

Retail Tenancies Bill

No.

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SCHEDULE

Disclosure Statement



LEGISLATIVE ASSEMBLY

Read 1° 7 May 1986

(Brought in by Mr Fordham and Mr Wilkes)

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 either the Institute of Chartered Accountants of Australia or the Australian Society of Accountants.

“**Building**” includes any structure.

15 “**Common area**” means an area within or adjacent to a retail shopping centre that 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 intended to be so used.

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

“**Key-money**” means—

(a) money that a tenant is to pay by way of a premium, non-repayable bond or otherwise; or

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

in connection with the granting, renewal or assignment of a lease or the sub-leasing of the premises. 10

“**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 any lease, licence or agreement, whether in writing or not, that provides for the occupation of premises situated within the State, whether for a term or by way of a periodic tenancy or a tenancy at will. 15

“**Registered valuer**” means a person registered under Part II of the *Valuation of Land Act 1960*. 20

“**Retail premises**” means any premises that 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—

(a) premises that are marketing premises under the *Petroleum Retail Marketing Franchise Act 1980* of the Commonwealth (as amended and in force for the time being); or 25

(b) exempt premises.

“**Retail shopping centre**” means a cluster of premises— 30

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

(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. 35

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

(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. 40

(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. 45

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

Application.

10 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.

15 (3) Parts 1, 2 and 4 do not apply to a retail premises lease that—
(a) was entered into before the commencement of this section;
or
(b) is entered into after the commencement of this section under
20 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—

- (a) irrespective of where the lease was entered into; and
- 25 (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—

- (a) either completely or to a specified extent;
- 30 (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.

35 **PART 2—RETAIL PREMISES LEASES**

Disclosure.

7. (1) If a tenant has not been given a disclosure statement at least 7 days before entering into a retail premises lease, the tenant may give
40 the landlord a written notice of termination at any time within 28 days
after entering into the lease.

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

(3) If a tenant gives the landlord a notice of termination under sub-section (1), the lease terminates 14 days after the notice is given.

Tenant to be given copy of lease.

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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 within 14 days after the lease is entered into or the terms are agreed.

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(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.

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

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Key-money and goodwill.

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

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(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—

(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

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(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

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(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—

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(i) within 12 months of entering into the lease 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

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* 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.

lease for the 4 months immediately before the assignment;

5 (ii) within 2 years of entering into the lease 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;

10 (iii) within 3 years of entering into the lease 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.

15 (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.

Rent review.

20 10. (1) A provision in a retail premises lease for a review of the rent is void if the lease provides that the rent payable after the review must exceed the rent payable immediately before the review.

25 (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.

(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.

30 (4) If a retail premises lease provides for a review of the rent having regard to the market rent of the premises then, unless the lease contains a provision to the contrary, the market rent of the premises is the rent that would be obtained on a free and open market if the premises were unoccupied and offered for rental for the same use and on the same terms as under the lease.

(5) If—

35 (a) a provision in a retail premises lease about rent is made void by this section; or

(b) a retail premises lease provides for a review of the rent and the landlord and the tenant do not agree about the result of the review within 30 days—

40 the rent is to be as agreed in writing between the landlord and the tenant or determined by a registered valuer.

(6) The registered valuer is to be appointed jointly by the landlord and the tenant or appointed 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.

(7) The fees payable to a registered valuer appointed under sub-section (6) are borne jointly by the landlord and the tenant. 5

(8) In determining rent a registered valuer must have regard to the market rent of the premises as described in sub-section (4).

Rent based on turnover.

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. 10

(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— 15

(a) not later than 14 days after the end of each month for which rent is to be so determined or at any other time that the parties agree on, a statement in writing giving the turnover during that month or other period to which the statement relates; and 20

(b) not later than 42 days after the end of each year for which rent is to be so determined or at any other time that the parties agree on, and at the termination of the lease, a statement of the turnover certified by an accountant to represent the turnover truly and accurately during that year or other period to which the statement relates. 25

(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 but, at the request of the landlord, must permit an accountant to carry out an audit of those turnover figures on behalf of the landlord and at the cost of the landlord. 30

(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 5%. 35

(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 (but without limiting the generality of that expression in sub-section (1)), “turnover” does not include the following: 40

(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;
- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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;
- 25 (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;
- 30 (l) Any other matter which the landlord and the tenant agree does not form turnover.
- (5) 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, the rent is to be as agreed in writing between the landlord and the tenant or determined by a registered valuer.
- 35 (6) The registered valuer is to be appointed jointly by the landlord and the tenant or appointed 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.
- 40 (7) The fees payable to a registered valuer appointed under sub-section (6) are borne jointly by the landlord and the tenant.
- (8) In determining rent a registered valuer must have regard to the market rent of the premises ascertained as described in section 10 (4).

Turnover figures not generally required.

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
- (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 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 ceases to have effect as soon as those figures or statements are no longer required for the purpose.

(3) 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 (whether in accordance with section 11 (2) or under the lease) unless the communication is made with the consent of the tenant.

(4) If a landlord contravenes sub-section (3) then, notwithstanding anything in this Act or in the retail premises lease, the tenant is released from any obligation to provide any further turnover figures or statements during the term of the lease.

Right to at least 5 years' tenancy.

13. (1) Subject to sub-section (2), a retail premises lease (other than a periodic tenancy or a tenancy at will) 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—

- (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;
- (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.

(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—
- 5 (i) any period ending immediately before the beginning of the current term during which the premises were occupied as retail premises by the tenant;
- (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
- 10 (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
- 15 (c) the lease is not the first retail premises lease entered into by the tenant as a tenant; or
- (d) before the end of the current term the landlord gives notice to the tenant in the prescribed form that at the end of that term the premises are to be—
- 20 (i) demolished; or
- (ii) substantially repaired, renovated or reconstructed and the repair, renovation or reconstruction cannot be carried out practicably without vacant possession.
- 25 (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.
- (4) 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 that—
- 30 (a) the tenant does not have any further statutory option to renew the lease; and
- (b) 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 determined by a registered valuer.
- 35 (5) The registered valuer is to be appointed jointly by the landlord and the tenant or appointed 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.
- 40 (6) The fees payable to a registered valuer appointed under sub-section (5) are borne jointly by the landlord and the tenant.

(7) In determining rent a registered valuer must have regard to the market rent of the premises ascertained as described in section 10 (4).

(8) The landlord is not entitled to determine a retail premises lease at a time before the end of the term provided for by the statutory option unless— 5

- (a) the tenant has not remedied a default under the lease; or
- (b) it would be inconsistent with a head lease under which the landlord holds the premises for the retail premises lease to continue.

(9) If a retail premises lease has been assigned, a reference to the tenant in sub-section (1) (a), (1) (b) or (2) (a) (i) is a reference to the person who entered into the lease as the tenant and not to the tenant's assignee. 10

Options to renew.

14. (1) In this section "option" does not include the statutory option. 15

(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 20
- (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. 25

(4) 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
- (b) the tenant has persistently defaulted under the lease throughout its term and the landlord has given the tenant written notice of the defaults. 35

(5) 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

(6) If a landlord fails to notify a tenant as required by sub-section (5), the lease continues, subject to sub-section (8), until a day specified in a notice given to the tenant by the landlord that is more than 3 months after the giving of the notice.

5 (7) The terms and conditions upon which a lease that continues by virtue of sub-section (6) is held are the same as those upon which the lease was held immediately before it was continued.

(8) If a landlord fails to notify a tenant as required by sub-section (5), the tenant may, by written notice given to the landlord, determine
10 the lease as from any day that is—

- (a) not earlier than the expiry of the term of the lease; and
- (b) not later than the day specified in any notice given by the landlord under sub-section (6).

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, then—

(a) the lease must specify—

20 (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 expenses 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.

(2) The regulations may—

40 (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

(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.

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

(4) If for any particular item of expense a tenant has paid the landlord more than the actual amount of that item of expense, the landlord must refund to the tenant the amount of the overpayment when the landlord gives the tenant the annual statement that deals with that item of expense. 5

Consent to assignment or sub-lease.

16. (1) If a retail premises lease allows the tenant to assign the lease or sub-lease the premises with the consent of the landlord, and the tenant has— 10

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

(b) given the landlord the name and address of the proposed assignee or sub-tenant together with two references as to the proposed assignee or sub-tenant's financial circumstances and a copy of the proposed deed of assignment or sub-lease— 15

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. 20

(2) A landlord must not unreasonably withhold consent to an assignment of the lease or a sub-letting of the premises. 25

(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 that purports to prevent or restrict the assignment of the lease is void. 30

(5) Sub-section (4) does not make void a provision in a retail premises lease—

(a) requiring the consent of the landlord to an assignment of the lease; or

(b) requiring the preparation and execution of documents for the purpose of effecting an assignment; or 35

(c) requiring a party to the lease to bear any fees, costs or charges (including stamp duty) incurred in connection with an assignment.

Compensation by landlord.

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

- 5 (a) inhibits the access of the tenant to the retail premises in any substantial manner; or
- (b) 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 that results in loss of profits by the tenant; or
- 15 (d) fails to have rectified as soon as practicable any breakdown of plant or equipment under the landlord's care and maintenance that results in loss of profits by the tenant; or
- (e) fails to comply as soon as practicable with any requirement of a public statutory authority or government department if it is the landlord's responsibility to do so; or
- 20 (f) if the retail premises are situated in a retail shopping area, fails to adequately clean, maintain, repair or repaint any common area—

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 reasonable compensation as agreed in writing between the parties or, in the absence of agreement, determined under Part 3.

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

- 30 (a) if the retail premises are situated in a retail shopping centre and the tenant 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
- 35 (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—

then the landlord is liable to pay the tenant reasonable compensation as agreed in writing between the parties or, in the absence of agreement, determined under Part 3.

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.

(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.

(3) The regulations may specify matters to be provided for in the rules of a merchants' association or similar body including matters about— 5

(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

(c) the fund or account to which the contributions of the members are to be paid; and 10

(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. 15

(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. 20

Indemnities.

19. (1) A provision in a retail premises lease is void if it claims to indemnify the landlord against any action, liability, penalty, claim or demand for or to which the landlord would otherwise be liable or subject. 25

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

(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 the tenant occupied the retail premises. 35

PART 3—DETERMINATION OF DISPUTES

Panel of arbitrators.

5 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.

(2) The members of the panel of arbitrators—

10 (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

(b) when acting as arbitrators are entitled to be paid the fees, travelling and other allowances which are fixed from time to time by the Governor in Council; and

15 (c) 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.

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

References to arbitrators.

25 21. (1) If a dispute arises under a retail premises lease between the landlord and the tenant, subject to sub-section (2) the landlord or the tenant or both may give notice in the prescribed form of the dispute to a person who is prescribed for the purposes of this section.

(2) A dispute about arrears of rent or the amount of rent payable cannot be notified under sub-section (1).

30 (3) As soon as practicable after receiving notice of a dispute under sub-section (1) the prescribed person must refer the dispute to a member of the panel of arbitrators appointed under section 20.

35 (4) Subject to the *Commercial Arbitration Act* 1984, if a dispute is capable of being referred to an arbitrator under this section the issue in dispute (whether as shown in the initial form of reference to the arbitrator or as emerging in the course of the hearing of the dispute by the arbitrator) is not justiciable at any time by a court or tribunal of any other kind except—

(a) if the arbitrator cannot reach a solution to the dispute; or

(b) if the arbitrator declines to hear the dispute.

(5) For the purposes of this Act a dispute is to be taken to have been referred to an arbitrator when sub-section (1) has been complied with.

Arbitration.

22. (1) Subject to sub-section (2), the *Commercial Arbitration Act* 1984 applies to arbitrations before a member of the panel of arbitrators appointed under section 20. 5

(2) Costs shall not be allowed to or against any party to an arbitration before a member of the panel of arbitrators 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. 10

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— 15

- (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 20
- (c) by sending it by post addressed to the person at the usual or last known place of residence or business of that person. 25

Act prevails. 25

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
- (b) limit the right of a party to the lease to refer any dispute to arbitration under Part 3. 30

(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. 35

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.

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SCHEDULE

Section 7 (2).

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>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
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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*
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 material agreements between landlord and tenant or material representations made by landlord or tenant:

DECLARATION BY LANDLORD

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

Name of tenant:

Address of tenant:

Signature:

Date:

