



THE LAW SOCIETY
OF SOUTH AUSTRALIA

22 February 2008

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Mr David Cobau
Productivity Commission

By Facsimile: (02) 6240 3322

Dear Mr Cobau

Inquiry into the Market for Retail Tenancy Leases in Australia

I refer to the Productivity Commission's Draft Report into the abovementioned Inquiry dated November 2007. The Draft Report has been considered by the Society's Property Committee. Accordingly, the Society makes the following submissions on the Draft Report.

The Society supports the proposition that a move be made to a nationally consistent retail and commercial lease framework. We understand that the national harmonisation of Torrens Title legislation and a national electronic conveyancing system are currently being considered and investigated by various bodies. Whilst there may be difficulties, from a political perspective, in achieving these reforms the Society supports the spirit of the reforms and suggests that they all be considered together, given their overlapping nature.

The Society supports, in principle, the Commission's recommendations that relate to the improvement of transparency and accessibility in the retail market, recognising however the potential that that an increase in the development of template documents and in consistency of documentation may result in a decrease in individually negotiated terms and covenants to the detriment of small business landlords and tenants.

The Society also has significant concerns about the Commission's recommendation for a nationally consistent model for retail tenancy leases. We suggest a standard model lease would be both unwieldy and inefficient as it would ultimately be a lease with numerous annexures, covering not only differing State legislative requirements but the peculiar requirements of certain landlords, tenants and properties. We consider that the end product in most cases will be a lease which is very difficult to read and understand.

Further, the Society takes the view that the proposal to relax key restrictions in retail tenancy legislation to better align the regulation of the retail tenancy market with the broader market for commercial tenancies requires careful consideration in order to ensure that inexperienced, vulnerable tenants are not unprotected.

Yours sincerely

A handwritten signature in black ink that reads "Grant Feary." The signature is written in a cursive style with a prominent underline under the word "Feary".

G K Feary
PRESIDENT