

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

**SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION DRAFT
REPORT**

FEBRUARY 2008

By way of background, I am a practicing valuer that specialises in retail property, in particular rent reviews in shopping centres and high street shops. I have a diverse client base and feel particularly qualified to comment on the matters contained in this submission. To this end and notwithstanding the many issues put forward by parties that made a submission to the Productivity Commission, there are several matters which are at “the heart” of retailer concerns that need to be emphasised. These are:

- i. Concerns relating to lease renewals, particularly agreement relating to rent in major shopping centres.
- ii. The lack of available information to parties that are involved in Retail Leasing.
- iii. The requirement placed on retailers to provide retail sales turnover figures to landlords which are subsequently “used” in differentiating rental levels between different retail uses.

My comments in relation to the above are follows:

- i. Whilst it is commendable that existing retail tenancy legislation across most jurisdictions now defines specialist retail valuers for the purpose of determining market rents, the reality in the market place is that there are virtually no market rent reviews in major shopping centres such as Chadstone or Southland. The reason is simple – there are no options in specialty shop leases in the vast majority of shopping centre leases.

It is acknowledged that it is a lessor’s prerogative as to whether a sitting tenant’s lease is renewed. However, many retailers are often faced with rent increases deemed by retailers as being unrealistic or unsustainable or both when a lease is renewed and in reality, shopping centre retailers effectively go through the rent review procedure at every lease renewal. To this end, the landlord would and does argue that the tenant can walk away if the parties cannot agree on the rent for the first year of a new lease. But, there are many instances, especially for the “mum and dad” business owners, where walking away is simply not an option due to the financial commitments entered into which the business supports. However, when a major landlord seeks to increase a food court rental from \$125,000 p.a. to \$168,000 p.a. with the attitude of “take it or leave it”, what can the small retailer do when there is no evidence or rationale to support the landlord’s requested rental.

My suggestion is simple. If the landlord complies with, for example, the Victorian act and offers the “sitting” tenant a new lease and the parties cannot agree on the new rent within say 60 days from the commencement of the lease renewal process, then there should be a statutory determination of the rental by a specialist retail valuer appointed by the Small Business Commissioner or the Australian Property Institute with the determination to bind both parties. In other words, there must be a dispute resolution process available. It is far too simple to say that the tenant can walk away!

- ii. Much has been said by the industry about the establishment of a national data base of information such as rental evidence or a national requirement to register leases in much the same way as NSW and Queensland. The need for this cannot be overstated to provide transparency and an “even playing field” for all players in the retail leasing market. The only caution here would be to ensure that such information includes shop areas and any side agreements that may deal with, for example, incentives provided to tenants that in turn “underpin” what may be termed as inflated rents.

- iii. Many retailers have concerns with the established practice of providing landlord's with their turnover figures. Whilst it is acknowledged that the collated data is used for gauging the performance/success of the centre, there is far too much anecdotal evidence to ignore the highly probable fact that landlord's are using this information to assist in establishing rental levels. This is considered an unfair market advantage in favour of a landlord when such information is in the hands of the landlords only. That is, a tenant is not able to access similar information and accordingly finds it virtually impossible to make a qualified decision about a rent when, for example, the tenant is renewing a lease.

I am more than happy to expand on the above at the Commission's hearing on 13 February, 2008.

Yours faithfully,



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