(4) This section does not prevent a landlord:

(a) requiring payment by the tenant of a reasonable sum for legal or other expenses incurred in connection with the preparation and entering into of the retail shop lease; or

(b) receiving payment of rent in advance; or

(c) securing performance of the tenant's obligations under the retail shop lease by requiring the provision of a bond, security deposit or a guarantee from the tenant or another person (such as a requirement that the directors of a company that is the tenant guarantee performance of the company's obligations under the lease); or

(d) seeking and accepting, from a purchaser of the business, payment for goodwill of a business (but only to the extent that the goodwill is attributable to the conduct of the business by the landlord); or

(e) seeking and accepting payment for plant, equipment, fixtures or fittings that are sold by the landlord to the tenant in connection with the granting of the lease; or

(f) seeking and accepting payment for the grant of a franchise in connection with the granting of the retail shop lease.

25 Time limit for registration of leases and provision to tenants

(1) A retail shop lease is taken to include provisions to the following effect:

(a) if the lease is not to be registered, the landlord must provide the tenant with an executed copy of the stamped lease within one month after the lease is returned to the landlord or the landlord's legal practitioner or agent following payment of stamp duty on the lease;

(b) if the lease is to be registered, the landlord:

(i) must lodge the lease for registration within one month after the lease is returned to the landlord or the landlord's legal practitioner or agent following payment of stamp duty on the lease; and

(ii) must provide the tenant with an executed copy of the stamped and registered lease within one month after the lease is returned to the landlord or the landlord's legal practitioner or agent following registration of the lease;

(c) the periods specified in paragraphs (a) and (b) are to be extended for delays attributable to the need to obtain consent from a head landlord or mortgagee.

(2) This section does not affect the operation of the *Stamp Duty Act 1978* or the *Land Title Act 2000*.

(3) In this section:

registered means registered under the *Land Title Act 2000*.

26 Minimum 5 year term

(1) The term for which a retail shop lease is entered into, together with a further term or terms provided for by an agreement or option for the acquisition by the tenant of a further term as an extension or renewal of the lease, is not to be less than 5 years.

(2) For subsection (1), an agreement or option is not taken into account if it is entered into or conferred after the retail shop lease is entered into.

(3) The validity of a retail shop lease is not affected if the lease is entered into in contravention of this section, but the term of the lease is extended by the period necessary to prevent the lease contravening this section.

(4) This section does not apply to a retail shop lease if a legal practitioner, or accountant, who is not acting for the landlord, certifies in writing that he or she has, at the request of the prospective tenant, explained to the prospective tenant:

(a) the effect of subsections (1), (2) and (3); and

(b) that the giving of the certificate will result in this section not applying to the lease.

(5) This section does not apply to a lease that results from the renewal of an earlier lease in accordance with an option conferred on the tenant, only if:

(a) there was no break in the entitlement of the tenant to possession of the retail shop; and

(b) the option was granted by that earlier lease or by an agreement entered into before or at the same time as that earlier lease was entered into.

(6) This section does not apply to a lease to the extent that its application would be inconsistent with the terms of a head lease under which the landlord holds the retail shop.

Part 4 Rent and outgoings under retail shop lease

Division 1 Rent

27 No payment of rent etc. when landlord's fitout not completed

(1) This section applies to a retail shop lease if:

(a) the liability of the tenant to pay rent under the lease begins on the tenant entering into possession of the retail shop (whether or not the tenant is required to enter into possession by a specified date); and

(b) the landlord has fitout obligations under the lease.

(2) A retail shop lease to which this section applies is taken to provide that:

(a) the tenant is not liable to pay rent, or another amount payable under the lease by the tenant (such as an amount payable in respect of outgoings), in respect of a period before the landlord has substantially complied with the landlord's fitout obligations; and

(b) the landlord is not entitled to deny the tenant possession of the retail shop merely because the landlord has not complied with the landlord's fitout obligations under the lease.

28 Rent reviews generally

(1) If a retail shop lease provides for a review of the rent payable under the lease or under a renewal of the lease, the lease is to 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 is to 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 shop lease;

(e) a basis or formula prescribed by the Regulations.

(3) A provision of a retail shop lease is void to the extent that it precludes or prevents a reduction of rent or limits the extent to which rent may be reduced.

(4) Subsection (3) does not apply to a provision that uses:

(a) a basis or formula mentioned in subsection (2)(a), (b) or (c); or

(b) a basis or formula prescribed under 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, and if the landlord has not initiated the review within 90 days after the end of that time the tenant may initiate the review.

(6) A rent review provision in a retail shop lease is void if the lease does not specify how the review is to be made.

(7) If a provision in a retail shop lease that provides for a review of the rent payable under the lease does not comply with subsection (2), 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 as the current market rent of the retail premises by a specialist retail valuer appointed by the Commissioner.

(8) The landlord and the tenant are to pay the costs of the valuation under subsection (7) in equal shares.

29 Reviews of current market rent

(1) A retail shop lease that provides for rent to be changed to current market rent, or that provides an option to renew or extend the lease at current market rent, is taken to include provisions to the following effect:

(a) the current market rent is the rent that would reasonably be expected to be paid for the shop, determined on an effective rent basis, having regard to the following matters:

(i) the provisions of the lease;

(ii) the rent that would reasonably be expected to be paid for the shop, in a free and open market between a willing landlord and a willing tenant in an arm's length transaction, if it were unoccupied and offered for renting for the same or a substantially similar use to which the shop may be put under the lease;

(iii) the gross rent, less the landlord's outgoings payable by the tenant;

(iv) rent concessions and other benefits that are frequently or generally offered to prospective tenants of unoccupied retail shops;

(b) for paragraph (a), 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 on the retail shop premises;

(c) if the landlord and the tenant do not agree as to what the actual amount of that rent is to be, the amount of the rent is to be determined by a valuation carried out by:

(i) a specialist retail valuer appointed by agreement between the parties to the lease; or

(ii) if the parties cannot agree as to who is to be appointed under subparagraph (i) – a specialist retail valuer appointed by the Commissioner;

(d) in determining the amount of current market rent, a specialist retail valuer must take into account the matters set out in paragraph (a);

(e) the landlord must, not later than 14 days after a request by a specialist retail valuer appointed under paragraph (c), supply the valuer with all relevant information about leases for retail shops situated in the same building or retail shopping centre to assist the valuer to determine the current market rent;

(f) a valuation for paragraph (c) is to be in writing, to contain detailed reasons for the specialist retail valuer's determination and to specify the matters to which the valuer had regard in making his or her determination;

(g) the parties to the lease are to pay in equal shares the costs of a valuation by a specialist retail valuer.

(2) A specialist retail valuer appointed under subsection (1)(c) must make the valuation of current market rent not later than one month after accepting the appointment.

(3) A specialist retail valuer may apply under Part 11 for an order that a landlord comply with a request mentioned in subsection (1)(e) to supply relevant information about leases for retail shops situated in the same building or retail shopping centre to assist the valuer to determine the rent.

30 Tenant may have current market rent determined early

(1) A retail shop lease that provides an option to renew or extend the lease at current market rent is taken to include provisions to the following effect:

(a) the tenant is entitled to request a determination of the current market rent at any time within the period that begins 6 months before, and ends 3 months before, the last day on which the option may be exercised under the lease, but may not make the request if the landlord and the tenant have already agreed as to the actual amount of that rent;

(b) the tenant makes the request by giving to the landlord notice in writing of the request;

(c) if the tenant makes the request:

(i) the amount of the current market rent is to be determined (as at the time of the request) in accordance with the provisions of a lease mentioned in section 29; and

(ii) the period within which the tenant must exercise the option is varied so that the last day on which the option may be exercised is 21 days after the determination of rent is made and notified to the tenant in writing or the last day of the term of the lease, whichever is the earlier;

(d) the parties agree that the amount of rent determined under paragraph (c) is the current market rent for the purposes of the exercise of the option, even though it may be a determination of the current market rent as at some earlier time;

(e) if the tenant renews or extends the lease after the determination of current market rent – the parties to the lease are to pay in equal shares the costs of the determination;

(f) if the tenant does not renew or extend the lease after the determination of current market rent – the tenant must pay the costs of the determination.

(2) If a retail shop lease is for a term of 12 months or less, the periods of 6 months and 3 months in subsection (1) are shortened to 3 months and 30 days respectively.

31 Proper use by valuer of information received

(1) A specialist retail valuer who is supplied with information by a landlord or a tenant for the purpose of determining under section 29 the amount of rent under a retail shop 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

(b) communicate or disclose the information to another person or permit the information to be communicated or disclosed to another person.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not prevent the specialist retail valuer using, communicating or disclosing information, or permitting another person to do so, in any of the following circumstances:

(a) in accordance with a consent of both the landlord and the tenant;

(b) to a court or the Commissioner;

(c) if the use, communication or disclosure occurs:

(i) for the purpose of specifying the matters to be taken into consideration in making a determination under section 29; and

(ii) in a way that does not disclose information identifying a particular lease or tenant or information relating to a tenant's business.

(3) A specialist retail valuer who contravenes subsection (1) is, whether or not the person is found guilty of an offence against that subsection, liable to pay compensation to the landlord or tenant for loss or damage suffered by the landlord or tenant as a result of the information being used, communicated or disclosed in contravention of subsection (1).

(4) The amount of the compensation mentioned in subsection (3) is:

(a) as agreed between the valuer and the person seeking compensation; or

(b) if the valuer and the person cannot agree on the amount:

(i) as determined under Part 11 following an application by the person seeking compensation; or

(ii) if no determination is able to be made under Part 11 – as determined by a court having the appropriate jurisdiction specified in that Part.

32 Turnover rent

(1) For a provision of a retail shop lease that relates to the determination of rent or a component of rent by reference to turnover, ***turnover*** does not include any of the following:

(a) the amount of losses incurred in the resale or disposal of merchandise reasonably and properly purchased from customers as trade-ins in the usual course of business;

(b) the amount of deposits and instalments received on account of lay-bys, hire purchase or credit sales that have been refunded to customers;

(c) the amount of a refund on a transaction if the proceeds of the transaction have been included as part of turnover;

(d) the amount of service, finance or interest charges payable to a financier in connection with provision of credit to customers (other than commissions on credit or store cards);

(e) the price of merchandise exchanged between shops of the tenant if the exchange is made solely for the convenient operation of the business of the tenant and not for the purpose of concluding a sale made at or from the shop to which the lease relates;

(f) the price of merchandise returns to shippers, wholesalers or manufacturers;

(g) the proceeds of sale of the tenant's fixtures and fittings after their use in the conduct of business at or from the retail shop to which the lease relates;

(h) the amount of discounts allowed to customers in the normal course of business;

(i) the amount of uncollected credit accounts that are written off;

(j) the net amount paid or payable by the tenant on account of a tax imposed at the point of retail sale or hire of goods or services;

(k) the amount of delivery charges;

(l) the amount received from the sale of lottery tickets and similar tickets (other than commission on those sales).

(2) The lease is taken to provide for an underpayment or overpayment of rent (resulting from actual turnover differing from projected or presumed turnover) to be adjusted within one month after the tenant requests the landlord in writing for the adjustment and provides the landlord with information that the landlord may reasonably require to make the adjustment.

(3) The tenant may make a request for an adjustment mentioned in subsection (2) only once in the first 12 months of the lease term and, after that, only at intervals of not less than 12 months following the first request for an adjustment under the lease.

(4) Subsection (3) does not prevent the lease providing for, or the parties otherwise agreeing to, more frequent adjustments than are provided for by this section.

(5) In this section:

turnover includes gross takings, gross receipts, gross income and similar concepts.

33 Special rent – cost of fitout

This Act does not prevent a retail shop lease from providing for the payment of a special rent (in addition to any other rent) to cover the cost of fitout, fixtures, fittings and equipment installed or provided by the landlord at the landlord's expense.

34 Rent and other costs associated with other land not recoverable from tenant

(1) A provision in a retail shop lease is void to the extent that it requires the tenant to pay an amount in respect of rent, and other costs, associated with unrelated land.

(2) In this section:

unrelated land means land other than:

(a) land on which is situated the building or retail shopping centre of which the retail shop forms part; or

(b) land of the landlord used by or for the benefit of the tenants:

(i) conducting business in that building or retail shopping centre; or

(ii) in connection with trading in that building or retail shopping centre.

Division 2 Sinking funds

35 Sinking fund for major repairs and maintenance

If a retail shop lease provides for the establishment of a sinking fund to fund provision for major items of repair or maintenance, the lease is taken to include provisions to the following effect:

(a) an amount paid by the tenant in respect of the landlord's outgoings on account of those major items of repair or maintenance is to be paid into the sinking fund;

(b) so much of the balance standing to the credit of the sinking fund as remains unexpended from time to time for a purpose for which the sinking fund was established is to be held by the landlord in an account bearing interest;

(c) amounts paid by the tenant for credit of the sinking fund, and the net interest earned by the landlord on the sinking fund, are not to be applied by the landlord for a purpose other than payment of outgoings for which the sinking fund was established;

(d) the landlord is liable to contribute to the sinking fund a deficiency attributable to a failure by the landlord, or a predecessor in title of the landlord, to comply with paragraph (c);

(e) the major items of repair or maintenance for which contribution to the sinking fund may be required by the tenant are limited to repair or maintenance of:

(i) a building, or plant and equipment of a building, in which the retail shop is situated; or

(ii) if the retail shop lease relates to a retail shop situated in a retail shopping centre – the buildings, plant and equipment and areas used in association with the retail shopping centre;

(f) the tenant is not liable to contribute an amount to the sinking fund that is greater than the maximum amount permitted under the Act;

(g) the landlord must keep full and accurate accounts of all money received or held by the landlord in respect of the sinking fund;

(h) the landlord must give the tenant, not later than 3 months after the end of each accounting period of the landlord during the term of the lease, a sinking fund statement containing details of expenditure during the period from the fund on items for which the tenant is required to contribute;

(i) the landlord must provide with the statement mentioned in paragraph (h) a report on the statement prepared by a person who holds a public practice certificate issued by an accountants body;

(j) a sinking fund statement provided by a landlord to a tenant is to be prepared in accordance with the relevant principles and disclosure requirements of applicable accounting standards.

36 Limits on sinking funds

(1) This section applies to the landlord under a retail shop lease that provides for the establishment of a sinking fund to fund provision for major items of repair or maintenance.

(2) The landlord must not establish more than one sinking fund at any one time in respect of retail shop leases for retail shops situated in the same building or retail shopping centre.

Maximum penalty: 50 penalty units.

(3) The landlord must not require or accept contributions to the sinking fund in respect of a retail shop situated in a retail shopping centre that total an amount that is more than 5% of the total of the landlord's estimated outgoings for the year concerned in respect of the retail shopping centre.

Maximum penalty: 50 penalty units.

(4) The landlord must not require or accept contributions by a tenant to the sinking fund if the amount outstanding to the credit of the sinking fund is more than 250 000 monetary units.

Maximum penalty: 50 penalty units.

37 Repayment from sinking fund after destruction etc. of building

(1) This section applies to the landlord under a retail shop lease of a retail shop that provides for the establishment of a sinking fund to fund provision for major items of repair or maintenance.

(2) If the building or retail shopping centre in which the retail shop is located is destroyed or demolished or the retail shopping centre ceases to operate, the landlord must repay to each tenant liable to contribute to the sinking fund the amount payable to the tenant determined in accordance with subsection (3).

(3) The amount payable to the tenant is that proportion of the total amount outstanding to the credit of the sinking fund that is equal to the proportion that the lettable area of the tenant's retail shop bears to the total lettable area of all the shops in respect of which contributions are required to be made to the fund.

(4) In this section:

landlord and ***tenant*** mean the persons who were the landlord and tenant, respectively, under a retail shop lease immediately before the destruction or demolition of the building or immediately before the retail shopping centre ceased to operate.

Division 3 Outgoings

38 Recovery of outgoings from tenant

(1) The tenant under a retail shop 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) 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) Costs associated with the advertising or promotion of a retail shop or retail shopping centre, or of a business carried on there, are not outgoings for subsection (1).

39 Landlord to provide estimates and expenditure statement of outgoings

A retail shop lease is taken to include provisions to the following effect:

(a) the landlord must give the tenant a written estimate of the outgoings for which the tenant is liable under the lease to make a payment to the landlord;

(b) the estimate of outgoings is to be given to the tenant:

(i) in respect of each accounting period of the landlord during the term of the lease; and

(ii) before the lease is entered into and, during the term of the lease, at least one month before the commencement of the accounting period concerned;

(c) the landlord must make a written expenditure statement available for examination by the tenant, detailing all expenditure by the landlord on account of outgoings in respect of which the tenant is liable under the lease to make a payment to the landlord;

(d) the expenditure statement is to be made available at least twice in each of the landlord's accounting periods during the term of the lease, being:

(i) once in relation to expenditure during the first 6 months of each of the accounting periods; and

(ii) once in relation to expenditure during the second 6 months of each of the accounting periods;

within one month after the end of the 6 month period to which the expenditure statement relates;

(e) for paragraphs (a) and (c), the relevant outgoings are to be itemised in the manner specified in the prescribed form of landlord's disclosure statement in relation to such outgoings.

40 Landlord to give statement and report on outgoings

A retail shop lease is taken to include provisions to the following effect:

(a) the landlord must give the tenant a written statement (an ***outgoings statement***) that details all expenditure by the landlord in each accounting period of the landlord during the

term of the lease on account of outgoings to which the tenant is required to contribute;

(b) if the shop is in a retail shopping centre – the outgoings statement is to include a statement of the current gross lettable area of the shopping centre and details of each material change in that gross lettable area during the period to which the outgoings statement relates;

(c) the outgoings statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards;

(d) the outgoings statement is to be given to the tenant within 3 months after the end of the accounting period to which it relates;

(e) the outgoings statement is to be accompanied by a report (an ***auditor's report***) on the statement prepared by a person who holds a public practice certificate issued by an accountants body;

(f) the auditor's report is to include a statement by the auditor as to:

(i) whether or not the outgoings statement correctly states the expenditure by the landlord during the accounting period concerned for outgoings to which the tenant is required to contribute; and

(ii) whether or not the total amount of estimated outgoings for that period, as shown in the estimate of outgoings given to the tenant, was more than the total actual expenditure by the landlord for outgoings during that period;

(g) the outgoings statement may be a composite statement (that is, it may relate to more than one tenant) so long as each tenant to whom it relates is able to ascertain from the statement the information required by paragraph (a) that is relevant to that tenant;

(h) the outgoings statement need not be accompanied by an auditor's report if:

(i) the statement does not relate to outgoings other than water, sewerage and drainage rates and charges, council rates and charges and insurance; and

(ii) the statement is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the landlord as mentioned in paragraph (a).

41 Adjustment of contributions to outgoings

A retail shop lease is taken to include provisions to the following effect:

(a) there is to be an adjustment between the landlord and the tenant for each accounting period of the landlord to take account of an under-payment or over-payment by the tenant in respect of outgoings during the period;

(b) the adjustment is to take place within one month after the landlord gives the tenant the outgoings statement mentioned in section 40 for the period concerned and is in any event to take place within 4 months after the end of that period;

(c) the adjustment is to be calculated on the basis of the difference between:

(i) the total amount of outgoings for which the tenant contributed (that is, the estimated total expenditure by the landlord on outgoings during the period concerned); and

(ii) the total amount actually expended by the landlord for those outgoings during that period, but taking into account only expenditure properly and reasonably incurred by the landlord in payment of those outgoings;

(d) contribution by the tenant towards repairs and maintenance is not taken into account for the purposes of the adjustment to the extent that the contribution is required to be paid into a sinking fund as mentioned in section 35;

(e) expenditure by the landlord in respect of repairs and maintenance is not taken into account for the purposes of the adjustment to the extent that the expenditure is in respect of contributions required to be paid into a sinking fund as mentioned in section 35.

42 Non-specific outgoings contribution limited by ratio of lettable area

(1) A tenant under a retail shop lease in a retail shopping centre:

(a) is not liable to contribute towards a non-specific outgoing of the landlord (that is, an outgoing not specifically referable to a particular shop in the retail shopping centre) unless the shop is one of the shops to which the outgoing is referable; and

(b) is not liable to contribute an amount that is more than an amount calculated by multiplying the total amount of that outgoing by the ratio of the lettable area of the shop to the total of the lettable areas of all the retail shops to which the outgoing is referable.

(2) An outgoing is referable to a retail shop if the shop is one of the shops that enjoys or shares the benefit resulting from the outgoing.

Division 4 Other costs or charges

43 Capital costs etc. not recoverable from tenant

(1) A provision in a retail shop 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 shop is located; or

(b) if the retail shop is in a retail shopping centre – a building in the retail shopping centre; or

(c) any areas used in association with a building mentioned in paragraph (a) or (b).

(2) A provision in a retail shop lease is void to the extent that it requires the tenant to pay an amount in respect of the capital costs of plant in a building or area mentioned in subsection (1).

(3) A provision in a retail shop 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 Depreciation not recoverable from tenant

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

45 Interest etc. on landlord's borrowings not recoverable from tenant

A provision in a retail shop 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.

Part 5 Restrictions on actions affecting rights under retail shop lease

46 Tenant to be given notice of alterations and refurbishment

A retail shop lease is taken to provide that the landlord must not begin to carry out an alteration or refurbishment of the building or retail shopping centre of which the retail shop forms part that is likely to adversely affect the business of the tenant, unless:

(a) the landlord has notified the tenant in writing of the proposed alteration or refurbishment at least 2 months before it is commenced; 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.

47 Tenant to be compensated for disturbance

(1) A retail shop lease is taken to provide that if the landlord:

(a) inhibits access of the tenant to the shop in a substantial manner; or

(b) takes an action that would inhibit or alter, to a substantial extent, the flow of customers to the shop; or

(c) unreasonably takes an action that causes significant disruption of, or has a significant adverse effect on, trading of the tenant in the shop; or

(d) fails to take all reasonable steps to prevent or put a stop to anything that causes significant disruption of, or which has a significant adverse effect on, trading of the tenant in the shop and that is attributable to causes within the landlord's control; or

(e) fails to rectify a breakdown of plant or equipment under the landlord's care or maintenance; or

(f) if the retail shop to which the lease relates is within a retail shopping centre – fails to adequately clean, maintain or repair the retail shopping centre, including common areas;

and the landlord does not rectify the matter as soon as reasonably practicable after being requested in writing by the tenant to do so, the landlord is liable to pay the tenant reasonable compensation for loss or damage, other than nominal damage, suffered by the tenant as a consequence.

(2) In determining whether a landlord has acted unreasonably for subsection (1)(c), due consideration is to be given to whether the landlord has acted in accordance with recognised shopping centre management practices.

(3) A retail shop lease may include a provision preventing or limiting a claim for compensation under the provisions implied by this section in respect of a particular occurrence if the likelihood of the occurrence was specifically drawn to the attention of the tenant in writing before the lease was entered into.

(4) The provisions implied by this section do not apply to an action taken by the landlord:

(a) as a reasonable response to an emergency situation; or

(b) in compliance with a duty imposed by or under an Act or resulting from a requirement imposed by a statutory authority or local government council acting under the authority of an Act.

48 Relocation

If a retail shop lease contains a provision that enables the business of the tenant to be relocated, the lease is taken to include provisions to the following effect:

(a) the tenant's business cannot be required to be relocated unless and until the landlord has provided the tenant with details of a proposed refurbishment, redevelopment or extension sufficient to indicate a genuine proposal that:

(i) is to be carried out within a reasonably practicable time after relocation of the tenant's business; and

(ii) cannot be carried out practicably without vacant possession of the tenant's shop;

(b) the tenant's business cannot be required to be relocated unless the landlord has given the tenant at least 3 months

written notice (***relocation notice***) of relocation and the notice gives details of an alternative shop to be made available to the tenant within the retail shopping centre;

(c) the tenant is entitled to be offered a new lease of the alternative shop on the same terms and conditions as the existing lease, except that the term of the new lease is to be for the remainder of the term of the existing lease;

(d) for paragraph (c), the rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation;

(e) if a relocation notice is given to the tenant, the tenant may terminate the lease within one month after the relocation notice is given by giving written notice of termination to the landlord, in which case the lease is terminated 3 months after the relocation notice was given, unless the parties agree that it is to terminate at some other time;

(f) if the tenant does not give a notice of termination as mentioned in paragraph (e), the tenant is taken to have accepted the offer of a lease as mentioned in paragraph (c), unless the parties have agreed to a lease on some other terms;

(g) the tenant is entitled to payment by the landlord of the tenant's reasonable costs of the relocation (including but not limited to costs incurred by the tenant in dismantling and reinstalling fixtures and fittings) and legal costs in connection with the relocation.

49 Demolition

(1) If a retail shop lease provides for termination of the lease on the grounds of the proposed demolition of the building of which the retail shop forms part, the lease is taken to include provisions to the following effect:

(a) the lease cannot be terminated on that ground unless and until the landlord has provided the tenant with details of the proposed demolition sufficient to indicate a genuine proposal to demolish that building within a reasonably practicable time after the lease is to be terminated;

(b) the lease cannot be terminated by the landlord on that ground without at least 6 months written notice of termination;

(c) if notice of termination on that ground is given to the tenant, the tenant may terminate the lease by giving the landlord not less than 7 days written notice of termination at a time within 6 months before the termination date notified by the landlord.

(2) If a retail shop lease is for a term of 12 months or less, the period of 6 months mentioned in subsection (1)(b) and (c) is shortened in each case to 3 months.

(3) If:

(a) a retail shop lease is terminated on the grounds of the proposed demolition of the building of which the retail shop forms part; and

(b) the demolition of the building is not carried out within a reasonably practicable time after the termination date notified by the landlord;

the landlord is liable to pay the tenant reasonable compensation for damage suffered by the tenant as a consequence of the early termination of the lease, unless the landlord establishes that at the time notice of termination was given by the landlord there was a genuine proposal to demolish the premises within that time.

(4) If a retail shop lease is terminated on the grounds of the proposed demolition of the building of which the retail shop forms part, the landlord is liable to pay the tenant compensation for the fitout of the retail shop if the tenant is required under the lease to fit out the retail shop, whether or not the demolition of the building is carried out.

(5) For this section, the demolition of the building of which a retail shop forms part includes a substantial repair, renovation or reconstruction of the building that cannot be carried out practicably without vacant possession of the shop.

50 Damaged premises

(1) A retail shop lease is taken to provide for the following if the shop or the building of which the shop forms part is damaged:

(a) the tenant is not liable to pay rent, or an amount payable to the landlord in respect of outgoings or other charges, that is attributable to a period during which the shop cannot be used under the lease or is inaccessible due to the damage;

(b) if the shop is still usable under the lease but its usability is diminished due to the damage, the tenant's liability for rent and an amount in respect of outgoings attributable to a period

during which usability is diminished is reduced in proportion to the reduction in usability caused by the damage;

(c) if the landlord notifies the tenant in writing that the landlord considers that the damage is such as to make its repair impracticable or undesirable, the landlord or the tenant may terminate the lease by giving not less than 7 days notice in writing to the other and no compensation is payable in respect of the termination;

(d) if the landlord fails to repair the damage within a reasonable time after the tenant requests the landlord in writing to do so, the tenant may terminate the lease by giving not less than 7 days notice in writing to the landlord;

(e) paragraphs (a) to (d) do not affect a right of the landlord to recover damages from the tenant in respect of damage or destruction to which those paragraphs apply.

(2) A provision in a retail shop lease is void to the extent that it limits the liability of a party to the lease to pay compensation to another party to the lease in respect of damage to the shop or the building of which the shop forms part.

(3) This section does not prevent the parties to a retail shop lease from terminating the lease by agreement if the shop or the building of which it forms part is damaged or destroyed.

51 Refurbishment and refitting

A provision in a retail shop lease requiring the tenant to refurbish or refit the shop is void unless it gives the details of the required refurbishment or refitting that is necessary to indicate generally the nature, extent and timing of the required refurbishment or refitting.

52 Employment restriction

(1) A provision in a retail shop lease is void to the extent that it limits or has the effect of limiting the tenant's right to employ persons of the tenant's own choosing.

(2) Subsection (1) does not prevent the lease containing one or more of the following provisions:

(a) a provision specifying minimum standards of competence and behaviour for persons employed in the shop or other persons (such as contractors) doing work in the shop;

(b) a provision prohibiting work from being carried out on specified items of the landlord's property;

(c) a provision requiring the tenant to comply with the requirements of an industrial award, industrial agreement or enterprise agreement (such as a construction site agreement) affecting a retail shopping centre in which the shop is situated.

Part 6 Assignment of retail shop lease

53 Circumstances when consent to assignment may be withheld

(1) The landlord is entitled to withhold consent to the assignment of a retail shop lease in any of the following circumstances (and is not entitled to withhold that consent in any other circumstances):

(a) if the proposed assignee proposes to change the use to which the shop is put;

(b) if the proposed assignee does not have the financial resources or retailing skills that will enable the proposed assignee to fulfil all the obligations of the lease;

(c) if the tenant has not complied with the provisions of the lease mentioned in section 56 and, if applicable, section 57.

(2) This section does not preclude a right of the landlord to require payment of a reasonable sum in respect of legal or other expenses incurred in connection with the consent, so long as the landlord has substantiated those expenses to the tenant at the request of the tenant.

54 Key-money on assignment prohibited

(1) A person must not, as landlord or on behalf of the landlord, seek or accept key-money in connection with the granting of consent to the assignment of a retail shop lease.

Maximum penalty: 100 penalty units.

(2) A provision of a retail shop lease is void to the extent that it requires or has the effect of requiring key-money in connection with the granting of consent to the assignment of the lease.

(3) If a person contravenes subsection (1) then, whether or not the person is found guilty of an offence against that subsection, the tenant is entitled to recover from the landlord as a debt:

(a) a payment made by; or

(b) the value of any benefit conferred by;

the tenant or assignee and accepted by or on behalf of the landlord in contravention of this section.

(4) This section does not prevent a landlord:

(a) requiring payment by the tenant or assignee of a reasonable sum for legal or other expenses incurred in connection with the assignment of the lease; or

(b) receiving payment of rent in advance; or

(c) securing performance of the assignee's obligations under the lease by requiring the provision of a bond, security deposit or a guarantee from the assignee or another person (such as a requirement that the directors of a company that is the assignee guarantee performance of the company's obligations under the lease); or

(d) seeking and accepting, from a purchaser of the business, payment for goodwill of a business, but only to the extent that the goodwill is attributable to the conduct of the business by the landlord; or

(e) seeking and accepting payment for plant, equipment, fixtures or fittings that are sold by the landlord to the tenant or assignee in connection with the granting of consent to the assignment of the lease; or

(f) seeking and accepting payment for the grant of a franchise in connection with the granting of consent to the assignment of the lease.

55 Obtaining consent to assignment

A retail shop lease is taken to include the following provisions:

(a) a request for the landlord's consent to an assignment of the lease is to be made in writing;

(b) the landlord must deal expeditiously with a request for consent to an assignment of the lease;

(c) the landlord is taken to have consented to the request for consent to an assignment of the lease if:

(i) the tenant has complied with the provisions of the lease mentioned in section 56(a) and, if applicable, section 57(c); and

(ii) the landlord has not, within 42 days after the request was made, given notice in writing to the tenant either consenting or withholding consent.

56 Information to be provided to proposed assignee and landlord

A retail shop lease is taken to include the following provisions:

(a) before requesting the consent of the landlord to a proposed assignment of the lease, the tenant must provide to the proposed assignee:

(i) a copy of the most recent landlord's disclosure statement given to the tenant in respect of the lease; and

(ii) details of changes that have occurred in respect of the information contained in the landlord's disclosure statement since it was given to the tenant (being changes of which the tenant is aware or could reasonably be expected to be aware);

(b) the tenant may provide the proposed assignee with an assignor's disclosure statement;

(c) if the assignment is in connection with the lease of a retail shop that will continue to be an ongoing business – the tenant must provide the landlord and proposed assignee with an assignor's disclosure statement;

(d) an assignor's disclosure statement is a statement that contains or has attached the information or material specified in the form prescribed by the Regulations, but the layout of the statement need not comply with that of the prescribed form;

(e) to enable the tenant to comply with paragraph (a):

(i) the tenant is entitled to request the landlord to provide the tenant with a copy of the relevant disclosure statement; and

(ii) the landlord must comply with the request within 14 days after it is made.

57 Information about financial standing of proposed assignee

A retail shop lease is taken to include the following provisions:

(a) the tenant may, at the time of making the request for the landlord's consent to the assignment of the lease, provide the landlord with information concerning the financial standing and business experience of the proposed assignee;

(b) on receipt of a request for his or her consent to an assignment of the lease, the landlord may, if no information concerning the financial standing and business experience of the proposed assignee is provided by the tenant, request the tenant to provide him or her with that information;

(c) the tenant must provide the landlord with information under paragraph (b) that the landlord reasonably requires.

58 Protection of assignors and guarantors

A former tenant who has assigned a retail shop lease in respect of a retail shop that was to continue to be an ongoing business, and any guarantor or covenantor of the former tenant, is not liable to pay to the landlord money in respect of amounts payable by the assignee if:

(a) the former tenant gave the landlord and the proposed assignee a copy of the assignor's disclosure statement in accordance with section 56(c); and

(b) the disclosure statement does not contain any information that is false, misleading or materially incomplete.

59 Landlord may reserve right to refuse sublease, mortgage etc.

A retail shop lease may contain a provision that allows the landlord to refuse in the landlord's absolute discretion:

(a) consent to the grant of a sublease, licence or concession in respect of the whole or a part of the shop; or

(b) consent to the tenant parting with possession of the whole or a part of the shop; or

(c) consent to the tenant mortgaging or otherwise charging or encumbering the tenant's estate or interest in the lease.

Part 7 Renewal and extension of retail shop leases

60 Notice to tenant of landlord's intentions at end of lease

(1) Not less than 6 months and not more than 12 months before the expiry of a lease, the landlord must by written notice to the tenant:

(a) offer the tenant a renewal or extension of the lease on terms (including terms as to rent) specified in the notice; or

(b) inform the tenant that the landlord does not propose to offer the tenant a renewal or extension of the lease.

(2) An offer made under subsection (1)(a) cannot be revoked until after one month after it is made.

(3) If the landlord fails to give a notice to the tenant under subsection (1), the term of the lease is extended until the end of 6 months after the landlord gives the notice, but only if the tenant requests that extension by notice in writing to the landlord given before the lease would otherwise have expired.

(4) During any extension of the lease under subsection (3), the tenant may terminate the lease by giving not less than one months notice of termination in writing to the landlord.

(5) This section does not apply to a lease:

(a) containing an option to renew or extend the lease; or

(b) that is the subject of an agreement for the renewal or extension of the lease.

(6) If a retail shop lease is for a term of 12 months or less, the periods of 12 months and 6 months mentioned in subsection (1) and (3) are shortened to 6 months and 3 months respectively.

61 Key-money for renewal or extension prohibited

(1) A person must not, as landlord or on behalf of the landlord, seek or accept key-money in connection with the renewal or extension of a retail shop lease.

Maximum penalty: 100 penalty units.

(2) A provision of a retail shop lease is void to the extent that it requires or has the effect of requiring key-money in connection with the renewal or extension of the lease.

(3) If a person contravenes subsection (1), the tenant is entitled to recover from the landlord as a debt:

(a) a payment made; or

(b) the value of a benefit conferred by the tenant and accepted;

by or on behalf of the landlord in contravention of this section, whether or not the person is found guilty of an offence against that subsection.

(4) This section does not prevent a landlord from:

(a) requiring payment by the tenant of a reasonable sum in respect of legal or other expenses incurred in connection with the renewal or extension of the lease; or

(b) receiving payment of rent in advance; or

(c) securing performance of the tenant's obligations under the renewed or extended lease by requiring the provision of a bond or security deposit or a guarantee from the tenant or another person; or

(d) seeking and accepting payment for the grant of a franchise in connection with the renewal or extension of the lease.

Part 8 Other requirements for retail shop leases

62 Trading hours

A provision in a retail shop lease is void to the extent that it operates to require the tenant to trade at a time when trading would be unlawful.

63 Security deposits

(1) A retail shop lease is taken to include provisions to the following effect:

(a) money paid by the tenant to the landlord as security for the performance of the tenant's obligations under the lease is to be held by the landlord on behalf of the tenant:

(i) in an account mentioned in section 50 of the *Agents Licensing Act 1979*; or

(ii) in any other interest-bearing account;

(b) if the landlord holds money in accordance with paragraph (a)(i) – Part V of the *Agents Licensing Act 1979* applies in relation to that money;

(c) if the landlord holds money in accordance with paragraph (a)(ii):

(i) the landlord must account to the tenant for interest earned on the money but the landlord is entitled to retain the interest and deal with it as money paid by the tenant to the landlord to form part of the security deposit concerned; and

(ii) the landlord is not entitled to unreasonably refuse to accept a guarantee from an ADI in satisfaction of a 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.

(2) Subsection (1) does not prevent the landlord appropriating security moneys in accordance with a lawful entitlement to do so.

64 Independent legal advice – effect of coercion

(1) A person must not compel the tenant or a prospective tenant under a retail shop lease to use the services of a legal practitioner, accountant or conveyancing agent nominated by the landlord.

Maximum penalty: 50 penalty units.

(2) If the tenant or a prospective tenant is compelled to use the services of a legal practitioner, accountant or conveyancing agent in contravention of this section, the landlord is liable to pay to the tenant the amount of any fees paid by the tenant to the legal practitioner, accountant or conveyancing agent for those services.

(3) If a prospective tenant is compelled to use the services of a legal practitioner in contravention of this section for the provision of a certificate mentioned in section 19, the certificate is invalid for of section 19 if the tenant establishes that even though the certificate was given he or she did not understand:

(a) the effect of section 19; or

(b) that the giving of the certificate would result in a waiver of the time limit in section 19(1).

(4) If a prospective tenant is compelled to use the services of a legal practitioner or accountant in contravention of this section for the provision of a certificate mentioned in section 26, the certificate is

invalid for section 26 if the tenant establishes that even though the certificate was given he or she did not understand:

(a) the effect of section 26(1), (2) or (3); or

(b) that the giving of the certificate would result in section 26 not applying.

Part 9 Additional requirements for retail shopping centres

65 Part applies only to retail shopping centres

This Part applies only to retail shop leases of shops in retail shopping centres and, in respect of those leases, applies in addition to the other provisions of this Act.

66 Confidentiality of turnover information

(1) If a retail shop lease requires the tenant to provide information to the landlord concerning the turnover of the business of the tenant, the landlord must not disclose or communicate to a person the information provided by the tenant.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not prevent the landlord communicating or disclosing information provided by the tenant as required by the lease if the information is communicated or disclosed:

(a) with the consent of the tenant; or

(b) in a document giving aggregate turnover information about a retail shopping centre in a manner that does not disclose information relating to the turnover of an individual tenant's business; or

(c) in compliance with a requirement of a court, the Commissioner or a person conducting proceedings under Part 11; or

(d) in compliance with a requirement made by or under an Act; or

(e) to the landlord's professional advisers (such as legal or financial advisers), or to the proper officer of a financial institution, in good faith, to assist in enabling the landlord to obtain financial accommodation; or

(f) in good faith to a prospective purchaser of the retail shop or the building of which it forms part.

67 Statistical information to be made available to tenant

If a retail shop lease requires the tenant to pay an amount for outgoings on account of expenditure incurred in obtaining statistical information (such as traffic counts), the lease is taken to include a provision that the landlord must make available to the tenant the statistical information.

68 Advertising and promotion requirements

(1) A provision in a retail shop lease is void to the extent that it requires the tenant to undertake advertising or promotion of the tenant's business.

(2) Subsection (1) does not apply to a provision in a lease that requires a payment to the landlord for advertising and promotion costs incurred or to be incurred by the landlord.

69 Marketing plan for advertising and promotion

If a retail shop lease requires the tenant to pay an amount to the landlord in respect of advertising and promotion costs, the lease is taken to include provisions to the following effect:

(a) the landlord must, at least one month before the start of each accounting period of the landlord, 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;

(b) if payment to the landlord in respect of advertising and promotion costs relates to an opening promotion – the landlord must, at least one month before that opening promotion, make available to the tenant details of the proposed expenditure on that promotion.

70 Availability of advertising and promotion expenditure statement

A retail shop lease is taken to include provisions to the following effect:

(a) the landlord must make a written statement available for examination by a tenant detailing all expenditure by the landlord on account of advertising and promotion costs to which the tenant is required to contribute under the lease;

(b) the landlord must make the statement available at least twice in each of the landlord's accounting periods during the term of the lease, being:

(i) once in relation to expenditure during the first 6 months of each of the accounting periods; and

(ii) once in relation to expenditure during the second 6 months of each of the accounting periods;

(c) the statement must be made available within one month after the end of the 6 month period to which it relates.

71 Provision of statement on advertising and promotion expenditure

A retail shop lease is taken to include provisions to the following effect:

(a) the landlord must give the tenant a written statement (an ***advertising 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;

(b) the advertising statement is to be prepared in accordance with relevant principles and disclosure requirements (in force from time to time) made by the Australian Accounting Standards Board;

(c) the advertising statement is to be given to the tenant within 3 months after the end of the accounting period to which it relates;

(d) the advertising statement is to be accompanied by a report (an ***auditor's report***) on the statement prepared by a person who holds a public practice certificate issued by an accountants body;

(e) the auditor's report is to include a statement by the auditor as to whether or not the advertising statement correctly states the expenditure by the landlord during the accounting period concerned in respect of advertising or promotion costs to which the tenant is required to contribute.

72 Unexpended advertising and promotion contributions carried forward

A retail shop lease is taken to include a provision that an amount:

(a) that is contributed under a retail shop lease by a tenant in the shopping centre in respect of advertising or promotion costs of the landlord; and

(b) that is not spent for the purpose for which it was contributed;

is to be carried forward by the landlord and applied towards future expenditure on advertising or promotion of the centre.

73 Termination for inadequate sales prohibited

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

74 Geographical restrictions prohibited

(1) A provision in a retail shop 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, either during the term of or after the expiry of the lease.

(2) This section does not operate to 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 shopping centre.

75 Trading hours of retail shopping centre

(1) A lease of a retail shop is taken to include a provision to the effect that the landlord is not entitled to change the core trading hours of the retail shopping centre of which the shop forms part except with the approval in writing of the tenants of a majority of the retail shops in the shopping centre (whether or not those retail shops are retail shops to which this Act applies).

(2) The initial fixing of trading hours in a new retail shopping centre is not a change to core trading hours and is not affected by subsection (1).

(3) Subsection (1) does not operate to permit a landlord to ignore the requirements of another agreement, arrangement or understanding that prevents or restricts a change to core trading hours by the landlord in a retail shopping centre.

(4) This section does not prevent a lease providing for the action that may be taken by a landlord in the event of a tenant not trading in accordance with core trading hours, including provisions:

(a) enabling the landlord, as a condition of granting consent to a tenant trading outside core trading hours, to require the tenant to pay, or pay a contribution towards, the costs of opening the retail shopping centre during those extended trading hours; or

(b) requiring a tenant who trades outside core trading hours to make specified payments or additional payments in respect of advertising and promotional costs for the shopping centre.

(5) In section:

core trading hours, in relation to a retail shopping centre, means the times when retail shops in the shopping centre are required to be open for business, whether the requirement is imposed by or under a lease or by or under some other agreement, arrangement or understanding between landlords and the tenants.

Part 10 Unconscionable conduct in connection with retail shop lease

76 Definitions

In this Part:

applicable industry code, see section 51ACA(1) of the *Competition and Consumer Act 2010* (Cth).

industry code, see section 51ACA(1) of the *Competition and Consumer Act 2010* (Cth).

77 Application of Part

(1) This Part extends to apply to a retail shop lease that was entered into:

(a) before the commencement of section 7; or

(b) under an option granted or agreement made before the commencement of section 7;

but only if this Act would have applied to the lease if it had been entered into after the commencement of section 7.

(2) This Part does not apply to conduct that occurred before the commencement of this section.

78 Court may determine claim of unconscionable conduct

(1) A landlord or tenant, or former landlord or tenant, who suffers loss or damage as a result of unconscionable conduct of another person in contravention of section 79 or 80 may apply to a court of competent jurisdiction to recover the amount of the loss or damage from the other person.

(2) In determining whether section 79 or 80 has been contravened:

(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.

(3) If the issue of loss or damage as a result of unconscionable conduct of a person in contravention of section 79 or 80 arises in connection with another matter the subject of proceedings in the court, the court may decide the issue, and in so doing may award the sum it thinks fit.

79 Unconscionable conduct of landlord in retail shop lease transactions

(1) A landlord must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without limiting the matters to which a court may have regard in determining whether a landlord has contravened subsection (1), the court may have regard to the following:

(a) the relative strengths of the bargaining positions of the landlord and the tenant;

(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 legitimate interests of the landlord;

(c) whether the tenant was able to understand any documents relating to the lease;

(d) whether undue influence or pressure was exerted on, or unfair tactics were used against, the tenant or a person acting on behalf of the tenant by the landlord or a person acting on behalf of the landlord in relation to the lease;

(e) the amount for which, and the circumstances in which, the tenant could have acquired an identical or equivalent lease from a person other than the landlord;

(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;

(g) the requirements of an applicable industry code;

(h) the requirements of another industry code, if the tenant acted on the reasonable belief that the landlord would comply with the code;

(i) the extent to which the landlord was willing to negotiate the terms and conditions of any lease with the tenant;

(j) the extent to which the landlord unreasonably failed to disclose to the tenant:

(i) intended conduct of the landlord that might affect the interests of the tenant; and

(ii) risks to the tenant arising from the landlord's intended conduct (being risks that the landlord should have foreseen would not be apparent to the tenant);

(k) the extent to which the landlord and the tenant acted in good faith.

80 Unconscionable conduct of tenant in retail shop lease transactions

(1) A tenant must not, in connection with a retail shop lease, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without limiting the matters to which the court may have regard in determining whether a tenant has contravened subsection (1), the court may have regard to the following:

(a) the relative strengths of the bargaining positions of the tenant and the landlord;

(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 legitimate interests of the tenant;

(c) whether the landlord was able to understand any documents relating to the lease;

(d) whether undue influence or pressure was exerted on, or unfair tactics were used against, the landlord or a person acting on behalf of the landlord by the tenant or a person acting on behalf of the tenant in relation to the lease;

(e) the amount for which, and the circumstances in which, the landlord could have granted an identical or equivalent lease to a person other than the tenant;

(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;

(g) the requirements of an applicable industry code;

(h) the requirements of another industry code, if the landlord acted on the reasonable belief that the tenant would comply with the code;

(i) the extent to which the tenant was willing to negotiate the terms and conditions of any lease with the landlord;

(j) the extent to which the tenant unreasonably failed to disclose to the landlord:

(i) intended conduct of the tenant that might affect the interests of the landlord; and

(ii) risks to the landlord arising from the tenant's intended conduct (being risks that the tenant should have foreseen would not be apparent to the landlord);

(k) the extent to which the tenant and the landlord acted in good faith.

81 Conduct that is not unconscionable

For this Part, a person is not taken to engage in unconscionable conduct in connection with a retail shop lease merely because:

(a) the person institutes legal proceedings in relation to the lease; or

(b) fails to renew the lease or to issue a new lease.

Part 11 Dispute resolution for retail tenancy claims

Division 1 Preliminary matters

82 Interpretation

(1) In this Part:

application means an application lodged with the Commissioner under section 86.

certificate means a certificate issued under section 104.

conciliator means the person conducting a conference.

conference means a preliminary conciliation conference or a conciliation conference.

disputed matter means a matter that is the subject of a retail tenancy claim.

Hearing Commissioner means the person conducting an inquiry.

order includes direction, declaration, determination and decision.

proceedings means any of the following:

(a) a preliminary conciliation conference;

(b) a conciliation conference;

(c) an inquiry.

retail tenancy claim, see section 84.

retail tenancy dispute, see section 83.

(2) A reference in this Part to a party to a retail shop lease or former party to a former retail shop lease includes a reference to a person who is or was a guarantor or covenantor under a retail shop lease or former retail shop lease.

83 Meaning of *retail tenancy dispute*

(1) A ***retail tenancy dispute*** is a dispute concerning the liabilities or obligations of a party to a retail shop lease, or a former party to a former retail shop lease, that arose:

(a) under the lease or former lease; or

(b) in connection with the use or occupation of the retail shop to which the lease or former lease relates.

(2) The following disputes are not retail tenancy disputes for this Part:

(a) a dispute in relation to unconscionable conduct mentioned in Part 10;

(b) a dispute in relation to the repossession of business premises mentioned in Part 13, Division 2.

84 Meaning of *retail tenancy claim*

A ***retail tenancy claim*** is any of the following claims or applications:

(a) in relation to a retail tenancy dispute:

(i) a claim for the payment of a specified sum of money (including a claim for compensation under section 18); or

(ii) a claim for relief from payment of a specified sum of money; or

(iii) a claim for the performance of specified work or the provision of specified services; or

(iv) a claim for assignment of rights under a lease or for a declaration that a landlord is not entitled to withhold consent to an assignment of the rights of a tenant; or

(v) a claim regarding the rectification of the lease; or

(vi) a claim regarding the invalidity of a lease or a provision of the lease for inconsistency with this Act or the Regulations; or

(vii) a claim for a declaration of the rights, obligations and liabilities of the parties under a lease;

(b) an application under section 29(3) by a specialist retail valuer for an order that a landlord comply with a request for information;

(c) an application under section 31(4)(b) by a person seeking a determination of compensation.

85 Retail tenancy claim may be taken to court only if certificate issued

(1) A retail tenancy claim may be the subject of proceedings before a court only if a certificate is issued in relation to the claim.

(2) Subsection (1) does not apply to proceedings before a court for an order in the nature of an injunction.

Division 2 Commencement of retail tenancy claim

86 Application to Commissioner

(1) A party to a retail shop lease or a former party to a former retail shop lease may apply to the Commissioner for determination of a retail tenancy claim.

(2) An application in respect of a retail tenancy claim is to be lodged with the Commissioner.

(3) An application in respect of a retail tenancy claim is to be in the form prescribed by the Regulations and accompanied by the fee prescribed under section 87.

(4) An application is to contain a brief summary of the nature of the retail tenancy claim, briefly set out the facts relevant to the claim and include the information specified by the prescribed form.

(5) An application may not be made more than 3 years after the date on which the liability or obligation that is the subject of the application arose.

87 Application fees

(1) The Minister may, by *Gazette* notice, prescribe the fees payable under this Act in relation to an application.

(2) The Commissioner may waive a fee payable under this Act in relation to an application and, if a fee is so waived, the person to whom the waiver relates is not required to pay the fee.

88 Commissioner to give notice of conference

(1) On receipt of an application, the Commissioner must determine a time and place for the holding of a preliminary conciliation conference or a conciliation conference.

(2) The Commissioner must:

(a) give the applicant a notice setting out the time and place at which the conference is to be held; and

(b) give to the other parties to the application a notice setting out:

(i) the time and place at which the conference is to be held; and

(ii) a brief description of the nature of the application.

89 Who may conduct proceedings

(1) A particular proceeding may be conducted by any of the following persons, who must be suitably qualified in accordance with this section to conduct that proceeding:

(a) the Commissioner;

(b) a delegate of the Commissioner under section 13;

(c) any other person appointed in writing by the Commissioner.

(2) The Commissioner must ensure that, in relation to an application, the same person does not personally conduct more than one of the following:

(a) a preliminary conciliation conference;

(b) a conciliation conference;

(c) an inquiry.

(3) If a conciliation conference is to be conducted by a delegate of the Commissioner, the Commissioner must ensure that wherever practicable the delegate has the prescribed qualifications.

(4) A person conducting an inquiry must be a lawyer who has been admitted to the legal profession for at least 5 years.

(5) A conference or an inquiry in respect of an application is not to be conducted by a person who has conducted or taken part in an investigation to determine whether an offence against this Act has been committed by a party to the application in relation to the disputed matter.

Division 3 Conciliation conferences

90 Who may attend conferences

The following persons are entitled to attend a conference:

(a) the applicant;

(b) any other party to the application;

(c) a representative of a party to the application permitted by section 111 to attend;

(d) the Commissioner (if he or she is not the conciliator).

91 General principles of dispute resolution at conferences

Procedures for dispute resolution at a conference may include informal mediation, conciliation and other forms of alternative dispute resolution.

92 Purpose of preliminary conference

(1) At a preliminary conciliation conference, the conciliator must:

(a) give information to ensure that the parties to the application are fully aware of their rights and obligations under this Act; and

(b) encourage full, open communication between the parties about the retail tenancy dispute on a without prejudice basis; and

(c) encourage the parties to identify the relevant facts and propose solutions to, and resolve by agreement, the matters in dispute between the parties.

(2) If the parties do not resolve the matters in dispute, the Commissioner must determine whether:

(a) a conciliation conference should be held; or

(b) an inquiry should be held; or

(c) a certificate should be issued.

93 Purpose of conciliation conference

(1) At a conciliation conference, the parties to the application are, between themselves with the assistance of the conciliator, to attempt to resolve the retail tenancy claim by negotiating a settlement.

(2) If the parties do not negotiate a settlement, the Commissioner must determine whether:

(a) a further conciliation conference should be held; or

(b) an inquiry should be held; or

(c) a certificate should be issued.

94 Procedure for conferences

(1) Unless the conciliator determines otherwise, conferences are to be held in private.

(2) The conciliator may exclude from the conference a person other than the parties and the representatives permitted by section 111 to attend.

(3) A settlement to which a party agrees at a conference is binding on the party.

(4) The conciliator may refer a question of law arising at the conference to a legal practitioner for determination.

(5) The conciliator may record a settlement reached at a conference and may make an order to give effect to the settlement.

(6) An order made under subsection (5) has effect as if it were an order made at an inquiry.

95 Costs of conciliation to be met by parties

The costs of and associated with a conference are to be paid by the parties to the application in the proportions agreed between themselves or, if they cannot agree, in equal shares.

96 Restriction on evidence

Evidence of anything said or done in the course of a conference is inadmissible in other proceedings under this Part or before a court, except with the consent of all parties to the proceedings.

97 Confidentiality

A conciliator must not disclose to another person, including the Commissioner, information obtained in the course of the conference, except with the consent of all parties to the conference or in the course of his or her duties under this Act.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

Division 4 Inquiries

98 When inquiries may be conducted

(1) An inquiry may be conducted in respect of an application only if the retail tenancy claim has not been settled between the parties at or after a conference.

(2) An inquiry is not to be conducted in respect of an application relating to a monetary claim if the value of the claim exceeds 15 000 monetary units.

99 Procedures generally

(1) Inquiries are to be conducted with the minimum of formality.

(2) The Hearing Commissioner is not bound by evidentiary rules when conducting an inquiry but may inform himself or herself as he or she thinks fit.

(3) Unless the Hearing Commissioner orders otherwise, an inquiry is to be open to the public.

100 Powers to gather evidence

(1) The Hearing Commissioner may do any of the following in relation to an inquiry:

(a) by summons, require a person to attend before him or her;

(b) by summons, require the production of books, papers or documents;

(c) inspect books, papers or documents produced before him or her, retain them for a reasonable period and make copies of them or of their contents;

(d) require a person appearing before the Commissioner to give evidence on oath;

(e) require a person appearing before the Hearing Commissioner, whether summoned to appear or not, to answer relevant questions put by the Hearing Commissioner or another person appearing at the inquiry.

(2) A person must not:

(a) without reasonable excuse, fail to comply with a summons under subsection (1); or

(b) refuse or fail to comply with a requirement of a Hearing Commissioner under subsection (1).

Maximum penalty: 100 penalty units or imprisonment for 6 months.

101 Powers at inquiry

The Hearing Commissioner may do any of the following for an inquiry:

(a) hear the application in the manner the Hearing Commissioner thinks fit;

(b) decline to consider the application or adjourn the inquiry until conditions fixed by the Hearing Commissioner are fulfilled, with a view to promoting the settlement of matters in dispute between the parties;

(c) decline to consider the application if the Hearing Commissioner thinks it is frivolous or vexatious;

(d) proceed to hear and determine the application in the absence of a party;

(e) extend a period prescribed by or under this Act within which the application or other step in respect of proceedings is to be made or taken, whether or not the period has expired;

(f) adjourn the inquiry to a time or place or to a time and place to be fixed;

(g) allow the amendment of the application;

(h) hear the application jointly with another application;

(i) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;

(j) generally give directions and do all things the Hearing Commissioner thinks necessary or expedient in the proceedings.

102 Orders at inquiry

(1) At an inquiry, the Hearing Commissioner may make any one or more of the following orders that he or she considers appropriate:

(a) an order that a party to the application:

(i) pay money to a person specified in the order, whether by way of debt, damages, compensation or restitution; or

(ii) refund money paid by a specified person;

(b) an order that:

(i) a specified amount of money is not due or owing by a party to the application to a specified person; or

(ii) a party to the application is not entitled to a refund of any money paid to another party to the proceedings;

(c) an order that a party to the application:

(i) do specified work or perform a specified service or obligation arising under this Act or the terms of a lease; or

(ii) surrender possession of specified premises to another person; or

(iii) assign his or her or its rights under a lease to a specified person; or

(iv) do or perform, or refrain from doing or performing, a specified act, matter or thing;

(d) an order, by consent of the parties, requiring the parties to the proceedings to rectify a lease;

(e) an order:

(i) that a lease is invalid or a provision in a lease is void for inconsistency with this Act or the Regulations; or

(ii) that a landlord is not entitled to withhold consent to an assignment of the rights of a tenant; or

(iii) relating to the rights and liabilities of the parties under law, whether or not consequential relief is or could be claimed;

(f) an order, in the nature of an interlocutory order of a kind mentioned in paragraphs (a) to (e), that the person thinks proper to be made to resolve or assist resolution of the retail tenancy claim.

(2) The Hearing Commissioner may do either or both of the following:

(a) make the ancillary orders he or she thinks necessary to enable an order under this section to have full effect;

(b) impose on an order conditions he or she considers appropriate.

103 Reasons for decisions

The Hearing Commissioner must state in writing the reasons for an order made during or at the completion of the inquiry.

Division 5 Retail tenancy claims that may proceed to court

104 Certificate of failure to resolve retail tenancy claim

(1) If, at any time after a preliminary conciliation conference has been held in respect of an application but before an inquiry has been commenced, the Commissioner is satisfied that:

(a) the parties have failed to resolve the retail tenancy claim and are unlikely to do so; and

(b) the retail tenancy claim is within a court's jurisdiction mentioned in section 105;

the Commissioner must issue a certificate to each party.

(2) The certificate is to be in the form prescribed by the Regulations.

(3) Without limiting subsection (1)(b), the Commissioner is entitled to determine that the parties are unlikely to resolve the retail tenancy claim if one or more parties to the application has refused to take part in or has withdrawn from a conference.

(4) When a certificate is issued in respect of an application, no further proceedings relating to that application are to be held under this Part but a party to the application is entitled to commence a proceeding in a court of competent jurisdiction.

105 Jurisdiction of courts to hear unresolved retail tenancy claims

(1) The Local Court has jurisdiction to hear and determine retail tenancy claims in respect of any disputed matter.

Note for subsection (1)

Section 12 of the Local Court Act 2015 sets the jurisdictional limit of the Local Court's civil jurisdiction at $250 000.

(2) The Supreme Court has jurisdiction to hear and determine retail tenancy claims that relate to a monetary amount in excess of $200 000.

(3) The Supreme Court or Local Court must not hear and determine a claim mentioned in this section unless a certificate has been issued in respect of the claim.

106 Powers of court hearing unresolved retail tenancy claim

A court in which proceedings are brought in accordance with this Act may exercise the powers of the Hearing Commissioner under Division 4 in addition to any other powers it may have.

107 No legal costs if plaintiff awarded less than 15 000 monetary units by court

If the plaintiff in proceedings brought in a court in accordance with this Act recovers less than 15 000 monetary units, the plaintiff is not entitled to costs unless the court is satisfied that there were reasonable grounds for the plaintiff to believe that the plaintiff was entitled to 15 000 monetary units or more.

Division 6 Powers of Commissioner

108 Entry and inspection of property

(1) The Commissioner may:

(a) enter land or a building; or

(b) authorise, in writing, a person to enter land or a building.

(2) The Commissioner or a person authorised under subsection (1) may do any of the following:

(a) carry out an inspection the Commissioner considers relevant to proceedings;

(b) take photographs, including video recordings, or make sketches or other records of land or a building or things on or in land or a building;

(c) inspect and take copies of a document as defined in Part 1 of the Dictionary at the end of the *Evidence (National Uniform Legislation) Act 2011*; or

(d) open a container, cupboard, box, package or carton to inspect the contents;

(e) ask questions of a person on the land or request him or her to provide assistance in carrying out an investigation of the land or building.

(3) The Commissioner must take reasonable steps to ensure that:

(a) at least 24 hours notice of a proposed inspection under subsection (1) is given to the landlord and the tenant; and

(b) an inspection carried out under subsection (1) takes place at a time and in circumstances that are as convenient as practicable for the Commissioner, the landlord and the tenant.

(4) A person must not obstruct the Commissioner or a person authorised by the Commissioner in exercising a power of entry or inspection under this Act.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

Division 7 Retail tenancy proceedings generally

109 Place and time of proceedings

Proceedings may be conducted at any place and at any time, including a day that is not a business day.

110 Duty to act quickly

The Commissioner must ensure that proceedings in relation to an application are concluded within 28 days after receipt of the application by the Commissioner or as soon after that as is reasonably practicable.

111 Representation of parties

(1) A party may be represented in proceedings by a legal practitioner.

(2) A person may be represented in proceedings by a person other than a legal practitioner if:

(a) the party is a body corporate and the representative is an officer or employee of the body corporate; or

(b) the party is a landlord and the representative is an agent appointed by the landlord to manage the premises on the landlord's behalf and the Commissioner is satisfied that it will not unfairly disadvantage an unrepresented party; or

(c) all parties to the proceedings agree to the representation and the Commissioner is satisfied that:

(i) it will not unfairly disadvantage an unrepresented party; or

(ii) if appropriate information or assistance or both were to be provided by the Commissioner to the unrepresented party, that party would not be unfairly disadvantaged; or

(d) the Commissioner is satisfied that the party is unable to present the party's case properly without the assistance of the person.

112 Payment of lawyers, translators etc.

A person must not ask for or receive a fee for representing a party in an application unless the person is:

(a) a translator or interpreter and the fees relate to work as a translator or interpreter; or

(b) a legal practitioner; or

(c) an articled clerk employed by a legal practitioner; or

(d) an officer or employee of a body corporate who represented the body corporate in the proceedings; or

(e) an agent as defined in section 5(1) of the *Agents Licensing Act 1979* acting on behalf of a landlord.

Maximum penalty: 20 penalty units.

113 Costs not generally to be ordered

(1) Subject to subsection (2), a conciliator or Hearing Commissioner must not make an order requiring a party to the application to pay an amount by way of costs.

(2) If at an inquiry the Hearing Commissioner is of the opinion that the application is frivolous or vexatious or brought otherwise than in good faith, he or she may order the applicant to pay an amount by way of costs to another person appearing at the inquiry.

(3) The person in whose favour an order is made under subsection (2) may recover the amount specified in the order from the applicant as a debt due and payable.

114 Interest may be awarded

(1) If a conciliator or Hearing Commissioner makes an order that a person pay money to another person, the order may include, in the amount ordered to be paid, interest at a specified rate on the whole or a part of that amount for the whole or a part of the period between when the liability or obligation in question arose and when the order takes effect.

(2) If the whole or part of an amount claimed in an application is paid during proceedings:

(a) before an order is made for payment in respect of the claim; or

(b) without an order being made for payment in respect of the claim;

an order may be made that interest be paid at a specified rate on the whole or a part of the money paid for the whole or a part of the period between when the liability or obligation in question arose and the date of the payment.

(3) The rate of interest to be paid under this section is not to exceed the rate at which interest is payable on a judgment debt of the Local Court.

(4) This section does not:

(a) authorise the giving of interest on interest; or

(b) apply in relation to any debt on which interest is payable as of right whether because of any agreement or otherwise.

(5) On a claim for the payment of money, no order is to be made for the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of the order.

(6) For subsection (5), an appropriate settlement sum is a sum offered by a party in settlement of a claim for the payment of money where the amount ordered to be paid (including interest accrued up to and including the date of the offer) is not more than 10% of the sum offered.

(7) Subsection (5) does not prevent an order for the payment of interest for the period before the settlement offer is made.

115 Contempt

(1) A person must not:

(a) during proceedings, insult the conciliator or Hearing Commissioner; or

(b) interrupt proceedings; or

(c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where proceedings are being conducted.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) If a person has, in the opinion of the conciliator or Hearing Commissioner, committed an offence against this section during proceedings, the conciliator or Hearing Commissioner may eject the person from the proceedings.

(3) A person ejected from proceedings under subsection (2) must not return to the proceedings from which he or she was ejected.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

116 Enforcement of orders

(1) A registrar of the Local Court may, on the application of the Commissioner or a party to an application to which an order under this Part relates, register the order as an order of the Local Court.

(2) An order that is registered under this section is taken to be an order of the Local Court and may be enforced accordingly.

117 Procedural rules

The Commissioner may make rules relevant to the practice and procedure relating to proceedings or to assist in the effective and efficient handling of applications.

Part 12 Appeals relating to retail shop leases

118 Definition

In this Part:

retail tenancy order means an order made under Part 11.

119 Appeal may be made to Local Court

(1) A party to an application under Part 11 may appeal to the Local Court against a retail tenancy order made in respect of that application.

(2) An appeal against a retail tenancy order is to be an appeal de novo.

(3) In an appeal, the Local Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

(4) In an appeal, the Local Court may do one or more of the following:

(a) confirm, vary or quash the retail tenancy order;

(b) make an order that should have been made in the first instance by the person who made the retail tenancy order;

(c) make incidental and ancillary orders.

(5) Subject to subsection (6), an application for appeal may be lodged:

(a) before 14 days after the date of the order, determination or decision appealed against, unless the Local Court allows an extension of time; or

(b) if the person who made the retail tenancy order does not give reasons for the order at the time of making it – within 14 days after the parties are given the reasons.

(6) If the reasons of the person who made the retail tenancy order are not given in writing at the time of making the order, and the appellant then requests that person to state the reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

(7) This section does not prevent the Supreme Court from hearing an appeal against a decision of the Local Court under this Act.

120 Notice of appeal to be given to Commissioner

(1) If the Local Court receives a notice of appeal under this Part, a copy of the notice is to be sent to the Commissioner by a registrar of the Local Court.

(2) If the Commissioner receives a copy of a notice of appeal under this Part, the person who made the order must provide to the Local Court all information in his or her possession relating to the retail tenancy order other than matters to which section 96 relates.

121 Stay of proceedings

(1) If a retail tenancy order has been made and a court or the Commissioner is satisfied that an appeal against the order has been commenced, the court or the Commissioner may suspend the operation of the retail tenancy order until the determination of the appeal.

(2) If the Commissioner suspends the operation of a retail tenancy order, the Commissioner may terminate the suspension.

(3) If a court or the Commissioner suspends the operation of a retail tenancy order, the court may terminate the suspension.

Part 13 Business tenancies generally

Division 1 Interpretation

122 Interpretation

In this Part:

rent means the amount of money payable under a business lease for the right to occupy or use business premises, or business premises and goods, for a period of time and includes any rates or taxes payable by the tenant but, where in the business lease:

(a) it is provided that a reduced amount may be accepted by the landlord as rent upon the performance of a condition by the tenant; or

(b) provision is made for a rebate, discount, allowance or other reduction of rent;

the amount payable after such reduction is made is, for this Part, taken to be the rent payable under the lease.

tenant includes a person who remains in possession of business premises after determination of a lease of those premises to him or her and the word "landlord" is used correlatively.

Division 2 Repossession of business premises

123 Definitions

In this Division:

landlord means the party to a business lease who makes premises available for occupation by a tenant or who, being an owner of business premises, permits a person to occupy those premises in exchange for rent.

tenant includes a person in possession of business premises under an assignment of a lease or a sublease where the assignment or the grant of a sublease has been made or given without the consent of the landlord and that consent was required under the terms of the lease whether expressed or implied.

124 No entry without order

A person must not, except in accordance with an order of a court, enter business premises of which a person has possession as a tenant under a business lease, or as a former tenant holding over after termination of a business lease, for the purpose of recovering possession of the premises, whether entry is effected peaceably or otherwise.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

125 Notice to quit to be in writing

A notice to quit given by a landlord is to be in writing and signed by the landlord or the landlord's agent authorised in writing.

126 Landlord may evict tenant if drug premises order made

A landlord of business premises that are drug premises as defined in section 11A of the *Misuse of Drugs Act 1990* may issue a notice to quit in accordance with section 125 requiring the tenant to give up vacant possession of the business premises within 14 days.

127 Expiry of notice

(1) A notice to quit given by a landlord and a notice of intention to quit given by a tenant may expire at any time specified in the notice if the period of notice required by this Division is given, despite the

fact that the expiry of the period of the notice does not coincide with a day before a rent day or a day before the last day of the tenancy.

(2) A notice of intention to quit given by a tenant is to be for:

(a) the period as agreed between the parties to the lease; or

(b) if no agreement is reached under paragraph (a):

(i) if the lease is for a fixed term – the unexpired duration of the term; or

(ii) in any other case – 14 days.

128 Certain matters not to affect notice

Where notice to quit premises has been given:

(a) a demand by the landlord for payment of rent or a sum of money as rent; or

(b) the institution of proceedings by the landlord for recovery of rent or a sum of money as rent; or

(c) the acceptance by the landlord of rent or a sum of money as rent;

in respect of a period within 6 months after the giving of the notice does not, of itself, constitute evidence of a tenancy or operate as a waiver of the notice to quit.

129 Defective notice

A notice to quit which does not comply with the provisions of this Division does not operate so as to terminate the tenancy in respect of which the notice was given.

130 Notice to quit business premises

(1) Subject to a term of the business lease, a landlord is not required to specify in the notice to quit a ground for the giving of notice in respect of a periodical tenancy.

(2) Subject to the terms of the business lease, if the lease was granted for a fixed term the landlord must specify as a ground for the giving of a notice to quit:

(a) that the tenant has breached or failed to comply with a provision of the lease and that the breach or failure to comply was such that the landlord was justified as treating the lease as at an end; or

(b) that the term of the lease has expired.

(3) The period of a notice to quit premises is the period fixed by the lease or, where the rent is payable at regular intervals, the period of one such interval.

131 Application for warrant of ejectment

(1) Where a landlord has given to a tenant a notice to quit which complies with this Division, the landlord or an agent authorised in writing may, at any time within 60 days after the expiry of the term of the notice, apply to the Local Court for a warrant of possession.

(2) The Court must specify the day on which an order for the issue of a warrant of possession takes effect.

132 Court may make orders for outstanding rent etc.

The Court may, in making an order under this Division, make further orders as to payment of any outstanding rent or damage to business premises or goods leased with business premises that may be established by the landlord.

Division 2A Alternative dispute resolution

132A Application of Division

This Division applies if, during the emergency period, an application is made to the Local Court for a warrant of possession of business premises.

132B Referral to NTCAT

(1) Before hearing and determining the application, the Local Court must refer the matter to NTCAT for alternative dispute resolution.

(2) Despite subsection (1), if the Local Court is satisfied there are exceptional circumstances, the Local Court may proceed to hear and determine the application without referring the matter to NTCAT.

(3) NTCAT must deal with a matter referred to it in accordance with subsection (1) under Part 4, Division 4 of the *Northern Territory Civil and Administrative Tribunal Act 2014* as if the matter were a proceeding in NTCAT's original jurisdiction.

132C Alternative mediation or conciliation

(1) Despite section 132B(1), if the Local Court is satisfied that the parties prefer to arrange their own mediation or conciliation without involving NTCAT, and that such a course is appropriate, the Local Court may adjourn the hearing of an application to allow the mediation or conciliation to take place.

(2) A mediator or conciliator engaged by the parties as mentioned in subsection (1) must advise the Local Court:

(a) of the date that the mediation or conciliation concluded; and

(b) whether the mediation or conciliation was successful or unsuccessful.

(3) If mediation or conciliation in accordance with this section is successful, the application for a warrant of possession is taken to be withdrawn.

132D Alternative dispute resolution successful

NTCAT must notify the Local Court if the parties agree to a settlement in alternative dispute resolution before NTCAT, and the application for a warrant of possession is taken to be withdrawn.

132E Alternative dispute resolution unsuccessful

(1) NTCAT must advise the Local Court that a resolution has not been achieved if:

(a) NTCAT is satisfied that the applicant has participated in good faith in alternative dispute resolution before NTCAT, but a settlement could not be reached; or

(b) a settlement is not reached within 60 days after the Local Court referred the matter to NTCAT under section 132B.

(2) If the Local Court is considering the matter of costs in a proceeding, the court may request from NTCAT a report on the conduct of the parties in alternative dispute resolution proceedings before NTCAT.

Division 2B Offences in relation to negotiations during emergency period

132F Misrepresentation

A person commits an offence if:

(a) the person is a party to negotiations between a landlord and a tenant or is acting on behalf of such a party; and

(b) the negotiations take place during the emergency period; and

(c) the negotiations seek to adjust the terms of an arrangement for the occupation of premises for business purposes; and

(d) the person intentionally or recklessly misrepresents the financial situation of the party in the course of the negotiations.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

132G Unauthorised disclosure of information

(1) A person commits an offence if:

(a) the person is a party to negotiations between a landlord and a tenant or is acting on behalf of such a party; and

(b) the negotiations take place during the emergency period; and

(c) the negotiations seek to adjust the terms of an arrangement for the occupation of premises for business purposes; and

(d) the person intentionally or recklessly discloses information about the other party's financial situation that was obtained in the course of the negotiations.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

(2) A person does not commit an offence against subsection (1) if:

(a) the disclosure is:

(i) necessary for the administration of this Act; or

(ii) for a legal proceeding; or

(iii) for obtaining legal advice from a legal practitioner; or

(iv) to report suspected illegal conduct to a government organisation with responsibility for investigating that kind of illegal conduct; or

(v) with the consent of the other party; or

(b) the person has knowledge of the information independently from obtaining the information in the course of the negotiations.

(3) For subsection (1), it is immaterial whether the disclosure was made during, or after, the emergency period.

Division 3 Miscellaneous matters

133 Tenant's right of association

(1) A provision of a business lease is void to the extent that it has the effect of preventing or restricting the tenant from joining, forming or taking part in any activities of a tenants association or other similar body or of penalising the tenant in any way for doing so.

(2) A landlord must not:

(a) refuse to renew a business lease (whether or not the right to renew was a condition of the lease) for the reason that the tenant has joined or is or was a member of a body or association of persons the objects of which include the mutual advancement of their business interests, whether in relation to the business carried on at the business premises to which the lease relates or elsewhere; or

(b) purport to exercise a power or right to terminate a business lease for the reason that the tenant has joined or is or was a member of a body or an association mentioned in paragraph (a); or

(c) threaten or otherwise indicate that he or she will refuse to renew a business lease if the tenant joins or becomes a member of a body or an association mentioned in paragraph (a).

Maximum penalty: 1 000 penalty units.

134 Mitigation of damages for breach of lease

The rules under the law of contract relating to mitigation of loss or damage upon breach of a contract apply in relation to a breach of a business lease.

Part 14 Miscellaneous matters

135 Service of notices

Unless otherwise provided by or under this Act, a notice required by or under this Act to be given to a person may be delivered personally to the person or sent by post addressed:

(a) if the person is an individual – to the person's last-known place of business or residence; or

(b) if the person is a body corporate:

(i) that is a company as defined in section 9 of the Corporations Act 2001 – by serving a document in accordance with section 109X of that Act; or

(ii) that is a registered body as defined in section 9 of the Corporations Act 2001 – by serving a document in accordance with section 601CX of that Act.

136 Notice to one landlord or tenant sufficient

If 2 or more persons are the landlords or tenants under a business lease, a notice or other document is duly given if given to any one of them.

137 Notice or payment to landlord's agent sufficient

If under this Act a tenant is required to give notice or a document to a landlord or to pay money to a landlord, it is sufficient if the tenant:

(a) gives notice or the document to, or pays the money to, the landlord's agent; or

(b) if the tenant has no notice of a new landlord – gives notice or the document to, or pays the money to, the last-known landlord.

138 Extension of term of retail shop lease – effect on *Land Title Act 2000*

(1) The extension of the term of a retail shop lease by operation of a provision of this Act is of no effect for the *Land Title Act 2000* unless and until a lease is registered under that Act which gives effect to the extension of the term, or the variation of a lease that is already registered under that Act is registered to give effect to the extension of the term.

(2) The Registrar-General is not bound to inquire into or to recognise an increase or alleged increase in the term of a retail shop lease by operation of a provision of this Act.

(3) The landlord under a retail shop lease, the term of which is extended by operation of a provision of this Act, is bound, at the request of the tenant:

(a) to execute a lease in the approved form for the *Land Title Act 2000* to enable registration of the lease under that Act (with its term so extended) if the lease is not already so registered; and

(b) to enter into the variation of the lease that may be necessary to give effect to the extension of term if the lease is already registered under that Act, and to obtain all necessary consents, for the registration under that Act of the variation of lease.

139 Meaning of *the Act* in retail shop leases

A reference in a retail shop lease to ***the Act*** is taken to be a reference to this Act, except in so far as the context or subject matter otherwise indicates or requires.

140 Commissioner may intervene in court proceedings

(1) The Commissioner may intervene in proceedings before a court arising under this Act.

(2) If the Commissioner intervenes in proceedings, the Commissioner becomes a party to the proceedings and has all the rights, including rights of appeal, of a party to the proceedings.

141 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may provide for the following matters:

(a) a penalty of not more than 100 penalty units for an offence against the Regulations;

(b) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations;

(c) the service of an infringement notice in respect of payment of a prescribed amount on a person alleged to have committed an offence mentioned in paragraph (b) and the particulars to be included in that notice.

142 Repeal

The Acts specified in the Schedule are repealed.

143 Savings and transitional regulations

(1) The Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) The Regulations may provide that a provision mentioned in subsection (1) takes effect from the date of assent to this Act or from a later date.

(3) To the extent to which a provision mentioned in subsection (1) takes effect from a date that is earlier than the date on which notice of the making of the Regulations is published in the *Gazette*, the provision does not operate so as to:

(a) affect, in a manner prejudicial to a person (other than the Territory or an authority of the Territory), the rights of that person existing before the date on which the notice is published; or

(b) impose liabilities on a person (other than the Territory or an authority of the Territory) in respect of anything done or omitted to be done before the date on which the notice is published.

144 Review of Act

(1) The Minister must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after 7 years after the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in the Assembly within 12 months after the end of the period of 7 years.

Schedule Repealed Acts

Section 142

Tenancy Act 1979	No. 43, 1979
Tenancy Act (No. 2) 1979	No. 131, 1979
Tenancy Amendment Act 1982	No. 19, 1982
Tenancy Amendment Act (No. 2) 1982	No. 37, 1982
Tenancy Amendment Act 1983	No. 37, 1983

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Business Tenancies (Fair Dealings) Act 2003* (Act No. 55, 2003)**

Assent date	22 October 2003
Commenced	1 July 2004 (*Gaz* G9, 3 March 2004, p 5)

***Justice Legislation Amendment Act 2007* (Act No. 5, 2007)**

Assent date	24 April 2007
Commenced	s 37 (ex amd of Criminal Code and *Legal Profession Act 2006*): 1 May 2007 (s 2(1), s 2 *Victims of Crime Assistance Act 2006* (Act No. 15, 2006) and *Gaz* G17, 26 April 2007, p 7); rem: 24 April 2007

***Legal Profession (Consequential Amendments) Act 2007* (Act No. 7, 2007)**

Assent date	17 May 2007
Commenced	s 10: 1 July 2007 (*Gaz* G26, 27 June 2007, p 3); rem: 17 May 2007

***Unit Title Schemes Act 2009* (Act No. 14, 2009)**

Assent date	26 May 2009
Commenced	pt 2.3, div 3, sdv 4 and s 135 (to ext ins s 54C): 1 January 2010; s 111: 1 July 2010; rem: 1 July 2009 (s 2, *Gaz* S30, 26 June 2009, p 1, s 2 *Land Title and Related Legislation Amendment Act 2008* (Act No. 3, 2008) and *Gaz* S30, 26 June 2009, p 1)

***Justice Legislation Amendment (Penalties) Act 2010* (Act No. 12, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

***Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010* (Act No. 41, 2010)**

Assent date	8 December 2010
Commenced	1 January 2011 (*Gaz* S71, 20 December 2010)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 **(Act No. 40, 2010)**

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

Justice and Other Legislation Amendment Act 2011 **(Act No. 25, 2011)**

Assent date	31 August 2011
Commenced	21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

Statute Law Revision Act 2011 **(Act No. 30, 2011)**

Assent date	31 August 2011
Commenced	21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012 **(Act No. 23, 2012)**

Assent date	21 November 2012
Commenced	1 January 2013 (*Gaz* G51, 19 December 2012, p 4)

Local Government Amendment Act 2014 **(Act No. 19, 2014)**

Assent date	2 June 2014
Commenced	s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014, (s 2)

Local Court (Related Amendments) Act 2016 **(Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

Tenancies Legislation Amendment Act 2020 **(Act No. 15, 2020)**

Assent date	24 April 2020
Commenced	25 April 2020 (s 2)

Justice and Licensing Legislation Amendment Act 2022 **(Act No. 6, 2022)**

Assent date	14 April 2022
Commenced	pt 6: 1 May 2022; rem: 1 July 2022 (Gaz S17, 27 April 2022)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 5, 12, 14, 16, 25, 63, 105, 108, 112, 126 and 138.

4 LIST OF AMENDMENTS

pt 1 hdg	amd No. 30, 2011, s 3
s 3	amd No. 30, 2011, s 3
s 5	amd No. 14, 2009, s 123; No. 30, 2011, s 3; No. 25, 2011,s 6; No. 19, 2014, s 26; No. 15, 2020, s 4
s 6	amd No. 5, 2007, s 8; No. 30, 2011, s 3
ss 7 – 8	amd No. 30, 2011, s 3
ss 10 – 11	amd No. 30, 2011, s 3

pt 1A hdg	ins No. 15, 2020, s 5
ss 11A – 11H	ins No. 15, 2020, s 5
s 12	amd No. 30, 2011, s 3
ss 15 – 16	amd No. 30, 2011, s 3
s 17	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 18	amd No. 30, 2011, s 3
s 19	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 21	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 23	amd No. 30, 2011, s 3
s 24	amd No. 12, 2010, s 3; No. 30, 2011, s 3; No. 25, 2011,s 7
s 26	amd No. 30, 2011, s 3
ss 28 – 30	amd No. 30, 2011, s 3
s 31	amd No. 12, 2010, s 3
s 32	amd No. 30, 2011, s 3
s 35	amd No. 30, 2011, s 3
s 36	amd No. 12, 2010, s 3; No. 6, 2022, s 18
ss 38 – 41	amd No. 30, 2011, s 3
s 43	amd No. 30, 2011, s 3
s 47	amd No. 30, 2011, s 3; No. 19, 2014, s 26
s 48 – 50	amd No. 30, 2011, s 3
s 53	amd No. 30, 2011, s 3
s 54	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 55	amd No. 30, 2011, s 3
ss 59 – 60	amd No. 30, 2011, s 3
s 61	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 63	amd No. 30, 2011, s 3
s 64	amd No. 12, 2010, s 3; No. 30, 2011, s 3; No. 25, 2011,s 8
s 66	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 72	amd No. 30, 2011, s 3
s 75	amd No. 30, 2011, s 3
s 76	amd No. 41, 2010, s 30
s 77	amd No. 30, 2011, s 3
ss 79 – 81	amd No. 30, 2011, s 3
pt 11	
div 1 hdg	amd No. 30, 2011, s 3
ss 82 – 84	amd No. 30, 2011, s 3
ss 86 – 87	amd No. 30, 2011, s 3
s 89	amd No. 7, 2007, s 16; No. 30, 2011, s 3
ss 92 – 94	amd No. 30, 2011, s 3
s 97	amd No. 12, 2010, s 3
s 98	amd No. 6, 2022, s 18
s 100	amd No. 12, 2010, s 3; No. 40, 2010, s 118; No. 30, 2011, s 3
ss 101 – 102	amd No. 30, 2011, s 3
s 104	amd No. 30, 2011, s 3
s 105	amd No. 30, 2011, s 3; No. 8, 2016, s 45; No. 15, 2020, s 6
s 107	amd No. 6, 2022, s 18
s 108	amd No. 12, 2010, s 3; No. 30, 2011, s 3; No. 23, 2012, s 32
s 111	amd No. 7, 2007, s 16; No. 30, 2011, s 3
s 112	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 114	amd No. 30, 2011, s 3
s 115	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 116	amd No. 30, 2011, s 3; No. 8, 2016, s 45
s 120	amd No. 8, 2016, s 45
ss 122 – 123	amd No. 30, 2011, s 3
s 124	amd No. 12, 2010, s 3
s 126	amd No. 30, 2011, s 3
s 128	amd No. 30, 2011, s 3

pt 13	
div 1 hdg	amd No. 30, 2011, s 3
pt 13	
div 2A hdg	ins No. 15, 2020, s 7
ss 132A –	
132E	ins No. 15, 2020, s 7
pt 13	
div 2B hdg	ins No. 15, 2020, s 7
ss 132F –	
132G	ins No. 15, 2020, s 7
s 133	amd No. 12, 2010, s 3; No. 30, 2011, s 3
pt 14 hdg	amd No. 30, 2011, s 3
s 135	amd No. 30, 2011, s 3
s 138	amd No. 30, 2011, s 3
s 141	amd No. 30, 2011, s 3
s 143	amd No. 30, 2011, s 3