

WESTERN AUSTRALIA

**COMMERCIAL TENANCY
(RETAIL SHOPS) AGREEMENTS
AMENDMENT ACT 1998**

No. 66 of 1998

AN ACT to amend the *Commercial Tenancy (Retail Shops) Agreements Act 1985* and for related purposes.

[Assented 15 January 1999.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Commercial Tenancy (Retail Shops) Agreements Amendment Act 1998*.

Commencement

2. This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act, the *Commercial Tenancy (Retail Shops) Agreements Act 1985** is referred to as the principal Act.

[* Reprinted as at 27 September 1991.]

Section 3 amended

4. (1) Section 3 (1) of the principal Act is amended —

(a) by deleting the definition of “accountant” and substituting the following definition —

“ **“accountant”** means a member of —

- (a) The Institute of Chartered Accountants in Australia;
- (b) The Australian Society of Certified Practising Accountants; or
- (c) The National Institute of Accountants;

”;

(b) by deleting the definition of “key-money” and substituting the following definition —

“ **“key-money”** means —

- (a) money that is to be paid by, or at the request or direction of, a tenant; or

- (b) any benefit that is to be conferred by, or at the request or direction of, a tenant,

by way of a premium or something of a like nature in consideration of the granting of, or agreeing to grant, a lease or the renewal of a lease or the consenting to an assignment of a lease or the sub-leasing of the premises the subject of a lease;

”;

- (c) in the definition of “retail shop lease” by deleting paragraph (a) and “or” at the end of that paragraph and substituting the following —

“

- (a) the total retail floor area to which that lease applies (including, in the case of a building with 2 or more floor levels, the area of every floor level or part thereof to which that lease applies) exceeds 1 000 square metres; or

”;

- (d) by deleting the definition of “retail shopping centre” and substituting the following definition —

“

“retail shopping centre” means a cluster of premises —

- (a) 5 or more of which are used wholly or predominantly for the carrying on of —

- (i) a business involving the sale of goods by retail; or
(ii) a specified business;

and

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(b) all of which —

- (i) have, or upon being leased would have, a common head lessor; or
- (ii) comprise lots on a single strata plan under the *Strata Titles Act 1985*,

whether the premises are in a single storey building or a multi-level building;

”;

and

(e) by inserting in the appropriate alphabetical positions the following definitions —

“**“accounting year”** in relation to a lease, means the accounting year specified in the lease or, if not so specified, a financial year;

“management fees” means fees in respect of costs for or incidental to the collection of rent or other moneys or the management of premises including, but not limited to, such of those costs —

(a) in respect of —

- (i) management offices;
- (ii) plant and equipment;
- (iii) staff;

and

(b) as are of a kind prescribed;

“retail floor area”, in relation to a retail shop, means the floor area of the retail shop designed and available for use for the carrying on of business in the retail shop;

“total lettable area”, in relation to a retail shopping centre, means the aggregate of the retail floor areas of the retail shops (or areas set aside for retail shops) in the retail shopping centre;

”.

(2) Section 3 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) A reference in this Act to a question arising under a retail shop lease includes a reference to —

- (a) a question whether or not a lease exists or has existed;
- (b) a question whether or not a lease is or was a retail shop lease;
- (c) a question arising —
 - (i) in relation to any communication, including a disclosure statement under section 6, between the parties to the retail shop lease, prior to their entry into the retail shop lease, which communication was material to the terms and conditions of the retail shop lease; or
 - (ii) in relation to the retail shop lease under a provision of this Act;

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- (d) a matter that is in dispute between the landlord and the tenant under section 12 in relation to —
 - (i) operating expenses of the landlord under the retail shop lease generally;
 - (ii) an allocation made under section 12 (1) (b) of the proportion of those operating expenses; or
 - (iii) a determination of the relevant proportion for the purposes of section 12;

or

- (e) any other matter that is in dispute between the landlord and the tenant in connection with the retail shop lease, whether or not that matter is dealt with by the provisions of the retail shop lease.

”.

Section 6A inserted

5. After section 6 of the principal Act the following section is inserted —

“

Tenant guide

6A. (1) Where a retail shop lease is entered into and the retail shop lease does not incorporate a tenant guide in accordance with subsection (4), the tenant may, in addition to exercising any other right, do either or both of the following —

- (a) within 60 days after the lease was entered into, give to the landlord written notice of termination of the lease;

- (b) apply in writing to the Tribunal for an order that the landlord pay compensation to the tenant in respect of pecuniary loss suffered by the tenant as a result of the failure to incorporate the tenant guide in the retail shop lease in accordance with subsection (4).

(2) Where the tenant under a retail shop lease gives to the landlord a notice of termination under subsection (1) the lease terminates upon the expiry of a period of 14 days after the notice was given.

(3) In addition to exercising the tenant's rights under subsection (1) (b), the tenant may, after the expiry of the period referred to in subsection (1) (a), apply in writing to the Tribunal for an order that the retail shop lease be terminated.

(4) The tenant guide shall be in the prescribed form and located in the prescribed position in the retail shop lease.

(5) Where the tenant under a retail shop lease (in this subsection referred to as "**the outgoing tenant**") assigns the lease to another person (in this subsection referred to as "**the incoming tenant**"), nothing in this section gives to the incoming tenant a right to terminate the lease that the outgoing tenant would not have had if he or she had continued as the tenant under the lease.

(6) The tenant guide is not required to be included —

- (a) on the renewal of a retail shop lease under an option (including the option arising by reason of section 13 (1)); or
- (b) on the assignment of a retail shop lease.

”.

Section 10 amended

6. Section 10 (3) of the principal Act is repealed and the following subsections are substituted —

“

(3) A provision in a retail shop lease to the effect that the landlord may withhold consent to an assignment of the lease by a tenant unless the tenant or a guarantor of the tenant, agrees to pay any moneys that are payable under the lease by the person to whom it is proposed to assign the lease is void.

(4) A provision in a retail shop lease to the effect that the landlord or a person claiming through the landlord may recover from the assignor or from a guarantor of the assignor, any moneys that are payable under the lease by the tenant to whom the lease has been assigned is void.

(5) In this section —

“**assignor**” means a tenant who assigns a lease in accordance with this section;

“**guarantor**” means a person who has guaranteed the performance by a tenant of the tenant’s obligations under a retail shop lease or a person who has indemnified a landlord against any loss the landlord may incur as a result of the failure by a tenant to comply with those obligations;

“**moneys payable under the lease**” includes moneys recoverable by action under the lease.

”.

Section 11 amended

7. (1) Section 11 (1) of the principal Act is amended by deleting “the basis on which or the formula by which” and substituting the following —

“
 , in respect of each occasion on which the review is to be made, a single basis on which
”.

(2) Section 11 (2) of the principal Act is repealed and the following subsections are substituted —

- “
- (2) If a retail shop lease provides for the review during the currency of the retail shop lease of the amount of rent payable under the retail shop lease having regard to the market rent of the retail shop concerned —
- (a) that market rent shall, for that purpose, be taken to be the rent obtainable at the time of that review in a free and open market as if, all the relevant factors, matters or variables used in proper land valuation practice having been taken into account, that retail shop were vacant and to let on similar terms as are contained in the current retail shop lease;
 - (b) unless specific provision is made in the retail shop lease for the time at which a review may be initiated, a party to the retail shop lease may not more than 3 months before the date on which that review is to be carried out and not more than 6 months after that date, initiate the review by notice in writing served on the other party to the retail shop lease; and
- ”

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(c) a provision in the retail shop lease purporting to preclude the increase or reduction of that market rent or to limit the extent to which that market rent may be increased or reduced is void.

(2a) A provision in a retail shop lease purporting to preclude the tenant from voluntarily disclosing the rent under the lease is void.

”.

(3) After section 11 (3) of the principal Act the following subsection is inserted —

“

(3a) If the parties to a retail shop lease referred to in subsection (3) do not agree on the rent payable as a result of the review concerned, the rent payable immediately before that review shall not be increased or reduced before the question is resolved or determined under this section, but nothing in this subsection prevents any increase or reduction in rent which takes place after that resolution or determination from being due and payable with effect from the date of that review.

”.

(4) Section 11 (5) of the principal Act is amended by deleting “resolution” and substituting the following —

“ determination ”.

(5) After section 11 (5) of the principal Act the following subsections are inserted —

“

(6) In determining a question under subsection (5), the Registrar shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and shall not be bound by the rules of evidence, but may inform himself or herself on any matter in such manner as the Registrar thinks fit.

(7) For the purpose of determining a question under subsection (5) the Registrar may require the parties to furnish to the Registrar such valuations, documents or other information as the Registrar thinks fit and the parties shall comply with any such requirement.

(8) In determining a question under subsection (5) the Registrar, after considering all the circumstances of the case, may determine that any increase or reduction in rent payable as a result of the determination of the Registrar under that subsection is payable over such period as the Registrar thinks fit.

”.

Section 12 amended

8. (1) Section 12 (1) of the principal Act is repealed and the following subsections are substituted —

“

(1) If provision is made in a retail shop lease for payment by the tenant, in addition to rent, of all or any of the operating expenses of the landlord —

(a) the amount payable by the tenant under the retail shop lease is limited to the items of operating expenses that the retail shop lease specifies are to be paid wholly or in part by the tenant and does not include an amount in respect of which the retail shop lease does not specify both —

(i) how that amount is to be determined and, when applicable, apportioned to the tenant; and

(ii) how and when that amount is to be paid by the tenant;

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- (b) the proportion of those operating expenses payable by the tenant under the retail shop lease shall not be greater than the relevant proportion without the approval of the Registrar;
- (c) where —
 - (i) the premises the subject of the retail shop lease are adjacent to, or form a cluster with, one or more other premises which have or, on being leased, would have a common head lessor and are grouped together for the purpose of allocating to each of those premises a portion of operating expenses; and
 - (ii) any part of the operating expenses is expenditure incurred as a result of some only of the premises in the cluster being open outside the standard trading hours,

the retail shop lease shall be taken to provide that a tenant whose retail shop was not so open is not required to make any payment of, and the landlord is not entitled to recover, the expenditure referred to in subparagraph (ii); and

- (d) the retail shop lease shall be taken to provide that —
 - (i) the tenant is not required to make any payment of, and the landlord is not entitled to recover, any such operating expenses in respect of a year or part of a year until at least one month after the landlord has given to the tenant annual estimates of expenditure under each item of operating expenses in respect of the year; and

- (ii) the landlord is required to give to the tenant a written statement in accordance with subsection (1a) (an “**operating expenses statement**”) that details all expenditure by the landlord in each accounting period of the landlord during the term of the lease on account of operating expenses to which the tenant is required to contribute.

(1a) An operating expenses statement —

- (a) is to be given to the tenant within 3 months after the end of the accounting period to which it relates;
- (b) if the relevant retail shop is in a retail shopping centre, must include a statement of the current total lettable area of the retail shopping centre and details of any material change in that total lettable area during the period to which the statement relates;
- (c) is to be prepared in accordance with relevant principles and disclosure requirements of the applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time;
- (d) may be a composite statement (that is, it may relate to more than one tenant) if each tenant to which it relates is able to ascertain from the statement the information required by subsection (1) (d) (ii) that is relevant to that tenant; and
- (e) is to be accompanied by a report on the statement prepared by a registered company

auditor within the meaning of the Corporations Law which includes a statement by the auditor as to whether or not the operating expenses statement correctly states expenditure by the landlord during the accounting period concerned in respect of operating expenses to which the tenant is required to contribute, and as to whether or not the total amount of estimated operating expenses for that period (as shown in the estimate of operating expenses given to the tenant) exceeded the total actual expenditure by the landlord in respect of those operating expenses during that period.

(1b) The landlord shall bear half of the cost of an audit referred to in subsection (1a) (e) and the other half of that cost shall be borne by —

- (a) the tenant to whose premises that audit relates;
or
- (b) if there is more than one tenant to whose premises that audit relates, jointly in the relevant proportions.

(1c) An operating expenses statement is not required to be accompanied by an auditor's report if the statement does not relate to any operating expenses other than land tax (unless subsection (1g) applies), water, sewerage and drainage charges, local government rates and charges or insurance premiums and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the landlord referred to in subsection (1) (d) (ii).

(1d) If a landlord does not comply with the requirement referred to in subsection (1) (d) (ii), the tenant is not obliged to pay, and the landlord is not entitled to

recover, operating expenses from the date of that non-compliance until the landlord complies with that requirement.

(1e) A tenant under a retail shop lease in respect of premises in a retail shopping centre —

- (a) is not liable to contribute towards an operating expense of the landlord that is not specifically referable to any particular retail shop in the retail shopping centre unless the shop is one of the shops to which the operating expense is referable; and
- (b) is not liable to contribute an amount in excess of an amount calculated by multiplying the total amount of that operating expense by the proportion that the retail floor area of the shop bears to the aggregate of the retail floor areas of all the retail shops in the retail shopping centre to which the operating expense is referable.

(1f) If there is a provision in a retail shop lease in respect of any premises to the effect that the tenant is obliged to make a payment to or for the benefit of the landlord for management fees, the landlord is not entitled to recover, and the tenant is not obliged to make, that payment.

(1g) If provision is made in a retail shop lease for payment by the tenant of all or any of the land tax or metropolitan region improvement tax imposed in relation to the land on which the retail shop is situated it is a term of that retail shop lease that the tenant shall only be obliged to pay, and the landlord shall only be able to recover, whether directly or indirectly, from the tenant in relation to that land —

- (a) where the premises the subject of the retail shop lease comprise the whole of the land, the notional land tax imposed; and

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- (b) where the premises the subject of the retail shop lease do not comprise the whole of the land, the relevant proportion of the notional land tax imposed.

”.

(2) After section 12 (2) of the principal Act the following subsection is inserted —

“

- (3) In this section and section 12A —

“**land tax**” means tax imposed by the *Land Tax Act 1976*;

“**metropolitan region improvement tax**” means metropolitan region improvement tax under the *Metropolitan Region Town Planning Scheme Act 1959*;

“**notional land tax**” means land tax and metropolitan region improvement tax calculated on the basis that the land on which the tax is assessed is the only land of which the landlord is the owner within the meaning of that term in the *Land Tax Assessment Act 1976*;

“**operating expenses**”, in relation to a landlord, means expenses of the landlord in operating, repairing or maintaining —

- (a) a building of which a retail shop the subject of a retail shop lease to which the landlord is a party forms the whole or a part; or
- (b) if that retail shop is in a retail shopping centre, the building or buildings of which a retail shop the subject of a retail shop lease to which the landlord is a party forms the whole or a part and the common area,

and includes, if a strata titles levy is imposed on the landlord, that part of the levy which relates

to expenses of the landlord in operating, repairing or maintaining the building or buildings of which the retail shop forms part or that building or those buildings and the common area, as the case requires;

“referable”, in relation to an operating expense for a retail shop, means the retail shop enjoys or shares the benefit resulting from the operating expense;

“relevant proportion”, in relation to a retail shop, means —

- (a) where the retail shop is situated in a retail shopping centre, the proportion that the retail floor area of the retail shop bears to the total lettable area of the retail shopping centre at the commencement of the accounting year; or
- (b) where the retail shop is adjacent to, or forms a cluster with, one or more other premises which have or, on being leased, would have a common head lessor and are grouped together for the purpose of allocating to each of those premises a portion of an item of operating expenses, the proportion that the retail floor area of the retail shop bears to the total lettable area of the premises in the cluster at the commencement of the accounting year;

“standard trading hours” means the hours prescribed for the purposes of subsection (1) (c);

“strata titles levy” means a contribution levied under section 36 of the *Strata Titles Act 1985*.

”.

Sections 12A, 12B and 12C inserted

9. After section 12 of the principal Act the following sections are inserted —

“

Sinking funds

12A. (1) This section applies if provision is made in a retail shop lease in respect of premises in a retail shopping centre for payments to be made by the tenant into a sinking fund for repairs or maintenance or any similar purpose.

(2) The purpose of the sinking fund is to be specified in the retail shop lease.

(3) The lease shall be taken to provide that —

- (a) the landlord is to, as soon as practicable, pay amounts paid by the tenant for the credit of the sinking fund into one or more appropriately designated interest bearing accounts held by the landlord with a bank or society in the State;
- (b) the landlord may only apply amounts standing to the credit of the sinking fund and interest earned on the fund for —
 - (i) the purpose mentioned in subsection (2);
 - (ii) taxes and imposts payable on the fund;
 - (iii) the cost of an audit referred to in paragraph (c) (iii); and

- (iv) accounting, legal and other professional costs reasonably incurred in the preparation and approval of the scheme of repayment referred to in paragraph (e);
- (c) the landlord is to —
 - (i) keep full and accurate accounts of all money received or held by the landlord in respect of the sinking fund;
 - (ii) keep the accounts in such manner that they can be conveniently and properly audited;
 - (iii) at the end of each accounting year cause the accounts to be audited by an auditor who is a registered company auditor within the meaning of the Corporations Law; and
 - (iv) within 3 months after the end of each accounting year deliver a copy of that report to the tenant;
- (d) subject to subsection (5), the landlord is liable to pay into the sinking fund any deficiency attributable to the failure by the landlord or any predecessor in title of the landlord to comply with paragraph (a) or (b); and
- (e) if the retail shopping centre is destroyed, demolished or ceases to operate the landlord is to —
 - (i) prepare a scheme of repayment detailing —
 - (I) the amount standing to the credit of the sinking fund

(including any interest earned on the fund);

(II) the relevant proportion of that amount to which each former tenant is entitled; and

(III) the way in which the landlord proposes to distribute that amount based upon the relevant proportion;

and

(ii) submit the scheme of repayment to the Registrar for approval under subsection (4).

(4) The Registrar is to examine a scheme of repayment submitted under subsection (3) (e) (ii) and may approve the scheme or require such amendments to be made to the scheme as the Registrar thinks fit and the landlord is to repay to each former tenant the amount set forth in the scheme of repayment or amended scheme of repayment, as the case requires.

(5) A landlord is only liable for a deficiency under subsection (3) (d) in respect of a claim for that deficiency notified to the landlord by the tenant within a period of 3 years following the receipt by the tenant of the copy of the report of the auditor referred to in subsection (3) (c) (iv) disclosing the deficiency.

(6) If a landlord does not comply with the requirement referred to in subsection (3) (c) (iv), the tenant is not obliged to pay, and the landlord is not entitled to recover, payments to the sinking fund from the date of that non-compliance until the landlord complies with that requirement.

(7) In this section and in section 12B —

“bank” means —

- (a) a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted by or under a law of the State;

“former tenant” in relation to premises means the last tenant to carry on business at those premises;

“society” means a society or foreign society within the meaning of the Financial Institutions (Western Australia) Code.

Contribution to other funds and reserves by tenants

12B. (1) This section applies if provision is made in a retail shop lease in respect of premises in a retail shopping centre for payments to be made by the tenant into a fund (other than a fund referred to in section 12A) or a reserve for marketing or promotion of the retail shopping centre or any similar purpose.

(2) The purpose of the fund or reserve is to be specified in the retail shop lease.

(3) The lease shall be taken to provide that —

- (a) the landlord is to, as soon as practicable, pay amounts paid by the tenant for the credit of the fund or reserve into one or more appropriately designated interest bearing accounts held by the landlord with a bank or society in the State;

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- (b) the landlord may only apply amounts standing to the credit of the fund or reserve and interest earned on the fund or reserve for —
 - (i) the purpose mentioned in subsection (2);
 - (ii) taxes and imposts payable on the fund or reserve;
 - (iii) the cost of an audit referred to in paragraph (c) (iii); and
 - (iv) accounting, legal and other professional costs reasonably incurred in the preparation and approval of the scheme of repayment referred to in paragraph (e);

- (c) the landlord is to —
 - (i) keep full and accurate accounts of all money received or held by the landlord in respect of the fund or reserve;
 - (ii) keep the accounts in such manner that they can be conveniently and properly audited;
 - (iii) at the end of each accounting year cause the accounts to be audited by an auditor who is a registered company auditor within the meaning of the Corporations Law; and
 - (iv) within 3 months after the end of each accounting year deliver a copy of that report to the tenant;

- (d) subject to subsection (5), the landlord is liable to pay into the fund or reserve any deficiency attributable to the failure by the landlord or any predecessor in title of the landlord to comply with paragraph (a) or (b); and
- (e) if the retail shopping centre is destroyed, demolished or ceases to operate the landlord is to —
 - (i) prepare a scheme of repayment detailing —
 - (I) the amount standing to the credit of the fund or reserve (including any interest earned on the fund or reserve);
 - (II) the proportion of that amount to which each former tenant is entitled; and
 - (III) the way in which the landlord proposes to distribute that amount;
 - and
 - (ii) submit the scheme of repayment to the Registrar for approval under subsection (4).

(4) The Registrar is to examine a scheme of repayment submitted under subsection (3) (e) (ii) and may approve the scheme or require such amendments to be made to the scheme as the Registrar thinks fit and the landlord is to repay to each former tenant the amount set forth in the scheme of repayment or amended scheme of repayment, as the case requires.

(5) A landlord is only liable for a deficiency under subsection (3) (d) in respect of a claim for that deficiency notified to the landlord by the tenant within a period of 3 years following the receipt by the tenant of the copy of the report of the auditor referred to in subsection (3) (c) (iv) disclosing the deficiency.

(6) If a landlord does not comply with the requirement referred to in subsection (3) (c) (iv), the tenant is not obliged to pay, and the landlord is not entitled to recover, payments to the fund or reserve from the date of that non-compliance until the landlord complies with that requirement.

Hours of operation

12C. (1) A provision in a retail shop lease which requires a tenant to open the retail shop the subject of the lease at specified hours or specified times is void.

(2) Where —

- (a) a landlord has refused to renew a retail shop lease; and
- (b) the tenant under the retail shop lease believes that the refusal was because the tenant did not open the retail shop the subject of the lease at specified hours or specified times,

the tenant may apply in writing to the Tribunal for an order that the landlord pay compensation to the tenant in respect of pecuniary loss suffered by the tenant as a result of the failure to renew the retail shop lease.

”.

Section 24 amended

10. After section 24 (a) of the principal Act the following paragraph is inserted —

“
 (aa) an application by a tenant for an order under section 6A (1) (b), 6A (3) or 12C (2);
”.

Section 26 amended

11. After section 26 (1a) of the principal Act the following subsection is inserted —

“
 (1aa) The Tribunal may, where it considers it appropriate to do so, make an order terminating a retail shop lease under section 6A.
”.

Section 30 amended

12. Section 30 of the principal Act is amended —

- (a) by inserting after the section designation “**30.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
 (2) Regulations made under subsection (1) prescribing standard trading hours for the purposes of section 12 (1) (c) may prescribe those standard trading hours generally or in relation to —

- (a) a specified class or classes of retail shop;

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- (b) a specified part or parts of the State;
or
- (c) a specified time or times of the year.

”.

Section 31 repealed and a section inserted

13. Section 31 of the principal Act is repealed and the following section is substituted —

“

Review of Act

31. (1) The Minister is to carry out a review of the operation and effectiveness of this Act within 6 months after the expiration of every 5 years from the commencement of section 1 of the *Commercial Tenancies (Retail Shops) Agreements Amendment Act 1998*.

(2) The Minister is to prepare a report based on each review made under subsection (1) and cause the report to be laid before each House of Parliament within 12 months after the commencement of that review.

”.

Saving and transitional

14. (1) In this section —

“**existing lease**” in relation to a provision of this Act means a retail shop lease entered into —

- (a) before the coming into operation of that provision; or
- (b) pursuant to an option granted in a retail shop lease entered into before the coming into operation of that provision,

but does not include a retail shop lease to which the provision does not apply by reason of section 4 of the principal Act;

“new lease” in relation to a provision of this Act means a retail shop lease entered into on or after the coming into operation of that provision and —

- (a) includes an extension of the term of a retail shop lease entered into before the coming into operation of that provision if the extension is granted on or after the coming into operation of that provision; but
- (b) does not include a retail shop lease so entered into pursuant to an option granted in a retail shop lease entered into before the coming into operation of that provision;

“retail shop lease” has the same meaning as it has in the principal Act.

(2) Subject to subsection (3), the principal Act as amended by a provision of this Act applies only to and in relation to a new lease and the principal Act applies to and in relation to an existing lease as if that provision had not been enacted.

(3) Each of —

- (a) section 3 (1) of the principal Act as amended by section 4 (1) (a) of this Act, only in relation to the insertion of the definition of “accountant”;
- (b) section 3 (3) of the principal Act as inserted by section 4 (2) of this Act;
- (c) section 11 (3a) of the principal Act as inserted by section 7 (3) of this Act;

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- (d) section 11 (5) of the principal Act as amended by section 7 (4) of this Act; and
- (e) section 11 (6) and (7) of the principal Act as inserted by section 7 (5) of this Act,

applies to and in relation to an existing lease and a new lease.

(4) This section applies despite an agreement to the contrary between the parties to a retail shop lease whether or not the agreement is contained in the retail shop lease.

(5) This section does not affect the operation of section 22 (1) of the *Commercial Tenancy (Retail Shops) Agreements Amendment Act 1990*.

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