

## **SUBMISSION: To the Productivity Commission's public enquiry to examine the market for retail tenancy leases in Australia.**

I am writing this submission from the point of view a Business Broker who deals with tenants and landlords involved with Retail leases, during negotiations to sell the tenants' businesses. My experience is that the landlords' lease conditions are far stronger than the tenants' at the time of negotiating the transfer of lease to the prospective purchaser, resulting in a reduction in value of the tenants' business. This submission calls on the Government to level the "playing field" with the view to safeguarding the interests of small retail business owners.

### **What are the weaknesses of the current structure of the RTA, what are the effects on business?**

The basic problem is associated with landlords' widespread practice of demanding unnecessary financial and personal history from the prospective purchaser beyond his commitment to take over the conditions of the lease. This commitment should be limited to the actual payment of the bond and rent in advance.

History shows that landlords demand unreasonable documentation from the prospective new tenant in order to consider the transfer/assignment of the lease. In general the requested information is private and confidential to the tenant and is irrelevant to the landlord. Common examples include Asset & Liabilities Statements, written business and trade references and Profit & Loss Statements. Further examples and comments are provided in Appendix A. The Retail Tenancies Act (RTA) is silent on this issue and has no set parameters for directing and limiting the landlord's decision to assign or not assign the lease.

The unnecessary documentation restricts entry into small business opportunities by people without previous business experience, creating a barrier of entry to many entrepreneurial individuals. It also further restricts the number of potential purchasers for the business, reducing demand and the opportunity for the business to realise its true value.

Once a new tenant has paid the bond and rental in advance into the Estate Agent's/ Business Brokers' or purchasers' solicitors Trust Account, the assignment of lease should be finalised within seven days. With the lease assignment in place, the timely settlement of the sale of the business can proceed, without any further restrictions or delays by the landlord.

#### Appendix A

- Shopping Centres - Landlord will not renegotiate any further terms with an incoming tenant any more than 6 months from the end of the current term, which is generally only a single term of 5 or 6 years. When selling a business the incoming tenant has no security that the lease will even continue after this term, which reduces the following on the business:

- The Return on Investment (ROI) time frame available for incoming tenant, especially when paying a high multiple to take over the business.
- Reduces the goodwill on the business, regardless of how profitable the business is, if there is no lease, there is no business to sell.
- If a business owner can not secure his lease prior to putting the business on the market, a business that is well established and profitable can have its multiplier reduced significantly in the sale, and in many case the business is unsaleable.
- One major issue we have at the assignment and renewal term of a lease under the RTA is the accessible of supporting rental evidence for the tenant. Recent example:

### **Confidential information removed**

Term: 2 x 2 x 2 year  
Business settlement: 1<sup>st</sup> July.2007  
Market Review 1<sup>st</sup> July 2007.  
Current rental (prior to review): \$32,500 p.a  
Landlord suggested new rental: \$55,000 p.a  
New tenant would agree to: \$40,000 p.a

The landlord had no supporting documentation of provable, transparent rental evidence to support his claims, and there was no accessible, researchable rental evidence to assist the incoming tenant to resolve this issue. The RTA is silent on this issue, apart from to suggest having an independent determination undertaken at the cost of both parties. However in the sale of a small business where the purchase price is very low, paying for a further valuation is not viable.

Yours faithfully

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