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**Law
Institute
Victoria**

Telephone (03) 9607 9311
Facsimile (03) 9602 5270
E-mail lawinst@liv.asn.au

Mr David Cobau
Retail Tenancy Lease Market in Australia Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

ENQUIRIES

Dear Mr Cobau,

Productivity Commission Inquiry – The Market for Retail Tenancy Leases in Australia

The Law Institute of Victoria (LIV) has already made a submission in respect of the above inquiry.

The LIV has become aware of a report in *The Australian Financial Review* dated 5 July 2007 in respect of the registration of leases. A copy of the report is **enclosed** for your reference. The LIV would like to make additional submissions in respect of the issue of registration of leases.

As you may be aware, it is not the practice in Victoria for leases to be registered in view of the special protection provisions of s42(2)(e) of the *Transfer of Land Act 1958* (Vic). Generally, it appears that the Victorian legal profession is satisfied with the system of non-registration of leases and would be very concerned if a system of registration was introduced without substantial amendments being made to ensure that the registration process is simplified and made far more efficient than at present.

As far as the value of registration in providing reliable information about leases the LIV does not believe that the registration of leases as currently practised in states other than Victoria will provide any assistance in this regard. For example, rent review details are not included in the lease registration details. Further, the LIV notes that the actual market rents may differ from the rents on the face of the lease.

The LIV is also aware of the practice in other states of supplementary agreements being prepared for the specific purpose of ensuring that full lease details are not on the register.

The LIV further submits that the requirement for registration would not necessarily make information available within an appropriate timeframe. It is quite common for landlords, particularly those owning or managing multiple shopping centres, to take many months to execute leases after they have been executed by the tenant. A delay of over six months is not uncommon. There are often further delays while the lease is stamped in those jurisdictions where stamp duty is still payable and lodged for registration, and then often with the registration process itself.

If you would like to discuss any of the matters raised in this submission please do not hesitate to contact Karen Cheng, LIV Property and Environmental Law Section Lawyer, on 03 9607 0522.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Geoff Provis'.

Geoff Provis
President
Law Institute of Victoria
Encl

Backing for tenants hailed

Tina Perinotto

The shopping centre industry yesterday welcomed a call by the competition regulator for more states and territories to register retail leases as a way of using collective bargaining in the sector, which is increasingly coming under fire for unfair practices.

Shopping Centre Council of Australia executive director Milton Cockburn said NSW, Queensland, the ACT and the Northern Territory already had mandatory registration of retail leases, which were available for search for "a very small fee".

"The simplest and most effective way for that information to be available to everyone would be for all other states to adopt a similar system of registration of leases, and we would have no objection to that at all."

But Mr Cockburn rejected suggestions by sources in the retail leasing market that landlords shared rental information between themselves, especially when they were co-owners of shopping centres.

"If you have two companies that are co-owners then the lease information is available to those two. But if there is a suggestion that Westfield is swapping rent information with GPT then that is nonsense."

The response came after a speech

delivered by Australian Competition and Consumer Commission chairman Graeme Samuel on Tuesday, in which he called on tenants to take greater charge of their destiny by using new provisions for collective bargaining to negotiate better deals.

It also follows the announcement by the federal government of a Productivity Commission inquiry into the sector.

Retail tenancy issues had become "somewhat of a hot issue of late", Mr Samuel said, speaking at the National Small Business Summit in Sydney, organised by the council of Small Business Organisations of Australia.

"There are concerns that smaller players are perhaps not getting as good a deal as they think is fair in some circumstances," Mr Samuel said.

"There are times when this may seem unfair, but as the law currently stands, it is largely up to the market to determine what is a fair price for tenants to pay."

But there were steps small businesses could take to improve their own position, such as collective bargaining, he said.

The managing director of Leaseinfo.com.au, Simon Fonteyn, told the summit that lack of information in the shopping centre industry was severe and created distortions.