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Retail Shop Leases Act Review Secretariat
Department of Customer Services, Open Data and Small and Family Business
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By email: [REDACTED]

Dear Secretariat

Retail Shop Leases Act 1994 review

Thank you for the opportunity to provide feedback on the review of the *Retail Shop Leases Act 1994* (the **Act**). The Queensland Law Society (**QLS**) appreciates being consulted on this important review.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Executive Summary/Key Points:

- We have noted several provisions of the Act, including definitions, that could be amended to reflect contemporary leasing models and address ambiguities when determining whether an arrangement falls within or outside scope of the Act.
- Plain-language drafting and greater use of examples would make the Act more accessible and reduce the number of disputes over technicalities.
- The disclosure requirements, including the prescribed forms and strict timing requirements can be burdensome, increase costs, and result in harsh outcomes for minor procedural breaches. These provisions could be amended without affecting the substantive content and protective intent of the provisions.
- For businesses operating under franchise arrangements, overlapping State and Federal disclosure requirements can create inefficiencies, delay business openings, and increase costs without providing any meaningful additional protection.
- Recurring disputes about outgoings, market rent, relocation/demolition, disturbance compensation and assignments indicate the current drafting of these provisions may not be sufficiently clear or prescriptive.

This response has been compiled by the QLS Property and Development Law Committee and Franchising Law Committee, whose members have substantial expertise in this area. Our response focuses on the questions raised in the discussion paper with additional feedback provided afterwards.

A. Simplification and harmonisation

1. Are there any aspects of the Act, or associated regulation, which could be simplified or streamlined to improve operational efficiencies, better balance the interests of the lessee and lessor, or reduce the regulatory burden?

We suggest the following provisions in the Act could be simplified to improve operational efficiency without reducing the substantive protections provided by the Act:

- Section 20C regarding application of the Act to leases of service stations contains statutory cross-references that are confusing and difficult to apply. We suggest redrafting this section to include specific examples of how and to what it applies.
- The disclosure provisions for entering into or renewing a lease (including the lessor disclosure statement, lessee disclosure statement and franchisor's disclosure) and disclosure on assignment of a lease (including the prescribed forms and strict timing requirements) could be revised. These provisions could be rationalised into fewer, modular forms and made technology neutral, for example by expressly permitting electronic delivery and signatures, while retaining the same substantive content.
- The provisions regarding assignment and consent, requirements for lessor consent (e.g. conditions of consent, and treatment of franchise arrangements and mortgagees) are highly technical and difficult for small business lessees to navigate.
- The sections dealing with waiver and notices, including formal requirements for notices and the effect of non-compliance could be revised. Minor technical defects in these notices can have disproportionate consequences.

2. Are there any areas where the Act does not operate well with other legislation?

Franchising Code of Conduct

The Franchising Code of Conduct (**Franchising Code**) under the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* (Cth) imposes separate and overlapping disclosure obligations. These obligations provide comprehensive pre-entry protection for prospective franchisees, including:

- lease and occupancy disclosures: under sections 23(2) and 29 of the Franchising Code, a franchisor must give a prospective franchisee a copy of the head lease (or a summary of commercial terms and incentives) and any statutory disclosure statements provided by the head lessor;
- mandatory consideration and cooling-off periods: franchisors cannot execute a franchise agreement until a mandatory 14-day consideration period expires (section 23). In addition, section 50 of the Franchising Code grants franchisees statutory cooling-off rights to terminate up to 14 days after receiving occupancy terms, or after entry if the final terms differ materially from what was disclosed; and

- independent professional advice: section 27 of the Franchising Code requires franchisors to obtain signed statements certifying that the franchisee has taken independent legal, accounting, and business advice (or formally opted out in writing).

Our members have advised us that requiring compliance with the Queensland-specific disclosure requirements under the Act in addition to disclosure requirements under the Franchising Code duplicates paperwork, stalls business openings, and increases overall transaction costs without providing any meaningful additional protection.

Therefore, we suggest the Act's disclosure provisions could be amended to explicitly recognise franchising arrangements and minimise duplication with franchise disclosure documents under the Franchising Code.

We provide further feedback on the Act's application to franchise arrangements throughout this submission.

Property Law Act

There is an overlap between the Act and the *Property Law Act 2023 (PLA)* in relation to lease assignments.

Section 142 of the PLA imposes a strict one-month deadline for a lessor to approve or reject a lease assignment once they receive "full particulars" of the lessee's proposal. The term "full particulars" is not defined under the PLA, and it is unclear whether this would include the full disclosure materials required under the Act. If it does, then it may be more appropriate to deal with it under the Act. Otherwise, there could potentially be a conflict if the one-month period under section 142 expires while the parties are still working through the disclosure steps under the Act. In these circumstances, it is unclear if the lessor will breach section 142 for failing to respond within the one-month timeframe.

B. Requirements and scope of the Act

3. Are the objectives of the Act appropriate to the needs of lessors and lessees in the current retail leasing environment?

The object of the Act remains broadly appropriate, but you could consider whether contemporary retail leasing models should be explicitly recognised, including mixed-use premises such as allied health and fitness, and short-term pop-ups.

Further, the object could be amended to emphasise the goals of clarity, simplicity and proportionality, so that the minimum standards protect small business lessees without imposing excessive compliance burdens on lessors.

4. Do the current requirements of the Act remain appropriate and effective in meeting its objectives?

The disclosure and timing provisions for new leases, renewals and assignments can produce harsh outcomes for relatively minor procedural breaches, even where the lessee has received all relevant substantive information and is not disadvantaged by the minor breach.

In our view, the Act would be more effective if it more clearly distinguished between serious substantive defects and minor procedural irregularities, and adjusted the remedies accordingly, for example, limiting termination rights to material non-disclosure and clearly explaining (with examples) what would constitute material non-disclosure.

5. Do the current scope and definitions of the Act, including “retail shop lease” and “retail business”, remain appropriate and reflective of modern retail models?

In our view, there is scope to improve Part 3 of the Act containing key definitions, Schedule 1 of the *Retail Shop Leases Regulation 2016* (the **Regulation**) listing “retail businesses”, and the provisions under Part 4 that determine when the Act applies.

In particular, the current definition of “retail shop lease” in section 5A and the prescribed “retail businesses” in Schedule 1 of the Regulation do not clearly contemplate mixed-use and service-based premises (e.g. medical centres, allied health facilities, gyms and experiential premises) that now commonly operate in shopping centres.

It is unclear whether the Act applies to short-term pop-up or casual mall licences, dark stores, click-and-collect hubs, or businesses that offer in-store retail and mobile services conducted outside the premises and co-working/flexible office-retail hybrids. For these types of premises, it can be hard to determine whether a shop is used “wholly or predominantly for carrying on a retail business” or even if premises are situated in a “retail shopping centre”.

There is also uncertainty in the application of the exclusion for shops with a floor area over 1,000m² where leased premises comprise both built form and ancillary areas or a mix of areas. In this respect, recent decisions (*Farmers Arms Tavern Pty Ltd v Barns* [2025] QCAT 134 and *Suttons Beach Pavilion Pty Ltd v Moreton Bay City Council* [2025] QCAT 135) could be considered as to whether an unintended consequence has arisen.

We recommend the definitions and Schedule 1 be updated, with clear examples and guidance for different types of businesses and premises, so practitioners can easily and confidently determine whether a particular arrangement falls within or outside the Act’s scope.

6. Are there opportunities to update the Act to ensure it meets contemporary needs, and is clear and fit for purpose?

Key groups of provisions in the Act we suggest could be modernised include:

- the definitions and application provisions, to reflect contemporary retail models;
- the pre-lease and assignment disclosure provisions, including prescribed forms and timing;
- the minimum lease standards and operational provisions relating to rent reviews, outgoings, relocation, demolition and compensation for disturbance; and
- the retail tenancy dispute provisions under Part 8, to streamline dispute resolution pathways.

Additionally, in relation to application of the Act, we suggest clarifying whether the execution of a binding but conditional pre-lease agreement (such as an agreement for lease) would satisfy the definition of “entered into” under section 11 of the Act.

Further, we suggest clarifying the ability for lessors to clawback incentives, particularly where the lessee seeks to assign the lease.

Plain-language drafting and greater use of examples, particularly in the definitions, rent review and compensation provisions, would make the Act more accessible and reduce the number of routine technical disputes.

7. Have there been any changes to the retail landscape or to commercial leasing practices that require the Act to be amended?

There have been several changes in retail leasing practice that are not well addressed by current provisions in the Act, including:

- the growth of omnichannel retail, such as online sales, click-and-collect, and fulfilment from stores, which has created uncertainty in applying the turnover rent provisions and permitted use clauses, and in how sales data is captured and shared;
- the increased prevalence of short-term activations and pop-ups is not clearly addressed in the application and definition provisions; and
- the use of premises as fulfilment or storage hubs in conjunction with online operations is difficult to classify under the current definition of “retail business”.

We suggest you consider whether the definitions, turnover rent provisions and minimum standards should be amended to expressly accommodate these practices.

C. Disclosures

8. Are the current disclosure processes (including timing, sequencing, forms and content requirements) operating effectively and efficiently in practice?

The pre-lease disclosure provisions, including prescribed forms and timing requirements for lessor and lessee disclosure statements, and the disclosure on assignment or franchise arrangements are not operating efficiently. Strict timing and sequencing rules combined with multiple forms create difficulties for both parties and increase transaction costs. The parties often focus on achieving technical compliance with the forms rather than on the quality and clarity of the information provided.

For franchise parties that operate across states and territories, flexibility in the form of disclosure would be welcomed, particularly where a generic cross-border style disclosure provided by a franchisor already appropriately covers the issues required by the Act. This will ease the administration and compliance burden on parties who operate across jurisdictions, as only one form of disclosure would be required.

Additionally, the current disclosure processes for franchises under the Act are causing unwarranted delays. Under sections 21C (subleases) and 21D (franchise licences) of the Act, a franchisor who grants an occupancy right may request an updated disclosure statement from the head lessor. The head lessor then has 28 days to provide the updated disclosure statement at the franchisor's expense (sections 21C(2) and 21D(3)). The franchisor must provide this statement to the franchisee at least seven days before entry (section 21B(1), as applied by sections 21C(3) and 21D(4)). A defective or late statement allows the franchisee to terminate the lease within six months and claim compensation under section 21F of the Act.

In circumstances where the head lease is already signed and its terms remain unchanged, waiting up to 28 days for an updated lessor disclosure statement creates artificial delays and unnecessary costs. Consequently, we suggest that, where the underlying head lease terms have not changed, consideration be given to removing the need under sections 21C and 21D to obtain an updated head lessor disclosure statement. Instead, the franchisor, or its relevant related leasing entity/associate, could be permitted to provide the franchisee with a copy of the current head lease, the original head lessor disclosure statement, and

written confirmation from the lessor that there has been no material change in the lease or the original lessor disclosure since the original head lessor disclosure statement was provided. If there has been a material change, we suggest only the material change needs to be detailed. We recommend lessors be required to provide this confirmation within 14 days of any request by the lessee.

Further, the Act assumes the relevant entity who provides a licence or sublease to a franchisee will be the franchisor. However, in practice for most franchise systems, a franchisor will set up a related entity (an associate) to hold all leases and grant relevant occupancy agreements to their franchisees. As such, the Act should be updated to reflect that the occupancy arrangement, whether licence or sublease, may be provided by a franchisor or its related leasing entity/associate.

9. Are there aspects of the disclosure framework that are unnecessarily complex, duplicative or burdensome?

In our view, there are aspects of the disclosure framework regarding pre-lease disclosure, renewals, variations and assignments that are unnecessarily burdensome, including:

- duplication between lessor and lessee disclosure and repeated full disclosure on renewals where terms are largely unchanged;
- separate, detailed requirements for assignor/assignee disclosure and franchise-related disclosure, even where much of the information overlaps; and
- requirements that appear to necessitate full re-disclosure for minor variations or extensions of existing leases.

We also note that the termination provisions under section 21F of the Act that apply to franchisees under an occupation licence duplicate existing protections for franchisees under the Franchising Code.

Where a franchisor or its related entity/associate holds the head lease and the franchisee holds an occupation licence, the franchisor (or related entity/associate) generally remains solely liable to the lessor, with contractual privity staying between the lessor and the franchisor or its related leasing entity.

As such, we suggest consideration be given to excluding the six-month termination remedy under section 21F from applying to a franchise licence situation where the franchisee is already protected against the franchisor and its associated leasing entities under the Franchising Code regarding lease terms, fit out obligations, capital expenditure, and occupancy risks.

Additionally, our members have identified two requirements for franchisees under section 22D of the Act that are unnecessarily burdensome:

- section 22D(1) was amended by the *Retail Shop Leases Amendment Act 2016* to exempt a "prospective franchisee" from providing financial and legal advice reports before entering into a lease. However, this exemption only applies to a "prospective franchisee" who is to be granted a franchise licence under section 21D(1)(b). A franchisee who is to be granted a sublease under section 21C is treated as a "sublessee" and must still obtain the advice reports under section 22D; and

- to waive or shorten the seven-day disclosure period under section 21B(2)(b)(ii) or section 22C(2)(b)(ii) of the Act, a non-major lessee must provide a separate legal advice report under section 22D which confirms a lawyer advised them on the waiver's legal meaning and effect.

For franchise arrangements that are already covered under the Franchising Code, we suggest the exemption for licences should be extended to subleases.

10. Are there opportunities to simplify or streamline disclosure processes without changing the substantive information that must be provided? How could this be achieved?

QLS believes there are opportunities to improve disclosure processes and reduce complexity without altering substantive information and preserving the protective intent of the existing disclosure provisions. In particular, we suggest:

- consolidating the disclosure sections into a single modular disclosure framework, supported by one core form with optional schedules for renewals, assignments and franchising;
- explicitly permitting standardised electronic forms and delivery, including electronic signatures; and
- introducing a short-form process for renewals or extensions where key terms are unchanged, with clear guidance that only material changes would trigger updated disclosure.

D. Minimum lease standards and other operational requirements

11. Do the existing prescribed minimum lease standards remain appropriate?

Our members have reported that the minimum lease standards governing outgoings recovery, relocation and demolition lack sufficient detail, which has led to varied drafting and frequent disputes.

12. Are there any requirements or processes under the Act in relation to minimum lease standards / other operational matters that are unclear, overly complex or difficult to apply or comply with in practice?

We have identified several requirements or processes under the Act that could be amended:

- Outgoings provisions: we suggest clarifying what may be recovered (e.g. capital works, sustainability upgrades, marketing/promotions levies) and the level of budget and reconciliation transparency required, especially in multi-tenant centres.
- Relocation and demolition clauses: we recommend providing a clearer framework around "reasonably comparable premises", genuine redevelopment, and minimum notice and compensation.
- Turnover rent/data provisions: we suggest updating the sections dealing with turnover rent to address omnichannel sales, online components and data-sharing requirements. This raises policy issues of whether:
 - (a) online sales should be included in sales in or at the shop in circumstances where the lessee's recipient computer might or might not be located in the retail shop, or might

be there intermittently but not permanently, and relevant goods might be supplied and delivered from an off-site warehouse; and

(b) the retail lessee should be required to include those sales in any trading figures relevant to turnover rent.

- Termination, extension or compensation consequences for procedural non-compliance: we recommend providing a clear framework for when those remedies should apply, e.g. only where the non-compliance is material and has caused actual prejudice, with a reasonable opportunity to cure inadvertent administrative non-compliance before substantive lease rights are affected.

13. Are there any areas where prescribed lease standards should be amended to better align with the needs of lessors and lessees?

Provisions that our members have consistently found to be unclear or complex include:

- the assignment and consent provisions, particularly where franchisors, mortgagees and multiple parties are involved;
- compensation for business disturbance, e.g. centre refurbishments, reconfigurations and changes to trading hours or access, or for leases that include a contractual break clause for the benefit of the lessor (not necessarily on redevelopment) where the thresholds for entitlement and the method of quantifying loss are not well defined; and
- the market rent determination provisions, including assumptions to be used by valuers and treatment of incentives and lessor contributions.

These sections would benefit from clearer definitions and the inclusion of examples in the Act.

14. Are the current processes relating to rent reviews and market rent determinations operating efficiently from a user perspective?

Our members have reported that the current processes relating to rent reviews and market rent determinations can be slow and expensive to use, particularly where parties must negotiate valuation assumptions and the treatment of incentives. Further, they do not provide sufficient guidance on methodology, leading to divergent valuation practices and disputes.

We suggest these provisions could be improved by making statutory assumptions more explicit, streamlining valuer appointment mechanisms and tightening timeframes in relation to rent reviews and market rent determinations.

15. Are there aspects of the Act's operational requirements that could be simplified or clarified to improve usability and compliance?

Operational provisions that could be simplified, clarified or further considered include:

- consider whether the warning provisions for renewing or not renewing a lease are useful in practice or whether they create an additional level of administration;
- the assignment, variation and option to renew provisions could be amended to clarify who must provide each disclosure, when consent may reasonably be withheld, and the effect of non-compliance;

- the sections dealing with compensation, relocation, demolition and centre redevelopment could be clarified by defining key concepts such as “significant disruption” and “reasonably comparable premises” and including guidance or examples on their application; and
- section 48(2) could be clarified to distinguish the external registration fee and survey fees from reasonable third-party legal and administrative costs necessarily incurred in the process. If those ancillary costs are not intended to be recoverable, the provisions should state this expressly.

16. Do the current provisions of the Act establish conditions that help prevent disputes from arising between parties to a lease?

In our view, the disclosure, minimum standards and compensation provisions help prevent some disputes from arising between the parties, particularly around hidden terms and unfair rent review mechanisms. However, recurring disputes about outgoings, market rent, relocation/demolition, disturbance compensation and assignments indicate that the current drafting is not sufficiently clear or prescriptive in these areas. Refining these specific sections and increasing guidance would strengthen the preventive function of the Act.

17. Are there any emerging practical issues in how the Act operates (for example, due to changes in business models or technological changes) that are not well addressed by current processes?

Emerging issues not well addressed in the Act include:

- treatment of online and omnichannel sales for turnover rent calculations and disclosure;
- rights and obligations relating to data collection and sharing, especially where lessors require access to sales data; and
- licences, pop-ups and fulfilment hubs.

Targeted amendments to the turnover rent, permitted use, disclosure and minimum standard provisions may be required to deal with these developments if these business models are to fall within the scope of the Act.

E. Dispute resolution

18. Do the dispute resolution provisions and processes under Part 8 of the Act operate efficiently and effectively in practice?

The retail tenancy dispute provisions in Part 8 (including provisions regarding notice of dispute, mediation, and certification to proceed) provide a structured pathway but can be cumbersome. In particular, there is uncertainty about when parties have satisfied the pre-conditions to escalate a dispute, and how informal negotiations or partial participation in mediation are treated. Additionally, the provisions do not always accommodate the need for urgent relief, particularly where a lessee faces imminent termination or lock-out.

We suggest clarifying the steps, pre-conditions and circumstances in which urgent relief is available would improve the practical operation of Part 8.

19. Are the current procedural and jurisdictional settings supporting timely, proportionate, accessible and cost-effective resolution of disputes?

Our members have reported that the procedural and jurisdictional settings in Part 8 and related provisions do not consistently deliver timely, proportionate and cost-effective outcomes.

The interaction between the Act, the Queensland Small Business Commissioner's functions and QCAT's jurisdiction can be confusing, especially in relation to limitation periods and costs. Further, the consequences of non-compliance with dispute resolution steps (e.g. failure to attend mediation) are not clearly articulated in the Act.

We suggest more explicit guidance in Part 8 on dispute resolution pathways, jurisdictional thresholds, and the effect of non-compliance would assist parties and their advisers.

Additional feedback

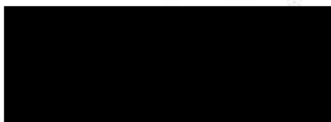
In addition to the issues raised in the discussion paper, we suggest there is an opportunity to pursue greater national consistency across retail leasing regimes in core areas such as definitions, disclosure, minimum lease standards and dispute resolution processes. Aligning the Act's definitions and key operational provisions with broadly similar frameworks in other jurisdictions (for example, New South Wales) would reduce compliance costs for lessors and lessees operating nationally and make the Queensland regime easier to understand and apply, without diminishing substantive protections.

This could be addressed through targeted amendments to the definition and application provisions, disclosure sections, minimum standards provisions and Part 8 dispute resolution provisions.

We note that the Australian Government Treasury is currently consulting on harmonisation of retail tenancies and related commercial leasing.¹ QLS intends to provide feedback to the Law Council of Australia for a submission in response to this consultation.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED]

Yours faithfully



Peter Jolly
President

¹ [Harmonising retail tenancies across Australia - Consult hub](#)