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**TRANSCRIPT  
OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO THE MARKET FOR RETAIL TENANCY LEASES IN  
AUSTRALIA**

**DR N. BYRON, Presiding Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

**AT CANBERRA ON FRIDAY, 1 FEBRUARY 2008, AT 9.00 AM**

**DR BYRON:** Good morning, ladies and gentlemen. Welcome to the public hearings of the Productivity Commission's inquiry into the market for retail tenancy leases in Australia, following the release of our draft report in December last year. My name is Neil Byron, I'm the presiding Commissioner for this inquiry.

This inquiry started with a reference from the Australian government on 21 June last year and examines the operation of the retail tenancy market in Australia. I'd like to put on record how grateful we are to the many organisations and individuals who have already participated in this inquiry. The purpose of these hearings is to facilitate public scrutiny of the Commission's work and to get feedback and comment on the draft report. I understand that the topics we're covering in this report are very important for many small businesses, a great deal is at stake and that passions can sometimes be raised. We're trying to analyse the evidence objectively to see what's been tried in various places, what's worked and what hasn't, and what more the Australian and state governments should do or not do.

Following these hearings today we'll be in Sydney next week; Brisbane on Monday, 11 February; Melbourne, the following Wednesday and Friday; Perth on Monday the 18th, and finishing in Adelaide on Wednesday, 20 February. The Commission will then prepare a final report that has to be with the Australian government by the end of March, having considered all the evidence that's been presented in the hearings and in submissions and whatever other relevant information we can find.

All the participants in the inquiry will automatically receive a copy of the final report once it has been released by the government - not the Commission - and that's usually within 25 parliamentary sitting days after the completion of the inquiry. We always like to conduct our hearings in a reasonably informal manner, although the Productivity Commission Act does require that participants should "be truthful in giving their evidence". Because we're taking a full transcript for the record, comments from the floor are not helpful but at the end of the proceedings each day I always provide an opportunity for anybody in the room, who wishes to do so, to come forward and make a brief presentation on the record. Anyone who wants to respond to something that someone else has said during the day or people who have earlier given us evidence who forgot to say something, or want to come back and add to it, there will be opportunities for people in the room to participate later, whether they are on the arranged schedule or not.

Transcript will be made available for participants to check and then will be on the Commission's web site as soon as possible, usually within a couple of days of each hearing, and they can also be purchased in hard copy. Order forms are available out the front or from the staff here today. All the submissions that we've received are available on the Commission's web site or via the order form. To comply with the

Commonwealth's occupational health and safety legislation I have to draw your attention to the fire exits, evacuation procedures and assembly points. In the most unlikely event of fire, head back towards the lifts but don't use the lifts, take the fire stairs beside them down to the ground floor and then proceed to the assembly points at the front of the building. The second housekeeping announcement is that the toilets are on either side of the lifts. Finally, I would like to ask anybody who has a mobile phone in the room to either turn it off or turn it to silent mode; I have.

I'd now like to start today's formal proceedings by welcoming Patrick White and Angelo Sommariva from the Pharmacy Guild of Australia. Thank you both for your submissions. If you would like to come and take a seat in front of the microphones there and when you settle down and comfortable, if you could each introduce yourself in your own voice so that the transcript can recognise who's speaking later, and then our usual procedure is if you'd like to summarise the main points in your written submission, usually about 15, 20 minutes, and then there are a couple of questions and a few points that I'd like to discuss further with you to clarify and expand on the matters that you've raised, but I thank you very much for your initial submission and for the response to the draft report.

**MR SOMMARIVA (PGA):** For the introductions, my name is Angelo Sommariva representing the Pharmacy Guild of Australia. I'm the strategic planning officer in the strategic policy division.

**MR WHITE (PGA):** My name is Patrick White, I'm a community pharmacist in Canberra and I'm also a community member of the Pharmacy Guild locally.

**MR SOMMARIVA (PGA):** Can I quickly start off by thanking the Commission as well for their work on the draft report. I think it was a very comprehensive report and it makes some very interesting points and analysis. We also want to thank the Commission for the opportunity to outline our issues and concerns and also to speak to the report. The issue of retail tenancy leases is one of major concern to the Pharmacy Guild to the point where last year we held a retail rental symposium specifically designed to bring together landlords and tenants within our industry, so we certainly welcome the opportunity to further contribute to the public debate in the area of retail tenancy leases.

To get straight into the actual report we have a number of key points that we want to expand on relating to the report specifically. The first issue is that of uniform tenancy legislation. We welcome the Commission's draft recommendation that further consistency in this area is possible down the track in the long term. We believe that one of the most important things that needs to occur on this issue is to have uniform legislation around the country. One of the key concerns that we have with the current situation is the confusion with the definition of unconscionable

conduct between different jurisdictions. I notice in the report there are the different uses for the term outlined on page 57 where there are varying definitions put to the term.

Another key issue that we would like to raise is that of a voluntary national code of conduct for shopping centre leases. We don't believe that a voluntary code is the way to proceed forward on this issue. We believe that noncompliance is a major problem with voluntary codes, as indeed was the case in New South Wales as outlined on page 36 of the report where on this very issue a voluntary code was deemed unsuccessful due to noncompliance of many of the participants.

A fourth key issue that we would like to outline is that of goodwill. We are concerned about the potential use of goodwill against tenants, sitting tenants. We are concerned that goodwill can be used and has been used against many of our constituents as a bargaining chip. I read with great interest on page 97 of the report the acknowledgment that there is a vulnerability for sitting tenants at lease renewal time, and if I could just draw your attention to a particular comment in the report on page 97, where I quote it says:

It was suggested that landlords exploit their superior bargaining power when a lease expires by either seeking excessive rent increases or forcing tenants to terminate their business or relocate within a shopping centre.

It is obvious to us that no pharmacist or, for that matter, no small business owner, would willingly want to lose the goodwill that they have spent many years building up. So we find that this vulnerability, particularly at lease renewal time, is one that is very easy to exploit. Patrick, did you want to go on.

**MR WHITE (PGA):** Yes, I'd just like to make one comment before I start and that is that I'm here - although I have a number of leases in a number of shopping centres - as a representative of the Pharmacy Guild and to give a lessee's perspective on things to a certain extent. I am not here indicating that I have any grievance with any landlord. So from that point of view, yes, there are issues I think in terms of the vulnerability of our people, not only when renegotiating leases but also when market reviews are also in existence in any sitting lease. Market reviews can be as much an issue as renegotiating the lease from the point of view that the transparency upon which parameters the value of a tenancy, either in its own right in terms of square metreage or in terms of being industry specific, can be looked at in different ways and skewed, depending upon what parameters you're using. So a landlord may, for example, use information and some of it can be a little bit ambiguous to decide on a market rate, whereas the lessee may be using completely different parameters to try to indicate what they believe to be the market rate.

I think a lot of small tenants are certainly very vulnerable or feel very vulnerable, either at lease negotiations or, as well, in rent reviews. Should a rent review go to arbitration or be a serious issue, any lessee will then feel vulnerable coming up to the end of that lease about whether they're in a good relationship with a landlord and I think they are issues that need to be addressed, certainly from a tenancy point of view.

**MR SOMMARIVA (PGA):** In addition to that, we agree at least in principle with most of the suggestions outlined on page 112 for additional security for tenants, particularly at lease renewal time, such as a mandatory first right of refusal for all existing tenants, as is currently the case in South Australia and the ACT, and other suggestions which, as I said, are outlined in that particular part of the report.

Next, the key point that we'd like to comment on is the lack of transparency that can currently occur or be found during lease negotiations. This is outlined in chapter 8 of the report. Patrick, did you want to add to the lack of transparency?

**MR WHITE (PGA):** Just in terms of the fact that occupancy costs are a serious issue in terms of the viability of businesses within a shopping centre and although base rent and marketing outgoings et cetera are stipulated as part of a lease, the contribution of various tenants or non-contribution of various tenants to those occupancy costs of the total centre is obviously an issue in terms of small tenants and that is whether there is preferential treatment for anchor tenants, whether an anchor tenant, for argument's sake, originally built a shopping centre and then has sold it with an agreement that they will not contribute to certain outgoings et cetera. There are issues in terms of the occupancy costs of any small tenant from that point of view. But also the information that is contributed or shared in terms of renegotiating leases or setting those market reviews is also an issue.

The idea that the "market rate" - and I say that in inverted commas - is such-and-such or is a percentage of turnover, without taking into account the various issues that may affect, over the tenancy and over the lease, the various issues that may affect the viability of that business I think really is an issue that must be addressed. I think as well that the awareness of the issues which relate or possibly relate to any industry over the period of the tenancy need to be seriously discussed at the start of the tenancy or at the renegotiations of the lease and sometimes I don't believe that is necessarily the case, but a figure has been decided upon as an ask by a landlord and then it's a matter of the justification of the tenant of reducing that down or striking a rent accordingly.

**DR BYRON:** I don't want interrupt but can I just seek clarification or elaboration on that one. I understand what you're saying but where I'm at a bit of a loss is how legislation by state or Commonwealth governments can actually remedy that sort of

situation that you're describing. It seems to me that trying to prescribe in law how negotiations will be conducted between two businesses and what sort of contract they can agree on and what sort of factors they can take into account in coming up with an asking price or coming up with whether or not you're willing to take it or not take it. I think it's a bit hard to see how legislation actually is the best way of dealing with that.

**MR SOMMARIVA (PGA):** I think one of the main issues that we are arguing is not so much - we completely understand it is obviously a negotiation that is entered into and subsequently it is a business transaction or a contract that is entered into. All that we are arguing for is that both parties, as is the case with any other contract negotiation, have access to the same information or at the very least, they have the ability to enter the contract with all the facts on the table, and we don't believe that that is currently the case, certainly among our constituents which is why we refer to this information asymmetry.

**DR BYRON:** Thanks, sorry to interrupt. Carry on.

**MR SOMMARIVA (PGA):** No problem at all. A further point relates to arbitration and this was actually outlined also in our submission, and that is that we believe that there is, from lack of a better term, a fear factor in entering into arbitration, even at times when it may be necessary. One of the reasons we state for this is the need to maintain a good working relationship with a landlord. I think based on this fear, tenants, as mentioned, may often decide not to pursue arbitration.

**MR WHITE (PGA):** I think that is definitely the situation. Sometimes that comes from the tenant's inability to tap into resources, particularly the small tenants who are single businesses who don't necessarily have the expertise in negotiations et cetera. Again we are seeing less rent review occurring with leases but there are certainly a number of leases out there that have got rent reviews and a market review within a lease period does cause some issues in terms of, "What is going to happen if two years down the track when I'm renegotiating my lease, I will agree to this now. I have to agree to this now. If I don't agree to this now I will have serious issues two years down the track, but I am agreeing to a market rent now that may or may not be feasible or reasonable within the original lease from that point of view." I think there is a certain fear factor there where people feel they need to comply and they're looking at the future in terms of that.

**MR SOMMARIVA (PGA):** If I could just say one other thing which also relates to your previous question relating to information, and that is that we are dealing with people - in terms of the small business owner, and in our case, pharmacists - who only enter or have to enter into lease negotiation a few times in their lives and they're coming up against, generally, organisations that are obviously well resourced in this

area, have legal expertise and other associated information. Whether it be through legislation or otherwise, or a mandatory code, we believe there needs to be greater security for that particular small business owner who, as I said, does not necessarily have the same expertise as the people across the table from them.

One final point that we would like to put on the record relates specifically to pharmacy's position in the community. Patrick, as a pharmacist, you're no doubt the person to outline this best.

**MR WHITE (PGA):** I am sure that the Commission would field viewpoints from various different industries about the uniqueness of issues relating to their industries. In terms of pharmacy we feel that the accessibility of pharmacy to the general public is absolutely paramount. We see, for argument's sake, a lot of aggregation of GP practices into corporate practices which is a major issue. It has seen the erosion of relationships between GPs and patients where appointments aren't taken, waiting times are extended for three or four hours, and we see a lot of instances where elderly patients or people who have had relationships with specific GPs for a long period of time can no longer get to see those GPs. The result of that is that often people feel they have accessibility to their primary health provider, being their GP, is being reduced and they're falling back on the pharmacist as being a professional adviser from a health point of view.

From that point of view, accessibility is absolutely paramount - whether it's buses, whether it's the elderly, whether it's families or whatever - and therefore accessibility from that point of view has to be viable as well. With dispensing profitability reducing down on a continuous basis, from an industry point of view we feel that landlords need to be aware of this, so the various things that are taken into account in terms of setting rents et cetera, whether they be percentage turnover rent or whatever ways they are, we feel that the landlord seriously needs to be aware of the issues on a continuous basis relating to pharmacy. Now, whether they are in relation to the profitability of dispensing, whether they are in relation to anything else in terms of the health provision, we are definitely seeing a lot more provision of health services at no cost where the general public is expecting that the pharmacy will provide a lot more advice; will provide services like national diabetes schemes et cetera at no cost. That is certainly an impost on the costs of pharmacy business and the viability of pharmacy.

Definitely from a pharmacy point of view we feel that it is an industry/profession which needs to be looked at in its own right as well by landlords and we feel it will become a greater issue again as the years go by.

**DR BYRON:** Thank you very much. I guess my first question follows rather well than what you were just saying, Patrick. Can you clarify for me what proportion of



pharmacists would be in a major shopping centre as opposed to being in strip retail or high street, and have you any idea of what proportion of pharmacists would actually own their own premises rather than being tenants?

**MR WHITE (PGA):** Well, I can only really make a comment in terms of the Canberra situation. Canberra, as you know, was made up of four regional shopping centres and then the way it was set up was to have convenience centres in the various localities and then small community pharmacies in the small community shopping centres. As you would know, the small community shopping centres have disappeared in their own right to a great extent, and certainly doctors and pharmacies have closed down in a large number of these very small community centres. Because of the leasehold exercise in Canberra I would suggest to you it's a very, very small percentage of pharmacists who would own their own premises. I would be very surprised if it was greater than 5 per cent and therefore rent and occupancy, of course, is a huge issue.

**DR BYRON:** The difference, I guess, I'm trying to get at, in your comments this morning you've talked a lot about shopping centres and the superior information resources, bargaining power, information asymmetry of the large shopping centres, and I was wondering whether that also applies if a pharmacy is located in a strip, because we make the point in our report that when we look through the justifications that were given when all the retail tenancy legislation was brought in by the various states over the last 20 years, they're always talking about the market power and the information asymmetry of the big shopping centres, and yet the legislation applies to all retail leases, including a single shopfront that's owned by Mr and Mrs Smith and rented to Mr and Mrs Jones to run their business in.

Is the problem you're talking about only if you're in a large shopping centre or does it apply to any form of retail lease, even if your landlord was Mr and Mrs Smith's super fund?

**MR WHITE (PGA):** I think to a great extent that is the case but I think we have to be careful not to only target large shopping centres; that there are a substantial number of shopping centres with, say, 20 to 30 plus specialty stores that are owned by fund managers or shopping centre management et cetera in large corporations, and so the same principles do apply to a great extent. I think there are issues with strip shops or where a landlord may own one, two or three in a strip shopping area. I think they are different, they tend to be far more amenable to longer-term leases.

**DR BYRON:** That's exactly what my next question was going to be.

**MR WHITE (PGA):** From that point of view, and the security of tenure and the terms under which that tenure is going to be ongoing, a more of a win-win situation

is taken into account. For example, it would be unlikely that someone in a strip shopping centre would have in their clause that they would have to do a shop refit to the standard of a style manual which has been set to create or maintain the image the shopping centre wants to maintain. Those extra costs are serious issues in terms of the viability over the period of the tenancy for that tenant to be viable and also to end up not at the end of a lease with some major debts.

**DR BYRON:** Yes. I guess what follows on from that is that if I was setting up a business and looking at either locating in a major shopping centre or locating in a retail strip, for example, the package is actually quite different in terms of the terms and conditions, the swings and roundabouts. There are some elements of being in a centre that would be very attractive, like much larger turnover; there are some elements that are not very attractive like the person sitting opposite you at the table has got a lot more information and got expensive lawyers and accountants and all the rest of it that I haven't got. I'm just wondering about how a businessman like you says, "If there's too many things I don't like in the package that's being offered in this lease then I will choose to go into the high street rather than into this centre," or, "I will choose to go to a different centre or a smaller centre." It seems that what a lot of the retailers are telling us is that they like the idea of being in a centre because of the turnover and so on, but they don't like some of the other features of that package.

**MR WHITE (PGA):** I think in terms of making a decision - any business decision - it is better to make it on the basis that you have all the information, and the information in terms of making any business decision, whether it relates to a rental situation or anything in terms of any businesses that you need to look at a risk benefit analysis, but to do a proper risk benefit analysis you need to have all of the information or reasonably all of the information in terms of the duration of the contract that you're entering into. For example, if you were taking a loan for a business you would know whether you wanted to fix the loan, wanted to fix part of the loan, wanted to leave it variable et cetera, you would do a risk benefit analysis which, if you fixed the loan, you knew what the situation was for the duration of that period. With a tenancy you don't always know what is going to occur.

**DR BYRON:** One of the things that struck me in the examples that were attached to your submission is the case of a pharmacist who took a loan to buy a business over 10 years where the lease was only for five years. I find it extraordinary that such a situation would be allowed to arise. It seems to me that a fixed term lease is in fact a fixed term lease; five years means five years and 10 years means 10 years. It doesn't mean five years and you will automatically get something else. If someone goes into a situation where they have ongoing liabilities for loan repayments where they have got undepreciated fit-out and their lease is about to expire, I'm surprised that people would allow themselves into that situation.

**MR WHITE (PGA):** As a tenant, and not in relation to the Pharmacy Guild, yes, I agree with you. However, one of the issues is whether pharmacists will be able to afford to go into shopping centres and afford then to be accessible to the public as well is the other issue. In terms of the compression of tenancy duration to five years, it is highly unlikely you would get in a major shopping centre a 10-year lease now, for argument's sake. The viability for that pharmacist (1) to remain in a business; (2) to build a relationship with the clientele, the greater the compression of tenancies, the duration of tenancy leases, the less likelihood that it will be viable in the future. That's not to say people won't do it, but people go in and out of shopping centres and go in and out of business on a regular basis. I think everybody wants - for people going into shopping centres to actually be able to remain in business.

**DR BYRON:** Sure.

**MR SOMMARIVA (PGA):** Can I also say on that point, I think, for instance if we start arguing that a pharmacist has the option of saying, "If I don't like the package of this particular shopping centre then I'll simply go to a high street situation." I think we do face the danger of entering into a false argument, particularly when you look at newer growth areas. To give an example, the north-western Sydney growth area, which is an area I know reasonably well, you would be pretty hard pressed to find a strip of shops in some of the newer suburbs, and that's happening right around the country. In the inner city areas, yes, it's possible that you would have more of a choice but in outer suburban areas where people do still need access to pharmacy services then certainly I think that argument is not on our side.

**DR BYRON:** Yes. I'm just trying to get at the way people do their due diligence. They say, "Well, if I accept the lease that's being offered to me in the shopping centre, say it's only going to be five years, well, gee, that creates" - a few alarm bells start to go off - "given the write-off period for my fit-out and the loan I've got to take to start the business" et cetera. There's the possibility of mid-term rent reviews, there's a requirement of supplying turnover data, there's the quality and expense of a fit-out. At what point do you start to think, "Maybe I should look somewhere else, or is there a different shopping centre in the adjoining suburb who has a different package." If I look at it and say, "If I accept this contract that I'm being offered, I'm going to lose money," then why would I sign it? Why wouldn't I walk away?

**MR WHITE (PGA):** There will always be bad decisions made in business by various different people; that doesn't change what we're talking about here in terms of the viability of businesses. Any business, if you compress a tenancy lease enough and your requirements are fit out to a particular standard et cetera et cetera and the occupancy costs are prohibitive, in an industry that is reducing the profitability - its profitability is reducing anyway - then you run the risk that no pharmacy will be viable in a shopping centre, a major shopping centre, and I don't think that that's of

benefit to anyone.

**DR BYRON:** But it's also possible that if the shopping centre management find that it's very hard to get any pharmacist to come into their centre at exorbitant rates and the centre needs to have a pharmacy as part of its offering to the customers, perhaps the rates might come down to the point where a mutually acceptable deal can be negotiated. It doesn't have to be an all or nothing. I'd just like to pick up further on the points about rights of first refusal for sitting tenants which does exist in South Australia and the ACT. We haven't been able to find any evidence that that legislation has made any difference compared to the previous situation in those jurisdictions or with the situation in an adjoining situation. A lot of people have said it would be a great idea to have what the ACT and South Australia have got, but we're looking for evidence that actually shows that it has made a difference. We would need to have that sort of evidence before we start recommending that every other state and territory should also produce such clauses. Frankly, we can't find the evidence that it's actually done anything, because there seem to be quite a few "except", "except", "except - - -"

**MR SOMMARIVA (PGA):** If I could just comment on that. By itself, then I think you're absolutely right, in that it would be very difficult to find evidence of it, if you just look at that one particular piece of law. What we are wanting to focus on is that an entire set of changes need to be made in order for that particular aspect of the legislation to be effective. So, for instance, once you start addressing, be it through legislation or other means, the imbalance that is currently occurring between small tenants and in many cases the larger shopping centres, just to cite an example, once you start addressing those imbalances, then you start finding that rights of first refusal and that sort of thing start to become more useful. What I mean by that is that, for instance, we have had situations where some of our members have been offered a right of first refusal but at an exorbitant increase in their rentals. So it's quite obvious that that particular landlord didn't genuinely want that business relationship to continue, therefore the right of first refusal was completely useless in that situation.

**MR WHITE (PGA):** I think the biggest issue for me is how rents are struck, the information in terms of how you can come to what is a fair rent in whatever tenancy you're in and the sharing of the information upon which that decision is made. The idea that, "Well, this is the rent because that's the industry standard," I don't hold with that. I don't see that that is a reasonable way for things to be done. I'm not sure how you're going to get round that. I think that there needs to be the ability of both sides to be able to sit down and look at it from a business point of view, knowing full well the different viewpoints on each side of the table.

**DR BYRON:** But it's not uncommon for any negotiations on any topic to start with

an ambit claim.

**MR WHITE (PGA):** Absolutely. One of the big issues though is the ability of a small tenant to deal with an ambit claim in the appropriate way and to get where their business is viable, that is one of the big issues, and should it be the requirement of a small tenant to have the backing or the knowledge that a large landlord has or other ways and means of actually ensuring that that small tenant is protected to a particular degree.

**DR BYRON:** It seems to me that a lot of the attempts of state governments to provide that sort of protection to small tenants have created an illusion that the government is there to help you or the rules are there, but actually provided very little, and that, as in most cases, it comes back to caveat emptor and there's no substitute for doing your homework, especially if you're sitting down to negotiate with somebody who you know is much better and has got much better resources. There are tenant advisers and consultants and real estate agents and solicitors and accountants and people whose expertise is knowing what market rates for retail space are. So if you're suggesting that somebody goes in to negotiations ill prepared and gets done over, that's hardly a surprise, irrespective of what the negotiations are about.

**MR WHITE (PGA):** I'm not saying that that is the case. I would say that that has been the case in the past on a number of occasions for a number of different people. I suppose it is the transparency in terms of where and how you prove your - a tenant can make a very good case from a business point of view. That doesn't mean that the landlord will take that case on board. Does that mean that that's right or wrong on the basis that someone else is prepared to pay a higher rate, who necessarily hasn't done their homework or hopes that all of the dominos will line up and won't fall down, from that point of view? You can produce the best business program, business plan, and show it; it doesn't necessarily mean that there won't be an agreement from the landlord's point of view in terms of the viability and the worth of that business plan. I don't know how you can solve it personally.

**MR SOMMARIVA (PGA):** I think your original entering into an agreement, you're right, in that there are always going to be cases where people make poor business decisions but one of the things that we are most concerned about is the fact that it is far too easy in respect to small business owners for the goalposts to be shifted on them. Now, it's true that it's your decision whether you actually sign the piece of paper that constitutes the lease agreement but to then suggest that there are other options I think is also a false argument because if you want to be in a particular place, as I mentioned earlier, say, in a growth area, then you really do not necessarily have the options that you would think are actually out there by reading, say, parts of the report, where it states that you have that option, whether you're going to a

shopping centre or a high street environment. I think particularly in the newer developments, that option is not necessarily there and you either take what the shopping centre has offered or you choose not to conduct your business and I think that's a major issue of concern.

**DR BYRON:** Just looking at the time, I'm afraid that we're going to have to wrap that up. I'm sure there are many other things that we could usefully discuss at some length but - - -

**MR SOMMARIVA (PGA):** Certainly.

**DR BYRON:** But I thank you very much for your input. It has been extremely valuable and we'll certainly take those points on board in our deliberations. Thank you both very much for coming.

**MR SOMMARIVA (PGA):** Thank you very much for your time.

**DR BYRON:** Moving right along, we have the representatives from the Retail Estate Institute of Australia. Gentlemen, if you would like to take a seat. Thank you, gentlemen, if you could each introduce yourselves in your own voice for the transcript and then if you would like to summarise the main points you wanted to make in maybe 15, 20 minutes and then we can talk about that.

**MR STEVENS (REIA):** Thanks, Neil. I'm Bryan Stevens, I'm the CEO of the Retail Estate Institute of Australia. I have two expert people here with me: firstly, Craig Sebbens, a senior negotiator with the CBRE who is well experienced; also Michael Wellsmore, the deputy president of the ACT branch of the Retail Estate Institute of Australia and also has his own consultancy business but has been in commercial property for many years and formerly with CBRE himself. Perhaps I might just make an opening statement, Neil, if I could - - -

**DR BYRON:** Please do.

**MR STEVENS (REIA):** - - - and then we can go from there. Firstly, thank you very much for the opportunity to make a few points and also for the opportunity some months ago now to sit down with you in some detail and go through the initial issues. We have an active interest in the Australian tenancy markets and we welcome the inquiry into the market for the retail tenancy leases in Australia. While the REIA membership does not of itself extend to landlords or tenants, real estate agents often act as intermediaries between these parties, being engaged to act on behalf of either the tenant or more commonly the landlord.

In this capacity the REIA is a well-informed market observer. It supports the maintenance of an efficient retail tenancy market. The Commission report, we believe, has comprehensively addressed the inquiry terms of reference and has in itself provided a consolidated wealth of contemporary information concerning the retail tenancy market. The REIA generally agrees with the findings of the Productivity Commission that the retail tenancy market is competitive and operating reasonably well across Australia.

In that context, the REIA considers that the balance be acknowledged between the needs and motivation of the landlord and the tenant. Therefore any notion of a voluntary code of conduct would be problematic, we believe, as well as potentially costly. The market is unfortunately burdened by inconsistent and prescriptive legislation at the state and territory level and could be made more efficient by reducing the level of prescription and moving towards nationally consistent legislation. Indeed, such an approach for a nationally consistent framework, we would argue, Neil, could also be applied to other areas, such as education and licensing, but that's a different topic.

Inefficiencies result in unnecessary costs for all parties to a retail tenancy transaction and a less productive use of available retail space. There are no borders on the Australian business map, and tenants, landlords, property professionals, policy-makers and ultimately the consumers would all benefit from harmonised, nationwide regulation. The REIA agrees with the report's draft recommendations to do a number of things, including harmonised retail tenancy legislation; reduce legislation prescription; simplify language; include clear and obvious contact points for information and dispute resolution in contract information; harmonise the definition of unconscionable conduct and establish some level of national reporting by administering authorities.

The REIA also supports calls for a further review of the potential for more widespread lease registration and the potential to relax those planning and zoning controls that limit competition and restrict retail spaces and its utilisation. The REIA does not, however, support the proposals that would lead to completely standardised contract documentation or the complete removal of all regulatory differentiation between commercial and retail leasing markets.

There are important differences between the commercial and retail tenancy sectors and while there is scope for greater harmonisation, at the very least retail tenancy regulation should remain a subset of broader commercial tenancy legislation. A more practical alternative to prescribing standard leasing documentation would be for the state and territory governments to reach consensus on the elements which must be included as part of the lease documentation package and then leave it to industry to prepare conforming documentation. This would allow industry to stay abreast of changes in a dynamic retail sector, without the inevitable lag of relying on government policymakers to consult widely and subsequently react to constant market developments.

The REIA understands that the Productivity Commission seeks to improve efficiency and flexibility in the retail tenancy sector and mandating detailed template documentation would only undermine its position. It is our view that it is not the purview of governments to be prescribing all the detail of lease documentation in a healthy and competitive market. The REIA suggests that the best place for improved transparency and information exchange should occur within plain language, up-front precontractual disclosure statements. In this manner, all parties to the transaction can be informed of the transaction particulars prior to proceeding to contract. Where contracts do not align with a precontractual disclosure statement it may be deemed to be null and void as currently occurs in the ACT.

Neil, overall, the REIA considers that the Commission has provided a very good report which, inter alia, recommends harmonisation and improved efficiency in retail leasing across Australia. We have provided a separate submission in respect of



the draft report which outlines our industry position on these matters in some more detail. Again I thank you for the opportunity to talk to you today.

**DR BYRON:** Thank you very much. Michael and Craig, was there anything you wanted to add at this point or are you just here to take my thorny questions?

**MR WELLSMORE (REIA):** I think some of the things that occur in these discussions - and there have been discussions I've had with the people at the REIA and some of the members about this - is that we as agents - Bryan mentioned at the beginning that we act for both tenants and for landlords, and more for landlords, although it is a growing thing now of tenants relying on agents and/or others to fill in the gap, I suppose, in knowledge that has been a feature of things in the past where the landlords have tended to have a greater understanding. I think in terms of where we're moving forward with what you're looking at, there needs to be a bit of an understanding of some fundamentals though that don't seem to come out in the discussions that I've heard.

The biggest thing first is really supply and demand. People always talk about - the favourite thing of real estate in housing - location, location, location, and people look to get a great location in, say, a shopping centre or a strip, wherever it may be. But at the end of the day a lot of those fundamentals all go back to supply and demand. If you have situations where you have a few tenants and lots of landlords, of course the tenant tends to have the upper hand in any negotiations, especially if they can be more aware of the market and the environment in which they're working. But, of course, then when you have the alternative where you have a huge demand for tenants and little supply, the landlords have got product that a lot of people want, then of course you're going to end up with a lot of pressure, price pressure, and that's a feature of the housing market at the present time, but the same occurs, of course, in the commercial market, be it as a buyer or as a tenant.

The commercial activities really for retail fall into two broad areas: the first is strip shopping, and that's really categorised by an individual landlord with an individual tenant; then there is the major centres where of course you have an individual landlord with multiple tenants. The law and the structure and how we work, in terms of the leases and everything else is the same. There are some variations of the law because of the features of major centres but some of the discussions you probably have heard from people talk about situations where landlords who own major centres sometimes do things which appear to be somewhat draconian. But it's a matter of trying to have the proper legislation in place, and Bryan has mentioned the fact of having standardisation of documentation so people are fully informed, and then it's up to people to make a decision as to whether or not they wish to enter into those agreements or they don't wish to enter into those agreements.

If we are to address a situation where people feel that a landlord has got a huge amount of demand and he's got the only supply in an area, then of course an alternative to that which government can work with is that they can increase the supply of the retail space that's available and that then becomes a planning issue. So rather than trying to address some of these issues by way of legislation, there are actually commercial ways of dealing with that which is through planning laws which would increase the supply of the product, say if there's a large demand for tenants for a particular space. So we just offer that as an alternative way of addressing things, because I think if you try to do it through some legislative process then you're trying to legislate human behaviour, which was always fraught with danger, but that was basically the only additions I wanted to make to what Bryan said.

**DR BYRON:** So my attempt to summarise that, when people say that the market is not working because their rents keep going up, your answer is that that is the market working, that is supply and demand.

**MR SEBBENS (REIA):** That is supply and demand and if you want to affect that and that is a result of poor supply then increase the supply, and that's a matter of planning and that's governed by local government which is then overlaid of course with state government.

**DR BYRON:** I was taken by the table that was in your first submission that showed the rents and the turnovers in strip shops and in major shopping centres and, yes, for each classification of different types of retailing the turnover was substantially higher in the big shopping centre but the rent was more substantially higher and so if you look at the rent as percentage of turnover the shopping centres looked to be a bit more expensive on that basis and yet the impression that we're getting is that a lot of people who are going into retail, particularly first time, think that if they can get a space in a big shopping centre it's like winning the lottery. There should be a question here somewhere. Am I misreading those tables, or is it accurate to say that even though the turnover is likely to be higher in a shopping centre than a strip, the rent is at least proportionately higher?

**MR SEBBENS (REIA):** I guess I was talking to a compatriot years ago about just this thing. I've walked through Miranda Fair and spoke to some tenants there about the rents they were paying and I came back and I said, "How can shops afford or businesses afford to pay that sort of rent?" and his answer was, "Well, if you have the turnover because of the amount and volume of people that are in there, then you don't mind paying the rent." I guess it comes back to profitability, so you could be located outside the centre, pay smaller rents, have a smaller turnover, but have more profit, or alternatively you could be located inside the big centre, have a higher turnover, have a higher cost base, and have a smaller profit. At the end of the day it's got to be

an informed business decision and I guess each prudent business does a business plan and looks at the benefits to them of locating in one position or the other and then they make, hopefully, an informed decision.

**MR WELLSMORE (REIA):** I think there's probably something in addition to that too - and Craig mentioned the business models that people have. If you are outside one of the major centres in a strip location, or a service trades location, the business model usually if you looked at the balance sheets you would find that the people outside of the major shopping areas will spend to make their business successful, have to end up and spend more money in advertising themselves, whereas inside the shopping centres they will usually contribute to some sort of marketing program that they're doing and that's reflected in the rents, but because they get a combined effect of everyone doing that they end up with a higher turnover. So they in fact make a lower margin or a lower profit, but their turnover is usually substantially higher.

I mean, the people who have been successful outside of the major shopping centres is that they make something unique about their business and that they then get people to come to them, or they become a destination rather than the shopping centre becoming a destination. That's not always possible if some of the general sort of services that are provided, but if you have something unique then that would be a decision that you would wish to make - do you go into a shopping centre where you know you've got so many people passing by - and some rents are in fact negotiated on the basis of volumes of people that come through the shopping centres and it's then up to you to attract those people. So there's lots of variations that come and I'm trying to just give simplicity to it, these broad differences between these areas so that you can end up with some better understanding.

**DR BYRON:** Could one of you or all of you please elaborate a little bit more on the point that you think we've missed about the differences between retail leases and all other business or commercial leases. The point we made in the draft report was that we've realised that location is probably more important in a retail lease than any other form of business lease, but we were concerned about the divergence that retail was getting a great deal of, if you like, special regulatory legislative attention in the states that didn't apply to all sorts of other business leases and that they were actually diverging under law. We weren't actually proposing that retail leases disappear as a special category, that the divergence should stop. Is there something that we've missed apart from the importance of location?

**MR SEBBENS (REIA):** If I could just address that and use ACT as an example. The retail legislation in the ACT doesn't catch public companies or tenancies that are over 1000 square metres. I think the retail legislation in the Act and probably most other states has been put in place to help the smaller businesses and to help protect those smaller businesses from unconscionable conduct of the landlords and it's

deemed that the bigger companies and the public companies, the ones that can afford to take more than 1000 square metres, are big enough and have enough commercial acumen to look after themselves, and probably have the resources to afford better information, better help from property professionals.

**DR BYRON:** I guess the counter-example that was given to us is if somebody wants to set up a mechanical workshop and leases a big shed and pours a half a million bucks worth of concrete and fixes all his lathes and stuff, he's locked in at least as much as any pharmacist, or retailer, or a dress shop, shoe shop, coffee shop person is, and yet because he's not a retailer he doesn't get the sort of legislative protections that retail legislation offers. So the question is: why so much special attention for retail that doesn't apply for other commercial and industrial leases where you may get the same situation of a small tenant who has very high costs of relocating, who doesn't want to be evicted at the end of five years because he's got all this installed stuff that you can't remove or reuse?

**MR WELLSMORE (REIA):** I think the differences there are that it goes back to what I was talking about before in those other situations. You tend to have a single landlord with a single tenant and the relationship develops differently in terms that in the example you used has got a large shed which is in real estate terms referred to as a shed - and that he's got a good tenant who is there who is paying rent, then that would be a thing for him to do that, because to do that tenant and start again, then that's a cost for him to do that, so he's going to have an ongoing relationship with that tenant and they try to negotiate it early on.

The alternative example of course is that you've got the landlord who's got multiple tenants - he might have 50 or a hundred tenants - so one tenant coming and going doesn't really impact too greatly on the cash flow of that as a centre, and it's looked at as an economic entity in that light. I think the things that we were trying to also suggest with some of our comments about the legislation was that if there was disclosure of material and information up-front and that they've used things which are referred to as disclosure statements, in the past - and we, as agents, in fact like the fact that there are disclosure statements because in the past, sometimes things would be discussed, negotiated, and then it seemed to change dramatically, not in all cases but from time to time from when the negotiations started by the time the documentation got finished by the solicitors as well and the agent was usually a person who was suggested hadn't completely informed the people of what was happening - we're happy with the situation where that's all documented up-front. It stops lots of people fiddling with it, including the lawyers, because everyone has agreed then what it's all about, the landlord has agreed, the tenant has agreed and the disclosure statements are signed off on and that helps to protect the smaller retailer because they know what they're getting themselves into and it's all set from the beginning, then we don't have people who try and change it afterwards. From our

viewpoint as agents, that's a much better proposition.

**DR BYRON:** Those sort of plain English disclosure statements is one of the things that we think has actually been a huge improvement over the last 20 years and we're not suggesting getting rid of that at all. But the other thing that's been put to us - and you discussed it in your first submission - is about the requirement to get legal advice, as in the ACT or Queensland before the lease can be executed. Again, it's one of the many areas where we're struggling to find evidence that that requirement has actually changed things, either before and after or if the ACT has got it and New South Wales doesn't, can you see the difference between ACT and Queanbeyan because of that particular thing, because before we could recommend that this is a great idea and every other state and territory should bring it in too, you would like to have some evidence that it actually makes a difference and we haven't actually found any. It sounds like commonsense, that anybody going into a retail lease should seek the advice of a lawyer or an accountant or an agent or somebody, but does a formal requirement under the legislation to do it actually make much difference or is it just seen as an unreasonable piece of additional red tape and expense?

**MR WELLSMORE (REIA):** I think that the reason it was put it was perhaps political and it's in some other documentation that people execute - mortgages, for example, are keen that people go and get advice and have it signed off that they have been to a lawyer. Why? So that they don't have a situation where someone says, "They didn't explain all this to me properly and I signed this mortgage and I didn't understand that, it said something else." I think in this situation, it permits the politicians to be able to say, "Look, we've put things in place of what you should have done. If you didn't do things to help yourself and we've mandated that you do it," I think that's the rationale.

My understanding of the logic was to try to ensure that people had to do that so that if something did go wrong, then it was very much on their head and that it wasn't something that government was then being approached about, which it used to be in the past. Always the complaints were coming, "We didn't quite understand, they didn't explain it to us properly," and these were complaints that came through and people say, "You should have done this," or "should have done that". "Well, we didn't." Now they're required that it be done and I think that's the rationale for it, rather than there be any - as you say, prudence would suggest that yes, you should get that advice, when previously it didn't happen a lot of times and then things went wrong and people would say, "But I didn't quite understand." I think the way the politicians have dealt with that is to say, "We're forcing you to go and say that you did understand because someone has told you what it means."

**MR SEBBENS (REIA):** There is also a time factor there. Once again, using the ACT as an example, you can actually waive your right to have it viewed by a

solicitor, so you sign a document that says, "I don't want a solicitor to see it," or, "I've waived my right to do that," which allows things to move along more quickly. Michael was saying that with their essential terms detailed in the disclosure statement, that's something that I agree industry-wide has been terrific. It's saved a lot of fights, arguments, further negotiation and things being done underhandedly. However, the disclosure statement only outlines essential terms and conditions. The lease is then prepared with those essential terms and conditions in it and it must be prepared within the framework of the appropriate legislation.

The individual clauses in that lease that don't refer to essential terms and conditions are up for negotiation and they are usually done at a solicitor level after the initial disclosure statement has been signed. There is so much room for variation in those leases and no two solicitors' firms have the same lease. I think, going to where your recommendations go, it would be fantastic to have this framework that is consistent across the states. I don't know how you're going to achieve it. As we all know the states are a law unto themselves sometimes, but certainly I think it would be a huge step forward if that could be promoted and followed through with.

**MR STEVENS (REIA):** I might add in there, I think quite frankly it's just plain commonsense. That's what it boils down to. For you to dig out evidence - and I appreciate, as the Commission, you're hidebound to do that - I don't think you'll find it and the reason you won't find it is, for example, you could look at business failures prior to the legislation being introduced and subsequent to that, but that business failure report wouldn't probably tell you why the business failed and for it to actually go back to the start of the contractual contract as to whether or not legal advice was sought at the time would be a very difficult thing to get a hold of. I think you might waste your time looking for it, so I think it's just commonsense. For example, if I was a private individual and want to buy a property, I'll engage a valuer to check the property's value; the bank will do a valuation on that property; I might get someone to have a look at it to make sure it's structurally sound, an expert; I'll then get legal advice, a solicitor, to facilitate the purchase of the property, and all of those costs I've got to factor in to the rent return and all the rest of it as a capital investment and I do that as a private individual. If I buy a second-hand car, I'm likely to go and get an NRMA report which will cost me. So I think it's just plain commonsense that if you're outside your area of expertise, then you need to get expert advice and it will cost you, and that needs to be factored into the business plan.

I think this opens up a broader issue which is licensing, and I referred to that in my original opening statement; whilst on the one hand it was certainly an offhanded remark about how Australia's federation arrangement is currently inhibiting our productivity in all other areas, it did have application at this specific inquiry insofar as retailers by and large are probably very good at their trade or profession. The pharmacist was here before; he's probably an excellent pharmacist. Is he a good

businessman? I've no idea. A lot of these people are making business decisions based on not a lot of experience. You quoted the example that he's got a five-year lease with a 10-year loan. It doesn't add up. I'd ask a couple of questions like where did he get his business expertise? Now, most licensing arrangements, you can go and register yourself as a business. Who has told you the fundamentals of running a business? Certainly in the real estate agent practice, one of the areas that we're looking at, we're trying to harmonise real estate education and licensing across Australia. That's been under way now with the eight state and territory governments and the federal government now for some years and it's making progress. But the point I make is that most regulators don't see a need for any business education. Why would you set someone up to fail would be my point. I don't think you should. I think in the first instance, where's that.

The other thing I'd say is with respect to the bank in the case that you said, if you're making a loan, where's the business plan, where's the bank checking that business plan that says it's a viable business plan? I mean, the first alarm bell should have been at the bank that said, "I'm giving you a loan for 10 years and you've got a five-year lease." Where are the checks and balances in that? It has got absolutely nothing to do with the landlord whatsoever.

**DR BYRON:** Except that the tenant gets himself into a very, very vulnerable situation where he's basically put himself in a trap.

**MR STEVENS (REIA):** He has but all I'm saying is he needs expert advice. He needs to recognise that and, like any private individual, he should go and get that; if he doesn't, that's a risk that he runs - or she.

**MR WELLSMORE (REIA):** Perhaps, Neil, if I could make one comment, is that we are finding certain landlords who are a bit more picky about who their tenants are because experience has taught them that over the years that if they pick the wrong tenant is they get someone in to pay the rent. But then if it all falls apart, it actually is a cost to them to do that, and unless they have an extreme situation where the demand is, they can fit someone in the next minute, but in the larger centres in particular they usually have models that they have of combinations of businesses that they want to have, and different groups have different ideas of what those models are. What you find from time to time is if you have one large operator take over a facility from another operator, there's a change of the mix of tenants, there's a change where the tenants are, because they have their ideas about what will make those areas work to bring more people into them.

The unfortunate situation out of that has been that sometimes people have had businesses that have been there for a long period and they then are changed. There have been numbers of examples more recently here locally where people have

complained about, you know, their business has been there for 20 years and then they have been put in some different spot. Whether that has affected their business or not long term, I haven't followed through. But those things are just part of the commercial risk. It might sound harsh but the lease is only for a set period of time and you don't have a right beyond that. The question as to whether or not some people wish to have that legislated that they get some compensation for that, well, it might work in a few cases and then can have other downside effects as well.

**DR BYRON:** It's surprising how often people giving submissions seem to think that a five-year lease means indefinitely or perhaps forever, and they make their assumptions on that five-year lease will automatically be renewed on the same terms and conditions which seems to me a little naive.

**MR WELLSMORE (REIA):** It's a hope, perhaps, and they probably feel they have contributed to the success of the centre as well. But if we were to take all that into account we would have some fundamental restructuring then of commerce about the rights of people and whether or not that would then end up with the most efficient program, because then you would have tenants' rights and then would be usurping the property rights and it's a matter of which way, as a nation, we then would decide to go.

**DR BYRON:** That brings me to one of the things I was going to come back to. Your first submission I thought gave us a fairly nice recipe of how you create a sort of a commercial slum in terms of giving the incumbent sort of automatic rights of renewal, that if the landlord couldn't change the mix that whoever was there could continue no matter how vibrant or otherwise their business was, no matter what their product line was, you know, somebody still selling buggy whips and chaff or something but because they had been there for 20 years they can't be evicted. It seemed to me in your submission that you were making the point that the dynamism, the vibrancy of the whole centre itself depends on the manager being able to manage that whole enterprise.

**MR WELLSMORE (REIA):** Perhaps as an example of where you have prescriptive planning - and to speak to that is a little bit to look at Canberra, whereas retailing has changed a lot. For example, I first started as an agent in 1970 so I've been able to look at a fair bit over that time. One of the features of Canberra has been that when the new areas, the new town centres - say Belconnen and Tuggeranong and Woden in particular - were developed. Each suburb had their own little shopping centre, which usually comprised of a supermarket, a chemist, a butcher, the standard sort of things, and there was a service station there. Of course, over that time what has happened now is that for economic reasons, the structure of how things work has changed dramatically. We've ended up with the supermarkets in some of these areas struggling. The reason why is because we've had the growth



of the big retailers in the major shopping centres - the Coles and the Woolies. Of course they have been able to produce a shopping basket of goods at a substantial discount to what the local shopping centre should be.

We've had cases where people have argued that they don't want the local shops to close down or to be regenerated, so they can go and grab their milk or have something available to them, but the problem is that comes at an economic cost. These people cannot afford to stay open for selling a bit of milk here or a loaf of bread or something unless they need to have the volume going through, the weekly shop. If someone goes to one place that's \$150 for a weekly shop or goes to a place that's \$120, they will go to the 120. Of course that has now been changed yet again with the new business model with Aldi where that 120 may be, you know, 90 or 100 dollars. So all these changes in retailing and the other ways business is done come into play and it affects the market on what that original submission was about. If you had these fixed things happening then the place would be stuck.

Again go back to the Woden Valley example in Canberra, some of the suburban shops have struggled and for a long time you think, they will just close them all up. The landlords have not been making money, then a retailer comes in, has a new approach to doing something, they then become a destination and it resets things off. There's one particular suburb I'm considering in make that comment where I knew the people and I suggested to them to open - the little cafe they were looking at in the location, I thought, "That's a bit of a struggle, I'm not sure that will work." In fact it has worked amazingly well because of the capacity of the people. They have in fact taken over the shop next door and it has helped to regenerate all the other shops as well.

That's what I'm saying is that if you become too prescriptive about these things then other problems will occur. It's a matter for us to make decisions as to how we would want the economies to work. My understanding is the intent here is to look at what's the most productive way for the economies to work. We have enough problems - Bryan has already indicated - with federation causing us - the basis of how the nation was developed and all these disparate groups came together. It causes problems. I mean, all the different laws and all, we're trying to get around some of that. It's the same situation here with retailing. If we have prescriptive laws I think it will not be for the best interests of the public at large.

**DR BYRON:** With a view to the time, I've just got one more question, and you might have some closing comments. Coming back to the idea that we floated of a voluntary code, not like the one that used to exist in New South Wales where you could comply with it if you felt like, but not if you didn't feel like it, sort of like the national code that applies to franchising. There's a national code enforceable by ACCC when it comes to car insurance and smash repairers, where it's voluntary

whether you sign onto it, but once you've signed on it is binding and enforceable by ACCC.

Now, the logic behind that proposition that was put to us is that for all the strip centres, yes, there's a lot of argy-bargy but it's basically small landlord versus small tenant, and nobody has got any particular market power or information advantage. All the issues that the state and territory legislation tries to deal with, seems to involve the case of the large shopping centre and the small tenant in it. All the rest of retailing can basically take care of itself.

Now, if that's the area, rather than going through all this legislation that tries to prescribe everything that should and shouldn't be in a lease, if the representatives of the retailers of the major shopping centres could come out with a mutually agreed code of conduct and say, "This is what we think is fair practice and we commit ourselves to doing this as a code of conduct; if we violate this, we render ourselves liable to persecution and prosecution by the ACCC," would that be a way of taking the heat out of it? We're not pushing this, we're simply floating it for discussion.

**MR SEBBENS (REIA):** I believe that some of the worst cases are probably your small lessor and your small tenant. I've seen it in this area, where there was one particular shopping centre owner or small strip shop owner that was just unbelievable. I think if you introduce this, the larger guys, the Westfields and the Centros et cetera, of course they will join in because they will need publicly to be seen to be doing the right thing and generally they tend to anyway, but I don't think you'll be able to prescript your smaller owners. I think you will find it an uphill battle, so it's probably going to be - - -

**MR WELLSMORE (REIA):** The ones who most need it would be the ones who don't joint.

**MR SEBBENS (REIA):** Exactly right.

**MR STEVENS (REIA):** I'll say a couple of other things I think: the first thing is you've got two - and I hate to use the word - adversarial parties at play, so to get agreement on a code that will cover both parties would be a very difficult proposition, the extent to which I think you might end up with a number of principles in a code but not sufficient detail that probably both or at least one party will be happy with. In other words, if they could fall back on it and say, "You agreed to do this but here you're doing that and it contravenes that," I'm not sure you'd be able to get into such detail that you would be able to do that.

The second thing is that the so-called voluntary code that's been put forward by the ACCC a few years ago where that was being promoted, our response at the time

was essentially good notion in theory; it's very costly for industry to do that because you need help lines, complaint lines, you need complaint processes to be able to handle all of that, you need legal advice and people don't join an association to get whacked around the ears as the policeman on behalf of government. I mean, that's just simply not appropriate. So if you did that, government would be saying to industry, "Look, we think there's a problem here. You fix that and you pay for that." So in principle, I don't think that that's an appropriate thing to do.

The next thing I'd say is that given what Craig was saying with respect to the smaller end of the market, there is already legislation in place and it's called the Trade Practices Act and it covers misleading and deceptive conduct and a lot of what you're talking about boils down to, for one reason or another, the lessor misled the retailer, okay, and if that's the case, you can be prosecuted. This also happens with respect to franchising, for example. There are a lot of cases running under franchising with respect to that and that often gets down to misleading and deceptive conduct, not just on behalf of the lessor or the franchisor but also the franchisee insofar as, "I can do these things and I promise to do that," to uphold the various things that whatever the franchisor stands for. Now, there's a whole list of sort of framework things that a franchisee has to do; if he doesn't comply, the whole franchise is at risk. So it's on both parties, and I'm not having a good at franchisors, all I'm simply saying is that I think there is provision in place under current legislation to provide for what you're looking at and I don't think another layer of compliance will be of much assistance and it would be very costly. That comes against the framework with the federal government certainly and I think the state governments are saying to small business in particular, "Don't worry, we're trying to get rid of red tape and overburden on regulation." You don't need another layer.

**DR BYRON:** Any concluding comments from any of you gentlemen?

**MR STEVENS (REIA):** I think I'd simply say our whole submission - we gave you a very detailed submission, I think, Neil, and have chatted to you before previously - I think it all boils down to there's a balance between the tenant and the landlord and I think that needs to be kept in balance.

**DR BYRON:** Thank you very much. I think we've now got time for a cup of tea outside and we'll resume at 11 o'clock with the Australian Newsagents Federation. Thank you very much, ladies and gentlemen.

**DR BYRON:** Thank you very much, ladies and gentlemen. If we can resume now with the representative from the Australian Newsagents Federation Ltd. Thank you very much for coming, Cathie. If you could just introduce yourself for the transcript and take us through the main points you wanted to highlight. We've allowed about 45 minutes for the session, but there's questions that I'd like to ask you later too.

**MS TREZONA (ANF):** Okay. My name is Cathie Trezona. I'm special projects manager with the Australian Newsagents Federation and, first of all, I'd like to obviously thank you for the opportunity to be here and contribute to the inquiry.

As a bit of background about the ANF, as we know it, it's the peak industry body that represents newsagents in Australia. The ANF's membership is made up of about 2100 newsagents all around Australia and nearly all of our members are small business retailers, so they're employing less than 20 staff. There are actually a lot of parallels with the pharmacy industry in terms of the placement of newsagents between strip and shopping centres. The ownership of retail space is virtually nonexistent, so they pretty much all are subject to retail tenancy leases. As an industry as a whole, it's one that's sort of being squeezed at the moment. Newsagents are faced with increasing costs. They have some unusual supplier terms which are quite specific to the newsagency industry, but probably the other thing that newsagents are regularly telling us is an issue in their business viability is the issue of rents.

At the outset, the ANF wants to state on the record that it is a little bit disappointed in the draft findings of the Productivity Commission. We really felt that there were a lot of submissions to the inquiry that sort of concisely presented some of the difficulties presented to small business and that they've sort of been roundly dismissed. As an example, in the past week alone, the ANF has become aware of some recent retail tenancy leasing examples that give you a bit of a snapshot of some of the difficulties faced. Firstly, we've had a newsagent in a Sydney shopping centre faced with a 180 per cent rent increase at lease renewal; secondly, we've had a newsagent in Sydney who has endured a major shopping centre redevelopment and a resulting decrease in trade, only to discover that they're not being offered a lease in the new redeveloped centre; thirdly, we've had a newsagent in an Adelaide shopping centre forced to double the size of their shop at lease renewal to retain a lease, and lastly, again a newsagent in Adelaide who engaged the services of a paid leasing negotiator, wisely, but then was told by that paid leasing negotiator that they should use their service anonymously for fear of being labelled a difficult tenant.

As you're aware, we made a previous submission to the Productivity Commission. That outlined some of our key areas of concern and I am not proposing to revisit those now because I'm not sure that I could make those arguments any

clearer than we previously did, so there's just I guess some other areas that we wish to just cover off at the public hearings themselves.

Firstly, we strongly feel that there's more to the retail tenants in the marketplace than just economic efficiency and that the inquiry should really look at some of the social impacts of the retail tenancy legislation. I mean, obviously we're a member-driven organisation. We represent the interests of a lot of mum and dad businesses out there and so we have the human element as part of our daily work lives, but we feel that that is important to the broader inquiry as well. We're increasingly finding that we have newsagents who are working for wages, despite the investment that they're making in their business and we think that whilst it might be economically efficient in a textbook fashion it's not really fair.

I guess an example of where we feel the economic efficiency argument is trumping all other considerations is in the issue of things like zoning and planning controls. The Commission has noted that zoning and planning controls affect the location, quantity and use of retail space and that shopping centre landlords have a clear and significant market advantage over tenants by virtue of these artificial controls that are set by government. The Productivity Commission is suggesting that relaxing these controls is more appropriate for addressing retail tenancy issues than protecting the affected small businesses through retail tenancy legislation and we just simply don't agree with that view. We believe that planning controls and things like that have obviously been put in place by government for valid reasons and that it's not an appropriate means to address the imbalance in retail tenancy at all.

The second point we'd like to make is the Australian economy relies on the viability of small business and that the sustainability of small business retailers is of paramount importance and, according to the ABS, small business employed 3.3 million people or 47 per cent of the private sector workforce. That was back in 2000-2001. As we know the retail trade is the largest employer industry in the country. Despite an extended period of economic prosperity, newsagents are telling us that they are more than ever operating on a financial knife edge and their feeling is that rents are merely replacing their rightful return from investing in their businesses.

I guess the issue that we have is if the assessment is made that the market is currently efficient, we don't have faith in the market to address an economic downturn before it's too late for a great number of our members who are really doing it tough right now. So we don't share the same faith in the market to make those kinds of allowances in a timely fashion.

The third point we'd like to make is that current legislation, we don't believe it's excessive or unnecessary but we just think it hasn't quite hit the mark. The Productivity Commission notes that very complex and prescriptive legislation

amendments have been introduced over time and recommends that these provisions be wound back. That's in the face of the fact that rents are higher and the lifecycle of the average retail business is shorter, despite the 13-odd reviews of state and territory legislation that have taken place. I guess from reading the draft report we're hearing that the Productivity Commission suggests that means those prescriptive measures are redundant and we disagree. We simply think that they didn't work and that there is perhaps a better or a different or alternative way that those measures can be put in place to provide a safety net for small business.

The fourth point relates to a voluntary national code of conduct for shopping centre leases. I share the Retail Estate Institute's view on that. It's more likely to be an exercise in public relations than providing any meaningful protection. So we don't believe that's an appropriate way forward on the issue of retail tenancy legislation.

The fifth point we'd like to make is that consistency of legislation does little to assist a small business retailer in any given location. So while we're certainly not averse to consistency over time, we feel as though the focus on consistency of legislation is doing a disservice to the small business retailer in any given location that's doing it tough right now. From the ANF's perspective we feel like the Productivity Commission has effectively been given two different arguments: one is from small business retailers, and it goes to the core of their financial viability. They're effectively saying that they can't sustain the situation as it is currently. The other lobby group is suggesting that the legislation is too prescriptive and adds incidental cost and inconvenience to the process. One is, in our view, slightly more important than another. Obviously we'd like for some of those prescriptive measures to remain in place. It's a bit disappointing from a newsagent's perspective that consistency of legislation is proposed that that be achieved through the winding back of any provisions in certain states and territories that currently exist.

Point 6, as I said, we didn't intend to revisit our previous submission, but one that we would like to touch on again is the issue of turnover figures. We still maintain that turnover figures should not be a requirement of the shopping centre lease. We just do not accept the argument that shopping centres require turnover figures to guide investment decisions, and there's examples of businesses of all types, large and small, who make significant business decisions every day of the year without the trading information of their supplier, so we're not quite sure what sets shopping centres apart. I mean, the biggest investment that they make as a shopping centre owner or manager is the one that takes place before the first tenant actually even starts trading. It's only once the shopping centre is established that they start collecting that information for the shopping centre and they have already made the investment that they're going to make at that site.

Shopping centre landlords make much of the impact of the passing trade that they generate for retailers, including what we believe is the somewhat fanciful notion that small business retailers' goodwill is actually derived from passing trade and not the retailers' skill and hard work. If that's the case then accurate figures of passing trade would be an equally adequate measure of the centre performance. On this point we feel as though shopping centre managers want to have their cake and eat it too.

Lastly, some points in relation to the newsagency industry itself, and obviously the ANF is not proposing that retail tenancy legislation should contain any provisions that are specific to the newsagency industry, but just by way of background, I think it's important for the Productivity Commission to realise that newsagents simply do not have the same level of control over commercial levers of different parts of their business than many other retailers and this does make them extremely vulnerable to retail tenancy abuse.

The retail price of newspapers, magazines, greeting cards, lottery products and other key categories is actually fixed by the suppliers of these products. Newsagents don't have any control over price or margin, and these product sales account for more than 60 per cent of total sales in the newsagency. So a rent increase in an efficiently run newsagent can only erode their net profit position. Lastly, newsagents are contractually required by suppliers to operate within a specific geographic area. In many cases that geographic area can be a shopping centre, so they're not allowed - in order to retain their contracts - to move from that shopping centre. Under those circumstances the shopping centre landlord is the monopoly supplier of retail space to that business which is a fact that they well know.

I guess from our perspective there is reference from the Productivity Commission that small business retailers should just simply walk away from negotiations that aren't proceedings fairly or that aren't going to provide a viable return to the newsagent, but it's just simply not that easy for the small business retailer to actually abandon that business after working so hard, especially in the case of a newsagent in some cases when they have nowhere else to go.

We would like to see, in summary, the Productivity Commission's inquiry focus a bit more on perhaps what is fair than what is economically efficient because the reality is the dealings between small business retailers and large landlords do not equate to perfect competition. We don't have a lot of small retailers negotiating with a lot of small landlords, but in the shopping centre environment you've got oligopoly if not monopoly competition. Under those circumstances we think it fair and reasonable for the safety nets to be in place.

**DR BYRON:** Thank you very much. I think you've hit all the high points there. Your closing comments there - a nice segue into my first question - it seems there is

a world of difference between a large shopping centre and a high street, in a sense.

**MS TREZONA (ANF):** Yes, and we accept that. Most of the retail tenancy issues that we have relate to shopping centres.

**DR BYRON:** Yes. That was my next question because the legislation, as I said earlier this morning, seems to have been introduced because of concerns about small tenants in large centres, and yet that legislation applies right across the board even where there has never been the suggestion of misuse of market power or excessive information or anything else like that. Where shall we start? The prescriptive regulation: we have been looking at all the legislation that's been introduced by all the states and territories over the last 20 years in particular, and trying to see, "Has it helped? What difference has it made? Has it worked?"

There are some things like the improved dispute resolution disclosure statements that we think have been terrific and a big tick. There are other things like the requirement in Queensland and the ACT to get a lawyer to sign off that they have explained the lease. As I said before, we can't find any evidence that that has actually made any difference to anybody, whether you do an overtime study or a cross-jurisdiction study. The right to match, a right of first refusal, sort of thing, at the renegotiation of a lease in South Australia and the ACT, has that made a difference? From what you've said and what's in the submissions, you seem to be agreeing with us that much of the legislation that's been introduced in the last 20 years doesn't seem to have solved the problems, as you said. The problems are still there.

You're suggesting that we need better, more, different prescriptive legislation. I guess our assessment, having looked at all this, is that all the prescriptive legislation has been tried in eight different jurisdictions, none of them seem to have got it right. There has been a big policy experiment going on. All the states are trying different things and pushing different buttons. None of them seems to have got it right and that's why we're asking the question of, does it make sense to keep going down that track of trying to add more and more legislation, put little bandaids on this thing, when what you can conclude from the last 20 years of doing that is that it hasn't worked, it hasn't helped. More bandaids isn't the answer.

You have an opportunity now to convince us. What would be better, different legislation that would actually work and make a difference and solve the problems that you're talking about?

**MS TREZONA (ANF):** Well, firstly, in relation to some of those prescriptive measures, one of the ones that's been talked about is the right of first refusal in South Australia and the ACT, and the Productivity Commission makes the point that there



isn't any evidence that that has improved the scenario. My reading of the draft recommendations is that given that's the case you might as well remove them. But I guess from our perspective, what we're saying is, "Well, where's the evidence that that's introducing a market failure," because we don't believe that that exists either. Certainly from our members' perspective in South Australia they feel very favourably towards that piece of legislation. Perhaps it is simply a notion, a perception, but it's effective, it works in that sense.

If we're looking for evidence in this, we have to look at evidence of market failure as well and I'm not convinced there is evidence that there is market failure occurring in South Australia and ACT by virtue of those.

**DR BYRON:** We weren't suggesting that it actually does any harm or gets in the way, simply that there's no evidence that it actually does any good, in which case it's redundant and it's just unnecessary clutter and static in the system. But in terms of recommending that it's been such a success that it should be copied in all the other six jurisdictions, we can't find any evidence of that. Now, I've no doubt that it may help some people to sleep better at night, to feel good about that. It gives them some security blanket of comfort, but that may be largely illusory if it doesn't actually do anything when push comes to shove. We're looking for systems that will actually work, not just give people an illusion that the government is going to look after them and make sure that everything is all better.

**MS TREZONA (ANF):** Our view is that the ANF is not looking for bandaid solutions. We would like to see the inquiry establish a comprehensive alternative framework for this to occur, but the ANF is not the right organisation to develop that framework, that's not our area of expertise. We're here to say that the current system is failing our members.

**DR BYRON:** The examples you gave of 180 per cent rent increase in Sydney for newsagents, taking a line from what the people from the Retail Estate Institute of Australia said earlier that it is a market, the supply and demand, that there is a relatively limited supply of premium retail locations, there is a very large demand from retailers who would like to get into those premium retail locations. The fact that the rent has gone up may be simply an indication that the market is working, that that space is actually a lot more valuable than it was five years ago. I realise at a personal level for that individual operator it's probably a terrible shock but in the sense of is this evidence that there's something fundamentally wrong in how the market for retail leases is working, well, if there's a very large number of people queuing up willing to pay top dollar for that space, that sounds like the marketplace working to me.

**MS TREZONA (ANF):** Yes. I mean, I can't give you the specifics of that

individual case so I don't - - -

**DR BYRON:** No, I don't want them.

**MS TREZONA (ANF):** I guess it's all hypothetical discussion, but the point I would make is for a newsagent they're operating on a gross profit of around 30 per cent and rent eats through anywhere between 10 and 18 per cent of that in the shopping centres. Those sorts of rent increases for a newsagent can provide that tipping where they move from viable to unsustainable.

**DR BYRON:** So we may well see the situation that in future there are a lot of newsagents in the major shopping centres simply because - - -

**MS TREZONA (ANF):** It's possible. I mean, if newsagents accepted the Productivity Commission's view that they had to make their investment, do a shop fit, get in and out within five years and walk away with a return, I'd say that's true.

**DR BYRON:** I don't know if that's exactly what we're saying, but if you've got a five-year lease then presumably five years means five years, it doesn't mean 10, it doesn't mean seven and a half, it means five.

**MS TREZONA (ANF):** It does, yes.

**DR BYRON:** Many of the people that we've spoken to, including some very successful retailers, say that if you're offered a five-year lease, the only way to look at it is to say, "I've got five years to pay off my fit-out to repay the cost of setting up and to make some profit, and to be in a position that if the lease is not renewed I am available to walk away." If I can't look at it in that sort of business model, then I shouldn't start. So we have spoken to people who say, "Look, I know it's only a five-year lease. I'm in and I know I'll be ready to walk away in five years." Somebody who - we were talking about it this morning - takes a 10-year loan to start the business when they've only got a five-year lease is basically putting their head in a noose financially, I would have thought.

**MS TREZONA (ANF):** That's not uncommon, that kind of scenario, in the newsagency industry, so as much as a five-year-lease is a five-year lease is a five-year lease, implicitly newsagents go into business expecting to be doing that for a long time, so they take that calculated gamble that they will have a lease renewal.

**DR BYRON:** But if they went into a high street or a strip-type picture, they might well get a 10 plus 5 plus 5 plus 3 or whatever, in which case the idea of having a long-term business and building up the personal goodwill which would be saleable when they want to retire or move on, that concept doesn't seem to fit very well with

the large shopping centre model.

**MS TREZONA (ANF):** No, it doesn't, and that presents a real problem for newsagents because that's often the case that they are required to have retail space in order to have a contract with the supplier, so that's quite particular to the newsagency industry.

**DR BYRON:** Sure. But some person who takes their retirement package from the defence force at the age of 40 and decides he wants to be a newsagent, he's offered a contract with a supplier at a location which is specified at such-and-such shopping centre, does it occur to him that, "Hang on, if this is the only territory I'm allowed to operate in and the landlord can put up the rent, I could very easily be squeezed between a rock and a hard place? Is this the right business for me to go into, given that I would be setting" - you know, there's an automatic trap there, that the supply contract reduces the flexibility and ties you to one particular landlord who can do, within the terms of the lease, what they can do.

**MS TREZONA (ANF):** That's true.

**DR BYRON:** Don't alarm bells go off?

**MS TREZONA (ANF):** Yes, they probably should, but I think that as an industry, for us that's a very industry-wide problem. Newsagencies tend to sell for a price that requires a substantial investment that would be difficult for most people to service within that lease period and the reason that they do it is because they are operating on the anticipation of a lease renewal. I think most retailers do, as much as the lease is defined contractually, make long-term plans, and I don't think newsagents are isolated in that, nor do I think that they're necessarily dills for entering into that arrangement.

**DR BYRON:** There aren't many other retailers who have a geographical restriction like - - -

**MS TREZONA (ANF):** No, that is very isolated.

**DR BYRON:** Perhaps the pharmacist.

**MS TREZONA (ANF):** I guess the point I'm making is that shopping centres do their due diligence on tenants. Banks also look at the business plans of tenants and banks are prepared to fund for that length of time, even though a lease is shorter, so it's not as though the newsagent is the only one out on a limb, it's something that all parties are sort of implicitly agreeing to. I'm not saying that that gives a requirement for the shopping centre manager to provide a lease renewal but the expectation is that

unless things go sour, there will be a lease renewal. So the newsagent is backing their skill and expertise to make the site work so that they will be offered one.

**DR BYRON:** Yes, but as we've heard already, that's not necessarily enough.

**MS TREZONA (ANF):** No, it isn't.

**DR BYRON:** You could have done a fantastic job - - -

**MS TREZONA (ANF):** You can be a really good operator.

**DR BYRON:** - - - and no matter how hard you've worked and how diligently et cetera, you could still be displaced if the landlord can get a higher rental from somebody else.

**MS TREZONA (ANF):** Correct, which we strongly wish was otherwise.

**DR BYRON:** You raised this morning and in your submissions the issue of - that we've given a lot of emphasis to economic efficiency and not to fairness. One of the reasons is that it's relatively straightforward to objectively assess economic efficiency, but to assess what's fair in terms of how much of the surplus from running a business should go to the operator and how much should go to the landlord or how much should go to the staff or how much should go to the bank or the suppliers is something which we have absolutely no expertise, and even if we did, I doubt if governments would want us to be deciding what was a fair distribution of profits. I think one of the reasons that government themselves have done that is that in a market economy, it's up to the players to work that out for themselves by negotiation as consenting adults. I say that not as a defence but simply as an explanation, that fairness is not something that we are particularly good at or know a great deal about.

**MS TREZONA (ANF):** Yes.

**DR BYRON:** It shows?

**MS TREZONA (ANF):** It does.

**DR BYRON:** But we were not asked in our terms of reference to say what would be fair. On a more cynical note, every time when somebody says, "It's not fair," you could substitute the words, "I didn't get the outcome that I wanted and therefore it's not fair." Having taught primary school, I'm very used to, "It's not fair, sir, it's not fair." Well, yes, that's very much in the eye of the beholder.

**MS TREZONA (ANF):** Yes. If I can comment on that then, the ANF is not

proposing that there would be mandated occupancy costs or anything like that. We're not looking for prescriptive legislation of that nature. We accept the notion that there should be a negotiation that takes place between the landlord and the tenant. I guess one of our real bugbears is the whole issue of turnover rents.

**DR BYRON:** That was my next point.

**MS TREZONA (ANF):** That comes back to the notion of fairness because in our view, that is simply not fair, and we're not asking for there to be a predetermined splitting up of the profits that are generated by the business but we're just asking for a level playing field in terms of the setting of rents. It may well be that if we get rid of the requirement for newsagents to provide their turnover rent, their rents may go up; I don't know that they won't. To have rents determined some other way may not be as economic for them, but it would be a fairer way of going about things and it seems to me at the moment, shopping centres just have every ace in the deck, in the sense that they have the ability to add a lease renewal, to go out and source an alternative tenant, so they can easily work out what the market rent is, and then on top of that, they have access to the tenant's turnover figures, so they can work out what the tenant's capacity to pay is. What that means is that they actually have the opportunity for a premium rent because they can either accept a market rent or take as much as they can from the sitting tenant.

I guess our notion of fairness comes back to things like that, just the framework that exists allows them to do that and we don't think that's appropriate, especially when there are other mechanisms by which a shopping centre can measure their performance.

**DR BYRON:** You're not by any means the first or the last to tell us that the large shopping centres have all the aces in the deck. I am curious about where this market power comes from, and the best explanation that I can come up with so far, subject to more information is, as I said before, there's a relatively limited supply of high-quality retail space and there are queues of people waiting to get into it and so the shopping centre management can make whatever demands they think they can get away with and if you as a prospective tenant don't like it and don't agree with it, "Next."

**MS TREZONA (ANF):** That's true.

**DR BYRON:** That is actually, in very crude terms, supply and demand. Now, maybe if a lot more small retailers walked away and there wasn't that queue of prospective people outside, you know, you might be able to negotiate different terms - not only different rents but different lease periods, whether or not you disclose turnover. Personally I'm amazed, it's like letting somebody else read your diary or

your tax return. I'm amazed that people do it. But if that's part of the conditions in the lease and the tenant knows that that's one of the conditions of going into the centre, and they agree to it, then it's all part of the package. You can't say, "I want the package except for that bit, that bit and that bit."

**MS TREZONA (ANF):** To a degree that's true but some of the advantages that shopping centre managers have are by virtue of other pieces of legislation around planning and zoning and things like that. They already have some artificial advantages, so I think it is appropriate for the Productivity Commission in those circumstances to try and level the playing field.

**DR BYRON:** I've been trying to think of different structures. Apparently in New Zealand there are a few places where there are large shopping centres that are actually strata titled. If a large number of retailers were convinced that whenever they went to one of the big boys they were going to be mistreated or abused, is it possible that they put in some money, borrow some more from the bank, build themselves their own shopping centre and give themselves strata title and manage it themselves? As far as I know that hasn't been done anywhere in Australia and I ask myself, why not?

Perhaps, hypothetically, if it was set up as a small retailer owned cooperative shopping centre, what rules would they bring in about when people had to move on or when they were under-performing and were dragging the rest of the centre down? I speculate that the rules that that co-op might organise would start to look pretty much like the rules of the other big shopping centres because those are the rules that are necessary to make the whole centre work. If so many people are so dissatisfied with the way shopping centres are run, why haven't we seen any alternatives come up? Any ideas?

**MS TREZONA (ANF):** No.

**DR BYRON:** I'll keep asking other people that.

**MS TREZONA (ANF):** Drawing a blank.

**DR BYRON:** Given the situation that you've outlined, I understand perfectly the point that you're making about the newsagent in the shopping centre is between a rock and a hard place. Now, something has to give: either the rents will continue to go up and the newsagents will move out of shopping centres or completely disappear or something, or the price that somebody pays to buy a newsagency would substantially come down so the rent would be affordable. But the current situation basically can't continue indefinitely, can it?

**MS TREZONA (ANF):** No. We're heading for a correction, it seems.

**DR BYRON:** Okay. I do understand the point you're making but I'm just grappling for what we can do about it. The point about goodwill is one that I think all the small retailers organisations have raised and I can readily understand the retailer having goodwill if they have been in a particular location for years and their customers know them and they have some sort of personal rapport, they deliver a special service, "People go to me rather than my competitor down the street because of the dedicated service that I give them." But if you're a newsagent in a shopping centre and people happen to buy a greeting card or a newsagent on their way back from the supermarket, that doesn't suggest that there's any particular affinity or bond or customer loyalty.

**MS TREZONA (ANF):** For some of those transactions, no, but a newsagent will most likely go out of their way to find you a back issue of Underwater Knitting Quarterly if that's what it is that you want. So they do have that relationship with the customer, they're delivering their papers, they're taking the phone calls when the newspaper gets pinched off their front lawn. They're stocking an incredible range of magazines that no other retailer does, despite them being for sale in other outlets. I would say they do have that customer service role and they're seen as a community retailer, for sure.

**DR BYRON:** I can see that, but if I was running a newsagency in a shopping centre and did not renew my lease and moved away and Joe Blow came in and started up and he was now the newsagency on the second floor of the mall, most of the customers would neither know nor care whether Neil or Joe was running the newsagency, would they, or is there more, sort of special differentiation than that?

**MS TREZONA (ANF):** Well, Joe is unlikely to have moved to an alternative site where they could follow him, I think that's probably the difference, because newsagents have geographical territories. They can't just move shops and take their customer base with them. For the newsagency industry I don't think we'll ever know the answer to that question.

**DR BYRON:** But that suggests that the volume of custom is tied to the location rather than to the owner.

**MS TREZONA (ANF):** Look, I'm not disputing that it's probably a combination of the two, but I guess the argument we're making is that if the customer traffic is the all important generator of goodwill, then shouldn't that also be the all important measure by which to assess a centre's performance and not the figures. That's effectively what the shopping centre lobby group is arguing is that the customer traffic is paramount. But at the same time they want an insight into every retailer's business. I

strongly feel like that's a case of wanting to have a little bit both ways.

**DR BYRON:** Okay. I think we've talked about most of the five points that I wrote down that you've raised this morning. Is there anything else?

**MS TREZONA (ANF):** No. In closing I would say that we really do recognise that this is a very vexed issue. There's been 13-odd reviews and no-one has hit the nail on the head yet. But we'd just like to see that search continued and not just letting the market prevail with something that we don't think is going to help.

**DR BYRON:** I should have offered you the last word but in response - we're having a bit of a dialogue here. One definition of insanity is when you keep doing the same thing and expect different results next time. The observation that we're making is that over the last 20 years, more and more legislation has been added to the books attempting to redress what is seen as a problem and yet from the evidence we're hearing, apart from making work for lawyers, it hasn't actually achieved very much in terms of solving whatever the original problem was, but it has added a great deal of complexity and red tape and that was why we were searching for a simpler way of clarifying the relationship between retailers - particularly small retailers - and large centres. Legislative attempts to codify everything that can and cannot or must and must not be done in the past has been not very successful and that's why we're a bit reluctant to go even further down that path that has delivered so little so far.

**MS TREZONA (ANF):** I guess the message from the ANF is that we strongly feel that there is a valid need for a safety net in this area and we'd welcome an alternative way of doing it, but we certainly wouldn't welcome just abandoning it, so to speak.

**DR BYRON:** We'll leave it there. Thank you very much, Cathie. Thank you for all the effort that's gone into the submissions.

**MS TREZONA (ANF):** Thank you.



**DR BYRON:** Next, we have got Mr Kingsley Varr representing Kingsley's Chicken Pty Ltd. Thank you very much for coming, Mr Varr, and thank you very much for the four written submissions.

**MR VARR (KC):** Yes, those were the submissions but I also sent the response which is with you.

**DR BYRON:** You've obviously put a great deal of work into this and you're very knowledgeable about the subject, so if you'd like to take us through the main points of your criticism of our draft report and discuss that.

**MR VARR (KC):** Before I do that, it seems that as the Commissioner looking into this matter in the ACT, there are a few perceptions that you have which are not liked. Landlords do not have a long queue of people waiting to get in. A good indication is when there's a whole new site that's opened, they build an extension, and you will find that tenants from surrounds are invited. They are provided incentives. I can't prove this; it's only hearsay evidence.

**DR BYRON:** No, we've been told by the people who provide the incentives.

**MR VARR (KC):** So what happens is, in the broader market which is working efficiently - which even you guys have noted - people move out of that into the shopping centre because they're given incentives. The problem that happens and all the problems that you have said - you say you're looking for a simpler system - can be solved very simply if there is transparency and accessibility to the leases of all tenants. That is the main reason why legislation in all the states and territories don't work.

Now, I'm a student of this because I've been tied up and locked up with one of my landlords for three and a half years now in courts. We're on our second trip to the Court of Appeal. Every time it goes to the Court of Appeal, they lose. They have examined so many different clauses of this act, none of which address the problem that we have, which is the valuation that we've asked for three and a half years ago. Market value, should it be based on that date or today? These are the problems that are inherent in the legislation, where it's not clear. The landlords don't understand it, the lawyers don't understand it, the barristers don't understand it. The magistrate had the gall to say he didn't have jurisdiction. We had to take that to the Court of Appeal for them to say, "No, you've got jurisdiction."

It's a very expensive exercise to try and establish what is market rent, but if we have, for instance, access to leases in a registry, we could have made a commercial decision, what is market rent. So prescriptive legislation in itself is not the problem, it is that it has not prescribed and required transparency and accessibility of all leases

to everybody as a public document.

You talk about right of first refusal clauses. In the ACT, there is a clause called section 108. A landlord can ask you to sign your rights away. To do that, you have to get a lawyer to sign section 111, a declaration that says that you were not coerced into giving away this right. I've even had a lawyer tell me, "Look, if you don't sign this, you're not going to get your lease." I told him he needs to go back to law school and attend ethics classes because how can he sign that section 111, saying that I'm not being coerced, if he's the one telling me that it's likely I wouldn't get a renewal. I stopped dealing with that lawyer.

In an environment where the leases that are handed out to tenants - take the first tenant, a new site just built in a shopping centre. It says there in a clause about renewal. The legislation talks about renewal. Now, in this environment, somebody signs a lease, a five-year lease, no problem. The landlord says I can apply for renewal, the legislation says I can apply for renewal. It costs about 350 to 400 thousand dollars to set up a chicken shop; five years, \$80,000 a year write-off, plus interest. Nobody would sign a lease for five years unless they knew that there is this likelihood of the lease being renewed as long as I kept my terms. I pay my rent, I'm a good boy, I get renewed.

What happens is - and this used to happen in the broader market too - come the end of the lease, 70 per cent increase in rent. Now what do you do? Do you walk away as the Commission suggests, vote with your feet? I don't think so, not after spending that kind of money setting up, not after working all those hours building your goodwill. You're not just going to fold and go, even if it is going to take the bulk of your income. You can still make a wage. The next step, 70 per cent, you're not even making a wage. This is happening because at the renewal stage, there is no transparency. You can't say, "My neighbour is paying this rent on this side, this neighbour is paying this rent on that side, why do you want this much rent from me?"

What the legislation in the states and territories is doing is trying to, if you look at the readings by the parliamentarians, ensure security of tenure because they have identified that this is a serious problem for their people, the community. That's why they spend hours and hours and hours of debate in all the states to address this problem. The one thing they have not addressed is transparency and accessibility.

A few years ago, you could actually access, in the ACT, leases. You can't now, because they say "the Privacy Act; you can't". This is a public document. You collected stamp duty on it. There's no secrets in that. Landlords disagree. They say there's confidentiality problems because we might have given some confidential terms. Why did they give confidential terms? Because they've given some favour to somebody which is actually a benefit which affects market value of that site,

otherwise they wouldn't have that tenant. But the guy who is renewing, they know his turnover, they know he has built his business up, turn the screws into him, he's going to capitulate; comes a time, he can't any more, because now he's paying super rent, higher than everybody around and finally goes out of business.

You mentioned earlier, implying that perhaps retail tenants have got rocks in their head for signing 10-year loans with five-year leases. It comes back to the same problem. You have the likelihood or the implication - impliedly you have a renewal, factually it's only on these draconian terms that are laid down to you after you have invested capital and time. In fact, the Commission's recommendations are based on these perceptions which you enunciated and I'm sad to say that really I don't see how anybody could get it so wrong.

You talk about the Commission not being in a position to establish the division of profits, who gets what, and yet the terms of reference say - in terms of reference 1 -

the structure and function of the retail tenancy market, including the role of retail tenancies as a source of income for tenants.

That's your role, you were requested to do that. They didn't give you a choice, you can't leave that out. You should have invested and you should have done it. Whether you're good at it or not is irrelevant, but that was your term of reference.

The appropriateness of key factors are taken into account in determining retail tenancy rents in lease renewals. That's also in the terms of reference. The appropriateness of the key factors - is it appropriate to give turnover rent to somebody who is a supplier? If my chicken supplier wants to know what my turnover is I'll be pointing him to Lake Burley Griffin. He can go and take a quantum leap and dive in there, but he's not getting my turnover. But my landlord says I've got to tell him what the turnover is. I questioned this in some of my negotiations and I was told, "It is only for statistical purposes, don't worry." It's not true. When it comes to negotiating, you are negotiating with somebody who knows everything about your business. You have no access to determine market rent, what is a reasonable rent to pay, because there are no terms that are available to you, no access to any leases. You appoint a property valuer, he can't do it either.

We had a dispute, the property valuer went and asked for details, "Sorry, no can do." How does one negotiate in the dark? To negotiate in the dark is what the Commission calls hard bargaining. It's ludicrous. Hard bargaining should not be happening. Recently, Mr Wayne Swan said in the newspaper:

To judge whether or not it is a competitive market you need to have

transparency.

It's a pity he wasn't here before because these terms were given to you guys by Peter Costello. I think the Commission has not looked at transparency as a key issue to make this market competitive.

The churn rate according to the Commission, there's not much difference between the shopping centre and the strip shops and yet the stats provided by the Commission show that it is higher. The one issue that has been just touched on is whether the shopping centre landlord is a monopolist. By definition, one supplier, many buyers. A shopping centre is a monopoly. When you have a monopoly and there is no transparency, an accessibility to these documents, you're going to have standover tactics, you're going to have misuse of power. If you're looking for why there's misuse of power, that's the reason. Asymmetry of information in the hands of the landlord, he knows everybody's rent, he knows everybody's turnover and the tenant knows nothing.

The current disclosure documents are a whitewash, they provide virtually nothing other than where the place is, what the rent is going to be, and if you follow the vein of the franchising code of conduct in the Trade Practices Act, it should be asking for disclosure of a history of area let, number of shops in the centre, so where are subdivisions happening you will be alerted to that before you sign your lease; proposals for centre renovation and refurbishment; disclosure of foot traffic entering the centre; the growth of the foot traffic over, say, the last five years; disclosure of leases that have been terminated by the landlord, give the history; disclosure of leases that are not renewed by tenants with contact names and addresses should that tenant want to be contacted; disclosure of average base rent per square metre, so you can see this is what rent you're asking for, "This is your average, now you tell me why." There is a basis.

Current disclosure documents don't talk about lease incentives paid to tenants over the last year, five years, each year, how much incentives have been paid; disclosure of list of court settlements paid to tenants; disclosure of list of out of court settlements paid by tenants - unlikely you would find any; total outgoings by expenditure category over the previous five years so you can see the history, you can see the trend; are the air conditioning costs going up, at what rate, and why, are the machines old, do they need to be replaced; advertising contributions received, how it is spent, give us the history.

A voluntary code of conduct that the Commission is talking about will not achieve this because you're asking people to sign up for it. If they don't sign up for it, what are you going to do, force them? You can't be in a shopping centre now and have tenants because you refuse to sign up to this voluntary code of conduct. You

sign up for the code of conduct and then you decide, "It's too difficult, I'll opt out." What are we going to do. This guy has just spent \$500 million building a shopping centre and decides not to sign up. How would these problems be defined? How will the shopping centre be defined? These are issues that are going to arise if you go down this voluntary code of conduct.

I also mention further down that the problem with the ACCC is that it's far too big, it's not interested in small tenants one at a time, it has no national import and it just won't work. Even if you have access to leases today, landlords in shopping centres have circumvented it. They register the lease late, 12 to 14 months after you have signed and started the lease. So if you quote these leases and say, "That was the rent," they say, "It's out of date, it's not relevant," which is why, when you're dealing with people who have only their own self-interest and then you're expecting them to live by a voluntary code of conduct, it is definitely going to fail. Landlords talk about confidentiality which I covered earlier and then in submission 83 you say:

The tenant had previously been on a very favourable rent -

which is precisely what I'm talking about. I'm paying full rent and that person is on a very favourable rent. "How did you arrive at my rent? Why am I paying this rent?" I do not believe that there's any way around mandatory lease registration and mandatory accessibility in prescriptive legislation. I do not believe that there's an alternative because once you have transparency and accessibility, then you have a level playing field. What's happening now is because rents are rising - and using the table that you guys have provided, table 6.1 - you say:

Currently, rent increases range from 15.6 per cent to 71.9 per cent.

My court case is where they want to put it up 74 per cent. These increased rents are going to be passed on to customers. If they're passed on to customers, you're going to get inflation - inflation, where everybody pays 10 cents and five cents and a dollar here and a dollar there, which is going into one coffer, that of the landlord. It sort of explains why, from a small country like this with 20 million people, companies can actually go and invest in the United States, Great Britain. Where are they getting the money from? You, you, everybody is paying towards it.

The odd thing that occurs to me is that in submission 83, the Shopping Centre Association, and in submission 85, Westfield, state that they're not opposed to lease registration. As both tenants and landlords are in agreement that there should be lease registration, what is the Commission's problem with recommending mandatory registration? The cost of registration is very affordable. Search costs are very affordable. You guys have provided 8.1. If we have access and we have transparency, dispute resolution would come down to virtually nothing because

everybody would agree; negotiating from a level playing field. The Commission on page 27 of the draft states:

Many judge the current dispute system to be working well, particularly for disputes between small landlords and small retail tenants.

This begs the question: why has the Commission remained silent on large landlords and small tenants, although in its introduction it states that:

This inquiry stems from the problem between small tenants and large landlords.

It is this sector of the market that instigates this inquiry and yet, it's excluded from the recommendations. That's happened because the Commission has failed to carry out adequate investigation, in my opinion, and examination to establish the likely number of these disputes. It actually concludes that the processes are working reasonably well and are widely accessible, on the one hand, but on the other hand, it goes on to say they can be improved.

It is working reasonably well but it can be improved, improving dispute resolution and accessibility.

I don't know what that means. Dispute resolution and accessibility? You go to court. You go to a tribunal. Anybody can do that with or without a voluntary code of conduct. Strengthening requirements for parties to use low-cost alternatives prior to taking a case to a tribunal or a court.

Now, this court thing is an extremely expensive issue. It's a big decision. It's a huge cost. But the Commission has not investigated and carried out an examination of people who have not renewed their leases and if you talk to people who have not renewed their leases, then you will find out why they didn't renew the lease. I informed the Commission what it cost me at the point I make the submission. I didn't get one question. Now, if you think that that amount is a reasonable amount for dispute resolution, then maybe I need a job as a Commissioner because you guys make a lot more than me.

The Pharmacy Guild of Australia, the Franchise Council, the Australian Newsagents Federation, the Reid committee, all of them talk about the problems with lease renewals. Proper investigation would have shown that the low number of disputes that go to courts reflects fear of the extremely high cost of dispute resolution in the courts. Westfield, however, assert that dispute resolution is low cost and generally efficient - yes, generally efficient for Westfield. This is simply not true. The low level of recourse to formal disputation reflects the fact that intimidation and

standover tactics by the shopping centre landlords, together with the extremely high cost of resolution in courts are the reasons for leases not being renewed instead of being taken to court. This can be fixed through transparency and accessibility of leases.

In my response to the Commission, I have made a recommendation for dispute resolution, whereby we have a level playing field and we have tribunals and ombudsmans but not the court because you will find that if landlords in shopping centres had to go to the tribunal and there is an ombudsman to appeal to, then they cannot hang you out to dry because, like in my case, my landlord is worth about \$50 billion. Sooner or later, I'm going to have to pull the plug, and he's just waiting for that. The Commission itself has identified people walk away financially drained, but you haven't carried out the further investigation. Why? How can this be prevented? Why isn't this legislation working? It's not working because there's no transparency and no accessibility to all the leases.

Security of tenure: the landlord at the outset from the first lease that he issues, anybody is in a position to establish is this tenant risky? Is this tenant a successful retailer? If you're not a successful retailer, you don't get into a shopping centre. Either they're going to shoulder tap you or you're going to go there and say, "Hey, look, I'm doing this and this and I want a place here."

At that point, if you have transparency, you have a level playing field, you can actually negotiate the lease but once that lease is given and it has any mention of renewal, then that renewal should be a right, an ongoing right, because you have now made a decision to build your business in somebody else's property, based on a snapshot of all the tenants around you, "This is my competition. I can make a go here." You can't vote with your feet after you've spent \$400,000 setting up a shop. You just cannot do it. Why would you do it? You've got to write off your capital investment, you write off your goodwill and then you've got to make good the site which will cost maybe 30 to 50 thousand dollars, and then you go and set up somewhere else and you've got to pay this money again to set up. It's not commercial.

If landlords say, "Here is a five-year lease, there is no renewal attached," they will have no tenants. Nobody in their right mind who is going into business in a shopping centre and gone through the selection process of a shopping centre - they have got rocks in their brains to go and sign a lease that says, "You will not get a renewal and the lease will be five years." You just don't have that kind of traffic.

Westfield argues against security of tenure in shopping centres in submission 85. It's not that I'm picking on Westfield but it seems to be quoted all over the draft report. The Commission states that:

Achieving a lease within a centre does not grant a retail tenant a right to trade in a centre beyond that lease. This means that the business has little or no enduring goodwill from a shopping centre tenancy.

We note that this argument was put forward by Westfield in submission 85. Unlike the Commission, we disagree with this argument because both the lease documents currently used in shopping centres and the states and territories talk about renewal.

Now, if the leases issued have a clause about renewal and the landlord making a submission says there is really no right of renewal and the lease is the lease and at the end of the lease you don't have goodwill, then I think that might be a case for misleading and deceptive conduct by that landlord because you can't say, "I'm going to renew the lease but you don't have goodwill thereafter." Arguments given by landlords in submissions against security for tenure were: the landlord may wish to change the tenancy mix. Fantastic, the landlord is free at any time to buy the tenant's business and do with the property what they wish. It's a market - buy, get them out, put whoever you want. "The landlord requires vacant possession of the premises," same problem, same answer, buy the guy out. "It would be substantially more advantageous to lease the premises to another tenant."

How can it be substantially advantageous to lease it to another tenant if that incoming tenant knows that the people around him aren't paying that kind of rent? Why would he want to pay that rent? Wouldn't he be better off buying the person out and say, "Hey, I'll buy your business," and then go and ask for a change of purpose clause. "I want to sell fish instead of chicken." "The tenant has substantially or persistently breached the lease." Legal history is littered with landlords taking tenants to court for not paying their rent. This is breach of contract. It's nothing to do with security of tenure. If you don't pay your bill, you're going to be taken to bankruptcy court. Some of the negotiating tactics used by shopping centre landlords to get tenant capsulation is the issue of the terms of the lease for sign-off just before the expiry date, "Sign it or you're out." My experience is you contest it, you will get a termination notice. "No, we've changed our minds, we're not going to renew your lease." You are jeopardising this person's income, you are jeopardising this person's asset and we are supposed to vote with our feet? I think the Commission needs to do business class 101.

Currently in the ACT if a tenant wants to find out whether your lease is going to be renewed, you can write to your landlord and your landlord must say within 30 days or 31 days, "Yes, I am going to renew your lease", "No, I'm not." Usually, very promptly on the 29th or 30th day you will get a letter that says, "Yes, I'm going to renew your lease and then you don't get the terms." So you're starting to run out of time. Even if you wanted to move out and find another place, you're going to get a



renewal, you just don't know what the terms are. You get your terms and it's saying, "That's going to cost you 74 per cent extra." It's a different ball game. How does one negotiate when you run out of time and starting at a 74 per cent increase in rent? That is like saying to an employee, who has just signed a loan to buy a house, that he is now demoted and he is going to get 20 per cent of his normal income.

Refits, shop refits: the landlord is a supplier to the business. He is not a shareholder. He hasn't invested five cents in this business and yet, he wants to interfere and say that your shop needs a refit. You're talking about shopping centres that renovate the shopping centre every 25 years, but every five years they'll say, "Hey, you need a refit to get your lease." No supplier should be allowed to determine what their buyer needs to spend money on, "No, you must buy a BMW." "Mr Commissioner, you need to buy a Rolls Royce. To remain as a Commissioner you must buy a Rolls Royce every five years." It won't happen - well, it could.

Turnover rate: this is a supplier saying, "I need to know your turnover rate." That should be banned. It should prescriptively legislated and prevented unless the landlord says, "I like your business concept so much, you pay me a 8 per cent, 10 per cent, 11 per cent rent of your turnover." Nothing else, just that. Your business goes up, you pay more rent. Your business goes down, you pay less rent." Now he is sharing the risk. These landlords asking for turnover rent they don't share the risk, why do they need this turnover rent? They were happy with this rent. What have they done to earn on the upside and not share on the downside? Turnover rent should be banned legislatively. In draft recommendation 3 the Commission recommends:

The alignment of the retail tenancy market with the broader market for commercial tenancies.

This is not logical. It is ill-founded because what it is suggesting is that the broader market, which is an efficient market - that the shopping centre, which is a monopoly, should be brought in line with an efficient market where there are many owners, many tenants who are able to negotiate. The tenants are usually about the same economic strength, maybe the landlord might be a bit stronger, and it's working well because there are many tenants and many landlords. So why would we want to bring in line the shopping centre to that? It's not possible to make a shopping centre subdivide and have many owners. It has got shareholders, but that is a different scenario.

I believe that the Commission needs to carry out further unbiased, comprehensive analysis, focus on the monopolistic market segment relating to small specialty tenants where there is clear and evident market failure because in each shopping centre there's only one supplier and many buyers and this is facilitating

coercive price determination with a tenant being under the threat of having a lease renewal terminated. It simply does not make sense to try to align the efficient broader market with the monopolistic market.

**DR BYRON:** Thank you very much. I think you've very succinctly hit all the key points, particularly the role of greater transparency. I must say I am surprised at the number of people who appear to sign a contract, even knowing what the contract involves, when they think they're going to lose money as a result. I guess I am thinking along the lines of why do people throw good money after bad? I realise it's very difficult to walk away from substantial investment, but if staying there is going to cost you even more and at the end of another five years you're going to be even worse off than you were today, why would anybody do that?

**MR VARR:** I think you will find, Commissioner, that really not everybody has a telephone line to God to find out where they're going to be in five years - maybe you do, but tenants usually don't. So they live in hope that, you know, "I am a successful retailer, that's why I was selected in the first place to build a shop here, and I will find a way to retail my way out of this." I don't know that interest rates are going to go up - maybe you do, I don't - maybe it will go up to 17 per cent, I don't know. There are many things - the price of oil, is that going to be \$200? Maybe you know, retail tenants don't. They know about their business.

They don't know that the landlord is going to put up a kiosk selling exactly what you're selling right in front of you so that the customers have to pass them to come to you. They don't know that McDonald's is going to introduce chicken breast fillets. Nobody knows, that's why it's business, competition. In fact, we're in a particularly difficult situation because our landlords tell us, "You can only sell chicken," and then they let everybody else sell chicken. It's not so clear-cut, you know.

**DR BYRON:** It's extremely valuable for this inquiry for you to have put all this on the public record because I am afraid that there are a large number of people out there, people who are taking their superannuation payouts and whatever and thinking, "I'll go and start a small business" - you know, retire at 54 years and 11 months or something and they will take a retail space in a shopping centre and life will be a breeze and they will make a lot, and another five years they will go and buy a block of flats on the Gold Coast and retire. If they read the evidence that you have given us today, those people will be firmly persuaded not to do that and I think that's probably a great service that you've done the Australian public because it will disavow them of some of these rose-coloured dreams that people have had about to be a retailer, especially a retailer in a big shopping centre is easy and is going to guarantee you a fortune. You have made it very, very clear to us exactly why it is so complicated and so difficult.

**MR VARR:** Mr Commissioner, if I'm going to be doing anything for the Australian public in this response to your submission it would be to convince the commission not to go ahead with its draft recommendations because they are rubbish. They will not achieve anything for anybody's benefit except the shopping centre landlords. It is so one-sided. It is so uninformed. It is so ill-founded. It is a disgrace.

**DR BYRON:** Well, you're entitled to your opinion and thank you for coming here today to share it with us.

**MR VARR:** Thank you.

**DR BYRON:** I said this morning in my opening that there would be an opportunity for anybody else who wanted to comment or present to come forward and put their views on the public record. Do I hear anyone? If that is the case that there is nobody else, then I will adjourn the hearings and resume we will resume on Monday morning in Sydney. Thank you very much for your attendance, ladies and gentlemen.

AT 12.33 PM THE INQUIRY WAS ADJOURNED UNTIL  
MONDAY, 4 FEBRUARY 2008

