

30 July 2007

Our Ref: 20071350

Retail Tenancies Inquiry
Productivity Commission
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Dear Commissioners

**RE: *THE MARKET FOR RETAIL TENANCY LEASES IN AUSTRALIA* –
PRODUCTIVITY COMMISSION CIRCULAR AND ISSUES PAPER**

I am pleased to provide a submission for the Issues Paper *The Market for Retail Tenancy Leases in Australia*.

My Department is responsible for the administration of legislation in this area.

In the Northern Territory retail tenancy leases in addition to general law are regulated by the:

- *Business Tenancies (Fair Dealing) Act 2003* (NT)
- *Law of Property Act 2000* (NT)

The principal legislation is the *Business Tenancies (Fair Dealing) Act* (“the Act”).

The Act commenced in the Northern Territory on 1 July 2004 and is administered by the Commissioner of Consumer Affairs (“the Commissioner”) within the Department of Justice.

The Act:

- provides better disclosure of key lease terms for tenants;
- provides better lease security (minimum of 5 years unless requirement waived by tenant);
- provides for a dispute resolution process;
- establishes some basic rights and duties for tenant and landlords; and
- establishes regulatory offences.

Since the legislation commenced there have been 5 applications to the Commissioner for dispute resolution. These applications largely related to issues with the terms of the lease. Examples include:

- a landlord seeking 5 years rent from a tenant who ended the lease after 10 months;
- a landlord wanting to evict a tenant so another tenant could occupy the premises. The parties had no written lease; and
- a dispute over whether a car park was included in the leased area.

Consumer Affairs identify some possible issues with the legislation.

1. A possible lack of awareness about the legislation. Several applications made to the Commissioner revealed that one or both parties did not know about the legislation. Real estate agents handling commercial leases have expressed similar concerns to Consumer Affairs.
2. Enquiries received by the Commissioner suggest landlords and tenants experience some difficulty in determining which type of retail leases are covered by the legislation.¹

A positive indication is that most queries are made prior to parties entering into a lease.

One area of practical concern for the operation of the legislation is that of the airports. There are various points of contention between the operation of the Northern Territory legislation and the quite complex legislative and administrative scheme, under commonwealth law, governing business tenancies within major airports.

No major concerns, apart from those raised above, have been raised with the Department about this legislation. The Northern Territory Department of Business, Economic and Regional Development indicate that they have had no substantive concerns either.

The Consumer Affairs Council, a body established to provide advice to the Minister for Justice and Attorney-General on consumer issues also had no concerns raised by the community.

There are no other advocacy bodies funded by the Department of Justice relevant to this issue.

I thank you for this opportunity to comment.

Yours sincerely

Elizabeth Morris
Acting Chief Executive Officer

¹ Consumer Affairs acknowledge that due to their limited dealings with the Act the validity of these concerns is unknown.