

Retail Tenancies Bill (No. 2)

No.

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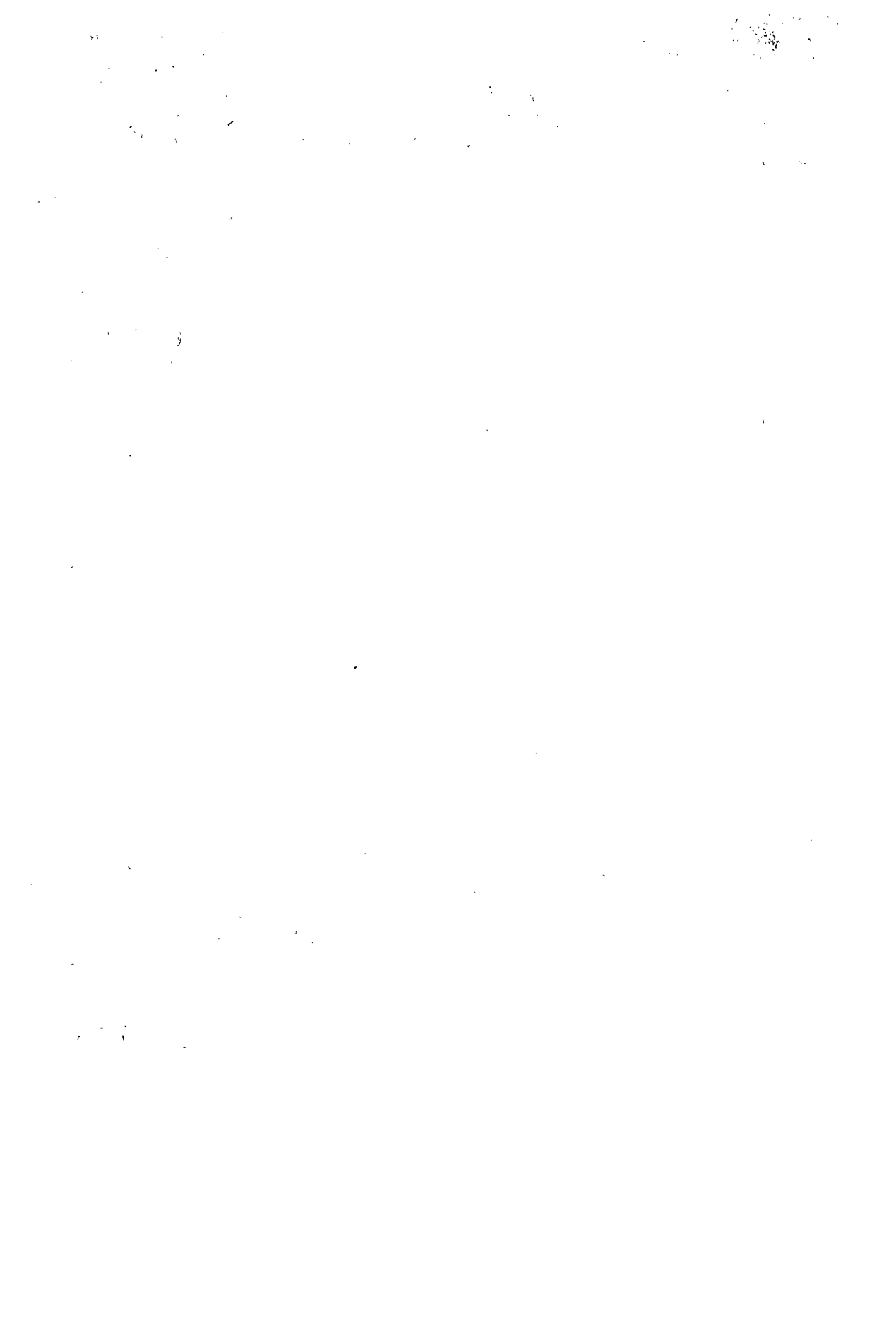
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LEGISLATIVE ASSEMBLY

Read 1° 22 October 1986

(Brought in by Mr Fordham and Mr Jolly)

(No. 2)

A BILL

to regulate retail tenancy agreements, to provide for the determination of disputes arising under such agreements and for other purposes.

Retail Tenancies Act 1986

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to reform the law relating to retail tenancy agreements.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.

3. (1) In this Act—

10 “**Accountant**” means a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or the Institute of Affiliate Accountants.

“**Building**” includes any structure.

15 “**Common area**” means an area within or adjacent to a retail shopping centre that is under the control of the landlord and is intended for use by the public or in common by

tenants in the conduct of business at the centre, and includes all stairways, escalators, elevators, malls, walkways, trafficways, parking areas, toilets, restrooms, gardens and fountains that are under the landlord's control and intended to be so used. 5

“Exempt premises” means premises that are exempted from the operation of this Act by section 5.

“Key-money” means—

(a) money that a tenant is to pay; or

(b) any benefit that a tenant is to confer— 10

by way of a premium or something of a like nature in consideration of the granting or agreeing to grant of a lease or the renewal of a lease or the consenting to an assignment of a lease or to the sub-leasing of the premises to which a lease relates. 15

“Landlord” means the person who under a lease is entitled to the rent payable in respect of the premises to which the lease relates.

“Lease” means a lease or sub-lease having a term of not less than one year and includes an agreement for such a lease or sub-lease. 20

“Registered valuer” means a person registered under Part II of the *Valuation of Land Act 1960*.

“Retail premises” means any premises that under the terms of the lease relating to them are used wholly or predominantly for the carrying on of a business involving the sale or hire of goods by retail or the retail provision of services, but does not include— 25

(a) premises that have a floor area that exceeds 1000 square metres; or 30

(b) premises that are used wholly or predominantly for the carrying on of a business by the tenant under a name or mark identifying, commonly associated with, or controlled by the landlord or a person or corporation within the meaning of the *Companies (Victoria) Code* connected with the landlord; or 35

(c) premises that are used wholly or predominantly for the carrying on of a business by the tenant on behalf of the landlord as an employee or agent of the landlord; or

(d) premises the lease relating to which is held by— 40

(i) a corporation within the meaning of the *Companies (Victoria) Code* that would not be eligible to be incorporated in Victoria as a proprietary company; or

(ii) a subsidiary of a corporation referred to in sub-paragraph (i); or 45

(e) exempt premises.

“Retail shopping centre” means a cluster of premises—

(a) 5 or more of which are retail premises; and

5 (b) all of which have, or if leased would have, a common head lessor—

but does not include a building with more than one storey except in relation to each storey of the building on which is situated a cluster of premises in respect of which paragraphs (a) and (b) apply.

10 “Spouse” includes—

(a) in relation to a man, a woman who is living with the man as his wife on a *bona fide* domestic basis although not married to him; and

15 (b) in relation to a woman, a man who is living with the woman as her husband on a *bona fide* domestic basis although not married to her.

“Statutory option” means the option that a lease gives a tenant under section 13 (1).

20 (2) A provision contained in any other agreement or arrangement between the parties to a retail premises lease is void if that provision would be void under this Act if contained in a retail premises lease.

(3) A reference in this Act to a dispute arising under a lease includes a reference to a dispute arising in relation to that lease under a provision of this Act.

25 (4) For the purposes of this Act a retail premises lease is entered into when—

(a) under the lease, the tenant enters into possession of the premises or begins to pay rent for them; or

30 (b) all of the parties to the lease have signed the lease—
whichever first occurs.

Application.

35 4. (1) The whole of this Act applies to a retail premises lease that is entered into after the commencement of this section unless the lease is entered into under an option granted or agreement made before that commencement.

(2) Part 3 applies to a dispute arising after the commencement of this section under a retail premises lease, whether the lease was entered into before or after the commencement of this section.

(3) Parts 2 and 4 do not apply to a retail premises lease that—

40 (a) was entered into before the commencement of this section;
or

(b) is entered into after the commencement of this section under an option granted or agreement made before that commencement.

(4) Subject to this section, this Act applies to every retail premises lease that provides for the occupation of premises in Victoria— 5

(a) irrespective of where the lease was entered into; and

(b) even though the lease purports to be governed by a law other than the law of Victoria.

Exemption from Act.

5. The Governor in Council may exempt any class or kind of premises from the operation of this Act by regulation— 10

(a) either completely or to a specified extent;

(b) either unconditionally or subject to specified conditions.

Act to bind Crown.

6. This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities. 15

PART 2—RETAIL PREMISES LEASES

Disclosure.

7. (1) Subject to sub-section (2), if a tenant has not been given a disclosure statement at least 7 days before entering into a retail premises lease or if a disclosure statement given to a tenant is misleading or contains false information or does not contain all the required information, the tenant may give the landlord a written notice of termination at any time within 28 days after entering into the lease. 20 25

(2) A disclosure statement is not required to be given—

(a) on the renewal of a retail premises lease, whether under an option (including the statutory option) or not; or

(b) on the assignment of a retail premises lease.

(3) The disclosure statement must be in the form set out in the Schedule.* 30

(4) Subject to sub-section (5), if a tenant gives the landlord a notice of termination under sub-section (1), the lease terminates 14 days after the notice is given.

(5) Within 14 days after being given a notice of termination under sub-section (1), a landlord may give the tenant a notice of objection to it on the ground that the landlord has acted honestly and reasonably 35

* By virtue of section 53 of the *Interpretation of Legislation Act* 1984 a form to the like effect of the form set out in the Schedule is sufficient in law.

and ought fairly to be excused for the contravention and that the tenant is substantially in as good a position as the tenant would have been in if there had been no contravention.

5 (6) If the tenant accepts the landlord's notice of objection or if that notice is upheld under Part 3, the lease does not terminate in accordance with the notice of termination.

(7) The operation of a notice of termination is suspended until the effect of a notice of objection to it is determined.

10 (8) The termination of a lease in accordance with a notice of termination does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the lease before the date of termination, unless the landlord and the tenant otherwise agree or it is otherwise determined under Part 3.

Tenant to be given copy of lease.

15 8. (1) If a retail premises lease is, or any of the terms of a retail premises lease are, in writing signed by the tenant, the landlord must give the tenant a copy of the lease or those terms signed by the landlord and the tenant (which copy may be a photocopy) within 28 days after
20 the lease is entered into or the terms are agreed, whether or not at that time stamp duty has been paid on the document containing the lease or those terms.

(2) If a landlord contravenes sub-section (1), the tenant may give the landlord a written notice of termination at any time within 28 days after entering into the lease.

25 (3) Subject to sub-section (4), if a tenant gives the landlord a notice of termination under sub-section (2), the lease terminates 14 days after the notice is given.

30 (4) The provisions of sub-sections (5) to (8) of section 7 apply to a notice of termination given under sub-section (2) of this section in the same manner and to the same extent as they apply to a notice of termination given under sub-section (1) of that section.

Key-money and goodwill.

35 9. (1) Subject to sub-section (2), a provision in a retail premises lease is void if it entitles the landlord or a person claiming through the landlord to get from the tenant—

(a) any key-money; or

(b) any consideration for the goodwill of the business.

(2) Sub-section (1) does not make void a provision in a retail premises lease for the landlord to—

40 (a) recover from the tenant costs which the landlord reasonably incurred in investigating a proposed assignee of the tenant or sub-lessee of the premises; or

- (b) recover from the tenant costs which the landlord reasonably incurred in connection with the documentation of the lease, an assignment of the lease or a sub-lease, and the obtaining of any necessary consents to the assignment or sub-lease; or
- (c) claim goodwill from the tenant in relation to the sale of a business which the landlord operated from the retail premises immediately before its sale, if the lease was granted to the tenant in the course of the sale of the business; or
- (d) recover from the tenant in connection with the assignment of the lease, if the retail premises are in a retail shopping centre—
- (i) within 12 months of the tenant commencing trading or of any other day, act or event that is prescribed, an amount that is agreed between the landlord and the tenant but not exceeding the amount of rent payable under the lease for the 4 months immediately before the assignment;
- (ii) within 2 years of the tenant commencing trading or of any other day, act or event that is prescribed, an amount that is agreed between the landlord and the tenant but not exceeding the amount of rent payable under the lease for the 2 months immediately before the assignment;
- (iii) within 3 years of the tenant commencing trading or of any other day, act or event that is prescribed, an amount that is agreed between the landlord and the tenant but not exceeding the amount of rent payable under the lease for the month immediately before the assignment.
- (3) A landlord must pay any amount received under sub-section (2) (d) to a fund for the benefit of the retail shopping centre.
- (4) A person may recover any amount paid or the value of any benefit conferred under a provision of a lease that is made void by sub-section (1) from the recipient in a court of competent jurisdiction as a debt due or the recipient may be ordered to return that amount or the value of that benefit to the tenant by an award made under Part 3.

Rent review.

10. (1) A provision in a retail premises lease for a review of the rent is void to the extent that it provides that the rent payable after the review must exceed or be not less than the rent payable immediately before the review.

(2) A provision in a retail premises lease that the rent is to be determined either in whole or in part by reference to any index of prices, costs or wages or in any other similar manner is void to the extent that it so provides.

(3) A provision in a retail premises lease for a review of the rent is void unless the lease specifies how the review is to be made.

5 (4) If a provision in a retail premises lease about rent is made void by this section and the lease makes no other provision for determining the rent, the rent is to be as agreed in writing between the landlord and the tenant or if the landlord and the tenant are unable to agree within 30 days of a notice specifying an amount of rent being served on the tenant by the landlord, then the rent is to be as determined by a registered valuer.

10 (5) If a retail premises lease provides for a review of the rent and does not provide for what is to happen in the event of the landlord and the tenant being unable to agree about the result of the review within 30 days of the completion of the review in accordance with the lease, then the rent is to be as determined by a registered valuer.

15 (6) The registered valuer is to be appointed jointly by the landlord and the tenant or appointed at the request of either the landlord or the tenant by a person who is prescribed for this purpose, if no joint appointment is made 14 days after one party serves the other party with a notice nominating a registered valuer and seeking approval.

20 (7) The fees payable to a registered valuer appointed under sub-section (6) are borne jointly by the landlord and the tenant.

Rent based on turnover.

25 11. (1) A provision in a retail premises lease that the rent is to be determined either in whole or in part by reference to the turnover of the business is void unless the lease specifies how the rent is to be determined.

30 (2) If a retail premises lease provides for the rent to be determined either in whole or in part by reference to the turnover of the business and that provision is not made void by sub-section (1), the tenant must furnish to the landlord—

(a) within 14 days after the end of each month for which rent is to be so determined or within such other period as the lease provides, a statement in writing giving the turnover during that month or other period to which the statement relates; and

35

(b) within 42 days after the end of each year for which rent is to be so determined or within such other period as the lease provides, and at the termination or an assignment of the lease, a statement of the turnover accompanied by an audit report from an independent accountant stating that in his or her opinion the statement fairly presents the turnover of the business during that year or other period to which the statement relates.

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(3) A tenant who furnishes to the landlord statements for a period in accordance with sub-section (2) satisfies any obligation under the lease to provide turnover figures or statements for that period.

(4) A tenant must reimburse the landlord for the cost of the audit if the audit discloses that the tenant understated the turnover of the business during the relevant period by more than 3%. 5

(5) For the purposes of sub-sections (2) and (3) and the interpretation of any provision of a retail premises lease that relates to the determination of rent by reference to turnover, "turnover" does not include the following: 10

- (a) The net amount of discounts reasonably and properly allowed to any customer in the usual course of business;
- (b) The amount of losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business; 15
- (c) The amount of uncollected credit accounts written off by the tenant;
- (d) The amount of any cash or credit refund allowed on a transaction the proceeds of which have previously been included as gross receipts, if the merchandise is returned and the sale is cancelled or fees for the services are refunded wholly or partly; 20
- (e) The amount of any instalment of purchase money refunded to customers where a lay-by transaction is cancelled;
- (f) The amount of any purchase, receipt or other similar tax imposed upon the purchase price or cost of hire of merchandise or services at the point of sale or hire; 25
- (g) The amount of delivery charges;
- (h) The price of merchandise exchanged between stores of the tenant made solely for the convenient operation of business and not for the purpose of concluding a sale made at or from the retail premises to which the lease relates; 30
- (i) The price of merchandise returned to shippers, wholesalers or manufacturers;
- (j) The amount received from the sale of the fixtures and fittings of the tenant from the premises; 35
- (k) Receipts from sales of tickets in any consultation or soccer football pool within the meaning of those terms in the *Tattersall Consultations Act 1958*, other than amounts derived as commission or fees from those sales; 40
- (l) Any other matter which the landlord and the tenant agree does not form turnover—

but does include the amount recovered of a credit account previously written off by the tenant.

(6) The amounts referred to in paragraphs (d) and (e) of sub-section (5) must be deducted from the turnover for the purposes referred to in that sub-section.

5 (7) If a provision of a retail premises lease that the rent is to be determined either in whole or in part by reference to the turnover of the business is made void by this section and the lease makes no other provision for determining the rent, the rent is to be as agreed in writing between the landlord and the tenant or if the landlord and the tenant are unable to agree within 30 days of a notice specifying an amount of
10 rent being served on the tenant by the landlord, then as determined by a registered valuer.

(8) The registered valuer is to be appointed jointly by the landlord and the tenant or appointed at the request of either the landlord or the tenant by a person who is prescribed for this purpose, if no joint
15 appointment is made 14 days after one party serves the other party with a notice nominating a registered valuer and seeking approval.

(9) The fees payable to a registered valuer appointed under sub-section (8) are borne jointly by the landlord and the tenant.

Turnover figures not generally required.

20 12. (1) A provision in a retail premises lease—

(a) that the tenant is obliged to furnish, or to permit the landlord or the landlord's agent to gather, figures or statements relating to the turnover of the business; or

25 (b) that the landlord is entitled to be furnished with figures or statements relating to the turnover of the business—

is void unless the figures or statements are required for the purpose of determining rent, either in whole or in part, by reference to the turnover of the business, or the landlord and the tenant are corporations that are, by section 7 (5) of the *Companies (Victoria) Code*, considered to be
30 related to each other for the purposes of that Code.

(2) If a retail premises lease contains a provision of a kind described in sub-section (1) and the figures or statements to which the provision applies are required for the purpose of determining rent, either in whole or in part, by reference to the turnover of the business, that provision
35 ceases to have effect as soon as those figures or statements are no longer required for the purpose.

(3) Subject to sub-section (4), a landlord must not communicate to any person any information about the turnover of the business obtained from turnover figures or statements provided by the tenant or gathered
40 by the landlord or the landlord's agent (whether in accordance with section 11 (2) or under the lease) unless the communication is made with the consent of the tenant.

(4) Nothing in sub-section (3) prevents a landlord from—

- (a) if the retail premises are situated in a retail shopping centre, including turnover information in a document, intended to be used for management purposes, that gives aggregate turnover information about the centre in a manner that does not disclose figures or statements relating to the individual turnover of the tenant's business; 5
- (b) if the retail premises are situated in a retail shopping centre, divulging or communicating turnover information to a prospective purchaser or mortgagee of the centre; 10
- (c) divulging or communicating turnover information to a court or an arbitrator;
- (d) divulging or communicating turnover information in compliance with any Act or court order;
- (e) divulging or communicating turnover information to the landlord's professional advisers. 15

(5) A landlord who contravenes sub-section (3) is liable to pay the tenant for any loss or damage suffered by the tenant as a consequence of that contravention reasonable compensation as agreed in writing between the parties or, in the absence of agreement, determined under Part 3. 20

Right to at least 5 years' tenancy.

13. (1) Subject to sub-section (2), a retail premises lease gives the tenant an option which is exercisable, subject to sub-section (3), by giving notice to the landlord in the prescribed form, to renew the lease for a term beginning immediately after the end of the current term and continuing until a day specified in the notice being a day that is not later than— 25

- (a) if the premises were occupied by the tenant as retail premises during any period which ended immediately before the current term began—the day that is 5 years after the beginning of that period; 30
- (b) if the premises were not occupied by the tenant as described in paragraph (a)—the day that is 5 years after the beginning of the current term. 35

(2) Sub-section (1) does not apply to a retail premises lease if—

- (a) the lease provides for occupation of the premises by the tenant for a term that is at least 5 years when taken together with—
 - (i) any period ending immediately before the beginning of the current term during which the premises were occupied as retail premises by the tenant; 40

- (ii) any period during which the tenant will be entitled to occupy the premises if the tenant exercises an option in the lease to renew it; or
- 5 (b) the landlord holds the premises under a head lease and renewal of the retail premises lease or renewal of the retail premises lease for a longer term than that provided for in an option to renew contained in it would be inconsistent with the head lease; or
- 10 (c) the lease is not the first retail premises lease entered into by the tenant as a tenant, whether before or after the commencement of this Act, and for this purpose a retail premises lease entered into by—
- (i) a corporation of which the tenant, or the spouse of the tenant, is a director or secretary; or
- 15 (ii) if the tenant is a corporation, a related corporation within the meaning of the *Companies (Victoria) Code*; or
- (iii) the spouse of the tenant; or
- (iv) a partner of the tenant; or
- 20 (v) a trustee or trustees under a trust of which the tenant is a beneficiary; or
- (vi) a person with whom the tenant has entered into an arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise—
- 25 as a tenant is to be taken to have been entered into by the tenant; or
- (d) not less than 90 days before the current term ends the landlord gives notice to the tenant in the prescribed form that at the end of that term the premises are to be—
- 30 (i) demolished; or
- (ii) substantially repaired, renovated or reconstructed and the repair, renovation or reconstruction cannot be carried out practicably without vacant possession.
- 35 (3) The statutory option is exercisable not less than 90 days before the current term ends and only if the tenant has remedied any default under the lease about which the landlord has given the tenant written notice.
- 40 (4) A lease is not renewable under the statutory option if at the end of the current term the tenant has not remedied any default under the lease about which the landlord has given the tenant written notice.
- (5) The terms and conditions upon which a lease is renewable under the statutory option are the same as those upon which the lease is held at the time the tenant gives notice of exercising the option except
- 45 that—

- (a) the tenant does not have any further statutory option to renew the lease; and
- (b) the landlord is not entitled to determine the lease at a time before the end of the term provided for by the statutory option unless— 5
- (i) the tenant has not remedied a default under the lease about which the landlord has given the tenant written notice; or
- (ii) the whole or any part of the retail premises or, if the retail premises are situated in a retail shopping centre, the whole or any part of the retail shopping centre has been destroyed or so damaged as to render the retail premises or a substantial part of them or the usual means of access to them unfit for occupation or use by the tenant; or 10 15
- (iii) it would be inconsistent with a head lease under which the landlord holds the premises for the retail premises lease to continue; and
- (c) if the lease does not provide for review of the amount of rent payable, the rent payable during the term for which the lease is renewed is to be as agreed in writing between the landlord and the tenant or if the landlord and the tenant are unable to agree within 30 days of a notice specifying an amount of rent being served on the tenant by the landlord, then as determined by a registered valuer. 20 25
- (6) The registered valuer is to be appointed jointly by the landlord and the tenant or appointed at the request of either the landlord or the tenant by a person who is prescribed for this purpose, if no joint appointment is made 14 days after one party serves the other party with a notice nominating a registered valuer and seeking approval. 30
- (7) The fees payable to a registered valuer appointed under sub-section (6) are borne jointly by the landlord and the tenant.
- (8) If a retail premises lease has been assigned a reference in sub-section (1) (a), (1) (b) or (2) (a) (i) to the period during which the premises were occupied by the tenant is to be taken to include any period during which the premises were occupied by the tenant's predecessors in title. 35
- (9) If—
- (a) a dispute arises between the landlord and the tenant as to whether or not— 40
- (i) the statutory option is exercisable; or
- (ii) the lease is renewable under it; or
- (iii) the lease may be determined before the end of the term provided for by it—
- on account of a default under the lease; and 45

- (b) the dispute is referred to an arbitrator under Part 3—
the arbitrator has power to order that the default be ignored for the purposes of this section if the arbitrator is satisfied that the tenant has acted honestly and reasonably and ought fairly to be excused for the default and that the landlord is substantially in as good a position as the landlord would have been in if there had been no such default.

Options to renew.

14. (1) In this section “option” does not include the statutory option.
- 10 (2) If a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term, the lease must state—
- (a) the date until which the option is exercisable; and
 - (b) the manner in which the option is to be exercised; and
 - 15 (c) the terms and conditions upon which the lease is renewable under the option; and
 - (d) the manner in which the rent payable during the term for which the lease is renewed is to be determined.
- (3) If a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term, the landlord must notify the tenant in writing of the date after which the option is no longer exercisable at least 3 months before that date.
- 20 (4) If a landlord fails to notify a tenant as required by sub-section (3), the retail premises lease is to be taken to provide that the date after which the option is no longer exercisable is the day that is 3 months after the landlord gives the tenant the notice required by that sub-section and, if that date is later than the date of the expiry of the term of the lease, the lease continues, subject to sub-section (9), until that date.
- 25 (5) If a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term, the only circumstances in which the option is not exercisable is if—
- 30 (a) the tenant has not remedied any default under the lease about which the landlord has given the tenant written notice; or
 - 35 (b) the tenant has persistently defaulted under the lease throughout its term and the landlord has given the tenant written notice of the defaults.
- (6) If a retail premises lease does not provide for an option to renew the lease, at least 3 months before the lease ends the landlord must notify the tenant in writing whether or not the landlord wishes to renew the lease and the terms and conditions if the landlord wishes to renew it.
- 40

(7) If a landlord fails to notify a tenant as required by sub-section (6), the lease continues, subject to sub-section (9), until a day specified in a notice (containing the same information as is required by sub-section (6)) given to the tenant by the landlord that is more than 3 months after the giving of the notice. 5

(8) The terms and conditions upon which a lease that continues by virtue of sub-section (4) or (7) is held are the same as those upon which the lease was held immediately before it was continued.

(9) If a landlord fails to notify a tenant as required by sub-section (3) or (6), the tenant may, by written notice given to the landlord, determine the lease as from any day that is— 10

- (a) not earlier than the expiry of the term of the lease; and
- (b) not later than the day to which the lease would otherwise have continued by virtue of sub-section (4) or (7).

Sharing of operating expenses. 15

15. (1) If in addition to the rent a retail premises lease provides for the tenant to pay all or part of the expenses of the landlord in operating (including repairing and maintaining) the building in which the retail premises are situated and, if those premises are situated in a retail shopping centre, any common area, then— 20

- (a) the lease must specify—
 - (i) those items of expense which are to be included as operating expenses; and
 - (ii) how those operating expenses will be calculated and apportioned to the tenant; and 25
 - (iii) how those operating expenses may be recovered by the landlord from the tenant; and
- (b) the landlord must give the tenant annual estimates of each of those items of expense at least 1 month before the beginning of the period to which the estimate relates or when the tenant enters into the lease if this is during the period to which the estimate relates or within 1 month before the beginning of that period; and 30
- (c) the landlord must give the tenant annual statements of expenditure incurred on each of those items of expense within 3 months after the annual period to which the expenditure refers and those annual statements must be audited by an accountant. 35

(2) The regulations may—

- (a) prohibit a landlord from obtaining payment from a tenant (either absolutely or before a specified time) for specified items of expense or specified classes of items of expense; and 40

(b) prescribe the manner in which specified items of expense or specified classes of items of expense may be calculated and apportioned to a tenant.

5 (3) A landlord must not accept payment from a tenant for any particular item of expense of more than the greater of the actual amount or the total estimated amount of that item of expense.

10 (4) If for operating expenses a tenant has paid the landlord more than the actual amount of those expenses, the landlord must refund to the tenant the amount of the overpayment when the landlord gives the tenant the annual statement that deals with those expenses.

Consent to assignment or sub-lease.

16. (1) If a retail premises lease requires the consent of the landlord to an assignment of the lease or a sub-leasing of the premises, and the tenant has—

15 (a) requested the landlord in writing to consent to an assignment of the lease or a sub-leasing of the premises; and

20 (b) given the landlord the name and address of the proposed assignee or sub-tenant together with at least two references as to the proposed assignee or sub-tenant's financial circumstances and at least two references as to the proposed assignee or sub-tenant's business experience and a copy of the proposed deed of assignment or sub-lease—

25 and the landlord fails to give the tenant notice in writing consenting or withholding consent within 42 days after the tenant has done the things referred to in paragraphs (a) and (b), the landlord is to be taken to have consented.

(2) A landlord must not unreasonably withhold consent to an assignment of the lease or a sub-letting of the premises.

30 (3) If under Part 3 it is determined that a landlord has unreasonably withheld consent to an assignment of a lease or a sub-letting of premises, the assignment or sub-letting may be done without that consent.

(4) A provision in a retail premises lease is void to the extent that it purports to prevent the assignment of the lease.

35 (5) A provision in a retail premises lease is void to the extent that it imposes unreasonable terms, conditions or requirements as a prerequisite to the granting by the landlord of consent to an assignment of the lease.

(6) Section 144 of the *Property Law Act 1958* does not apply to or with respect to a retail premises lease to which this Part applies.

Compensation by landlord.

17. (1) A retail premises lease is to be taken to provide that if the landlord—

- (a) inhibits the access of the tenant to the retail premises in any substantial manner; or 5
- (b) except with the consent of the tenant, takes any action (other than action lawfully required by any public statutory authority or government department) that would substantially alter or inhibit the flow of customers to the retail premises; or 10
- (c) if the retail premises are situated in a retail shopping centre, causes, or fails to make reasonable efforts to prevent or remove, any disruption to trading within the centre; or
- (d) fails to have rectified any breakdown of plant or equipment under the landlord's care and maintenance; or 15
- (e) fails to comply with any requirement of a public statutory authority or government department if it is the landlord's responsibility to do so; or
- (f) if the retail premises are situated in a retail shopping centre, fails to adequately clean, maintain, repair or repaint any common area— 20

and the landlord does not rectify the matter within a reasonably practicable time after receiving from the tenant a written notice asking the landlord to do so, then the landlord is liable to pay the tenant for any loss or damage suffered by the tenant as a consequence reasonable compensation as agreed in writing between the parties or, in the absence of agreement, determined under Part 3. 25

(2) A retail premises lease is to be taken to provide that—

- (a) if the retail premises are situated in a retail shopping centre and the tenant mix or usage mix of the centre when the tenant enters into occupation of the premises is significantly different from that set out in the disclosure statement; or 30
- (b) if the landlord notifies the tenant under section 13 (2) (d) that the premises are to be demolished or substantially repaired, renovated or reconstructed and the demolition, repair, renovation or reconstruction is not carried out within a reasonably practicable time after the tenant ceases to occupy the premises— 35

then the landlord is liable to pay the tenant for any loss or damage suffered by the tenant as a consequence reasonable compensation as agreed in writing between the parties or, in the absence of agreement, determined under Part 3. 40

Provisions about chambers of commerce and merchants' associations.

18. (1) A provision in a retail premises lease that purports to prevent or restrict the right of the tenant to form or join any tenants' association, chamber of commerce or other similar body is void.

5 (2) A provision in a retail premises lease that purports to require the tenant to join any merchants' association or other similar body is void.

10 (3) The regulations may specify matters to be provided for in the rules of a merchants' association or similar body including matters about—

(a) the voting rights of members of the association or body; and

(b) the contributions to be made by members of the association or body; and

15 (c) the fund or account to which the contributions of the members are to be paid; and

(d) the purposes for which the contributions of the members may be used; and

(e) the management of the association or body; and

(f) the auditing of the accounts of the association or body.

20 (4) The rules of a merchants' association or other similar body must comply with the regulations.

(5) Any rule of a merchants' association or other similar body that is inconsistent with a provision of the regulations is void to the extent of the inconsistency.

25 Indemnities.

19. (1) A provision in a retail premises lease is void to the extent that it purports to indemnify or require the tenant to indemnify the landlord against any action, liability, penalty, claim or demand for or to which the landlord would otherwise be liable or subject.

30 (2) A provision in a retail premises lease is void to the extent that it purports to make the tenant liable for or subject to any action, liability, penalty, claim or demand in respect of any act, matter or thing done or omitted to be done by the landlord or any other person if the tenant would not otherwise be liable for or subject to that action,
35 liability, penalty, claim or demand.

(3) The landlord must indemnify the tenant for any amount recoverable from the tenant by a public statutory authority for charges, rates or taxes payable under any Act for the retail premises, except charges for the supply of water by measure in excess of the minimum rate payable for it where those charges relate to a period during which
40 the tenant occupied the retail premises and charges, rates or taxes for which, under the terms of the retail premises lease, the tenant is liable.

PART 3—DETERMINATION OF DISPUTES

Panel of arbitrators.

20. (1) The Governor in Council may, on the nomination of the Minister, appoint persons to be members of a panel of arbitrators for the purposes of this Act. 5

(2) The members of the panel of arbitrators—

(a) unless removed from office under sub-section (4), hold office for the period (not exceeding 5 years) which is specified in their instruments of appointment, but are eligible for re-appointment; and 10

(b) are not subject to the provisions of the *Public Service Act* 1974 in respect of their office as panel members.

(3) The Governor in Council may specify terms and conditions of appointment in the instruments of appointment of panel members.

(4) The Governor in Council may remove from office any member of the panel at any time. 15

(5) Any member of the panel may resign from office by writing to the Governor in Council.

References to arbitrators.

21. (1) Any dispute between a landlord and a tenant arising under a retail premises lease, other than a claim by the landlord solely for the payment of rent or a dispute which is capable of being determined by a registered valuer under section 10, 11 or 13, must be referred to arbitration in accordance with this Part. 20

(2) The landlord or the tenant or both may give notice of a dispute to which sub-section (1) applies in the prescribed form to a person who is prescribed for the purposes of this section. 25

(3) As soon as practicable after receiving notice of a dispute under sub-section (2) the prescribed person must appoint an arbitrator from the panel of arbitrators to determine the dispute. 30

(4) Despite anything to the contrary in the *Commercial Arbitration Act* 1984 or any other Act, a dispute which is capable of being referred to arbitration under this section is not justiciable in any court or tribunal.

Arbitration.

22. (1) Subject to sub-section (2) and to section 21, an arbitration under section 21 must be conducted in accordance with, and subject to the provisions of, the *Commercial Arbitration Act* 1984. 35

(2) In an arbitration under section 21—

(a) in addition to the powers conferred by the *Commercial Arbitration Act* 1984, the arbitrator has power to make a 40

declaration as to the rights of the parties to the dispute and to grant injunctive relief in any case in which the Supreme Court would have power to make such a declaration or to grant such relief; and

- 5 (b) the fees and expenses of the arbitrator are borne jointly by the parties to the dispute unless the arbitrator is of the opinion that a party has behaved in a frivolous or vexatious manner in which case the arbitrator may make such order as to those fees and expenses as the arbitrator thinks just; and
- 10 (c) the parties to the dispute must bear their own costs unless the arbitrator is of the opinion that a party has behaved in a frivolous or vexatious manner in which case the arbitrator may make such order as to costs as the arbitrator thinks just.
- 15

PART 4—GENERAL

Service of notices.

23. If a notice is required or permitted to be served on any person, the notice may be served in or out of Victoria—

- 20 (a) by delivering it personally to the person; or
- (b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of sixteen years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or
- 25 (c) by sending it by post addressed to the person at the usual or last known place of residence or business of that person; or
- (d) in any other manner authorised by the retail premises lease or by or under any other Act.

30 Act prevails.

24. (1) A provision of a retail premises lease is void if it claims to—

- (a) exclude the application of any provision of this Act; or
- 35 (b) limit the right of a party to the lease to refer any dispute to arbitration under Part 3.

(2) A provision of a retail premises lease is void insofar as it is contrary to or inconsistent with anything in this Act or with anything that by this Act the lease is taken to provide.

Regulations.

25. The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Review of Act.

5

26. (1) As soon as practicable after the end of the period of 5 years following the commencement of this section the Minister must cause an investigation and review to be conducted, and a report to be prepared, on the need for this Act to continue in operation.

(2) The Minister must cause a copy of the report prepared under sub-section (1) to be laid before each House of Parliament as soon as practicable after it is completed.

10

SCHEDULE

Section 7 (3).

DISCLOSURE STATEMENT

Retail Tenancies Act 1986

ADVICE TO TENANT

Before signing any offer to lease, any lease or any associated document the tenant should ensure that he or she fully understands those documents.

To help the tenant, the booklet "Retail Premises Leases—Advice for Landlords and Tenants" is available free of charge from the Department of Industry, Technology and Resources.

If there is any doubt, the tenant should get independent legal advice.

NOTE: Where there is insufficient space on this form, please attach additional sheets.

TENANCY DETAILS

Address of premises/Shop No.		Net leasable area (m ²)	
Permitted use of premises			
Lease period	Options	Option periods	
/ /19 to / /19	<input type="checkbox"/> No <input type="checkbox"/> Yes		
Finishes provided by the landlord			
Hours of access to premises outside trading hours			
Date on which premises will be available for occupation by tenant			
Landlord's requirements as to quality and standard of fittings in premises			

SCHEDULE—*continued***RENT DETAILS**

<p>Initial rent:</p> <p>Method for calculating rent:</p> <ol style="list-style-type: none"> 1. Commencement date 2. Formula 3. Rent reviews <ul style="list-style-type: none"> Frequency Nature

CHARGES TO BE BORNE BY TENANT

<i>Details of variable outgoings</i>	<i>Est. \$ p.a.</i>	<i>Details of variable outgoings</i>	<i>Est. \$ p.a.</i>
Formula for apportionment of variable outgoings			
Additional charges to be borne by tenant			

SCHEDULE—continued

SHOPPING CENTRE DETAILS

(To be completed if the premises are situated in a retail shopping centre)

Name of centre		
Address of centre	Suburb/Town	Postcode
Number of retail premises in centre	Total net leasable area (m ²)	
Parking facilities at centre Number of bays for customers <input type="text"/> Number of bays for tenants <input type="text"/>		
What facilities and services are provided by the landlord		
Are any changes or developments planned for: Shopping centre <input type="checkbox"/> No <input type="checkbox"/> Yes Attach details Surrounding roads <input type="checkbox"/> No <input type="checkbox"/> Yes Attach details		
Hours of trading		
Tenant mix or usage mix (Attach floor plan with locations of common areas and tenants)		
Merchants' Association <input type="checkbox"/> No <input type="checkbox"/> Yes Attach details of constitution, voting rights, contributions, etc.		
Nature of any centre promotion and advertising Existing Proposed Tenant contribution \$ p.a.		

SCHEDULE—*continued***DETAILS AS TO INTEREST OF LANDLORD**

Is the landlord: Owner of the premises Lessee of premises

Give details of any rights and obligations of landlord under that lease that may affect the proposed tenancy

DETAILS AS TO AGREEMENTS OR REPRESENTATIONS

Give details of any other agreements between landlord and tenant or representations made by landlord or tenant:

DECLARATION BY LANDLORD

I acknowledge that this statement contains all agreements and representations that influenced me to contemplate entering into the proposed lease

Name of landlord:

Address of landlord:

Signature:

Date:

DECLARATION BY TENANT

I acknowledge that this statement contains all agreements and representations that influenced me to contemplate entering into the proposed lease

Name of tenant:

Address of tenant:

Signature:

Date:

