

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Retail Leases Bill 2022

** Check Hansard for delivery **

Mr Speaker, I move that the Bill now be read a second time.

The Retail Leases Bill 2022 will provide contemporary regulation of retail leases in Tasmania. This Bill will facilitate the certainty and fairness of retail premises leasing arrangements between landlords and tenants.

Importance of the reform

Undoubtedly, the regulation of retail lease arrangements impacts a significant number of Tasmanian businesses. We are talking about hundreds of retail shops in our cities, townships and suburbs where retail premises are leased. This includes, but is not limited to, our giftware and homeware shops, child care centres, cafes, hairdressing salons and take away shops.

Mr Speaker, retail turnover in Tasmania has grown significantly over the past five years and it has generally grown at a faster rate than nationally.

In March 2022, the value of retail trade in Tasmania was estimated to be almost \$670 million (\$665.9 million) in seasonally adjusted terms, up 3.2 per cent from the level recorded last year.

Unsurprisingly, the retail trade industry is also a larger employer of labour in Tasmania. In the 2016 Census, retail trade was listed as the second largest employment sector in the State.

Protecting our businesses during COVID-19

Mr Speaker, each of us in this place understands the profound impact the COVID-19 pandemic had, and continues to have, on the Tasmanian community. This impact was substantial on retail trade in this State and Australia as a whole.

As part of our commitment to support businesses during this period, the Tasmanian Government put in place a range of measures, including relief from taxes and charges, and loans and grants for businesses affected by the COVID-19 pandemic. This enabled our local businesses to hibernate and survive, and then to be able to recover and drive growth and prosperity as restrictions are progressively eased.

In 2020, National Cabinet committed to the implementation of the Code of Conduct for commercial tenancies. The purpose of that Code was to govern the conduct of tenants and landlords, and provide additional protections and rent reductions for tenants experiencing financial hardship. The Tasmanian Government initially implemented these emergency measures

through a Notice made under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* and then more detailed provisions that applied under the *COVID-19 Disease Emergency (Commercial Leases) Act 2020* and its Regulations.

Mr Speaker, our Government committed significant resources to assist retail and commercial tenants with the impacts of the COVID-19 pandemic. These measures provided vital and timely support, and were important actions to support Tasmanian businesses through the pandemic. This Bill is similarly important as it puts in place modern, equitable and effective regulatory arrangements which reflect the business and leasing landscape of this State today and into the future.

Current regulation is outdated

Mr Speaker, since the 1990s, state and territory governments have had regulatory responsibility for retail tenancy arrangements. The development of Australian retail tenancy regulations was to address perceived imbalances in bargaining power between retail premises landlords and small retail tenants.

Today, Tasmania is the only Australian jurisdiction not to have enacted primary legislation to regulate retail leases.

Our Government has listened to the views of retail and property management stakeholders who saw the existing Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 as outdated and in 2019 our Government commenced a review of the regulation of retail leases in Tasmania. As a result of that review, I am pleased to be introducing this Bill today.

Key features of the Bill

Mr Speaker, I will now discuss the important features of the Bill.

The purpose of this Bill is to facilitate the certainty and fairness of retail premises leasing arrangements between landlords and tenants.

Mandatory pre-contractual disclosures by a landlord are a key feature of this Bill. The mandatory disclosure requirements are based on the principle that there should be full disclosure of costs and charges to be payable under a lease. This is to keep dealings between tenants and landlords open and fair, and prevent tenants from entering into an agreement that they do not understand. If during negotiations the landlord's costs or charges are not disclosed or how they may be estimated, the tenant will not be required to pay for them.

Mr Speaker, under the Bill a landlord will also be required to provide a standard Retail Leases Guide to any prospective tenant during negotiations before entering a retail lease. This Guide explains in plain language the rights of parties under the Bill in relation to retail leases.

The Bill includes specific provisions relating to when rent is payable, the basis or formula used to calculate the rent, and the timing and basis for rent reviews. This is to provide a consistent and predictable method for determining rent increases.

The Bill also stipulates certain arrangements regarding payment of the landlord's outgoings by the tenant, and lodgement and return of security deposits or bonds.

The Bill prohibits a landlord from seeking or accepting key-money in connection with entering into a retail lease. Key-money is typically a non-returnable amount paid by a tenant to a landlord to secure, renew, or extend a lease, but for which the tenant actually receives no real benefit

The Bill also provides the Director of Consumer Affairs and Fair Trading with specific powers and functions to ensure the legislation operates effectively. This includes specific functions to investigate infringements and take appropriate action to ensure enforcement of the Bill as well as make determinations relating to retail leases – including a determination of the content and format of the Retail Leases Guide.

Importantly, the Bill also sets out a mediation-based dispute resolution process if direct negotiation between parties fails. Under the provisions, a party to the lease may make an application to the Director for the mediation of a retail tenancy dispute. The Director may then appoint a qualified mediator to hear the dispute, where the costs of mediation are to be met by both parties. If parties to the dispute fail to resolve the matters between themselves, either party may refer the dispute to a prescribed body.

Mr Speaker, the Bill also ensures that the interests of landlords and tenants of retail premises are equally protected from unfair terms and conditions of leases, or from unconscionable conduct by parties during the negotiations or during the operation of a lease. Misleading, deceptive or unconscionable conduct by a party to a lease, or by another person affecting the lease, can be determined, with appropriate compensation awarded for loss or damage suffered by a party.

The Bill also includes specific provisions relating to retail premises within shopping centres. These additional provisions relate to matters including centre trading hours and requirements for advertising and marketing. For example, a retail lease within a shopping centre must include the core trading hours for which all businesses in the shopping centre must be open for trading. The Bill also requires that a retail lease must disclose advertising, promotion and marketing costs to which the tenant is required to contribute.

Consultation

Mr Speaker, this Bill has been developed and progressed in close consultation with industry stakeholders.

As I mentioned earlier, in 2019 our Government commenced a review of the regulation of retail leases in Tasmania.

Feedback provided by stakeholders was generally in favour of a new legislative framework to modernise Tasmania's retail leasing laws. Stakeholders were also in favour of the framework containing provisions similar to those used in other Australian jurisdictions.

Due to the COVID-19 pandemic, work on permanent reforms in 2020, including the drafting of a new Bill, was understandably put on hold.

Mr Speaker, I have already briefly touched on what this Government achieved during that period in relation to retail tenancy arrangements to support our retail businesses.

In April 2022, further stakeholder consultation took place on a draft Bill. Nine written submissions were received, representing the interests of both tenants and landlords, and I would like to thank those stakeholders for their valuable contributions.

In addition to carefully considering the views presented in written submissions, my Department also met with a number of interested stakeholders in May, including the Property Council of Australia, the Shopping Centre Council of Australia and the Law Society of Tasmania.

The feedback provided on this consultation draft was extremely valuable and has led to a number of improvements to the Bill.

Mr Speaker, these include amendments to clarify transitional arrangements, so that it is clear whether the existing Code applies or this Bill will apply to certain lease arrangements. Existing leases entered into before the Bill commences, will continue to be governed by the Code. However, five years after its commencement, the Retail Leases Bill will apply to all retail leases.

Adjustments were also made to the information to be provided in the landlord's disclosure statements. This is to accommodate instances where certain detailed information is not readily available or is not practical to be given.

Importantly, the scope of the application of the Bill has been amended from the consultation draft. The Bill will capture only business premises which are used or proposed to be used wholly or predominantly to sell or provide retail goods or services to the public.

This is consistent with the existing Code as well as other retail leases legislation in other Australian jurisdictions. I also note that to ensure there are no unintended consequences, Regulations may be made to exclude or include certain types of other commercial premises from the application of the Bill.

The maximum penalty amounts have been revised to lower amounts in the final Bill. These penalty amounts are now commensurate with those in other jurisdictions, while still being at an appropriate level to discourage non-compliance with the law.

Mr Speaker, our Government has listened to concerns raised by stakeholders on requiring a maximum of the equivalent of three months' rent for a security deposit. We have heard from

stakeholders that other jurisdictions do not set a quantum for security deposits and providing a maximum amount in the legislation could result in landlords not having confidence for investing in retail premises.

As a result, this Bill sets no maximum security deposit amount. If a deposit is required by the landlord, the Bill requires the disclosure of the amount to the tenant and provides for its prompt return after the tenant has discharged their obligations under the lease.

I wish to again thank all stakeholders who provided their time, attention and expertise to this important Bill.

This Bill will replace the outdated Code of Practice and provide contemporary regulation of retail leases in Tasmania, to reflect the modern markets and leasing arrangements of today and into the future.

Mr Speaker, [as I have indicated to my Parliamentary colleagues], I also flag my intention to move minor amendments to this Bill. Since I tabled this Bill in May, two minor drafting errors have been identified, which require amendment.

The first amendment is to clause 35 of the Bill, in which the word 'not' was inadvertently admitted. The second amendment is to clause 58 of the Bill, which incorrectly references section 55(3) of the Bill, when it should reference section 56(3).

Mr Speaker, I commend the Bill to the House.