Agents who are engaged in the sale and leasing of retail premises should be aware that new legislation has been recently introduced into the Queensland State Parliament which, if enacted, will significantly alter the existing law in relation to retail shop leases in Queensland.

As agents will be aware, the Retail Shop Leases Act 1994 (Qld) (the Act) provides the mandatory minimum standards for retail shop leases in Queensland. On 13 October 2015, the Retail Shop Leases Amendment Bill 2015 (Qld) (the Bill) was introduced into Parliament, with the intention of clarifying the scope and application of the provisions of the Act, following a mandatory statutory review.

The Bill has recently undergone a public consultation process and a Committee report is to be tabled in Parliament on 5 February 2016. In this article, we will highlight the key changes proposed under the Bill and detail how those changes will impact upon the leasing of retail premises in Queensland.

Exclusions of certain leases from the operation of the Act

One of the key changes proposed under the Bill is the narrowing of the application of the Act. Specifically, the Bill provides that the Act will not apply to leases of the following type:

- Non-retail businesses in an area of a shopping centre regarded or identified as “commercial” or for non-retail service providers. Therefore, the Act would not apply to leases of premises located in a retail shopping centre, if they are not used wholly or predominantly for carrying on a retail business, and at the time the lease is entered into either:
  i) the retail area is 25% or less of the total lettable area of that level, if the premises are located on a level of a multi-level building;
  ii) the retail area of the building is 25% or less of that total lettable area of the building, if the premises are located in a single level building.
- A retail shop with a floor area of more than 1000 m²;
- Premises used wholly or predominantly for the carrying on of a business by a tenant for a landlord, as the landlord’s employee or agent.

Relevantly, the Bill also clarifies that the Act will not apply to premises within a common area of a retail shopping centre, if they are used for an automatic teller machine or vending machine.
Changes benefitting tenants
The Bill proposes a number of changes that will enhance protection for tenants and prospective buyers of retail businesses, including the following:

• Tenants will be permitted to waive the disclosure period prior to entering into a lease, if they choose to do so;
• Landlords will be required to provide a Lessor Disclosure Statement to existing tenants, within seven days of receiving the renewing tenant’s notice exercising an option of renewal under a lease; and
• The renewing tenant can give the landlord a notice to advise that its notice exercising the option is withdrawn within 14 days of receiving a current Lessor Disclosure Statement from the landlord.

The Bill also seeks to facilitate full disclosure by landlords to franchisees and sub-tenants. Therefore, landlords would be required to provide a Lessor Disclosure Statement within 28 days, where requested by:

• A franchisor who is a tenant of a leased shop, where the franchisor proposes to grant a franchisee a licence or similar contractual right to occupy and use all or part of the leased shop wholly or predominantly for the carrying on of a retail business; or
• A tenant who proposes to sub-lease the premises.

Other enhancements to tenant protection which have been proposed under the Bill include:

• Tenants would only be liable to refurbish the leased shop during the lease term where the lease gives sufficient details of the nature, extent and timing of the required refurbishment;
• Landlords would be required to provide a breakdown of centre management fees in the annual estimate and audited statement of outgoings;

• Landlords would be required to make available to the tenant a marketing plan detailing the landlord's proposed advertising/promotion expenditure;
• Tenants under a turnover lease would not be required to give the landlord monthly turnover certificates and an annual audited statement of turnover; and
• Landlords would be responsible for all mortgagee consent costs.

Changes benefitting landlords
Some of the proposed amendments under the Bill that would benefit landlords include the following:

• Clarification that the Act does not apply to certain leases, as outlined above;
• A Lessor Disclosure Statement will not be regarded as a ‘defective statement’ if it omits information that is irrelevant to the lease or if its layout does not comply with the approved form;
• Although a tenant’s right to terminate the lease within six months of entering into the lease if a defective Lessor Disclosure Statement is provided has been retained, the Bill introduces an objection procedure benefitting the landlord and for disputed terminations to be a retail shop lease dispute;
• Provision for the landlord’s recovery of lease preparation costs where the tenant has negotiated, but does not proceed with, the final lease after instructing for it to be prepared;
• Clarification that the landlord’s liability for compensation for business disruption does not apply where the landlord’s action is a reasonable response to an emergency or in compliance with a statutory duty;

• Provision for landlords to include a lease provision limiting a claim for compensation for anticipated disturbances such as redevelopment, where such disturbances:
  i) occur within one year from the date the lease is entered into, and
  ii) the landlord gives the tenant a written notice which meets the specified minimum requirements before the lease is entered into; and

• Prohibition against tenants ‘double-dipping’ under sections 43 (1), 46G (reasonable compensation) and section 46G (relocation costs) for compensation under the Act.

Conclusion
The introduction of the Bill into Parliament highlights the government’s clear intention to clarify and delineate landlord and tenant obligations in relation to retail shop leases. The increased protections offered to landlords and tenants under the Bill will no doubt be viewed as a welcome improvement by all industry participants.

We will await any further announcements from the government following the tabling of the Committee report in Parliament in February 2016 in relation to any amendments to the Bill and its commencement date. Whilst it is likely that there will be a reasonable lead in time to implement and comply with the new legislation, agents should gain some awareness and understanding of the key amendments the Bill proposes now, so that they can be ready to align their processes to comply with those requirements if and when the legislation is enacted.