

NATIONAL RETAIL ASSOCIATION



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SUBMISSION TO THE

PRODUCTIVITY COMMISSION PUBLIC INQUIRY

“THE MARKET FOR RETAIL TENANCY LEASES IN AUSTRALIA”

27 July 2007

Introduction

Arising from an instruction from The Australian Government, the Productivity Commission has invited submissions by Circular and Issues Paper dated 20 June 2007, on the market for retail tenancy leases, relevant to its brief to:

- Make recommendations for improving the retail tenancy market in Australia; and
- To identify, and where practicable, quantify the likely benefits and costs of those recommendations for retail tenants, landlords, investors and the community generally.

The Commission has listed a range of matters to which it is to have regard, in undertaking its assessments.

The National Retail Association, as an important Retail Industry stakeholder on behalf of its members, has been invited to make a submission, and is pleased to respond, within the limited time available, on what it regards as some of the more important issues identified by the Commission, and that are within its direct experience.

Overview of the Organisation

The National Retail Association ('NRA') is a not-for-profit industry organisation that has been serving the retail industry for over 75 years. The NRA is an industry organisation that provides professional services to the retail and wider service industry throughout Australia.

It is the pre-eminent, Australia-wide voice of the retail sector, which employs more Australians than any other industry and accounts for almost 20% of the Australian workforce.

There are now over 3700 businesses serviced by NRA. Members range from sole operator enterprises to speciality, chain, and franchise stores of all types and sizes throughout Australia. NRA's members collectively employ over 300,000 Australians.

NRA's aim is to ensure that businesses within the service sector, whatever their size, have access to specialised knowledge and industry-specific expertise in order to grow and prosper.

NRA's key activity is to provide industry-specific professional services that include employment law and industrial relations advice, government relations and issues management, staff development and training, job placement service, property and project services including tenancy and leasing, and events and networking.

NRA also seek to ensure that the views and concerns of the service sector are communicated to governments, the media and the wider community, as well as profiling and showcasing the achievements of the industry through a number of key events.

Members of the NRA Board and Executive have been involved in the development and review of retail leases legislation since its inception in Queensland in 1984, and in the reviews of the Queensland Retail Shop Leases Act in 1999, 2004, 2000 and 2006, as members of Ministers and Industry Working Groups, and as lay members of the Retail Shop Leases Tribunal since 1991.

The NRA comments in the first instance on some of those matters to which the Commission is to have regard, in the following order:

1. The structure and functioning of the retail tenancy market in Australia;

1.1 The structure of the retail tenancy market in Australia (more accurately the retail markets) comprises, in outline:

- Higher and lower-order shopping centres, the ownership of most of those at major supermarket-anchored or above, being now increasingly highly concentrated into ownership and internal management through a limited number of publicly listed and unlisted property trust structures.

- Some of those structures involve “stapled securities” in which the ownership of the management “rights” is with the beneficial unit holders. Others involve external management and fee structures separate from the property ownership, recoverable as a component of outgoings in addition to base rent, with no effective accountability to lessees.
- The physical details of most of these centres, broad tenancy mix and Moving Annual Total (MAT) sales are to be found in the annual publication by the Property Council of its Shopping Centre Directories for each State.
- The average tenancy mix, sales and occupation costs and ratios for representative numbers of these centres are to be found in the Urbis-JHD Shopping Centre Retail Averages, also published annually. These centres are concentrated in varying degrees in capital and provincial cities and significant towns.
- At the Regional level, (anchored by a full-line Department Store) and Sub-Regional level (anchored by one or two discount department stores) these centres will typically be occupied by the order of 70% of GLAR by major (anchor) tenants, and 30% by specialty tenants, which however pay about 70% of the total rent, with average gross rents of \$1,440/m² and average occupation costs of about 16% of sales, with wide variation within these Averages. (Source Urbis-JHD 2005/06 Retail Averages).
- There is a higher proportion of franchise, national chain and brand specialty tenancies in higher-order centres, leading to perceptions of a lack of variety from centre to centre.
- Over the 10-year period 1995/6 to 2005/6, average total sales \$/m² for Regional Centres have only increased by 20%, excluding GST, compared with CPI increase of 28%, indicating over-expansion, well publicised problems with some major anchor tenants, competition from alternative retailing and lower-order centres, and consequent reduced efficiency.
- Over the period 2000/01 to 2005/06, total Specialty Shop Sales have only increased by \$289/m² or 4.33%, with CPI increase of 15.3%, gross rents \$/m² increased by \$262/m², indicating that over 90% of incremental sales have accrued to gross rent.
- A consequence is the substantial disparity between the wealth created for landlords as evidenced by the ASX Listed Retail Property Trust Returns (UBS Retail 200) and the relative inconsequence of ASX listed Specialty Retailers and other specialty retailers who provide up to the order of 70% of shopping centre rental income.

- The usual requirement by landlords for lease renewals in larger shopping centres, is for a significant increase in commencing rent – in many cases of the order of 30% - together with typical annual base rental increases of 5%, full recovery of outgoings increases including somewhat discretionary management fees, and either a complete refit or substantial refurbishment, for a more usual 5 year lease term.
- Annual base rental increases have been lifted from 3% to 5% over the last two years and now exceed the annual rate of increase in sales for most speciality retailers. Total speciality shop sales increased by only 4.33% over the period from 2000/1 to 2005/6.
- There is a high degree of consistency in retail leases and rental objectives as between major landlord groups, including limited lease term, high-cost fitout and refurbishment requirements, corporate and personal guarantees, no “market review” mechanism to reflect changes in external market conditions, and the internal changes to trading conditions and business viability reserved by landlords without recourse.
- The inclusion in leases as a non-negotiable condition of a requirement to provide a security deposit or bank guarantee for the term of the lease, and in some cases with no specified expiry date, is a relatively recent development which can substantially and adversely affect the liquidity of lessees. The deposit or guarantee is typically the equivalent of three months rent. Small to medium retailers who operate multiple sites may be more severely affected. Adverse consequences for retailers arise in terms of reduced liquidity and a restriction on growth and expansion.

1.2 Important leasing objectives for retail lessees are for

- longer-term business continuity on reasonable terms
- gross rentals and lease terms that are consistent with reasonable business viability for the particular business use required under the lease
- periodic rent reviews consistent with changes in the wider market for that use, including access to market review following adverse changes in trading conditions/competition controlled by the landlord
- a lease term of sufficient duration to amortize capital costs (matching costs with revenues) over the lease period
- lease renewal negotiations in good faith, that do not subsume into rent any part of lessees goodwill (market-related required profitability) or the “going concern value” of existing fixtures and fittings

- a “last resort” access to mediation and market review where there is (apart from the rental) an intention by the landlord to renew the lease.
- 1.3 From the Landlords position, the great majority of leases must be renewed, as there is not sufficient stock of existing and potential experienced specialty retailers to substitute for a significant proportion of existing tenants over a limited period.
- However any particular specialty retailer will be expendable in “one to one” negotiations on lease expiry, and the consequent uncertainty increases business and personal risk, prejudices capacity to compete with external retailers, longer-term business investment, and career employment opportunities for staff.
- 1.4 Given the increase in retail business operating costs at or exceeding CPI, there are consequent reductions in profitability among specialty tenants generally, with some exceptions facilitated more recently by a favourable exchange rate and cheaper imports. A substantial proportion of that benefit therefore accrues directly to higher rental rather than lower consumer prices.
- 1.5 Capitalization rates for sales of Regional Centres have reduced from 8-9% to most recently less than 10-year bond rate of 5.5%, with current perceptions of an over-heated market due to a surfeit of investment funds. This necessarily increases rental growth “requirements” by landlords/managers to maintain competitive positions against the average total financial performance of the Listed Property Trust market which has averaged 15.9% per annum over the past 10-year period, and to offset higher risk exposure to interest rate movements arising from higher debt leverage, without adequate regard for “shop floor” trading conditions.
- 1.6 The great majority of retail premises in Australia are in “main street” locations, with widely dispersed property ownerships, and generally substantially lower sales and rentals. With some exceptions, there are more benign landlord-tenant relationships, due to supply/demand factors, wider availability of alternative premises by existing tenants on lease expiry, with somewhat better negotiating positions relative to shopping centre tenants for whom there are more usually no feasible alternatives in any particular case.
- 1.7 In summary, and referring specifically to Specialty Retailers –
- Current functioning of the market for specialty retail tenancies particularly in larger shopping centres is inconsistent with efficiency and equity.
 - Shopping centre Landlords quest for certainty of ever-increasing rental income and control has the inevitable consequence of correspondingly higher risk and uncertainty for the specialty tenant.
 - Information provided above is evidence of that failure in important aspects of specialty retailer business risk and continuity, with wider detrimental effects on all industry stakeholders including consumers. .

2. Relationships with the broader market for commercial leases.

- 2.1 There is little if any relationship between “specialty retail leases and the broader market for commercial leases. The broader commercial market is relatively transparent, with tenants having a wider choice of locations from which to successfully conduct their businesses or professional practices. The landlord generally plays little or no part in the success or encroaches unreasonably on lessees businesses, continuity and profitability.

In contrast, most individual retail tenants, particularly in shopping centres, once committed to a particular site at substantial cost, cannot easily cease business, without loss of business, livelihood and close-down costs.

- 2.2 There will usually be little or no alternative to the shopping centre in which the business is located, leading to substantial negotiating disadvantages, and upward rental pressures unrelated to actual “shop floor” retail experience, for reasons previously mentioned, with inadequate regard for longer-term business viability. Shopping centre landlords are also able to control the business environment and competition within the relatively “closed market” of the centre.

The restrictive user covenants in such retail leases determines their profitability in conjunction with other restrictive lease conditions, the trading environment generated by the landlord, and landlords reservations to change tenancy mix and competition without recourse.

- 2.3 These issues have been extensively canvassed in the “Reid Inquiry” and the development of retail shop leases legislation, the existence of which demonstrates the substantial differences between the market for retail and commercial leases.

There may however be instances in the commercial or industrial market where a small business lessee has made specific improvements or investment in non-relocatable installations, whereby the landlord is able to charge a premium rental that appropriates some or all of that investment above the normal market rental value of those premises.

It may be that appropriate processes can be legislated whereby disputes that arise in these circumstances can be resolved by mediation, arbitration of independent market rental valuation that excludes the value of such tenants improvements/installations from the rent payable.

3. Any competition, regulatory and access constraints on the economically efficient operation of the market.

- 3.1 The somewhat concentrated aggregate market share of the major supermarket chains are currently receiving extensive publicity. However, the repositioning and expansion of the IGA and Foodworks brands, and the increase in Aldi stores, are providing increasing food shopping alternatives. There are also an increasing

variety of specialised and “boutique” type food shops, particularly in concentrated urban areas.

- 3.2 Rental structures for major retailers in larger shopping centres are relatively favourable, and equate to less than 20% of average specialty tenants rents on a \$M2 basis. Major retailers however lease large areas, attract complementary lessees and customers, and are increasingly subject to competition from other retail formats.
- 3.3 It remains the case that net profit margins after tax reported by major supermarket retailers in particular, of around 3% to 3.5% of sales, have little margin for management error, and are arguably not unreasonable having regard for their high investment in supply chains, warehousing, distribution, staff training and the like. It is difficult to see how the supermarket industry could reasonably be regulated under retail leases legislation.
- 3.4 Discount Factory Outlets, “Big Box” retailers, and Homemaker Centres located outside shopping centres also provide strong competition and partly explain the reduced efficiency of some larger shopping centres, evidenced in lower sales \$m2 compared with CPI inflation over the past decade.
- 3.5 Some relaxation of Town Planning/Rezoning restrictions, costs and procedures would be beneficial to facilitate enhancement of competition and variety of choice, particularly in concentrated urban areas. However there are in total a relatively large number of lower-grade retail premises, and increase in supply of itself will not necessarily lead to greater efficiency, or resolve the tenancy issues in shopping centres by further decreasing their efficiency.
- 3.6 There appears to be reasonable planning capacity and outcomes to provide shopping centre facilities in areas of high population growth, and for “supermarket-anchored” centres in some “infill” urban locations, that also result in increased competition between major supermarket chains.
- 3.7 However, higher order Regional and Sub-Regional Centres trading positions are largely protected by the lack of wide choice of anchor tenants – two supermarkets, two full-line department stores, two discount department store groups – and the consolidation of transport/infrastructure hubs around them such they dominate their trade area, with a consequently “captive” market, both for existing tenants and consumers. This quasi-monopoly market power is reflected in the increasing proportion of specialty tenants sales as rent, with inevitable increase in retail prices to consumers. The best way to maintain competitiveness is to provide more secure and equitable leases that increase efficiency, and as a consequence, generate higher rental value.

4. The extent of any information asymmetry between landlords and retail tenants.

4.1 This remains a major contentious issue, in particular for shopping centres that require disclosure of tenants sales (subject to audit) as a lease condition, and collate same by Retail Category, within their own Portfolio of centres. The information is also collated annually by Urbis-JHD via its Retail Averages for Shopping Centres, in co-operation with the Shopping Centre Council. .

These “averages” are widely used by some landlords for individual rent reviews and lease renewal terms, but suffer a number of major defects as indicators or individual retailer sales performance. For example:

4.2 Averages are derived from an excessively wide range in the sample, reducing or invalidating their use for or against any particular tenancy.

4.3 Averages can be distorted by different reporting standards - e.g., newsagents’ soft gambling sales being included rather than the commissions only thereon, contrary to Retail Leases legislation definitions of “sales”.

4.4 Pharmacies are inappropriately combined with specialist “cosmetics” retailers, thus inflating shop numbers, reducing average shop size and revenues, and inflating Occupation Cost/Sales Ratios for the relatively low-margin pharmacies. This misinformation is highly prejudicial to the negotiation of reasonable outcomes, given also the decision-making processes of institutionalized landlords.

4.5 Given the role of pharmacies in delivering essential components of the Government’s Community Health Policies, and its high expenditure under the Pharmaceutical Benefits and related Schemes, and excessive lease/rental outcomes against many existing pharmacy tenants in higher order shopping centres, this has important public policy implications. It is understood that the Pharmacy Guild will address these issues in its submission.

4.6 In some shopping centre environments negotiators refuse to provide meaningful information about the relative size and sales performance of Categories in a particular shopping centre relevant to an informed decision – particularly against captive sitting tenants on lease expiry/renewal.

4.7 The shopping centre averages are however a very useful tool for shopping centre landlords to measure and “benchmark” the size, tenancy mix and category performance of an individual shopping centre against its peers, and can be useful as a “forensic” tool by sufficiently experienced tenants and their consultants..

4.8 Tenants sales information and trends are also an important tool for the better management of tenancy mix, and also to measure the effectiveness of promotions programs which are partly financed by Promotions Levies levied on tenants under their leases.

Sales disclosures and their proper use are important to a better informed market, but provide a negotiating advantage to landlords/managers where such information is relevant but not reciprocated. This reciprocation would not necessitate any breach of confidentiality of any particular lessees sales information.

However, the “raw” sales figures do not address the question of business viability and reasonable rental payment capacity under all of the trading and lease conditions of a particular business.

- 4.9 It is important to the better order of the shopping centre industry, and its lease outcomes, that there be improved availability of Business Benchmarks for all the significant specialty tenant categories as listed in their Specialty Retail Categories. Current examples are the FMRC Business Benchmarks and the Pharmacy Guild’s annual surveys. This may reasonably be a project to be conducted or encouraged by the Productivity Commission or the ACCC to facilitate better informed outcomes, particularly for the different categories of small businesses.

5. The scope for reform of retail tenancies to improve performance.

The scope for such reforms includes the following:

- 5.1 A critical review of the typical or standard shopping centres lease, with particular regard to relative negotiating power, equity, efficiency, and reasonableness of terms.
- 5.2 Periodic access to market rent review principles and processes to reflect all of the lease conditions that affect necessary business profitability. There has been a general abandonment by landlords of the market rent review process since the “ratchet” rent provisions for new leases were made illegal from about 1994, and reduced understanding of market rental concepts for highly specific retail leases.
- 5.3 Access to a market rent review process in cases where the landlord introduces changes to tenancy mix that were not disclosed when the lease was entered into, or the timing and effects of which could not be reasonably measured, that significantly adversely affect the trading and business viability of a particular tenant.
- 5.4 Access to a market rent review process within 12 months after changes in Government policies that significantly adversely affect the profitability of Retail Pharmacy businesses (e.g., the five-year Agreements for Pharmacies).
- 5.5 Expansion of the “Specialist Retail Valuer” registration eligibility to include appropriately experienced forensic accountants and business valuers, to reflect that fact that retail leases are primarily concerned with financial outcomes, rather than purely real estate/property considerations.
- 5.6 A systemic Professional Development and Education program to improve the skills of valuers responsible for market rent determinations of the leases of retail premises.

- 5.7 Most professional property valuers are not sufficiently educated or experienced in the market rent assessments of highly specific retail leases, which require a sound understanding of the economics of those businesses, the impact of varying lease conditions, and the necessity to separate market rental value of the lease of the property (site goodwill) contributed by the landlord, from business goodwill contributed or generated by the lessee.
- 5.8 Provision of Financial Advice Reports by lessees qualified advisers, (mainly Accountants) as part of the pre-lease and lease renewal mutual disclosure process, that as far as possible reflect business investment risk and viability objectives having regard to the particular lease provisions being proposed.
- 5.9 Improved “end of lease” protocols whereby, in the event of a lease renewal being offered, market rental value principles should be applied, by negotiation, mediation, consultation of experts, determination, or Tribunal.
- 5.10 In the event that a lease is not going to be renewed ensure standards of “confidentiality” are maintained in order that information about store closures is not prematurely leaked to others including store employees resulting in consequently human resource, industrial relations and operational problems. Noting that the lease terms requires the store to trade through until the end of the lease and prohibits early closure.
- 5.11 Landlords to be required to state the basis for their rental assessments on market review and lease renewal offers, or in subsequent negotiations. The more usual practice is a “take it or leave it ultimatum – or someone else (unspecified as to use or identity) will take the premises.

In the event of a similar use, this provides the landlord with the opportunity to secure a rental premium with the benefit of existing lessees fitout/services, and lessees business goodwill arising from continuity of business, rather than the necessity to start up a substantially new business.

- 5.12 In the event of lease renewal not being offered – compensation for the “going concern” value of existing tenants fixtures and fittings, to the extent that they would be relevant to a new lease, or where the expiring lease term was not adequate to amortize the original shop fit and any subsequent refurbishment required by the landlord. This would encourage more reasonable fitout and refurbishment requirements under leases, to better match the lease term, and a “bona fide” lease renewal process that would temper unreasonable behaviour and render any such payment unnecessary in most circumstances.

In many cases, the forced abandonment of existing good quality fixtures, fittings, and services provided by the former lessee, are converted into higher rental outcomes for incoming tenants, for the landlords benefit.

- 5.13 Review of the required assumptions of retail shop leases legislation in all State jurisdictions, to clarify the notion of “disregarding the value of the goodwill of a (existing) lessee’s business or the lessee’s fixtures and fittings in the retail shop” for market rent determination purposes. This is interpreted in some cases as ignoring the necessity for business goodwill, and costs of fitout, and in so doing, including some or all of it by default, and by making valuation comparisons on a “higher use” basis rather than the use specified in the landlord’s lease.
- 5.14 The development of a Practice Standard in conjunction with the Australian Property Institute and the Accountants Institutes for the market rent valuation and determination of retail leases. As previously stated, this necessarily involves business valuation and investment principles which are the primary purposes of a retail lease, as distinct from e.g., commercial offices.
- 5.15 Improved specialized education of specialist retail valuers, whose exposure to retail leases and businesses may be relatively limited.
- 5.16 Consistency if not uniformity of State retail shop leases legislation, with particular regard for market rent review comparison criteria. (The Western Australian Commercial Tenancy (Retail Shops) Agreements Act permits wide comparisons (e.g, pharmacy & bottle shop rentals being relevant to a delicatessen in a recent decision).
- 5.17 Inclusion of appropriate experts on Tribunal panels to assist the Legal Member or Chair with their knowledge and experience of the retail and shopping centre industry.
- 5.18 Review of Unconscionable Conduct legislation applicable to Retail Leases to lower the “barrier” to access and effectiveness, and to provide effective low-cost access and remedies through State Tribunals. Existing Unconscionable Conduct legislation has been proved to be largely ineffective – a principal result of the legislation also being more complete “defensive” disclaimers by landlords, particularly with regard to (mutually) commercially necessary expectations of business continuity.
- 5.19 Improved reporting and collating of shopping centre tenants sales information to make it more accessible and useful by providing a number of “bands” or sales ranges to facilitate meaningful comparison. The current “Averages” are of limited use, due to the excessive range of the data.
- 5.20 The basis for shopping centre property valuations to reflect proper assessments of market rental values/reversions for individual retail tenancies where occupation costs are clearly excessive. This past practice has been abandoned with instructions now generally requiring adoption of existing passing rents without adjustment, as a basis for maintainable rental streams for property valuation purposes.

5.21 A requirement for new prospective tenants to have undertaken a course covering the important skills in managing a retail business. This would include financial planning, employment law, marketing, customer relations, retailing skills, specific industry knowledge, lease obligations. Some such programs may be made available under existing Industry Training programs funded by Governments.

6. The appropriateness and transparency of factors taken into account in determining retail tenancy rents and of provisions in leases to determine rights when the lease ends.

6.1 It is the usual practice that when requested to do so, virtually all categories of retail landlords/managers are reluctant or unable to provide meaningful information on the basis for their rental value assessments. This should be a requirement of lease renewal negotiations. It is arguable that information deemed “confidential” cannot be relevant to an adequately informed and transparent market and negotiation. “transparent” market does not necessarily mean public broadcast, but that information available to the landlord that is relevant, is also relevant to an informed market as between the landlord and a particular prospective or existing tenant.

6.2 A consequence of Unconscionable Conduct (Section 51AC) legislation is that more recent shopping centre leases require acknowledgement by the lessee that there are no expectations for lease renewal, whilst maintaining lease conditions and related capital and operating costs and consequences that make business continuity a virtual necessity for the lessee. This requirements ignores the reality that lease renewals are generally necessary to maintain occupation rates, tenancy mix and rental income.

6.3 The landlord’s negotiating position is therefore enhanced against virtually all individual tenants, while the individual lessee is denied the benefit of a reasonable expectation of business continuity, which can be relied upon for necessary business finance, assignment or sale of business, amortization costs and end-of – lease deficit costs.

6.4 Inadequate lease terms and security of tenure also inhibit the capacity of specialty tenants to invest in high cost and innovative retail formats that are being increasingly sought by more affluent customers. as disposable incomes increase.

6.5 Existing provisions in leases at lease end are to “make good” to the original “shell” – being deficit costs that can be quite substantial, and rarely if ever, a factor in the evaluation of the original lease commitment. Under current leasing practices, there is an obligation to pay full rent, and to continue trading until the last day of the lease.

6.6 But many businesses (especially apparel retailers) have to order stock up to 9-12 months in advance, and there is inevitable substantial loss on sale of inventories and other close-down costs if a lease is not renewed, that are not factored into the original Financial Advice Report. To do so would in most cases preclude agreement on the basis proposed, and these issues are ignored in the interests of remaining in business in the shorter term.

6.7 Rents are artificially inflated and the market distorted by landlords, in effect, recovering fit out contributions through rent increases. Under previous practice, in the event of shopping centre refurbishment, a tenant paid for the full cost of the fit out. Under current arrangements it is common for the landlord to make a contribution to the fit out. Subsequently this contribution is recovered through disproportionate rent increases. Hence rents are artificially increased and the market is distorted. Additionally the lessee is required to pay the rental “surcharge” for the duration of the lease and beyond, not just for the period needed to effect recovery of the fit out contribution.

7. Measures to improve the transparency and competitiveness of the market for retail tenancy leases.

7.1 There are fairly extensive disclosure requirements for landlords under some State legislation, particularly for new leases. However, individual landlords and prospective tenants have difficulty in accurately assessing business potential for a particular lease. The Queensland Retail Shop Leases Act has extensive mutual disclosure obligations, including the disclosure of financial and sales information by lessees.

7.2 At the larger shopping centre level, relevant information not generally available would include:

- Moving Annual Total Sales, Customer Counts and Trends over the past three years, for the centre, and the Retail Category of the proposed permitted use.
- The number of shops and their relative total area and aggregate sales as between anchor and specialty tenants, and the particular Retail Category – but not so as to disclose the sales of a specific lessee. .

This would in some cases permit a reasonable comparison of the Retail Category and Centre against the Urbis/JHD Retail Averages for that type of shopping centre, and provide a reasonable basis for business benchmarking and negotiation.

7.3 Shopping centre tenants are required to disclose sales, for legitimate reasons, and this information, in processed form, should be reciprocated in cases where it is relevant to a better informed negotiation and business decisions.

- 7.4 All retail shop leases should be registered, to protect the lessee against disclaimer of knowledge of the lease by a new owner. This is public information that is not confidential, but not readily available to a specialty tenant without high cost. At the least, this information, which is embodied in landlords tenancy schedules, should be available in confidence, to a lessee's financial or professional adviser.
- 7.5 To maintain competitiveness with retailers located outside shopping centres, retail shop leases in shopping centres require leases that provide a lease term and conditions that provide reasonable prospects for a typical lessee to trade profitably, having regard for the type of business and its risk/return profile in the wider market.
- 7.6 There has been a loss of relative efficiency by regional shopping centres in particular evidenced by declining productivity and increased rent and operating costs, particularly over the past 5 years.
- 7.7 Sales per \$m2 have only increased by 4.23%, whilst CPI has increased by 15.3%, and about 90% of incremental sales on a \$m2 basis have been subsumed into rent, thus reducing the capacity of specialty tenants in those shopping centres to compete and distorting investment decisions against the best interests of investors and consumers.
- 7.8 The Accounting Doctrine of "matching costs with revenues over the relevant period" by lessees Financial Advisers Report required to be disclosed to landlords, as a necessary basis for making informed investment decisions was an intended outcome under Queensland legislation, to improve the basis for negotiation for both landlord and tenant. It has been largely ineffective. The Financial Advice Report should be sufficiently detailed to be a relevant document in the negotiation of lease conditions, and also relevant in some circumstances, to the market rental valuation process.
- 7.9 The extent and quality of Financial Advice Reports should be mandated to normal Accounting Standards as part of the negotiating process.

The National Retail Association hopes that this submission will be of assistance to the Productivity Commission in its investigations, and would be pleased to respond in more detail, and to provide further information, if required.