

Productivity Commission
SUBMISSION COVER SHEET
(not for publication)

Inquiry into The Market for Retail Tenancy Leases in Australia

Please complete and submit this form with your submission to:

Retail tenancy leases inquiry
Productivity Commission
PO Box 1428
Canberra City, ACT, 2601

OR

By facsimile (fax) to:

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By email: retailtenancies@pc.gov.au

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CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

22 February 2008

Retail Tenancy Leases Inquiry
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601

Dear Sir / Madam

**SUBMISSION: THE MARKET FOR RETAIL TENANCY LEASES IN AUSTRALIA:
DRAFT REPORT**

The Chamber of Commerce and Industry of WA (CCI) is pleased to make this submission to the draft report about the market for retail tenancy leases in Australia. CCI supports the Productivity Commission's consultation about the draft report.

About CCI

CCI is the leading business association in Western Australia. It is the second largest organisation of its kind in Australia, with a membership of approximately 5,200 organisations in all sectors, including retail, food and beverage, hospitality, information and communication technology, resource, agriculture, transport, building and construction, community services and finance, among others.

Most members are private businesses, but CCI also has representation in the not-for-profit and government sectors. Approximately 80 per cent of members are small businesses, and members are located in all regions of the State.

Comments

Recommendation 1

The following measures should be pursued by State and Territory governments to further improve transparency and accessibility in the retail tenancy market.

- *enhance the use of simple language in all tenancy documentation and provide clear and obvious contact points for information on leases and dispute resolution.*
- *elaborate the significance of jurisdictional differences in the definition of unconscionable conduct and align definitions where practicable*

CCI supports greater use of simple language in all tenancy documents. We understand that many small businesses entering the retail market have limited technical knowledge about leases,

legislation and regulations that govern the marketplace. We believe the use of simple language in all areas of retail tenancy will help reduce the administrative cost for retail tenants.

CCI supports a nationally consistent definition of unconscionable conduct in state and territory retail tenancy legislation. We understand that variations in how each state and territory draw down unconscionable conduct provisions from the Trade Practice Act 1974 to retail tenancy legislation may be impacting the effectiveness of this provision. We believe a national definition will facilitate greater case law and increase small businesses ability to prove unconscionable conduct. We are concerned that state and territory governments will not be able to agree on a consistent definition without coordination from the federal government.

Recommendation 2

State and territory governments should seek to improve the consistency of lease information across jurisdictions in order to lower compliance and administration costs. They should.

- *encourage nationally consistent (plain English) models for retail tenancy leases and for tenant and landlord disclosure statements*
- *institute nationally consistent reporting by administering authorities on the incidence of tenancy inquiries, complaints and dispute resolution*

CCI supports the development of nationally consistent lease information and reporting for retail tenancy. We recommend that the federal government coordinate the model, in consultation with industry and state and territory governments.

Recommendation 3

State and Territory governments should relax key restrictions in retail tenancy legislation to better align the regulation of the retail tenancy market with the broader market for commercial tenancies.

CCI supports the reduction of unnecessary legislation and regulation imposed on Western Australian businesses. We believe certain provisions in the CTA are necessary to ensure the fair treatment of retail tenants and landlords, particularly the provision of disclosure statements, the dispute resolution process or unconscionable conduct.

In Western Australia commercial leases and tenancies are legislated by the Property Law Act 1969 Part VII. (PLA). CCI believes provisions associated with disclosure statements, dispute resolution and unconscionable conduct detailed in the CTA would be beneficial in the PLA. These provisions would protect both parties to a commercial lease from unfair treatment.

Recommendation 4

As unnecessarily prescriptive elements of the retail tenancy legislation are removed, State and Territory governments should seek, where practicable, to establish national consistent template legislation for retail and commercial tenancies available to be drawn down to each jurisdiction.

CCI supports the facilitation of nationally consistent legislation providing industry, state and territory governments, and previous retail tenancy reports are given regard in the drafting of

Feedback requested by the Productivity Commission

The Commission invites comments about the feasibility and benefits of more widespread lease registration and facilitation of this process by landlords.

We believe that lease registration can facilitate greater transparency in the retail tenancy market and would benefit both parties.

CCI recommends that this process is managed by a state based industry association such as the Retail Traders' Association of WA, with support from the WA Government. We believe industry associations can drive voluntary registration due to their membership base and help industry interpret retail tenancy data in a meaningful way.

The Commission invites comments on the feasibility and benefits associated with the introduction of a voluntary national code of conduct for shopping centre leases enforceable by the ACCC.

CCI supports the recommendation to develop a voluntary national code of conduct for shopping centers on the condition that it is supported by relevant legislation. We believe shopping centers would benefit from a code of conduct as it will promote fair landlord and tenant negotiations.

CCI is concerned that the report does not accurately portray the importance of the shopping centers in the retail tenancy market, particularly due to the number of submissions received by the Productivity Commission that expressed concerns about this section of the tenancy market. Although shopping centers only represent 20 per cent of retail tenancy leases in Australia they represent a significant proportion of the retail sales in Australia (41 per cent), according to the Shopping Centre Council of Australia.

CCI understands that securing a retail tenancy lease in a shopping center is extremely important for many types of retail tenants whose target market can only be found in shopping centers, particularly super-regional centers.

The Commission invites comments on the desirability and feasibility of establishing a nationally consistent framework for tenancy leases through the drawing down of nationally consistent template legislation for commercial (including retail) leases to each jurisdiction.

CCI supports legislative and regulatory consistency between the federal and state government. We believe the federal government needs to facilitate this approach in consultation with industry and the state and territory governments. CCI believes a national framework would improve the tenancy market for larger retailers operating in multiple states, and small retailers would benefit from a framework that draws out the best tenancy provisions of each state and territory. We do not support the merge of commercial and retail tenancy legislation.

WA Government review of retail tenancy

CCI supports the WA Government's review of the WA Commercial Tenancy (Retail Shops) Agreements Act 1985 (CTA). We understand that this review will address a number of industry's existing concerns about the tenancy market, including the following.

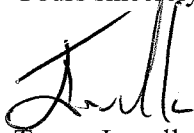
- supplying a valuer with relevant information about leases for retail shops in the same shopping centre

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- supplying a valuer with relevant information about leases for retail shops in the same shopping centre
- improving the rights of tenants about lease renewals, redevelopment and relocation in shopping centers
- clarifying disclosure statements
- preventing excess legal costs being passed onto tenants

Ms Sharon Dignard, Industry Policy Adviser would be pleased to provide further details and can be contacted on (08) 9365 7531 or email: Sharon.Dignard@cciwa.com.

Yours sincerely



Trevor Lovelle
Director Industry Policy