

2<sup>nd</sup> August 2007

Mr. David Cobau  
Administrative Officer  
Productivity Commission  
P O Box 80  
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Dear Sir

**RE: SUBMISSION ON BEHALF OF SMALL RETAILERS AND IN PARTICULAR THE SINGLE OUTLET SPECIALTY OPERATORS**

Amiott Retail Services Pty Ltd has been assisting small retail operators over the past four years and previous to that worked in an executive capacity with major shopping centre owners over the previous twenty three years. This has given us an insight on both sides of the fence. Our company is based in Melbourne but has conducted negotiations with major Landlords in major centres all over Australia and feel that our submission is worthy of consideration.

**LEGISLATION**

Yes, it would be far more efficient if there was National Retail Legislation. The advantage of this would be as follows:-

1. Administrative costs would be reduced considerably for both Retailer and Landlord.
2. It would be less confusing to both parties and particularly when a small retailer chooses to expand interstate and is confronted by conflicting rules and regulations.
3. On an on-going basis, all parties would become more in tune with a National Retail Act and would probably be less likely to result in future costly litigation as a result of not fully comprehending each particular State Act.

**SUPPLY OF TURNOVER FIGURES BY RETAILER TO THE LANDLORD**

This is a most complicated area and yes, it is important that the Landlord understands the turnover of his centre in order to have the correct tenancy mix and be able to market the centre effectively and in turn re-develop the centre.

However, this is not the prime objective of the Landlord and having worked for many years on that side I can without reservation say that all Landlords use the turnover of various tenants to assist them in achieving the very highest possible rents and taking the retailer to the extreme limit of a possible loss/profit business concern. Over the years the Landlords have educated themselves to understand the breaking point of each business and work towards that end and share in as much of the profitability as they can extract from the retailer, “many times to the retailers doom”.

## **OPTIONS TO RENEW LEASE**

In most major centres specialist retailers are not allowed an option to renew and usually the only exception to this is the majors, e.g. Coles, Woolworths etc.. This again puts tremendous pressure on the specialty retailer and after having spent five years developing a business with no option to renew the Landlord can set his own market level with no legal objection and use its superior bargaining position to achieve its own excessive goals.

In recent times we have witnessed increases of 15% to 100% in new lease proposals from the Landlord. The difficulty in all of this is that the retailers would have spent the last five years working all the hours available to build a business, employ staff and make personal financial commitments only to see the fruits of their labours being eroded or swept away by over-zealous Landlords and is then put in a position to try to hold on to what they have created over the previous five years. This is very frustrating when you are trying to assist these clients and when they have multiple retail outlets they sometimes just walk away from that particular business outlet.

## **RELOCATION CLAUSES**

This is another area where the sitting tenant is usually undermined as a result of the particular Acts not addressing the practical issues as a result of an instance of relocation. Some companies are using the Act to take a monetary advantage over the tenant. For example, in Victoria, we have experienced situations whereby the retailer suggested it would cost say \$150,000 to refit a new premises, the Landlord would only offer say \$90,000 and if the retailer did not accept his offer, he would then revert to making the following statement, ‘well you only have fourteen months left to run on the existing lease, so we will give you a temporary relocation at our cost for the remaining fourteen months and then you can vacate the centre’. By the way, the temporary relocation is probably only going to cost them \$50,000 maximum! Again the retailer is faced with a major threat to his future and business if he does not co-operate.

## **RENT REVIEWS – END OF LEASE**

In most centres, end of lease renewals usually come up en masse as they coincide with the opening birthday date of the centre. Most Landlords plan these reviews in advance by creating what is called bench marking. They select what they consider to be the easy mark tenants and concentrate on those to achieve the highest possible bench mark, thereby making it easier to convert the harder negotiating tenants highlighting by examples of what they have recently achieved. This usually works to their advantage and when it doesn't, they usually offer a rent free period in that year to achieve the higher bench mark. The retailer is always at a disadvantage in these circumstances and the higher benchmark is compounded in subsequent rent reviews during the term.

## **MARKETING OF THE CENTRE**

Major Landlords when it comes to changes to legislation always make a song and dance about how they need turnover figures to properly market the centre and in turn, re-develop the centre at the right time and we would like to comment on these aspects:-

1. Marketing – We have found in general, not specifically that most centres marketing departments are run by young marketing managers who do not always understand the dynamics of their own centre and how to achieve the best results. Some could be said to be totally in-experienced and it shows by seeing where the marketing dollars are being spent. Some spend most of their time concentrating on casual mall income leasing. In general, it should be said that it is definitely not as good as it should be except in isolated cases and the shopping centre owners statements that turnover reporting drives the marketing is not totally correct.
2. Door counting devices and numbers – Most centres nowadays have traffic counters on each entry door and this should always be a strong indicator of how the marketing strategies are working for each entry point regardless of the turnover. Sometimes the turnover is only dependent on the quality of the retailer and his product, services and own marketing strategies. Again, the average retailer is paying 5% of his base rent into a marketing fund and this money needs to be spent wisely by a professionally qualified marketing manager with experience in the type of centre he or she is managing.

## **REDEVELOPMENT OF CENTRES**

Redevelopment of shopping centres is as a rule, driven by competition and size of other centres in the region and is in many cases, a knee jerk reaction to an opposition Landlord infringing on its territory. Again, don't be fooled by the repeated assertions by Landlords that they are expanding only as a result of turnover trading performances.

There are many instances where there are more than an abundance of centres in a particular area and others where certain centres have been over-trading for years and the Landlord has done very little as the opposition has not yet moved into its primary catchment area.

## **LEASE CLAUSES**

There are many examples in lease documentation where clauses penalise the retailer and should be looked at if there are going to be fair and equitable amendments to the Retail Acts. Some of these are as follows:-

- a) Power of Attorney clauses.
- b) Double rent clauses for moderate defaults.
- c) Caveat clauses to allow registration of caveats over individuals personal property current and future.
- d) Relocation clauses (see previous).
- e) Implementation by the Landlord of refurbishment clauses and the magnitude of the refurbishment.

- f) No rent free fit-out periods when refurbishment is required by the Landlord for a sitting tenant.
- g) Magnitude of % rent clauses as related to the particular permitted use.
- h) Non-disclosure in the lease for fit-out and other allowances to induce a retailer to take a lease in the first place, “usually done by a separate deed” and this affects the rental rate per square metre.
- i) Some major Landlords have clauses in leases which upon termination or expiry, can stipulate items to be left in the shop that the tenant installed, e.g. shop front, lighting, switchboards, etc.
- j) Some leases also contain clauses that stipulate that if fixtures, fittings and stock are left in the premises after the expiry date, they are deemed abandoned and become the property of the Landlord. There should be appropriate time frames before this can happen in the Act.
- k) Management fees and administration costs should be reviewed in the light of the magnitude of these costs emanating from major centres. In many instances, these represent 30% and more of the total outgoing costs paid by individual retailers and should be looked at closely.

We do hope that some of the above comments will be helpful and contribute to the nature of the inquiry being conducted.

Should you require any further input into this inquiry I would be pleased to assist where possible and ask that my comments be kept confidential so that it will not affect my day to day business dealings with the various Landlords?

Yours faithfully

**WAL AMIOTT**  
**AMIOTT RETAIL SERVICES PTY LTD**