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Retail tenancy leases inquiry
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601

THE MARKET FOR RETAIL TENANCY LEASES IN AUSTRALIA
Submission to Inquiry

This submission does not contain confidential information.

Lessor's disclosure statement

1. Section 11 Retail Leases Act 1994 (NSW) provides that:-
 - (a) the lessee must be given a disclosure statement for the lease at least 7 days before a retail shop lease is entered into; and
 - (b) if the lessee was not given a disclosure statement, or if it was incomplete or inadequate, the lessee may terminate the lease as provided in sections 11(2) and (3).
2. Although section 11A makes provision for a disclosure statement to be provided by a lessee, the statute fails to give a comparable right to the lessor to terminate the lease if the disclosure statement by the lessee is incomplete, or contained information that at the time it was given was materially false or misleading.
3. Because section 11(2) entitles a lessee to terminate the lease where the disclosure statement was not given "at least 7 days before a retail shop lease is entered into", it is commercially impossible for a lessor and lessee to enter into a lease within 7 days after the provision of a disclosure statement. No lessor wants to give an option to a lessee to terminate the lease as contemplated by section 11(2).
4. Often a lessee may wish to enter into a lease, and take possession of retail shop premises quickly, and within less than 7 days after receiving a disclosure statement. Bizarrely this is prohibited.
5. Retail Leases Act 1994 (NSW) does not define the expression "a retail shop lease is entered into" used in section 11. Presumably entering into a retail shop lease may occur at one of many undefined dates, including:-
 - (a) on the date the lease is signed;

- (b) on the date of commencement of the lease;
 - (c) on the date an agreement in principle is reached, even if legally unenforceable on that date;
 - (d) on the date the lessee takes possession of the retail shop; and
 - (e) some other date.
6. In substance there is no difference between a lease of a retail shop, and a lease of other commercial or residential premises. Disclosure statements are mandated only for retail shop leases. As the final terms of a retail shop lease may vary dramatically from the provisions of the earlier disclosure statement, the requirement for a disclosure statement should be repealed.
7. If the harsh provisions of section 11 are not repealed, at the very least the statute needs to be amended to avoid the ambiguities of the expression "a retail shop lease is entered into".

Yours faithfully

TRIBE, CONWAY & COMPANY

Paul Conway OAM

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