

AUSTRALIAN PROPERTY INSTITUTE INC.

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

SUBMISSION TO THE PRODUCTIVITY COMMISSION

JULY 2007

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BACKGROUND

This submission responds to the two documents released by the Productivity Commission in respect of the *Inquiry into The Market for Retail Tenancy Leases in Australia*, namely:

- 1) *Terms of Reference* as detailed at www.pc.gov.au/inquiry/retailtenancies/tor.html
- 2) *Issues for consideration for the Inquiry into The Market for Retail Tenancy Lease in Australia* as detailed at www.pc.gov.au/inquiry/retailtenancies/circulars/circular1.pdf

This submission by the Australian Property Institute (API) is in response to an invitation contained within advertisements published in the Sydney Morning Herald for interested parties to make comments and submissions in response to the inquiry by the Productivity Commission.

The API fully supports the inquiry by the Productivity Commission into the market for retail tenancy leases in Australia, and notes with approval the intention of the Productivity Commission to address the many and varied issues referred to in the document entitled *Terms of Reference*, under the headings:

- *the structure and functioning of the retail tenancy market in Australia, including the role of retail tenancies as a source of income for landlords, investors and tenants and the relationships with the broader market for commercial tenancies;*
- *any competition, regulatory and access constraints on the economically efficient operation of the market;*
- *the extent of any information asymmetry between landlords and retail tenants and the impacts on business operation;*
- *scope for reform of retail tenancy regulation to improve economic performance, including:*
 - *differences in retail tenancy regulation between States and Territories, and the scope for nationally agreed regulations and approaches; and*
 - *the extent and adequacy of dispute resolution systems for landlords and retail tenants, including differences in dispute resolution frameworks between the States and Territories;*
- *the appropriateness and transparency of the key factors that are taken into account in determining retail tenancy rents;*
- *the appropriateness and transparency of provisions in retail leases to determine rights when the lease ends; and*
- *any measures to improve overall transparency and competitiveness of the market for retail tenancy leases*

It is also noted with approval that the Productivity Commission:

will make recommendations for improving the operation of the retail tenancy market; and
identify, and where practicable quantify, the likely benefits and costs of its recommendations for retail tenants, landlords, investors and the community generally

The APIs happy to discuss any of the matters raised in its submission or to provide any additional information required. Arrangements can be made by contacting Mr. Grant Warner, API National Director on telephone number (02) 6282 2411.

Australian Property Institute

The Australian Property Institute, (formerly known as the Australian Institute of Valuers and Land Economists), has enjoyed a long and proud history.

Originally formed over eighty years ago in 1926, the API today represents the interests of approximately 8,000 property experts throughout Australia. As the peak professional property organisation the API has been pivotal in providing factual and dispassionate advice on a broad range of property issues addressed by the Commonwealth and State/Territory governments since the API was formed.

In addition, the API's advice has increasingly been sought by overseas bodies such as the United Nations, the World Bank and the International Valuation Standards Committee, evidencing a level of expertise within the API and its membership which is recognised globally.

However, as a professional organisation the primary role of the Australian Property Institute is to set and maintain the highest standards of professional practice, education, ethics and discipline for its members.

API members are engaged in all facets of the property industry including valuation, property development and management, property financing and trusts, professional property consultancy, plant and machinery valuation, town planning consultancy, property law, and architecture. Membership of the Australian Property Institute has become synonymous with traits and qualities such as professional integrity and client service, industry experience, specialist expertise, together with tertiary level education and life long continuing professional development.

Members are the API's greatest asset, and the Australian Property Institute is committed to maintaining a strong base for the future of the property profession through the broadening of the expertise, and knowledge of the membership.

Integrity

The Membership of the Australian Property Institute is bound by:

- A Code of Ethics and
- Rules of Conduct

Executive Summary

The Australian Property Institute proposes that uniform Retail Tenancy legislation be established throughout Australia. The purpose of uniform retail tenancy legislation should be to ensure consistency and clarity for all participants involved in retail leasing throughout Australia.

At the moment the API believes there is far too much inconsistency between state legislation which often results in leases being drafted which conflict with relevant state legislation. In addition, this results in all participants incurring costs relating to different leases in different States and Territories. These increased costs are invariably passed on to the consumer.

Scope of Submission

This submission contains the principles that any harmonized or uniform retail tenancy legislation should adopt as well as comments on specific issues in current State and Territory legislation. Therefore, this submission focuses on:

- Premises to which the legislation should apply
- Preliminary disclosures by the lessor and lessee
- Minimum Lease Terms
- Financial obligations under a Retail Tenancy Lease
- Turnover Rental Provisions
- Rental Review Provisions
- Rent Determinations
- Renewal of Lease
- Unconscionable Conduct
- Relocating or terminating the Lessee's Business due to redevelopment
- Retail Tenancy Dispute Resolution
- Penalties and consequences

COMMENTS AND RECOMMENDATIONS

Premises to which the Legislation Should Apply

Comment

Various state legislation attempts to include or exclude, for various reasons, different types of property. Generally the result is cumbersome. By limiting the application to prescribed premises, problems associated with offices being caught in the legislation will not occur. For example, in the Queensland legislation an unintentional consequence is that office premises in a retail shopping centre leased to Government bodies falls within the legislation and the Government is not classed as a major lessee.

Recommendation

1. The API proposes that retail premises shall mean premises that are used wholly or predominantly for the retail sale or hire of goods or the retail provision of services.
2. A retail shop lease applies to a lease where the whole of the term including options is greater than 6 months, of premises having a floor area of 1,000 sq m or less, and where the permitted use is wholly or predominantly a retail use as defined

Disclosures by the Lessor and Lessee

Comment

The API acknowledges that all States and Territories provide for lessor disclosure statements and the API supports the continuation of this practice. However, there are irregularities between States and Territories that should be made uniform.

In this sense the Legislation needs to create as far as possible a level playing field between Lessor and Lessee. In particular the party with the weaker negotiation strength needs to be protected. In shopping centres, the Lessor generally will have greater expertise in lease matters. It would prove too difficult to attempt to level a playing field where the Lessee has more expertise than the Lessor but it can be achieved where the Lessor has the greater expertise.

A similar procedure between a lessor and an assignee should apply.

Recommendation

The API therefore recommends that any lessor and/or lessee disclosure statement should contain the following;

Lessor's Disclosure Statement

- (a) the names of the lessor and lessee;
- (b) the address and description of the leased shop;
- (c) the term of the lease;
- (d) the date the lease starts;
- (e) details of any options to renew the lease;
- (f) the following details about the rent—
 - (i) the amount of the initial rent (other than rent based on turnover) calculated yearly or the method of calculating the initial rent;
 - (ii) any rent free or reduced rent period;
 - (iii) any rent review, whether during the term of the lease or a period covered by an option to renew the lease;
- (g) identification of any provisions of the lease about—
 - (i) the giving of information to the lessor about turnover of the lessee's business; and
 - (ii) the payment of turnover rent;
- (h) details of payments to be made by the lessee under the lease for the lessor's outgoings;
- (i) details of the lessee's liability to pay—
 - (i) survey fees;
 - (ii) costs to register the lease;
 - (iii) cost's in obtaining mortgagees consent;
 - (iv) stamp duty;
 - (v) promotion amounts;
- (j) the date or estimated date when the leased shop will be available for fit out by the lessee;
- (k) details of each of the lessee's and lessor's liability for fit out costs of the leased shop;
- (l) details of the trading hours for the leased shop;
- (m) identification of any provision in the lease about demolishing the leased shop or relocating the lessee's business to different premises;

- (n) the lessee's permitted use of the leased shop and whether or not the use is exclusive to the lessee and whether circumstances are contemplated by the lessor where changes of use will occur;
- (o) mention of the agreements to be entered into by the lessor and lessee in relation to the lease;
- (p) if the leased shop is, or is to be, situated in a retail shopping centre, each of the following details—
 - (i) the name and address of the centre;
 - (ii) the total number of shops in the centre when the disclosure statement is given;
 - (iii) the name of the current anchor tenant for the centre and the date the current term of the anchor tenant's lease ends;
 - (iv) the leased shop's area or estimated area;
 - (v) the centre's lettable area or estimated lettable area;
 - (vi) the number of parking bays available for the following—
 - (A) customers of the shop;
 - (B) the lessee or the lessee's employees;
 - (vii) the facilities provided by the lessor;
 - (viii) the lessee's entitlement to use part of the centre's common areas for trading;
 - (ix) the types of business carried on by the centre's tenants when the disclosure statement is given;
 - (x) whether the types of business carried on by the centre's tenants is to change during the term of the lease and details of any proposed changes;
 - (xi) any intended changes to the centre approved by the local government for the area in which the centre is situated;
 - (xii) if there is a tenants' association for the centre—information about the association, including contributions payable by members and members' voting rights;
- (q) each of the following details, if the leased shop is, or is to be, situated in a retail shopping centre, and the lessor obtains the details—
 - (i) the centre's moving annual turnover for its previous financial year;
 - (ii) pedestrian traffic estimates for the centre during the previous financial year;
- (r) details of any intended conduct by the lessor that may affect the lessee's or assignee's business during the term of the lease or assignment;
- (s) if the lessor is giving the statement to a prospective assignee details of any unresolved retail tenancy dispute that may affect the assignee.

Lessee's Disclosure Statement

- (a) the names of the lessor and prospective lessee;
- (b) the prospective lessee's address;
- (c) if the prospective lessee is a corporation—sufficient information to identify the corporation;
- (d) the number of retail business premises leased by the prospective lessee when the disclosure statement is given;
- (e) sufficient details of the prospective lessee's experience in retail business to demonstrate the lessee's ability to meet the financial and other obligations of the lease;
- (f) details of anything known to the prospective lessee that may affect the prospective lessee's ability to meet the financial and other obligations of the lease;
- (g) details of statements or representations made by or for the lessor during the lease negotiations and being relied on by the prospective lessee;
- (h) a declaration that no other promises, representations, warranties or undertakings have been made by or for the lessor to the prospective lessee about the premises or the business to be carried on in the premises;
- (i) confirmation that, the lessor has given the prospective lessee a draft of the lease and a disclosure statement;
- (j) a Financial Advice Report and a Legal Advice Report. (Where the prospective Lessee is a Major Lessee (Lessee of more than 5 retail shops in Australia) these reports need not be provided).

A Financial Advice Report is to be signed by a qualified accountant and contain statements that

1. identify the parties to the lease and identify the premises
2. the accountant has provided advice about the prospective lessee or prospective assignee's financial rights and obligations under the lease including —
 - (i) the rent, outgoings and other payments; and
 - (ii) the potential financial impact of the rent review; and
 - (iii) the fact that the operation of the business is restricted by the term of the lease;
3. the accountant has advised the prospective lessee or prospective assignee to obtain further professional advice including advice about the following—

- (i) the volume of sales required to meet all costs of carrying on the business including capital costs, loan repayments and salary for the business operator;
 - (ii) appropriate accounting and financial reporting systems;
 - (iii) cash flow forecasting;
 - (iv) sales budget forecasting;
 - (v) taxation requirements;
4. by the prospective lessee or prospective assignee about receiving and understanding the advice mentioned in the report.

An independent legal advice report, to be signed by a lawyer, containing statements that

- 1. identify the parties to the lease and identifying the premises
- 2. the lawyer has given advice on the following matters in relation to the lease—
 - (i) the rent, outgoings and other payments and how they are calculated;
 - (ii) the rent review;
 - (iii) the liability to contribute to outgoings;
 - (iv) the term of the lease;
 - (v) any special or unusual terms or conditions of the lease;
 - (vi) whether a repayable bond or guarantee is required under the lease;
 - (vii) whether the lease contains an option to renew;
 - (viii) if the lease does not contain an option to renew—any rights the lessee or assignee may have to extend the lease;
 - (ix) the obligations on all parties at the end of the lease;
 - (x) any terms or conditions of the lease that allow the proposed lessee or proposed assignee's business to be relocated to other premises;
 - (xi) the uses permitted for the retail shop premises under the lease;
 - (xii) the lessee's right, under section 45 of the Act or the lease, to deal with the lease and assets of the business intended to be carried on in the retail shop;
 - (xiii) the consequences of a breach of a term or condition of the lease;

3. the lawyer has advised the prospective lessee or prospective assignee to obtain further professional advice including advice about the following—
 - (i) town planning matters, including the licences or permits required to carry on the business intended in the retail shop;
 - (ii) building laws, including the appropriate classification under the Building Act 1975 to carry on the business intended in the retail shop;
 - (iii) the statutory approvals required to carry on a retail business of the type intended;
 - (iv) financial advice about the operation of the retail business intended to be carried on;
4. by the prospective lessee or prospective assignee about receiving and understanding the advice mentioned in the report.

Minimum Lease Terms

Comment

Most State and Territory current legislation provides Lessees with an entitlement to a minimum five year term including options.

Recommendation

The API supports this entitlement. Reasons for this include, but are not limited to;

- It is the minimum period to justify the cost of the fitout,
- It recognizes the need for the tenant to establish the business,
- It is a reasonable period to preserve and maintain the tenants goodwill,
- It assists the lessor to maintain a viable tenancy mix in shopping centres.

There needs however to be a proviso that parties can agree to a shorter term.

Financial obligations under a Retail Tenancy Lease

Comment

It is appropriate to restrict the types of payments under a Retail Shop Lease. Items such as Key Money are not appropriate.

Recommendation

A lease can only require a lessee to pay provided the following items are declared in the Disclosure Statement;

1. Rent including percentage rent provided a clear formula is detailed
2. Outgoings or a share of them but excluding items of a capital or structural nature or other outgoings such as land tax if restricted by state law
3. Land Tax if legally recoverable under relevant State or Territory legislation
4. Amounts for promotion and advertising
5. Survey fees, mortgagees consent costs, stamp duty and lease registration fees
6. The lessor's reasonable costs in responding to a request by the lessee for:
 - (i) A variation of the lease
 - (ii) Consent to enter into a sublease or license
 - (iii) Damages for breach of a term of the lease
 - (iv) The cost of an indemnity given by the lessee for damaged suffered by the lessor as a result of the lessee's actions
7. Interest on arrears of rent or outgoings, but the interest rate must be clearly stipulated in the lease
8. GST

Turnover Rental ProvisionsComment

The provision of turnover details to the Lessor of a shopping centre is not only used for the calculation of rent but more importantly, for the sake of monitoring shopping centre performance. It enables the shopping centre manager to optimise the shopping centre mix which is to the benefit of all tenants. It may highlight instances where a particular section of a centre is adversely affected by certain actions of the manager or conversely demonstrate where particular strategies are successful. It is therefore essential that lessors have the option of obtaining retail turnover figures whether or not a lease contains turnover rent provisions.

Recommendation

Where turnover is collected by the lessor a lessee must provide;

- Monthly - within a reasonable period after the end of the month, provide to the lessor a sales certificate

- Annually -, provide to the Lessor an audited or certified annual statement.

The Lessor must not disclose the Lessee's sales figures except:

1. in a document giving the aggregate turnover of businesses, or a class of business, in the retail shopping centre in which the leased shop is situated if the disclosure is made in a way that does not disclose information about the turnover of an individual lessee's business; or
2. specifying the turnover of the lessee's business to—
 - (i) a prospective purchaser or mortgagee of the retail shopping centre in which the leased shop is situated; or
 - (ii) a professional adviser to, or properly appointed agent of, a prospective purchaser or mortgagee mentioned in subparagraph (i); or
 - (iii) the lessor's professional advisers; or
 - (iv) a court under a court order; or
 - (v) a mediator or tribunal under this Act; or
 - (vi) a specialist retail valuer.

Rental Review Provisions

Comment

Historically parties with a stronger negotiating position have taken advantage of those with a weaker negotiating position. In particular lease clauses that have market rent reviews that are subject to ratchet clauses or leases where the rental is to be the greater of two options have caused concern. The recommendation below is a fair procedure.

Recommendation

- (1) If, under a retail shop lease, the rent payable under the lease or any renewal or extension of the lease is to be reviewed during the term of the lease or under an option to renew or extension of the lease, the lease must state the timing of the reviews and the basis on which each review is to be made.
- (2) The rent may not be reviewed more than once in each year of the lease other than in the first year.
- (3) The rent may be reviewed using different bases during the term of the lease, but each review must be made using only 1 basis.
- (4) The basis for a rent review must be a single basis consisting of 1 of the following—

- (a) the current market rent of the leased shop;
 - (b) an independently published index of prices, costs or wages;
 - (c) a fixed percentage of the base rent;
 - (d) a fixed actual amount;
 - (e) if the rent is determined as a base rent plus an amount equal to a percentage of the turnover of the lessee's business—the average rental paid over the previous year, or the stated number of previous years, of the lease;
 - (f) a single basis formed by a combination of 2 or more bases mentioned in paragraphs (b) to (e).
- (5) If a rent review clause in a retail lease does not comply with the provisions set out in 1-4 above, the review mechanism in the lease is void. Where a review is void the rent will be reviewed to market.

Rent Determinations

Comment

The expertise to complete a retail rental determination requires specialist knowledge of the retail market and the legislation applying to retail leases. It is important that any determining valuer of a rental under a retail shop lease has demonstrated this higher level of expertise. Currently, most state retail legislation sets out experience criteria and other matters for consideration by valuers when undertaking rental determinations for retail premises and in a number of states use the terminology "Specialist Retail Valuer".

The provision of information for a rental determination is of great concern to API members.

In completing determinations, lessors and lessees have sought to restrict information provided to the valuer to the extent that determinations at best are delayed or possibly issued without the determining valuer being as fully informed as is desirable.

Currently, valuers practising in NSW and Queensland are the only valuers that are able to access rental transaction details from a central location. For example, in NSW, the lease registration system allows leases to be searched thereby enabling access to rental data.

An expert determination by a valuer is the dispute resolution mechanism employed in the various State and Territory legislation.

Recommendation

The API endorses the concept of a Specialist Retail Valuer as being the only appropriately experienced valuer to be appointed to undertake rental determinations for retail premises.

The API supports the following definition of Specialist Retail Valuer:

1) In relation to valuing shops in a retail shopping centre, having both;

- 20 or more retail shops, and
- a total of lettable areas of retail shops that exceeds 1,000 square metres,

a Specialist Retail Valuer shall be a member of the Australian Property Institute who holds the certification of Certified Practising Valuer with 5 years or more experience in valuing retail shops.

2) In relation to valuing any other retail shops or any other retail shop;

A Specialist Retail Valuer shall be a member of the Australian Property Institute who holds the certification of Certified Practising Valuer with 5 years or more experience in valuing retail shops.

The API supports the establishment of a National Data Base which would add transparency to the leasing process which will not only enable valuers to be more efficient and importantly more accurate, but will assist retailers and other users of premises deemed to be retail premises by enabling them to be well informed in their decision process which will, in an overall business sense, lead to better business decisions and a corresponding decrease in business failures. This would be particularly so in the case of retail shopping centres where information is difficult at best to access. Such a data base should comprise details of all transactions including but not limited to:

- New leases
- Rent reviews, in particular market rent reviews
- Incentives agreed to complete leasing transactions
- Area of premises
- Lease term
- Basis of rent increases/reviews

In addition, it is noted there is bi-partisan support for the establishment of a national data base by the Australian Retailers Association and the Australian Council of Shopping Centres, but to date no data base has been established.

Finally, in establishing the foregoing, valuers must receive an appropriate exemption from restrictions to accessing information associated with state and federal privacy legislation when undertaking Rental Determinations. However, it would be acceptable for the valuer to be bound by a confidentiality provision in legislation that is similar to existing state legislation.

The API supports the continued use of the expert determination as the dispute resolution mechanism currently used in retail tenancy legislation throughout Australia.

The expert determination has the following advantages;

- a) it is less expensive in comparison to arbitration or court action so it is more accessible to a greater number of parties;
- b) it takes less time to complete than arbitration or court action which allows parties to continue their businesses with certainty;
- c) it provides an independent decision from an expert, that is, a specialist retail valuer who, while considering and checking submissions from the parties, has also undertaken his/her own independent enquiries. This process contrasts with arbitration whereby the principles of arbitration are such that only the information and/or submissions made by the parties can be considered by the Arbitrator.

The API supports the provision of protection for the Specialist Retail Valuer in retail tenancy legislation. It is the API's position that protection for the valuer is required as the valuer is entering a dispute between the parties who have polarized views, on the level of rent to be paid and due to these polarized views it is common for either one or both parties to be unhappy with the determination.

This unhappiness with the determination can lead to either or both parties writing to the valuer querying the rental determination. In such circumstances, the valuer needs to notify their Professional Indemnity Insurer of a potential claim because without a notification, the valuer would not be covered by their insurance in case of a claim made by one or both of the parties. Upon receipt of the notification, the insurer often appoints a lawyer to investigate the matter and the valuer has to pay the legal fees under the provision of their insurance policy excess. In most instances, the legal fee has been greater than the valuation fee received for undertaking the rental determination and thus valuers are reluctant to undertake rental determinations without protection.

The need for protection has been recognized by the NSW legislation in Section 72AB (5) which states;

No matter or thing done or omitted to be done by a specialist retail valuer appointed by the Tribunal subjects the valuer to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of a determination of rent by valuation carried out by a specialist retail valuer under section 19, 31 or 32A (Retail Leases Act 1994 (NSW)).

The API further supports protection of the determining valuer if appointed by agreement between the parties and where the parties agree to request the Divisional Presidents of the API to make an appointment, the API believes that the same protection should be afforded to both the determining valuer and the Presidents in making the appointment.

Most State and Territory legislation provides a timeframe for the completion of the rental determination. However, not all legislation provides a mechanism for flexibility in that timeframe. The lack of flexibility in the timeframe can result in the appointment process having to be recommenced.

The API recommends the following matters:

- If the lessor and lessee can not agree on the current market rent within 1 month of the review date of the current market rent, the rent is to be determined at the request of either party by a specialist retail valuer agreed by the lessor and lessee, or failing agreement, nominated by the state President of the API or relevant authority.
- The Specialist Retail Valuer and API Divisional President making the appointment are to be given protection as described above.
- Both the Lessor and Lessee must give full and frank disclosure of all relevant information sought by the determining valuer.
- The lessor and lessee may each make a written submission to the specialist retail valuer about the current market rent of the retail shop. A submission must be made within the reasonable period decided by the valuer (*the submission period*).
- In making a determination of the current market rent, the specialist retail valuer must take into account the following:
 - (a) The current market rent that would reasonably be expected to be paid for the shop, as between a willing lessor and a willing lessee in an arm's length transaction (where the parties are each acting knowledgeably, prudently and without compulsion), determined on an effective rent basis;
 - (b) the provisions of the lease,
 - (c) the rent that would reasonably be expected to be paid for the shop if it were unoccupied and offered for renting for the same or a substantially similar use to which the shop may be put under the lease,
 - (d) the gross rent, less the lessor's outgoings payable by the lessee,
 - (e) rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops.

- (f) The current market rent is not to take into account the value of goodwill created by the lessee's occupation and shall disregard the lessee's fixtures and fittings and improvements made to the retail shop premises.
- (g) The specialist retail valuer's determination of the market rent must be in writing, the matters taken into consideration in making the determination and state the reasons for the determination.
- (h) The valuer should complete the valuation in a timely manner by agreement between the parties (including the valuer) and failing agreement in a timeframe determined by the relevant authority.

Renewal of Lease

Comment

In various forms throughout Australia, current Retail Tenancy Legislation requires the landlord to advise the tenant not later than 6 months before a lease expires (as distinct from an exercise of option) as to whether the landlord is going to offer a new lease and where a new lease is to be offered, the commercial terms for the new lease are to be provided at the same time.

The API believes that if the landlord proceeds to offer the "sitting" tenant a new lease but the parties cannot agree on the new rent within 60 days of the Landlord's notice, then there should be a mandatory determination of the rent by a specialist retail valuer appointed by the Divisional Presidents of the API or relevant authority.

Recommendation

The API would advocate the inclusion in any proposed legislation of a section similar to the following:

If a landlord offers to renew a retail premises lease and if the parties have been unable to agree on the rent for the first year of the new lease term within 60 days of receiving the lease proposal, then either party may apply to the relevant Divisional President of the Australian Property Institute for the appointment of specialist retail valuer who will determine the rent in accordance with

Unconscionable Conduct

Comment

Provisions in various state legislation seek to define Unconscionable Conduct. This however causes confusion with the Trade Practices Act by seeking to expand on those provisions. The legislation should be consistent.

Recommendation

The API therefore recommends that the approach taken in a number of jurisdictions where the Unconscionable Conduct provisions of the Trade Practices Act are incorporated into the relevant state legislation be adopted for inclusion in any harmonized or uniform act.

Relocating or Terminating Lessee's Business due to Redevelopment

Comment

Most State and Territory legislation provides in various forms the ability for a Lessor to relocate a tenant as a result of redevelopment works in a shopping centre or the termination of a lease.

Recommendation

The API supports the inclusion of similar legislative provisions in any harmonized legislation or uniform Act.

Penalties and Consequences

In all cases, where a party to a retail tenancy lease contravenes retail tenancy legislation, commercially appropriate penalties and/or consequences should be prescribed to ensure adherence to the act.

APPENDIX 1 SUBMISSION COMMITTEE

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