

Australian Newsagents' Federation Ltd  
Submission to the Productivity Commission

The Market for Retail Tenancy Leases in  
Australia

Productivity Commission Draft Report

January 2008

The Australian Newsagents' Federation (ANF) is the peak industry body representing newsagents in Australia. The ANF's membership comprises some 2,100 newsagents Australia wide. Nearly all ANF members are small businesses employing less than 20 staff.

The ANF has reviewed the Productivity Commission's Draft Report on The Market for Retail Tenancy Leases in Australia released in November 2007. This further submission to the Productivity Commission addresses some of the key recommendations in the Draft Report.

At the outset, the ANF must state that it is disappointed in the draft findings of the Productivity Commission. It appears that despite many submissions representing small business retailers, all presenting similar arguments and backed up by case study evidence, the Productivity Commission's recommendations, if implemented, involve the gradual erosion of legislative protection for small business retailers. The Productivity Commission has done an excellent job of acknowledging, and then choosing to ignore or dismiss the assertions of most small business proponents.

In the past week alone, the ANF has become aware of the following recent retail tenancy leasing examples that provide a further snapshot of the difficulties faced by small tenants:

1. A newsagent in a Sydney shopping centre faced with a 180% rent increase at lease renewal;
2. A newsagent in Sydney who has endured a major shopping centre redevelopment and the resulting decrease in trade only to discover that they are not being offered a lease in the newly redeveloped centre;
3. A newsagent in an Adelaide shopping centre forced to double the size of their shop at lease renewal to retain a lease;
4. A newsagent in Adelaide advised by their paid leasing negotiator that it was in the newsagents' best interests to use the leasing negotiator's services anonymously for fear of being labeled a difficult tenant by the shopping centre management.

Given the ANF's view that submissions presented to the Productivity Commission presented a clear case for change, and these arguments have been roundly dismissed by the Productivity Commission, this further submission does not simply reiterate its previous views. Rather, it seeks to make new points that might perhaps assist the Productivity Commission to refocus the inquiry.

## **1. There is more to the retail tenancy marketplace than 'economic efficiency'**

A complete and balanced review of the retail tenancy market needs to consider much more than 'economic efficiency'. The ANF believes that the Productivity Commission has failed to look beyond the mere economics of the marketplace, to the detriment of equally important cornerstones such as fairness, equity and social outcomes.

Whilst the ANF does not purport to have the answers, it is extremely concerned that the Productivity Commission's mantra of 'economic efficiency' does not allow it to consider the wider picture. It may be that thousands of small business retailers investing heavily in their businesses to find themselves working for wages is economically efficient, but it is certainly not fair or desirable when it is by virtue of a retail tenancy system that allows landlords to extract rent at a level that keeps these retailers on a financial knife edge.

As an example, the Productivity Commission notes that zoning and planning controls affect the location, quantity and use of retail space. Shopping centre landlords have a clear and significant market advantage over tenants by virtue of these artificial controls set by government. In its Draft Report the Productivity Commission suggests that relaxing these controls is more appropriate for addressing retail tenancy issues than protecting affected small businesses through retail tenancy legislation. To the ANF, this demonstrates that the Productivity Commission has focused on unattainable economic theory rather than the wider social implications on public amenity and the many small businesses serving the community.

## **2. The Australian economy relies on the viability of small businesses.**

Even if considered in purely economic terms the sustainability of small business retailers is of national economic significance. According to the Australian Bureau of Statistics, small business employed 3.3 million people or 47% of the private sector workforce in 2000-2001, and retail trade is the largest employer industry. There is a lot at stake in this for the Australian economy.

Despite an extended period of economic prosperity, newsagents are telling the ANF that they are more than ever operating on a financial knife edge, with rents merely replacing newsagents' return. As economic conditions are inherently cyclical, it is simply a matter of time before consumer confidence dips, retail spending reduces and rents become unsustainable for many newsagents. Given that rents in shopping centres are generally *not* based on turnover (as turnover rent rarely ever applies), ANF has little faith in the 'economic efficiency' of the marketplace to reflect changed economic circumstances prior to the failure of

many newsagents' businesses. Judging from other submissions representing small business retailers, this situation is far from isolated to the newsagency industry. Even the failure of a small percentage of shopping centre small business retailers would have negative national economic implications.

### **3. Current legislation is not excessive and unnecessary, but rather deficient.**

The Productivity Commission notes that very complex and prescriptive legislation and amendments have been introduced over time and recommends that provisions be wound back.

Rents are higher and the life cycle of the average retail business is shorter despite 13 odd reviews of state and territory legislation. Contrary to the Productivity Commission's view, this does not mean that prescriptive legislation is redundant, but rather it clearly indicates that legislative measures to date have not successfully addressed the core issues.

It is no coincidence that as the shopping centre retailing concept takes hold in Australia, as it has done in other developed countries, occupancy costs for retailers in general have increased from 13.8% in 93/94 to 18+% in 2007.

The ANF contends that it is not sufficient, nor appropriate for the Productivity Commission to advocate that the retail tenancy market be left to its own devices. Rather the Productivity Commission, having recognized the trend towards shopping centre retailing, must now find a way to ensure that retail tenancy legislation reflects the changing marketplace. To put this persistently vexed area in the 'too hard' basket on the basis of economic efficiency does a major disservice to the thousands of small business retailers around Australia.

### **4. A voluntary national code of conduct for shopping centre leases is optimistic**

Whilst recognizing that the ANF does not know the Shopping Centre Council or shopping centre landlords' views on the Productivity Commission's suggestion, the ANF contends that a voluntary national code of conduct for shopping centre leases is likely to be as ineffective as the current collective bargaining provisions that rely on the voluntary participation of both parties. The Productivity Commission only needs to check with the ACCC the status of the ANF's authorization to collectively negotiate with West Australian Newspapers Ltd to understand the ANF's views on this matter.

Such undertakings are generally an exercise in public relations on the part of the dominant party, and the ANF believes it is extremely optimistic to expect meaningful protection for small business retailers to result.

## **5. Consistency of legislation does little to assist a small business retailer**

In essence, the Productivity Commission has been presented with two opposing views. The first is from small business retailers suggesting that retail tenancy issues are eroding their rightful profits or even jeopardizing their economic viability. The second is from landlords, particularly shopping centre landlords, suggesting that prescriptive and inconsistent legislation is inefficient and expensive to manage. Submissions representing landlords do not appear to suggest that retail tenancy legislation is preventing them from achieving an adequate return on their property investment, but rather that it adds compliance costs to the process.

The ANF is not suggesting that consistency of legislation is not worthwhile. However, when presented with arguments at the core of economic viability on the one hand, and convenience and incidental cost on the other, it is disappointing to find the focus of recommendations favoring the latter view.

It should be remembered that consistency of legislation across state and territory borders does little to assist the plight of a small business retailer in a shopping centre in any given location. Small business retailers are, by definition, small, and do not operate across state and territory borders. For the Productivity Commission's recommendations to focus so heavily on the consistency of legislation across state and territory borders provide benefits to large tenants who are not subject to the same imbalances in bargaining power with landlords, and to the large landlords themselves. For this consistency to be achieved through the *winding back* of prescriptive parts of legislation further rubs salt into the wound.

## **6. Turnover figures should not be a *requirement* of a shopping centre lease**

Whilst the ANF has chosen not to merely restate the arguments from its previous submission, the ANF is compelled to revisit the issue of turnover figures.

The ANF does not accept that shopping centres require turnover figures to guide investment decisions. Businesses of all types, both large and small, make investment decisions every day without the benefit of the trading information of their customers. Indeed, the largest investment by shopping centre landlords occurs prior to and as it is built, well before the first tenant commences trade.

Given that shopping centre landlords make much of the impact of the passing traffic they generate for retailers, including that small businesses' goodwill is actually derived from this passing traffic and not the retailers' skill and hard work, ANF suggests that accurate measures of passing traffic figures provide a better indicator of centre performance. It seems that shopping centre landlords want to have their cake, the retailer's cake and then eat them both.

## **7. The newsagency industry is characterized by high turnover and low margin, with little or no control over price and margin in many key categories**

Newsagents do not have the same level of control over commercial levers of different parts of their business than many other retailers, making them extremely vulnerable to retail tenancy abuse.

The retail price of newspapers, magazines, greeting cards, lottery products and other key categories is fixed by the suppliers of these products. Newsagents have no control over price or margin of these products which account for more than 60% of a newsagent's sales. Given that newsagents are not able to increase prices to cover increases in their costs, rent increases can only erode an efficiently run newsagent's net profit.

Further, newsagents are contractually required by suppliers to operate within a specific geographic area, which in many cases is confined to a shopping centre, making the option of relocating elsewhere unavailable and the landlord a monopoly supplier of retail space. The Productivity Commission's view that retailers are able to accept or reject the shopping centre retailing model is little comfort to a newsagent entrenched within a shopping centre and faced with an unfair rent increase at lease renewal. Whilst it may be easy for the Productivity Commission to advocate that tenants simply 'vote with their feet' and walk away at this juncture, in reality this is extremely difficult for any retailer and contractually impossible for newsagents. Shopping centre landlords are well aware of this fact for retailers in general and newsagents in particular.

### **Summary**

In short, it appears to the ANF that the Productivity Commission is more interested in whether the retail tenancy market is 'economically efficient' than whether it is 'fair'. Unfortunately, the retail tenancy market, if left to its own devices in a textbook 'economically efficient' model, will continue to yield far more positive economic returns for landlords than tenants. The reality is that dealings between small business retailers and large landlords do not equate to 'perfect competition' (ie many small retailers negotiating with many small

landlords), but oligopoly if not monopoly competition between small retailers and multinational landlords. Whilst the Productivity Commission recommends against any further measures that would provide specific market participants with an advantage, the ANF and other small business lobby groups are merely seeking some redress for existing disadvantages created by current market conditions.

Unless there is a significant shift in the Productivity Commission's recommendations, the 'war' will go on and small business retailers will continue to be the casualties.