



# AUSTRALIAN RETAIL LEASE MANAGEMENT

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Your Ref:

Our Ref: Stephen Spring

Monday, 25 February 2008

The Productivity Commission,  
Market for Retail Tenancy Leases,  
PO Box 80,  
Belconnen,  
ACT 2616.

ATTENTION: COMMISSIONER NEIL BYRON

BY 4 PAGE FAX 6240 3322

Dear Sir,

RE: COSBOA'S SUPPLEMENTARY SUBMISSION – THE MARKET FOR RETAIL TENANCY LEASES

I write on behalf of the Council of Small Business of Australia. I refer to COSBOA'S recommendations and the following passage from the Westfield's Group submission dated 22 February 2008:-

"Turnover Information

At the Commission's public hearings a number of submissions have been made on behalf of retailer associations and retailers to the effect that shopping centre landlords should not be permitted to include provisions in retail leases requiring tenants to provide to the landlord turnover information concerning the tenant's business. Alternative suggestions have been put to the effect that such turnover information should be collected by an independent third party (instead of landlords) and then made available upon request to landlords and tenants on a basis where the turnover data specific to particular tenants cannot be identified.

The basis for these proposals is a belief that the receipt by shopping centre landlords of such turnover information from tenants confers upon landlords an unfair advantage by creating an information imbalance between landlord and



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tenant particularly in relation to negotiations regarding new leases or renewal leases.

Westfield observes that much of the debate that has surrounded the turnover collection issue has been misinformed.

In the first place it is not the case, despite submissions to the contrary, that landlords do not collect turnover information in other jurisdictions such as the United Kingdom or the United States of America. As pointed out in the SCCA Second Submission (Section 6) such information is in fact collected in the United States and the United Kingdom and further there is no legislative prohibition on the collection of turnover information in either of those jurisdictions.

Further, in the case of Westfield shopping centres, it is not the case that turnover data collected is unavailable to tenants in a form in which appropriate benchmarking can be done without identifying individual tenants. As pointed out in the SCCA Second Submission (Section 6) such information is made available to retailers by Westfield on request and a significant number of retailers already take advantage of that facility. It is Westfield's understanding that other large shopping centre landlords provide a similar facility to retailers.

Accordingly, in Westfield's view, there is no demonstrated justification for these particular reform measures in relation to the collection of turnover data.

Insofar as the submissions made advocate the prohibition of the collection of turnover data – such a measure would strike at one of the unique features of the shopping centre model which has underpinned the success of that model for both retailers and owners – that is the ability of the shopping centre owners to make informed decisions (assisted in a major way by the collection of turnover data) regarding the ongoing performance and market positioning of the shopping centre and its optimal tenancy mix. Further, it would eliminate the data base currently provided, not only to landlords but also available to individual retailers, industry researchers and retail consultants and advisers, which has enabled the appropriate benchmarking of the performance of shopping centres to be undertaken.



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Insofar as the submissions made advocate that an independent third party or regulatory agency should be empowered to collect such turnover data in lieu of shopping centre landlords, Westfield notes that this would serve to create yet a further regulatory structure and create additional cost (some or all of which would be borne by the tenants) when the relevant information in an appropriate form is already available at no cost, certainly in Westfield shopping centres and shopping centres owned by other major landlords. Again, Westfield observes that the tenor of these submissions, which is to advocate further regulatory intervention and the establishment of regulatory structures in an already over regulated industry in circumstances where no need for such regulatory intervention has been substantiated, runs counter to the Commission's views as expressed in the Draft Commission Report that the industry should progressively move to less prescriptive regulation..."

It's important to point out that whilst turnover information is collected by *some* shopping centres in the United Kingdom, their culture is one of not providing it. That is part of the negotiating process. In Australia, virtually all retailers provide turnover information. It's been the Australian experience, originally copied from the United States, from a time when landlords and tenants shared the property risk and landlords used the turnover overage clause when times were particularly good for the retailer. Conversely, when times were tough, retailers paid a lower base rent. It is now the case in Australia that a tiny fraction of lessees pay turnover rent, but the turnover clause remains.

In the United States, turnover information is normally provided, but there is open transparency in providing that information to the *prospective* leasing market. The important distinction here is that nowhere in Westfield's submission do they say that turnover information is given to *prospective lessees*. Perhaps they will not do so because it may be deemed to be a representation, but asking a shopping centre about detailed category by category information for that shopping centre for a prospective lessee will likely be met with hostility, or at best words to the effect of: "...no, sorry, that information is secret. We cannot disclose it you."



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In summary, it is the case that some lessees do use information collected to benchmark their businesses, but they are *already* lessees. It is too late. The lease has been signed. If turnover information is given to a third party, all information would be available to all lessees in any event – a far more beneficial system. It is not the case that “industry researchers, retail consultants and advisers” can properly detail and benchmark categories or performances on shopping centres on the information publicly available unless they have inside knowledge or access to further data.

If there are any aspects of our recommendations you wish to discuss, please do not hesitate to contact me on 9968 4775.

Yours sincerely,

STEPHEN SPRING FOR AND ON BEHALF OF COUNCIL OF SMALL BUSINESS OF AUSTRALIA (COSBOA)

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