

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 192
Issue No. 4

TUESDAY, 8 NOVEMBER 2011

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011 [192-2]

When in committee on the recommittal of the *Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011*:

Clause 5

Minister for Commerce: To move —

4/5 Page 4, line 6 — To delete the following words —

retail shop lease means any agreement under which a person grants or agrees to grant to another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop —

- (a) whether or not the right is a right of exclusive occupation;
- (b) whether the agreement is express or implied; or
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing.

and insert —

retail shop lease means a lease that provides for the occupation of a retail shop, unless —

- (a) the retail shop —
 - (i) has a lettable area that exceeds 1 000 square metres; and

- (ii) is not of a kind prescribed by the regulations for the purposes of this definition;
- or
- (b) the lease is held by —
 - (i) a listed corporation (within the meaning of the *Corporations Act 2001* (Commonwealth) section 9) that would not be eligible to be incorporated as a proprietary company; or
 - (ii) a subsidiary (within the meaning of the *Corporations Act 2001* (Commonwealth) section 9) of such a corporation;
- or
- (c) the lease is held by —
 - (i) a body corporate whose securities are listed on a stock exchange, outside Australia and the external territories, that is a member of the World Federation of Exchanges; or
 - (ii) a subsidiary (within the meaning of the *Corporations Act 2001* (Commonwealth) section 9) of such a body corporate;
- or
- (d) the lease is of a kind that is prescribed by the regulations as exempt from the operation of this Act;

Clause 7 [If recommitted by the House with Clauses 5 and 9]

Hon Lynn MacLaren: To move —

7/7 Page 7, after line 20 — To insert —

- (5) After section 6(6) insert:
 - (7) A landlord under a retail shop lease must, within 14 days after being given a written request to do so by the tenant, provide to the tenant such information as may be relevant to the retail shop lease as is requested, including any of the following information about leases for retail shops in the same building or retail shopping centre —
 - (a) current rental for each lease;
 - (b) rent free periods or any other form of incentive;
 - (c) recent or proposed variations of any lease;
 - (d) outgoings for each lease;
 - (e) any other information prescribed for the purposes of this paragraph.
 - (8) The information set out in 6(7) must also be included in the disclosure statement given for the purposes of this section.

Clause 9**Minister for Commerce:** To move —

- 6/9 Page 9, line 7 — To delete “section 11(3B) may disclose that information, with the exception of information relating to financial turnover, to any other person.” and insert —

section 11(3B) must not disclose that information to any other person unless the disclosure is made —

- (a) for the purpose of, or in connection with, determining the rent payable as a result of the review; or
 - (b) in a way that does not disclose information identifying a particular lease or tenant, or relating to a tenant’s business, for the purpose of specifying the matters to which the person had regard in resolving the question concerned; or
 - (c) with the consent of both the tenant and the landlord of the relevant retail shop; or
 - (d) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
 - (e) as required or permitted under this Act or any other law; or
 - (f) with any other lawful excuse.
- (2) Subsection (1) does not prevent a person from disclosing information that is publicly available at the time the disclosure concerned was made.
- (3) If a person discloses information in contravention of subsection (1) and the tenant or landlord suffers loss or damage because of the disclosure, the tenant or landlord is entitled to be paid by the person who made the disclosure compensation for the loss or damage —
- (a) of such reasonable amount as is agreed between the person and the tenant or landlord; or
 - (b) failing agreement, as may be determined by the Tribunal on the application of the tenant or landlord.

