



22 January 2008

Telephone (03) 9607 9311
Facsimile (03) 9602 5270
E-mail lawinst@liv.asn.au

ENQUIRIES

Mr David Cobau
Retail Tenancy Lease Market in Australia Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Mr Cobau

Productivity Commission Inquiry – The Market for Retail Tenancy Leases in Australia

The Law Institute of Victoria (LIV) has already made two submissions in respect of the above inquiry. The LIV is pleased to have the opportunity to make a further submission in response to the Productivity Commission's (Commission) November 2007 draft report on the market for retail tenancy leases in Australia (Draft Report) and in particular, to the Commission's draft recommendations contained in Chapter 11 of the Draft Report.

LIV representatives intend to attend the public hearings to be conducted by the Commission in Melbourne on 13 and 15 February 2008. Details of attendees have already been provided to the Commission via the Commission's registration process.

Continuity of Victorian retail tenancies legislation

As specified in the LIV's submission of 26 July 2007, the LIV is reasonably satisfied with the workings of the current Victorian retail tenancy legislation and would like to see its essential content and framework continue.

The LIV believes that there is reasonable acceptance of this legislation from all stakeholders and considers that, subject to the matters contained in its previous submissions, the legislation should continue.

Uniformity of state and territory legislation

The LIV agrees with the Commission's recommendations that the legislation of the various states and territories should be made more uniform rather than this area being regulated by legislation of the federal Parliament.

Registration of leases

As the LIV has advised the Commission in its submission of 27 November 2007, the registration of leases is not required in Victoria in order to provide protection to the lease and, as a result, it is not the usual practice for leases to be registered in Victoria.

The LIV does not believe that the introduction of a requirement that retail tenancy leases be registered will assist in providing valuable information in respect of leases.

Unconscionable conduct

The LIV agrees with the Commission that there is a need to further clarify and align definitions of unconscionable conduct, and the Commission is referred to the LIV's submission of 26 July 2007 in this regard.

The LIV does not believe that clarification will be achieved by further actions before the courts as such actions would take time and would be constrained by the terms of the current legislation.

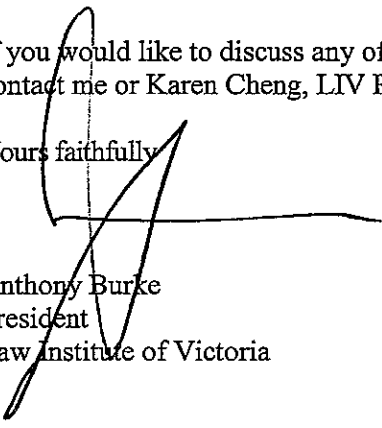
Shopping centres

While the LIV believes that it would be beneficial to provide for special controls in respect of shopping centres, it does not believe that these will be effective if limited to a voluntary code of conduct.

The experience of New South Wales in respect of a voluntary code would suggest that it is not a preferred course to adopt.

If you would like to discuss any of the matters raised in this submission please do not hesitate to contact me or Karen Cheng, LIV Property and Environmental Law Section Lawyer, on ph 9607 0522.

Yours faithfully



Anthony Burke
President
Law Institute of Victoria