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LEGISLATIVE COUNCIL

Retail Leases Amendment Bill 1997

First Print

Amendments to be moved in Committee

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- No. 1 Page 3, Schedule 1. After line 2, insert:
- [1] **Section 3 Definitions**  
Omit "of operating, repairing or maintaining" from paragraph (a) of the definition of *outgoings*.  
Insert instead "directly attributable to the operation, maintenance or repair of".
- No. 2 Page 6, Schedule 1 [7], lines 20 and 21. Omit all words on those lines.  
Insert instead:
- Omit "(including as to rent)" from section 57 (c).
- No. 3 Page 6, Schedule 1 [7]. After line 21, insert:
- [8] **Section 57 (c)**  
Insert at the end of the paragraph:  
The rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation.
- No. 4 Page 6, Schedule 1 [7]. After line 21, insert:
- [8] **Section 57 (f)**  
Omit "including legal costs".  
Insert instead "including (but without being limited to) costs incurred by the lessee in dismantling and reinstalling any fixtures and fittings."



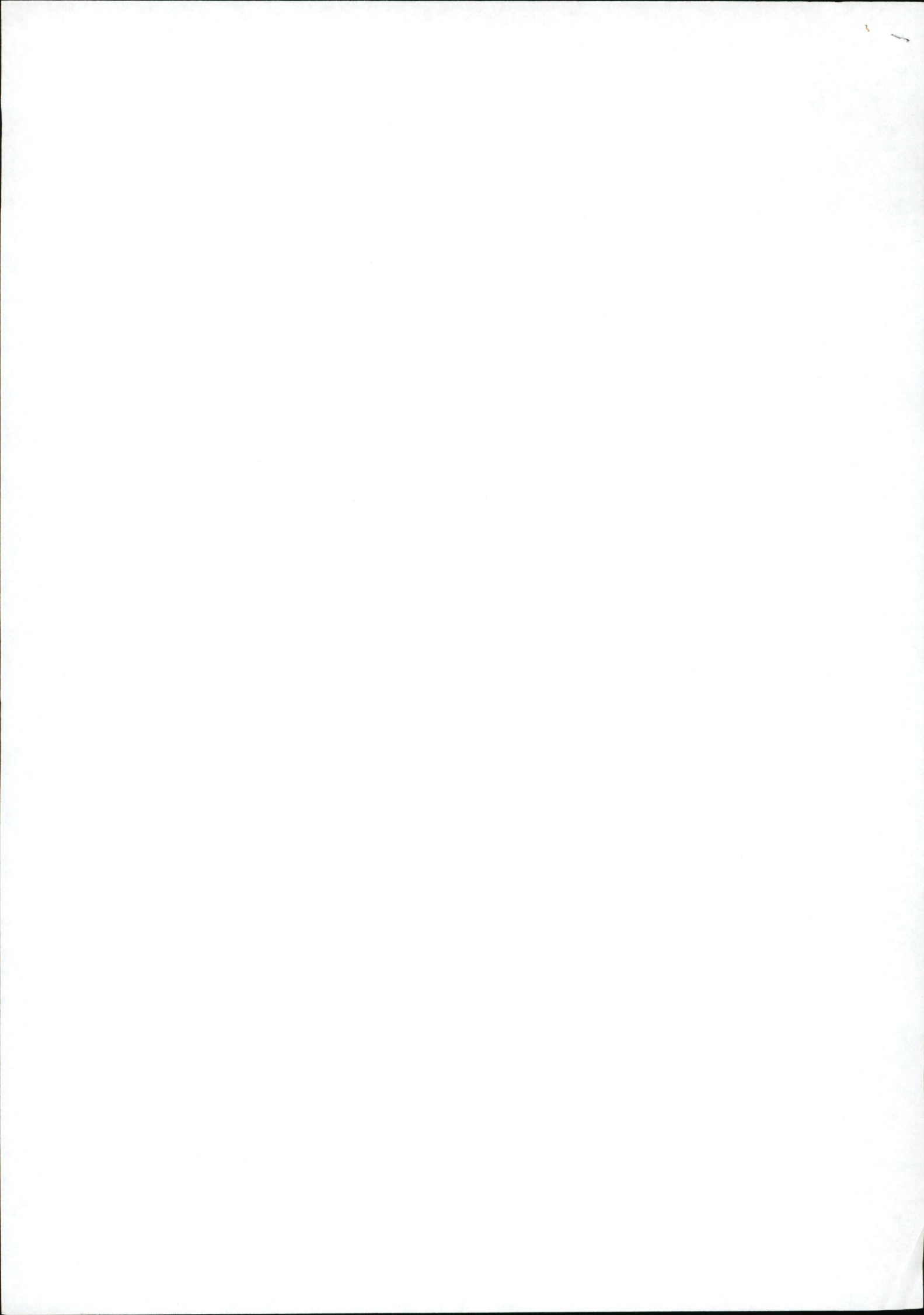
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and legal costs, in connection with the relocation".

No. 5      Page 6, Schedule 1 [7]. After line 21, insert:

**[8]      Section 57**

Omit "a new lease" from the note at the end of section 57.  
Insert instead "a new 5 year lease".





New South Wales

# Retail Leases Amendment Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Retail Leases Act 1994* as follows:

- (a) to change the requirements for reporting by lessors of outgoing expenditure to which lessees are required to contribute to increase the information required to be included and to ensure that the requirements accord with accounting and auditing practices,
  - (b) to change the timing of the required adjustment of lessees' contributions to outgoing so that the adjustment will be required within 1 month after the lessor gives the lessee the statement of outgoing expenditure concerned,
  - (c) to change the requirements for reporting by lessors of advertising and promotions expenditure to which lessees are required to contribute so as to ensure that the requirements accord with accounting and auditing practices,
  - (d) to amend the provision that entitles a lessee to alternative premises when the lessee is relocated during the term of the lease so that the alternative premises need not be offered at the same rent as the lessee's current premises,
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- (e) to provide that the costs of mediation under the Act are to be paid by the parties to the dispute rather than solely by the party applying for the mediation as at present,
- (f) to give the Commercial Tribunal power to award interest on an order for the payment of money for the period from when the cause of action arose to the time of the order for payment,
- (g) to make it clear that premises in an office tower that is part of a shopping centre are not to be regarded as retail shops in the shopping centre,
- (h) to make minor amendments to clarify the operation of some provisions,
- (i) to make consequential amendments including the enactment of savings and transitional provisions.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the *Retail Leases Act 1994*.

## Schedule 1 Amendments

**Schedule 1 [1]** and **[2]** make minor amendments to the definition of *retail shopping centre* in the Act to make it clear that the list of attributes of a retail shopping centre in the definition all have to be present to constitute a retail shopping centre.

**Schedule 1 [3]** provides that premises in an office tower that forms part of a retail shopping centre are not retail shops for the purposes of the Act.

**Schedule 1 [4]** replaces the provision dealing with the obligation of a lessor to report to a lessee on outgoings expenditure by the lessor to which the lessee is required to contribute. The lessor will be required to provide a statement (rather than a report) of outgoings expenditure. The statement is to be prepared in accordance with relevant accounting principles and disclosure requirements (instead of being prepared by an auditor in accordance with

*Corporations Law* accounting standards) and is to be accompanied by an auditor's report certifying that the statement is a correct statement of outgoings expenditure (rather than a statement as to whether the outgoings are properly payable by the lessee). The amendment brings the provision into line with current accounting and auditing practices.

**Schedule 1 [5]** changes the timing of the required adjustment between the lessor and the lessee to take account of any underpayment or overpayment by the lessee in respect of outgoings so that it will be required within 1 month after the lessor gives the lessee the outgoings statement referred to in item [4] with an upper limit of 4 months after the end of the relevant accounting period.

**Schedule 1 [6]** replaces the provision dealing with the obligation of a lessor to report to a lessee on advertising and promotions expenditure to which the lessee is required to contribute. The amendment will bring the provision into line with the provision referred to in item [4] concerning reports to lessees on outgoings expenditure.

**Schedule 1 [7]** changes the provision that deals with a lessee's entitlement to be offered alternative premises when relocated within a shopping centre. Currently the provision requires the lease for the alternative premises to be on the same terms (including as to rent) as the lease for the current premises. The amendment will exclude rent from this requirement to allow the rent to change to reflect differences in the alternative premises.

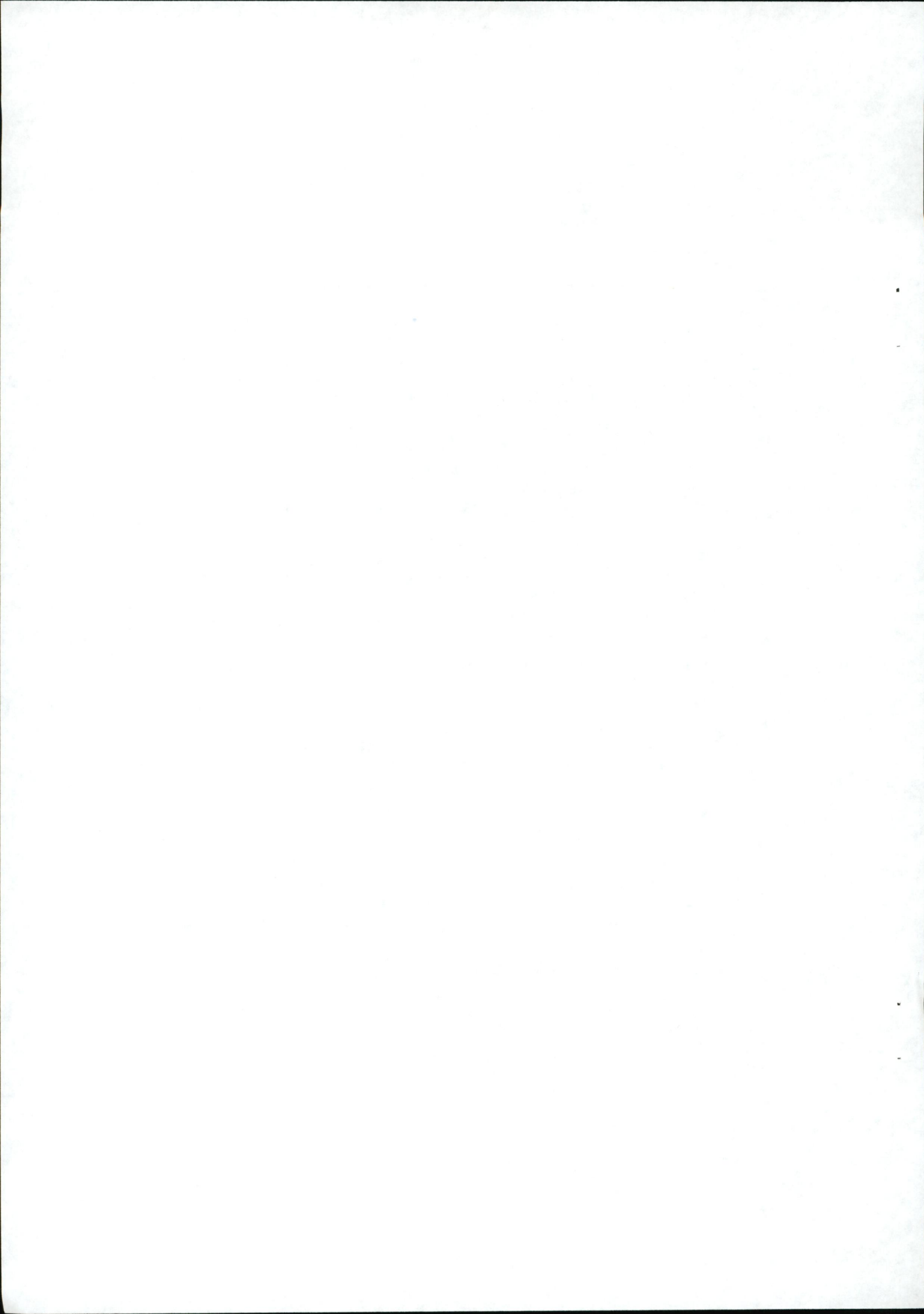
**Schedule 1 [8]** requires the parties to a mediation of a dispute under the Act to share the costs of mediation. At present the party applying for mediation is required to pay those costs.

**Schedule 1 [9]** gives the Commercial Tribunal power when determining a retail tenancy claim to award interest for the period between the date the cause of action arose and the date of the Tribunal's order on the claim. The provision is modelled on the parallel provision applying to the District Court.

**Schedule 1 [10]** is a minor amendment to make references in retail leases to *the Act* mean the *Retail Leases Act 1994*.

**Schedule 1 [11]** and **[13]** inserts savings and transitional provisions.

**Schedule 1 [12]** makes a minor amendment to the Disclosure Statement at the end of the Act for consistent usage of the expression "gross lettable area".





First print



New South Wales

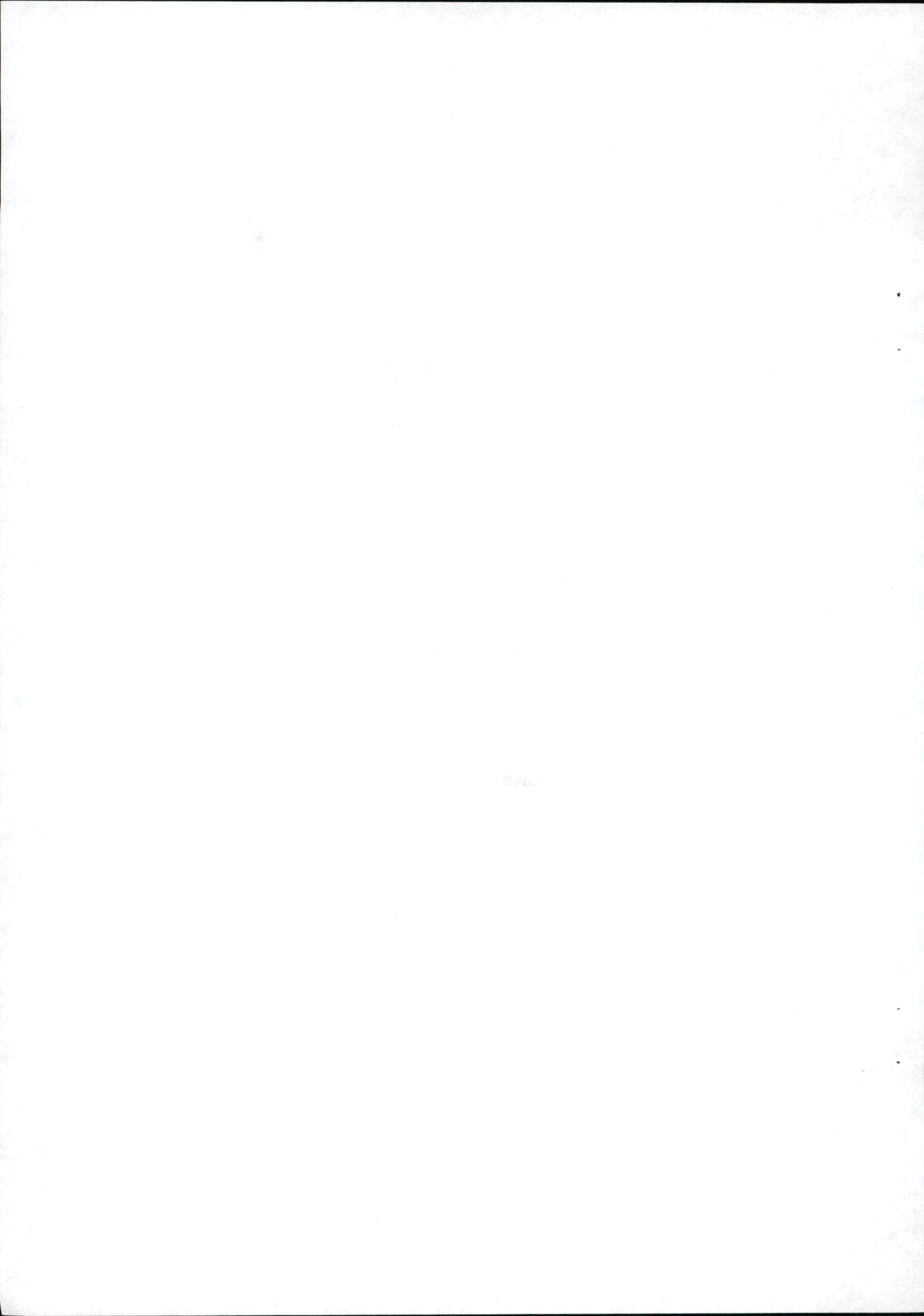
# Retail Leases Amendment Bill 1997

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New South Wales

## Retail Leases Amendment Bill 1997

No. , 1997

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### **A Bill for**

An Act to amend the *Retail Leases Act 1994* to make further provision with respect to the payment, apportionment and adjustment of outgoings and other expenditure under a retail shop lease, the payment of mediation costs, and the award of interest on claims for the payment of money; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Retail Leases Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Retail Leases Act 1994 No 46**

The *Retail Leases Act 1994* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Omit “with the following attributes” from the definition of *retail shopping centre*.

5

Insert instead “that has all of the following attributes”.

### [2] Section 3, definition of “retail shopping centre”

Omit “are promoted” from paragraph (d).

Insert instead “is promoted”.

### [3] Section 5 Certain retail shops excluded from the operation of this Act

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Renumber existing paragraph (d) as paragraph (e) and insert the following as paragraph (d):

- (d) any premises in an office tower that forms part of a retail shopping centre,

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### [4] Section 28

Omit the section. Insert instead:

#### **28 Lessor to provide statement and report on outgoings**

A retail shop lease is taken to include provision to the following effect:

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- (a) The lessor must give the lessee a written statement (an *outgoings statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of outgoings to which the lessee is required to contribute.

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Retail Leases Amendment Bill 1997

Schedule 1 Amendments

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- (b) If the shop is in a retail shopping centre, the outgoing statement must include a statement of the current gross lettable area of the shopping centre and details of any material change in that gross lettable area during the period to which the outgoing statement relates. 5
- (c) The outgoing statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time. 10
- (d) The outgoing statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (e) The outgoing statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*). 15
- (f) The auditor's report is to include a statement by the auditor as to whether or not the outgoing statement correctly states the expenditure by the lessor during the accounting period concerned in respect of outgoing to which the lessee is required to contribute, and as to whether or not the total amount of estimated outgoing for that period (as shown in the estimate of outgoing given to the lessee) exceeded the total actual expenditure by the lessor in respect of those outgoing during that period. 20  
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- (g) The outgoing statement may be a composite statement (that is, it may relate to more than one lessee) so long as each lessee to which it relates is able to ascertain from the statement the information required by paragraph (a) that is relevant to that lessee. 30  
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- (h) The outgoing statement need not be accompanied by an auditor's report if the statement does not relate to any outgoing other than land tax, water,

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sewerage and drainage rates and charges, local council rates and charges and insurance, and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the lessor as referred to in paragraph (a). 5

**[5] Section 29 Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred**

Omit paragraph (a). Insert instead:

- (a) There is to be an adjustment between the lessor and the lessee for each accounting period of the lessor to take account of any under-payment or over-payment by the lessee in respect of outgoings during the period. The adjustment is to take place within 1 month after the lessor gives the lessee the outgoings statement referred to in section 28 for the period concerned and must in any event take place within 4 months after the end of that period. 10  
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**[6] Section 55**

Omit the section. Insert instead: 20

**55 Lessor to provide statement and report on advertising and promotion expenditure**

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *advertising statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of advertising or promotion costs to which the lessee is required to contribute under the lease. 25  
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- (b) The advertising statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time. 5
  - (c) The advertising statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
  - (d) The advertising statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*). 10
  - (e) The auditor's report is to include a statement by the auditor as to whether or not the advertising statement correctly states the expenditure by the lessor during the accounting period concerned in respect of advertising or promotion costs to which the lessee is required to contribute. 15
- [7] Section 57 Relocation**
- Omit "including as to rent" from section 57 (c). 20  
Insert instead "excluding as to rent".
- [8] Section 66 Mediation of disputes**
- Omit "the person or persons applying to the Registrar for mediation of the dispute" from section 66 (2).  
Insert instead "the parties to the mediation". 25
- [9] Section 72A**
- Insert after section 72:
- 72A Power of Tribunal to award interest**
- (1) When the Tribunal orders on a retail tenancy claim that a person pay money to another person, the Tribunal may order that there is to be included, in the amount ordered 30



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to be paid, interest at a specified rate on the whole or any part of that amount for the whole or any part of the period between when the cause of action arose and when the order takes effect.

- (2) If the whole or part of an amount claimed under a retail tenancy claim is paid during proceedings in the Tribunal on the claim, prior to or without an order for payment being made in respect of the claim, the Tribunal may order that interest be paid at a specified rate on the whole or any part of the money paid for the whole or any part of the period between when the cause of action arose and the date of the payment. 5 10
- (3) The rate of interest specified by the Tribunal under this section must not exceed the rate at which interest is payable on a judgment debt of the District Court. 15
- (4) This section does not:
- (a) authorise the giving of interest on interest, or
  - (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise, or 20
  - (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (5) On a claim for the payment of money, the Tribunal may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order. 25
- (6) For the purposes of subsection (5), **appropriate settlement sum** is a sum offered by a party in settlement of a claim for the payment of money where the amount ordered to be paid (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. Subsection (5) does not prevent an award of interest for the period before the settlement offer is made. 30 35

**[10] Section 78A**

Insert after section 78:

**78A Meaning of "the Act" in leases**

A retail shop lease is taken to include provision to the effect that a reference in the lease to *the Act* is a reference to the *Retail Leases Act 1994*, except in so far as the context or subject-matter otherwise indicates or requires. 5

**[11] Section 84A**

Insert after section 84: 10

**84A Savings and transitional provisions**

Schedule 3 has effect.

**[12] Schedule 2 Disclosure statement**

Omit "Total Lettable Area" from the matter relating to retail shopping centre details. 15  
Insert instead "Gross Lettable Area".

**[13] Schedule 3**

Insert after Schedule 2:

**Schedule 3 Savings and transitional provisions**

(Section 84A) 20

**Part 1 General**

**1 Savings and transitional regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts: 25

*Retail Leases Amendment Act 1997*

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- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 10
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 15

## **Part 2 Retail Leases Amendment Act 1997**

### **2 Meaning of "1997 Amending Act"**

In this Part:

*1997 Amending Act* means the *Retail Leases Amendment Act 1997*. 20

### **3 Application of 1997 amendments**

Each amendment made by the 1997 Amending Act extends to leases to which this Act applies that were entered into before the commencement of the amendment, subject to the other provisions of this Part. 25

### **4 Outgoings statements and reports**

Section 28 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 28 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period. 30

**5 Adjustment of outgoing contributions**

The amendment to section 29 made by the 1997 Amending Act does not apply in respect of an outgoing contribution period that ended before the commencement of the amendment.

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**6 Advertising and promotion statements and reports**

Section 55 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 55 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

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**7 Mediation costs**

The amendment to section 66 made by the 1997 Amending Act extends to formal mediation commenced but not completed before the commencement of the amendment.

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**8 Interest on claims**

Section 72A does not apply to a retail tenancy claim lodged with the Commercial Tribunal before the commencement of that section.

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Second print



New South Wales

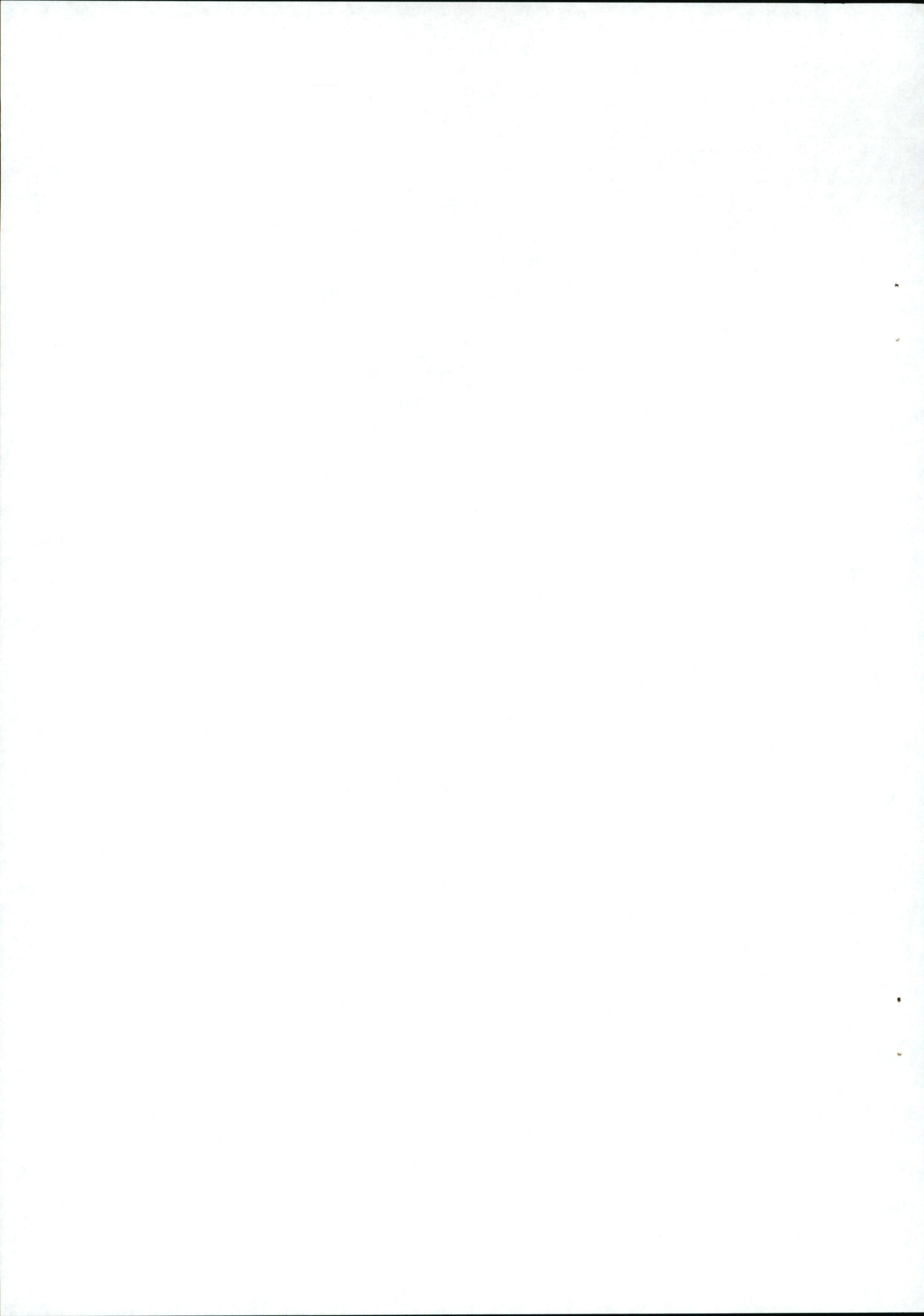
# Retail Leases Amendment Bill 1997

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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

## **Retail Leases Amendment Bill 1997**

Act No      , 1997

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An Act to amend the *Retail Leases Act 1994* to make further provision with respect to the payment, apportionment and adjustment of outgoings and other expenditure under a retail shop lease, the payment of mediation costs, and the award of interest on claims for the payment of money; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Retail Leases Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.      5

**3 Amendment of Retail Leases Act 1994 No 46**

The *Retail Leases Act 1994* is amended as set out in Schedule 1.



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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Omit "of operating, repairing or maintaining" from paragraph (a) of the definition of *outgoings*. 5

Insert instead "directly attributable to the operation, maintenance or repair of".

### [2] Section 3, definition of "retail shopping centre"

Omit "with the following attributes".

Insert instead "that has all of the following attributes". 10

### [3] Section 3, definition of "retail shopping centre"

Omit "are promoted" from paragraph (d).

Insert instead "is promoted".

### [4] Section 5 Certain retail shops excluded from the operation of this Act 15

Re-number existing paragraph (d) as paragraph (e) and insert the following as paragraph (d):

- (d) any premises in an office tower that forms part of a retail shopping centre,

### [5] Section 28 20

Omit the section. Insert instead:

#### 28 Lessor to provide statement and report on outgoings

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *outgoings statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of outgoings to which the lessee is required to contribute. 25  
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Retail Leases Amendment Bill 1997

Schedule 1 Amendments

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- (b) If the shop is in a retail shopping centre, the outgoings statement must include a statement of the current gross lettable area of the shopping centre and details of any material change in that gross lettable area during the period to which the outgoings statement relates. 5
- (c) The outgoings statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time. 10
- (d) The outgoings statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (e) The outgoings statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*). 15
- (f) The auditor's report is to include a statement by the auditor as to whether or not the outgoings statement correctly states the expenditure by the lessor during the accounting period concerned in respect of outgoings to which the lessee is required to contribute, and as to whether or not the total amount of estimated outgoings for that period (as shown in the estimate of outgoings given to the lessee) exceeded the total actual expenditure by the lessor in respect of those outgoings during that period. 20  
25
- (g) The outgoings statement may be a composite statement (that is, it may relate to more than one lessee) so long as each lessee to which it relates is able to ascertain from the statement the information required by paragraph (a) that is relevant to that lessee. 30  
35
- (h) The outgoings statement need not be accompanied by an auditor's report if the statement does not relate to any outgoings other than land tax, water,

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sewerage and drainage rates and charges, local council rates and charges and insurance, and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the lessor as referred to in paragraph (a). 5

**[6] Section 29 Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred**

Omit paragraph (a). Insert instead:

- (a) There is to be an adjustment between the lessor and the lessee for each accounting period of the lessor to take account of any under-payment or over-payment by the lessee in respect of outgoings during the period. The adjustment is to take place within 1 month after the lessor gives the lessee the outgoings statement referred to in section 28 for the period concerned and must in any event take place within 4 months after the end of that period. 10  
15

**[7] Section 55**

Omit the section. Insert instead: 20

**55 Lessor to provide statement and report on advertising and promotion expenditure**

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *advertising statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of advertising or promotion costs to which the lessee is required to contribute under the lease. 25  
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- (b) The advertising statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time. 5
  - (c) The advertising statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
  - (d) The advertising statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*). 10
  - (e) The auditor's report is to include a statement by the auditor as to whether or not the advertising statement correctly states the expenditure by the lessor during the accounting period concerned in respect of advertising or promotion costs to which the lessee is required to contribute. 15
- [8] Section 57 Relocation**
- Omit "(including as to rent)" from section 57 (c). 20
- [9] Section 57 (c)**
- Insert at the end of the paragraph:
- The rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation. 25
- [10] Section 57 (f)**
- Omit "including legal costs".
- Insert instead "including (but without being limited to) costs incurred by the lessee in dismantling and reinstalling any fixtures and fittings, and legal costs, in connection with the relocation". 30

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**[11] Section 57**

Omit "a new lease" from the note at the end of section 57.  
Insert instead "a new 5 year lease".

**[12] Section 66 Mediation of disputes**

Omit "the person or persons applying to the Registrar for mediation of the dispute" from section 66 (2). 5  
Insert instead "the parties to the mediation".

**[13] Section 72A**

Insert after section 72:

**72A Power of Tribunal to award interest**

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(1) When the Tribunal orders on a retail tenancy claim that a person pay money to another person, the Tribunal may order that there is to be included, in the amount ordered to be paid, interest at a specified rate on the whole or any part of that amount for the whole or any part of the period between when the cause of action arose and when the order takes effect. 15

(2) If the whole or part of an amount claimed under a retail tenancy claim is paid during proceedings in the Tribunal on the claim, prior to or without an order for payment being made in respect of the claim, the Tribunal may order that interest be paid at a specified rate on the whole or any part of the money paid for the whole or any part of the period between when the cause of action arose and the date of the payment. 20  
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(3) The rate of interest specified by the Tribunal under this section must not exceed the rate at which interest is payable on a judgment debt of the District Court.

(4) This section does not:  
(a) authorise the giving of interest on interest, or 30

- (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise, or
    - (c) affect the damages recoverable for the dishonour of a bill of exchange. 5
  - (5) On a claim for the payment of money, the Tribunal may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order. 10
  - (6) For the purposes of subsection (5), *appropriate settlement sum* is a sum offered by a party in settlement of a claim for the payment of money where the amount ordered to be paid (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. Subsection (5) does not prevent an award of interest for the period before the settlement offer is made. 15  
20
- [14] Section 78A**
- Insert after section 78:
- 78A Meaning of "the Act" in leases**
- A retail shop lease is taken to include provision to the effect that a reference in the lease to *the Act* is a reference to the *Retail Leases Act 1994*, except in so far as the context or subject-matter otherwise indicates or requires. 25
- [15] Section 84A**
- Insert after section 84: 30
- 84A Savings and transitional provisions**
- Schedule 3 has effect.

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**[16] Schedule 2 Disclosure statement**

Omit "Total Lettable Area" from the matter relating to retail shopping centre details.

Insert instead "Gross Lettable Area".

**[17] Schedule 3**

5

Insert after Schedule 2:

**Schedule 3 Savings and transitional provisions**

(Section 84A)

**Part 1 General**

**1 Savings and transitional regulations**

10

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

*Retail Leases Amendment Act 1997*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

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- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Retail Leases Amendment Act 1997**

### **2 Meaning of "1997 Amending Act"**

In this Part:

*1997 Amending Act* means the *Retail Leases Amendment Act 1997*. 5

### **3 Application of 1997 amendments**

Each amendment made by the 1997 Amending Act extends to leases to which this Act applies that were entered into before the commencement of the amendment, subject to the other provisions of this Part. 10

### **4 Outgoings statements and reports**

Section 28 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 28 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period. 15

### **5 Adjustment of outgoings contributions**

The amendment to section 29 made by the 1997 Amending Act does not apply in respect of an outgoings contribution period that ended before the commencement of the amendment. 20

### **6 Advertising and promotion statements and reports**

Section 55 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 55 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period. 25 30



**7 Mediation costs**

The amendment to section 66 made by the 1997 Amending Act extends to formal mediation commenced but not completed before the commencement of the amendment.

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**8 Interest on claims**

Section 72A does not apply to a retail tenancy claim lodged with the Commercial Tribunal before the commencement of that section.





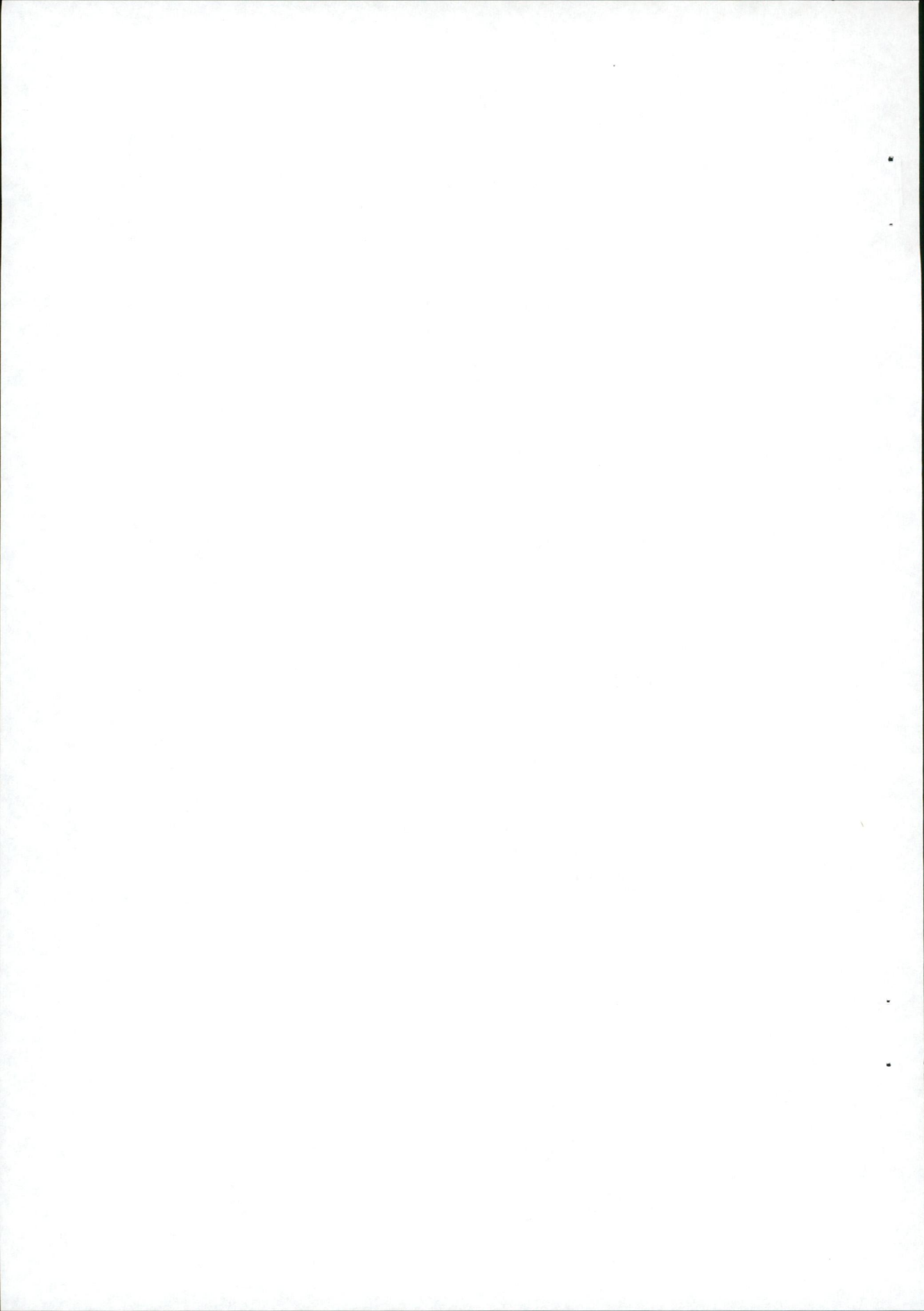
New South Wales

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New South Wales

# **Retail Leases Amendment Act 1997 No 52**

Act No 52, 1997

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An Act to amend the *Retail Leases Act 1994* to make further provision with respect to the payment, apportionment and adjustment of outgoings and other expenditure under a retail shop lease, the payment of mediation costs, and the award of interest on claims for the payment of money; and for other purposes. [Assented to 2 July 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Retail Leases Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Retail Leases Act 1994 No 46**

The *Retail Leases Act 1994* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Omit “of operating, repairing or maintaining” from paragraph (a) of the definition of *outgoings*.

Insert instead “directly attributable to the operation, maintenance or repair of”.

### [2] Section 3, definition of “retail shopping centre”

Omit “with the following attributes”.

Insert instead “that has all of the following attributes”.

### [3] Section 3, definition of “retail shopping centre”

Omit “are promoted” from paragraph (d).

Insert instead “is promoted”.

### [4] Section 5 Certain retail shops excluded from the operation of this Act

Re-number existing paragraph (d) as paragraph (e) and insert the following as paragraph (d):

- (d) any premises in an office tower that forms part of a retail shopping centre,

### [5] Section 28

Omit the section. Insert instead:

#### **28 Lessor to provide statement and report on outgoings**

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *outgoings statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of outgoings to which the lessee is required to contribute.

- (b) If the shop is in a retail shopping centre, the outgoing statement must include a statement of the current gross lettable area of the shopping centre and details of any material change in that gross lettable area during the period to which the outgoing statement relates.
- (c) The outgoing statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.
- (d) The outgoing statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (e) The outgoing statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*).
- (f) The auditor's report is to include a statement by the auditor as to whether or not the outgoing statement correctly states the expenditure by the lessor during the accounting period concerned in respect of outgoing to which the lessee is required to contribute, and as to whether or not the total amount of estimated outgoing for that period (as shown in the estimate of outgoing given to the lessee) exceeded the total actual expenditure by the lessor in respect of those outgoing during that period.
- (g) The outgoing statement may be a composite statement (that is, it may relate to more than one lessee) so long as each lessee to which it relates is able to ascertain from the statement the information required by paragraph (a) that is relevant to that lessee.
- (h) The outgoing statement need not be accompanied by an auditor's report if the statement does not relate to any outgoing other than land tax, water,



sewerage and drainage rates and charges, local council rates and charges and insurance, and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the lessor as referred to in paragraph (a).

**[6] Section 29 Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred**

Omit paragraph (a). Insert instead:

- (a) There is to be an adjustment between the lessor and the lessee for each accounting period of the lessor to take account of any under-payment or over-payment by the lessee in respect of outgoings during the period. The adjustment is to take place within 1 month after the lessor gives the lessee the outgoings statement referred to in section 28 for the period concerned and must in any event take place within 4 months after the end of that period.

**[7] Section 55**

Omit the section. Insert instead:

**55 Lessor to provide statement and report on advertising and promotion expenditure**

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *advertising statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of advertising or promotion costs to which the lessee is required to contribute under the lease.

- (b) The advertising statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.
- (c) The advertising statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (d) The advertising statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*).
- (e) The auditor's report is to include a statement by the auditor as to whether or not the advertising statement correctly states the expenditure by the lessor during the accounting period concerned in respect of advertising or promotion costs to which the lessee is required to contribute.

**[8] Section 57 Relocation**

Omit "(including as to rent)" from section 57 (c).

**[9] Section 57 (c)**

Insert at the end of the paragraph:

The rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation.

**[10] Section 57 (f)**

Omit "including legal costs".

Insert instead "including (but without being limited to) costs incurred by the lessee in dismantling and reinstalling any fixtures and fittings, and legal costs, in connection with the relocation".

**[11] Section 57**

Omit "a new lease" from the note at the end of section 57.  
Insert instead "a new 5 year lease".

**[12] Section 66 Mediation of disputes**

Omit "the person or persons applying to the Registrar for mediation of the dispute" from section 66 (2).  
Insert instead "the parties to the mediation".

**[13] Section 72A**

Insert after section 72:

**72A Power of Tribunal to award interest**

- (1) When the Tribunal orders on a retail tenancy claim that a person pay money to another person, the Tribunal may order that there is to be included, in the amount ordered to be paid, interest at a specified rate on the whole or any part of that amount for the whole or any part of the period between when the cause of action arose and when the order takes effect.
- (2) If the whole or part of an amount claimed under a retail tenancy claim is paid during proceedings in the Tribunal on the claim, prior to or without an order for payment being made in respect of the claim, the Tribunal may order that interest be paid at a specified rate on the whole or any part of the money paid for the whole or any part of the period between when the cause of action arose and the date of the payment.
- (3) The rate of interest specified by the Tribunal under this section must not exceed the rate at which interest is payable on a judgment debt of the District Court.
- (4) This section does not:
  - (a) authorise the giving of interest on interest, or

- (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise, or
  - (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (5) On a claim for the payment of money, the Tribunal may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order.
- (6) For the purposes of subsection (5), *appropriate settlement sum* is a sum offered by a party in settlement of a claim for the payment of money where the amount ordered to be paid (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. Subsection (5) does not prevent an award of interest for the period before the settlement offer is made.

**[14] Section 78A**

Insert after section 78:

**78A Meaning of "the Act" in leases**

A retail shop lease is taken to include provision to the effect that a reference in the lease to *the Act* is a reference to the *Retail Leases Act 1994*, except in so far as the context or subject-matter otherwise indicates or requires.

**[15] Section 84A**

Insert after section 84:

**84A Savings and transitional provisions**

Schedule 3 has effect.

**[16] Schedule 2 Disclosure statement**

Omit "Total Lettable Area" from the matter relating to retail shopping centre details.

Insert instead "Gross Lettable Area".

**[17] Schedule 3**

Insert after Schedule 2:

**Schedule 3 Savings and transitional provisions**

(Section 84A)

**Part 1 General**

**1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

*Retail Leases Amendment Act 1997*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Retail Leases Amendment Act 1997**

### **2 Meaning of "1997 Amending Act"**

In this Part:

*1997 Amending Act* means the *Retail Leases Amendment Act 1997*.

### **3 Application of 1997 amendments**

Each amendment made by the 1997 Amending Act extends to leases to which this Act applies that were entered into before the commencement of the amendment, subject to the other provisions of this Part.

### **4 Outgoings statements and reports**

Section 28 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 28 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

### **5 Adjustment of outgoings contributions**

The amendment to section 29 made by the 1997 Amending Act does not apply in respect of an outgoings contribution period that ended before the commencement of the amendment.

### **6 Advertising and promotion statements and reports**

Section 55 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 55 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

### **7 Mediation costs**

The amendment to section 66 made by the 1997 Amending Act extends to formal mediation commenced but not completed before the commencement of the amendment.

### **8 Interest on claims**

Section 72A does not apply to a retail tenancy claim lodged with the Commercial Tribunal before the commencement of that section.

[Minister's second reading speech made in—  
Legislative Council on 16 April 1997  
Legislative Assembly on 27 June 1997 p.m.]

BY AUTHORITY

