

**FIXING THE VOID IN AUSTRALIAN FRANCHISE LAW:
FRANCHISOR OPPORTUNISM AND THE FAILURE TO RENEW
FRANCHISE AGREEMENTS**

Executive Summary

1. This submission concerns a problem with the efficacy of current laws regulating the franchisee/franchisor relationship in Australia, particularly in relation to the renewal of franchise agreements when their term expires.¹
2. Competitive Foods Australia Pty Ltd ("CFAL") is both a franchisee and a franchisor in the Australian market, and has built up its business from a single KFC store which it opened in Perth in 1969. As a result of events late last year at Rockingham in Western Australia, CFAL has a unique insight into the problem of the "franchisor opportunism".²
3. The situation at Rockingham exposed a void in Australian law where a franchisee is left without any effective legal protection if a franchisor fails to renew, or threatens not to renew, a franchise agreement (and thereby destroy the goodwill built up in the business by the franchisee) to obtain a benefit that it could not otherwise obtain from the franchisee.
4. The Franchising Code under the Trade Practices Act does not deal with non-renewal, even though it places restrictions on a franchisor's power to terminate the franchise agreement during the term of that agreement. Additional disclosure under the Franchising Code of the risk that a franchisor might not renew the franchise agreement, as recommended by the Matthews Committee,³ would not solve the problem, and would merely entrench a franchisor's right to act opportunistically.
5. Existing contract law and the unconscionability provisions of the Trade Practices Act and Fair Trading Acts are also of no ready assistance, because those remedies would appear to

¹ This Submission has been prepared for provision to the West Australian Government's Inquiry into the Operation of Franchise Businesses in Western Australia (the Bothams Inquiry) and the inquiry being conducted by the Economic and Finance Committee of the Parliament of South Australia into Franchises. A copy of this Submission will also be provided to the Productivity Commission in relation to its inquiry in relation to Retail Tenancy Leases.

² R.D. Blair & F. Lafontaine, *The Economics of Franchising*, Cambridge University Press, New York, 2004, ch.10; J. Klick et al, 'The Effect of Contract Regulation: The Case of Franchising', <http://ssrn.com/abstract=951464>, 2006.

³ Matthews Committee, 'Review of Disclosure Provisions of the Franchising Code of Conduct, October 2006, Recommendation 20.

apply only during the contractual term and not when the contract expires. In the absence of any effective legal for the franchisee, the mediation provisions in the Franchising Code will not address the imbalance of power between franchisor and franchisee in relation to the non-renewal of a franchise agreement.

6. Franchising differs from other types of contracts insofar as the individual business units only exist because of the time, capital and effort invested by the franchisee in building up that business. Unlike a retail lease, for example, the franchisee cannot simply return the premises to their original condition and take its business elsewhere. Thus, the consequence of condoning "franchisor opportunism" is that the franchisor is granted a free option to acquire the franchisee's business at the end of the franchise term on terms of the franchisor's choosing, which is backed up by the threat that it can force the closure of the business if the franchisee does not agree to the franchisor's demands.
7. What is needed in Australia is a level playing field for negotiations to take place fairly between franchisor and franchisee about the renewal of franchise agreements. A key feature of the franchise relationship is that the parties should act in good faith towards each other during the contractual term. CFAL would like to see the same requirement apply to the issue of renewals to overcome the problem of "franchisor opportunism". Such a requirement would not only assist franchisees, but would benefit the franchise industry and the economy generally by allowing franchisees to invest in their businesses, secure in the knowledge that they can recoup that investment over time, rather than facing the threat that their investment might be taken away by an arbitrary decision on the part of the franchisor. Franchisors who act in good faith and fairly towards their franchisees should have no cause for concern from this type of regulation.
8. This submission recommends the adoption of three measures to overcome the problem of "franchisor opportunism" and establish a level playing field for franchise renewals:
 - a. Amend the Franchise Code to include a provision requiring a franchisor to renew the franchise agreement on expiry, unless the franchisor had a good faith reason not to do so. Such an amendment could be made by the Federal government based on earlier Commonwealth legislation to deal with problems in the oil industry in relation to petrol station franchises, or alternatively the government can look to "good cause" legislation adopted in a number of the states in the USA.
 - b. Clarify the operation of the unconscionability provisions of the Trade Practices Act and State Fair Trading Acts to ensure that these protections apply to renewal of franchise agreements. This change would enable a franchisee to take legal action to stop a

franchisor from misusing its superior bargaining position and require a franchisor to act reasonably and in good faith in negotiating a renewal of a franchise agreement. This could be done in the first instance by amending the Trade Practices Act and the Fair Trading Acts to allow the relevant Minister to make regulations at short notice to respond to particular types of abuse of power by a franchisor (or other contracting party).

- c. Consider the introduction of provisions in either the Franchising Code or the Trade Practices Act/Fair Trading Acts to require a franchisor to compensate a franchisee for the value of the franchise business if the franchise is not renewed. Such provisions would remove the economic incentive for franchisors to act opportunistically, and would secure the franchisee's investment in the business (subject to market forces determining the value of that business).
9. Although "franchisor opportunism" has been well recognised in the economic literature for some time, the evidence in Australia and the United States suggests that over 90% of all franchises are renewed when they expire.⁴ However, the Rockingham situation provides clear evidence that this will not always be the case, and that a franchisor can inflict a significant loss on a franchisee by refusing to renew the agreement. The mere threat that this sort of loss can occur brings into question how often franchisees are forced into submission to the wishes of a franchisor because of the fear of non-renewal.
 10. CFAL urges this Inquiry to grasp the nettle of resolving the problem of franchisor opportunism, which has now been publicly exposed by the Rockingham closure, and make recommendations for substantial reform. The broad public interest in the health and vibrancy of the franchise industry requires a comprehensive response to this problem by all Australian governments, as outlined in this submission.

CFAL and the Rockingham Closure

11. Competitive Foods Australia Pty Ltd ("CFAL") is both a franchisee and a franchisor in the Australian market. CFAL has built up its presence in the Australian market since its founder, Jack Cowin, opened his first KFC restaurant in 1969 with funds borrowed from 30 investors. Despite its current size, CFAL has first hand experience of the problems that all franchisees face when their franchise agreements expire, based on the closure of one of its KFC restaurants at Rockingham, Western Australia in November 2007, after 30 years' successful operation.

⁴ Blair & Lafontaine, *The Economics of Franchising*, *op. cit.*, p.263 refer to evidence that 93% of all franchises that expired in the US in 1986 were renewed. In the Griffith University survey by L. Frazer et al, *Franchising Australia 2006*, the data indicated that the rate of non-renewals upon expiry of franchise agreements in Australia in 2003-2005 ranged from 1.5%-3.7%.

12. The main events in the history of the Rockingham restaurant prior to 2007 were:
- a. Restaurant opened on 19 November 1977, with an initial building cost of \$156,000;
 - b. Restaurant upgraded in 1985 at a cost of \$106,000;
 - c. Restaurant upgraded in 1998 at a cost of \$303,000.
13. The Rockingham closure occurred in a context where Yum had offered to buy CFAL's network of 50 KFC restaurants in WA and the Northern Territory. The price offered by Yum was calculated by reference to the balance of the franchise term for each of the restaurants, which is approximately half the value of the restaurants calculated on the basis of their ongoing value (using a formula calculated as a multiple of each restaurant's earnings). Thus, CFAL was presented with a choice of selling its KFC network at a significant undervalue, or facing the closure of Rockingham.
14. Yum has told CFAL that it intends to follow the same procedure and force the closure of CFAL's other 49 KFC restaurants in WA and the Northern Territory as they expire progressively over the next 20 years. The next three restaurants facing closure are at Whitfords, Beechboro and Thornlie, in December 2008. Although CFAL has told Yum that it is prepared to consider the sale of its KFC network for a proper price (whether to Yum, management or a third party), its preferred position would be to continue to invest in and develop its existing network further in WA.
15. In order to avoid the closure of the Rockingham restaurant, CFAL also offered to enter an interim arrangement with Yum. As part of that arrangement CFAL offered to share some of the Rockingham profits with Yum, whilst the parties entered negotiations about the future of the restaurant. Yum declined that offer, with the consequence that the Rockingham restaurant was closed. CFAL continues to have discussions with Yum and other interested parties with a view to resolving the Rockingham situation, and avoiding any further restaurant closures.
16. CFAL has since lodged a Reform Proposal with the Federal government for amendments to the Franchising Code to require a franchisee to renew a franchise agreement (or provide compensation in lieu) unless the franchisor has a good faith reason not to renew.⁵ The proposed regulation would also require franchisors to give reasons for non-renewal, and the franchisee would be able to bring proceedings to enforce its right to renew or obtain compensation in lieu.

⁵ Competitive Foods Australia Pty Ltd, 'Reform Proposal: Failure to Renew Franchise Agreements', 21 January 2008. That Reform Proposal elaborates on a number of arguments identified in this submission, and CFAL adopts those additional arguments for the purpose of this submission.

17. Prior to the closure of CFAL's Rockingham restaurant, Yum lodged a development application with the City of Rockingham Council to build its own KFC restaurant in close proximity to the existing CFAL restaurant (which currently remains closed and fenced off). That application was initially rejected by the Council. Yum has since appealed to the State Administrative Tribunal, and also lodged a revised development application with the Council.

The Franchising Industry

18. The franchising industry plays a major role in the Australian economy, in terms of its financial significance and its impact upon the lives of hundreds of thousands of Australians and their families as owners, employees and suppliers.
19. The essence of the franchisor/franchisee relationship is the sharing of risk and revenue to develop a market for a product or service. The typical franchise model involves:
- a. The franchisor provides intellectual property, the system and coordinates/controls the marketing. For this contribution it receives a relatively risk free revenue stream.
 - b. The franchisee provides energy and capital – human and financial - to develop the business. For this contribution they have an opportunity to earn significant profits from their business.
20. Key features of the franchise relationship are:
- a. The franchise starts with a contract. It is typically a standard form, take-it or leave-it contract.
 - b. There will usually be a fixed franchise term, which may be for a long term of 10 years or more.
 - c. The franchisor will have the right to require the franchisee to maintain particular standards which are linked to:
 - i. The image of the brand;
 - ii. The maximisation of the franchisor's revenue stream.
 - d. The franchisor does not guarantee that the franchisee will be successful in the franchise business.

21. Additional features typically found in franchising, in CFAL's experience, are:

- a. Franchisors have extensive contractual powers to terminate the franchise contract, particularly for a failure to comply with standards instituted by the franchisor.
 - b. Franchisors have a right to acquire equipment at written down cost at the end of the franchise agreement.
 - c. Franchisees have no right to recover any goodwill established in the business at the end of the franchise term.
 - d. Franchisees will be subject to restraint of trade provisions limiting the franchisee's options for taking up new business opportunities (related to the type of business previously operated by the franchisee) both during and at the end of the franchise term.
22. In relation to restaurant franchises, a key issue that arises between the franchisor and franchisee is the question of restaurant upgrades. There are several considerations involved with this issue:
- a. The presentation of a restaurant at any time is part of the overall brand presentation in the market. Customers expect that the experience at one restaurant will be the same as that of another restaurant trading under the same brand.
 - b. The franchisor has a contractual right and duty to coordinate the brand image amongst all franchisees.
 - c. The franchisee is responsible for the cost of renovating or upgrading restaurants to meet the then current store image determined by the franchisee.
 - d. The accepted wisdom in the industry is that a new or renovated store will perform better than a tired, old store.
 - e. There is therefore an important point of tension which arises between franchisors and franchisees over the timing and cost of store upgrades:
 - i. Franchisors would prefer to have more upgrades, more often and often involving new themes to build system revenue.
 - ii. However, the capital cost of upgrades and disruption associated with upgrade works means that franchisees would prefer to have fewer upgrades, less often and involving fewer changes.
 - f. A further important consideration relating to investment by a franchisee in an upgrade is the length of time over which the franchisee can recoup his or her investment – this is

particularly relevant if the franchisee has no right of renewal and no ability to receive a goodwill payment on termination of the franchise.

23. The restaurant upgrade issue therefore focuses attention upon a key point of tension in the franchise relationship:

- a. When the parties enter a franchise agreement, which may be a long term agreement, they do not know what expenditures may be required over the contract term to meet the evolving demands of the market – whether in terms of capital upgrades or otherwise;
- b. However the contract will provide that the franchisor has the power to control the brand image and to impose requirements upon franchisees during the contractual term, even though the nature and cost of these requirements cannot be predicted in advance;
- c. The problem therefore is how to ensure that the franchisor acts in a way which maximises the return for franchisees referable to the costs incurred. An important factor in this calculation is the period over which the franchisee can recoup that investment.

24. In CFAL's experience the cost of restaurant upgrades and remodelling is substantial and often exceeds the initial establishment costs of the franchise restaurant over the term of the franchise agreement. The figures quoted earlier in relation to Rockingham are consistent with this experience.

25. It is now well accepted in Australia that the tensions that exist in franchise relationships require some measure of external intervention and accountability, through government regulation and the courts. This system of regulation and its shortcomings are addressed in the following section.

Franchise Regulation in Australia

26. The legal structure regulating franchising in Australia involves the following key elements:

- a. A national Franchising Code established by regulation under the Trade Practices Act.
- b. Provisions of general application under the Trade Practices Act and state Fair Trading Acts – in particular prohibitions against:
 - i. Misleading and deceptive conduct;
 - ii. Unconscionable conduct.

- c. The general law of contract, including the doctrines that contracting parties must act reasonably and in good faith in exercising powers under the contract.
27. The Franchising Code is heavily based on the principle of disclosure. This places the onus on a prospective franchisee to carefully investigate and consider whether or not it should enter into a particular franchise agreement.
28. However the principle of disclosure is inherently limited to such matters as can be disclosed in advance, and in reality there are several fundamental issues that are unknown at the time a franchise contract is entered into, including:
 - a. What changes will occur to the franchise system over the term of the franchise agreement.
 - b. What requirements will exist for capital investment to maintain the current image of the franchise system at unspecified times in the future.
 - c. What action will be taken by the franchisor in the future to deal with franchisees who cannot or do not comply with changes directed by the franchisor to meet the current system image.
29. Whilst a franchisor can protect itself by building in protections in its standard form franchise agreements, the problem is how the rights and expectations of the franchisee can be protected. Some of these problems are addressed by mandatory provisions in the Franchise Code, specifically clauses 20-22 which place restrictions on the rights of the franchisor to terminate the franchise agreement prior to the expiry of its term.
30. Otherwise, a franchisee's only protection arises under the general law of contract as supplemented by the Trade Practices and Fair Trading Acts.
31. First, there is the doctrine of good faith as a matter of contract law. This is a developing area of law, which is not universally accepted by the Courts.⁶ The issues that can arise in relation to this doctrine are:
 - a. Some courts appear to be wary of a notion of "good faith", possibly because it lacks the certainty normally associated with the interpretation of contracts. The answer to this

⁶ Good faith has been applied in contracts relating to franchising in *Burger King Corporation v Hungry Jacks Pty Ltd* [2001] NSWCA 187; *Far Horizons Pty Ltd v McDonalds Australia* [2000] VSC 310, *Automasters Australia Pty Ltd v Bruness Pty Ltd* [2002] WASC 286 and see also *Meridian Retail Pty Ltd v Australian Unity Retail Network Pty Ltd* (2006) VSC 223. See also Attachment F to the Matthews Report, 'Good Faith and Fair Dealing'.

problem is that franchise contracts are a special class of relational, organic or incomplete contracts where contractual certainty is very difficult to achieve at the outset of the contractual term.⁷

The recent Matthews Committee report, in particular, acknowledged the role of good faith in franchise contracts and recommended that:

"A statement obligating franchisors, franchisees and prospective franchisees to act towards each other fairly and in good faith be developed for inclusion in Part 1 of the [Franchising]Code".⁸

The then Federal Government did not agree to amend the Code as suggested, although it did accept the intention of the Matthews Committee recommendation, as follows:

"The Government agrees with the intention that franchisors, franchisees and prospective franchisees act towards each other fairly and in good faith. Section 51AC of the Trade Practices Act 1974 includes 'good faith' as a factor that can be taken into account when determining unconscionable conduct."

Given the uncertainty surrounding the application of s.51AC to issues of franchise renewal, (discussed below), the former Federal Government's response highlights the void in the current Australian law relating to renewals. That is, if the intention is that parties deal with each other in good faith at the time of franchise renewals (which the former Government seemed to support), it must either broaden the scope of s.51AC to include franchise renewals, or it must amend the Code to specifically incorporate a requirement of good faith in relation to franchise renewals.

- b. "Good faith" depends upon the intentions of the franchisor and not the effect on the franchisee. A practical test of whether a party is acting in "good faith" is whether the franchisor has acted capriciously or for an extraneous purpose. An action may have significant adverse consequences for a franchisee, but may be allowed in some circumstances if the intentions of the franchisor were good (eg. major overhaul of brand image world-wide) and disallowed if the intentions are bad (eg. specific measure

⁷ For articles which consider the implications of this developing area of law, see A. Terry, 'Franchising , relational contracts and the vibe', *Australian Business Law Review*, vol. 33, 2005, pp.289-300; G.K. Hadfield, 'Problematic Relations: Franchising and the Law of Incomplete Contracts', *Stanford Law Review*, vol.42, 1990, pp.927- 992.

⁸ Matthews Committee Report, Recommendation 25, 'Implementation of the principle of good faith and fair dealing'.

designed to force a particular franchisee into default). In addition, the onus of proving the lack of good faith rests with the franchisee.

- c. As a consequence of the above, resort to a contractual duty of "good faith" involves an inherently unpredictable court process, which reduces the likelihood that this remedy will be used except in extreme cases or by franchisees with the financial capacity to take the risk of funding proceedings through to conclusion.

32. Secondly, there is the remedy of unconscionable conduct under the Trade Practices and Fair Trading Acts.⁹ These provisions are relatively new, and the Courts are still developing their interpretation of these provisions. Some of the issues which arise in relation to the use of the unconscionability provisions are:

- a. Unconscionability is only partially defined by the legislation, and it is therefore unclear when these provisions would operate:
 - i. In s.51AA of the TPA, unconscionability is defined by reference to the current unwritten law. This means that s.51AA does not extend beyond traditional equitable doctrines of unconscionability which have only operated in very limited circumstances.
 - ii. In ss. 51AB and 51AC of the TPA, unconscionability is not defined at all, which has led some commentators to suggest that a wider interpretation of unconscionability is possible under these provisions. Note however that the operation of s.51AB is limited to the supply of goods and services to consumers for personal, domestic or household use, and is therefore not applicable to franchise situations.
- b. There are, however, a number of factors that can be taken into account to determine whether conduct is unconscionable, which are set out in s.51AC of the TPA. These primarily relate to the presence of unequal power in a relationship. The implication from these factors is that s.51AC is designed to protect a stronger party from using unequal power to achieve an outcome that would not have occurred if the parties had been acting on a level playing field.

⁹ The three substantive provisions in the Trade Practices Act dealing with unconscionability are s.51AA (unconscionable conduct within the meaning of the unwritten law of the States and Territories); s.51AB (unconscionable conduct in relation to consumers); s.51AC (unconscionable conduct in relation to small business transactions). The Fair Trading Act (WA), s.11, adopts ss.51AB and 51AC only. The Fair Trading Act (SA) s.57 adopts s.51AB only.

- c. Although the principles of good faith and unconscionability may overlap to some extent, each of them has a different point of focus: good faith is concerned with why a franchisor did something; unconscionability looks at the outcome of the franchisor's actions and the means used by the franchisor to achieve that outcome. However, a lack of good faith by a franchisor may provide evidence of unconscionability, as recognised by s.51AC(3)(k) of the TPA.
33. Thirdly, contractual good faith and statutory unconscionability only operate during the term of the contract and do not relate to contract renewals. As a matter of legal theory, a contract renewal involves a decision whether or not to enter a contract – being a new contract on expiry of the old contract. This classification appears to be artificial when applied to a franchise relationship, particularly one which has subsisted over many years, if not decades. Nevertheless, in the face of a franchisor who seeks to assert its right to rely upon the doctrine of freedom of contract, the legal obstacles confronting a franchisee may be summarised as follows:
- a. A contractual duty of good faith will only apply to powers exercised during the term of an existing contract, and will not apply to any renewal decision by the franchisor.
 - b. Unconscionability under s.51AA does not apply to contract renewals. This appears to be the consequence of the High Court's decision in *ACCC v Berbatis* (2003) 214 CLR 51, at least in relation to leases and presumably also in relation to franchises. In that case, the High Court held that it was not unconscionable under s.51AA for a landlord to require a tenant to drop legal proceedings against the landlord in return for being granted a renewal of the tenant's lease.
 - c. Unconscionability under s.51AC is untested in relation to contract renewals. If unconscionability does have a wider operation under s.51AC than s.51AA, there is a potential issue whether the High Court's reasoning in the *Berbatis* case will also apply to s.51AC. It may take many years of litigation for this issue to be resolved by the courts, as the case is ultimately likely to end up in the High Court.
34. It is useful to compare the position of a franchisee with that of a retail tenant, because there are some similarities but there are also some important differences.¹⁰
35. The main similarities are that a tenant may be subject to similar opportunistic behaviour by a landlord as franchisees in relation to lease renewals:

¹⁰ At the time of preparing this submission, the Productivity Commission has issued a draft report, *The Market for Retail Tenancy Leases in Australia*, November 2007.

- a. The underlying relationship is contractual, and involves a strong party (the franchisor or landlord) and a weaker party (the franchisee or tenant).
- b. The terms of the contract are generally presented on a take-it or leave-it basis by the stronger party to the weaker party.
- c. The weaker party has no right to any payment of goodwill upon expiry of the contract, and thus is an 'economic captive' to the demands made by a landlord or franchisor in order to obtain a renewal to protect its business investment and to ensure that it can continue to meet its third party property or financing obligations (ie. leasing, rental or mortgage obligations).

36. However the differences are significant, and these indicate the much weaker position of the franchisee compared to the retail tenant:

- a. The franchise contract is a relational, organic or incomplete contract, where many issues are left open-ended, such as those relating to changes to the franchise system and capital expenditure on upgrades. By contrast, a retail tenancy involves a complete contract, with all major obligations being spelt out in the lease agreement and well recognised means of determining rental changes.
- b. Different investment decisions are made by tenants and franchisees during the course of their contractual term. The tenant's decision will typically be limited to fitout of existing premises where all of the other facilities and services are provided by the landlord. However, the franchisee is typically provided with only a contractual right to use the brand name and other intellectual property rights. Thus, the franchisee's investment must extend to every other aspect of the business, including for example providing the land and buildings.
- c. At the end of the contract term, a franchisee does not have any business which he or she can take elsewhere, but must start again, and may be further limited by restraints of trade covenants. A retail tenant does not suffer from these limitations but can find new premises and resume its business activities from these premises without any restraints. The retail tenant's ability to walk away from unreasonable renewal terms, and relocate its business, places a limit upon the extent to which it is an economic captive of the landlord, and thus upon the ability of the landlord to behave opportunistically. There is no similar restraint upon a franchisor.

37. Although the draft Productivity Commission report does not expressly address the issue of opportunistic behaviour by landlords per se, a key insight of that report is the need to draw a distinction between "what constitutes unfair or unconscionable behaviour as opposed to a hard bargain". This is the same issue posed by the High Court in the *Berbatis case*, which effectively upheld the right of the landlord to make a hard bargain on renewal with the tenants (even though that conduct fits the description of opportunistic conduct). The draft Productivity Commission report included a draft finding that recommended against extending the reach of the existing unconscionability provisions, although it did acknowledge the need for greater clarity in the interpretation of those provisions.¹¹ A crucial step in the reasoning in the draft Productivity Commission report is:

"...large rent increases on lease renewal do not automatically indicate a lack of negotiating power on the tenants' part... The main bargaining chip available to tenants is the ability to 'vote with their feet'. Therefore, tenants need to be able to evaluate viable rent levels for their business model and ensure that they are in a position to walk away from negotiations if the proposed rental increases are considered too high."¹²

However, applying the reasoning of the draft Productivity Commission report, it is the very inability of franchisees to "vote with their feet" that strengthens the case for reform of the unconscionability provisions in relation to the franchise industry to overcome the problem of franchisor opportunism. Put another way, even if landlord opportunism falls on the hard bargaining side of the line (as the Productivity Commission's draft report appears to accept), franchisor opportunism should fall on the side of the line requiring regulatory intervention. This issue is addressed in more detail in the following section.

38. Finally in relation to retail tenants, South Australia and the Australian Capital Territory have protected preferential rights in relation to renewal of their leases and a right of compensation in circumstances if their leases are not renewed.¹³ The draft Productivity Commission report noted a submission that such provisions increased compliance costs for landlords; however, it concluded instead that the effect of the provisions was difficult to assess.¹⁴

¹¹ Productivity Commission, *The Market for Retail Tenancy Leases in Australia*, *op. cit.*, pp. xxxii, 86, ch.9.

¹² Productivity Commission Draft Report, *ibid.*, p.106.

¹³ The Retail and Commercial Leases Act 1995 (SA), ss. 20C-20I provides an existing tenant with a preferential right to renew the lease unless the landlord has one of a number of specified reasons for not renewing (eg. changing the tenancy mix). The court has powers to intervene in a dispute, which include making an order for a new lease or payment of compensation up to the amount of 6 months' rent. Similar provisions are contained in the Leases (Commercial and Retail) Act 2001 (SA), ss.106-112.

¹⁴ Productivity Commission Draft Report, *op. cit.*, p.107.