

**PRODUCTIVITY COMMISSION DRAFT REPORT
THE MARKET FOR RETAIL TENANCY LEASES IN AUSTRALIA
MATTERS FOR DISCUSSION**

The authors of the Draft Report are to be congratulated on the comprehensive materials set out in the report.

As can be noted from my Biographical Details that accompany this note, I have considerable knowledge and understanding of the issues involved in relation to Retail Tenancy matters.

Even though I may be able to make constructive comments about a number of issues raised in the report, I understand that my time with the Commission meeting is limited. I shall therefore confine my remarks to major matters that concern me, They are as follows:

NATIONAL RETAIL TENANCY LEGISLATION

As a consultant, several national retailers have engaged me over the years and there is no doubt that for these retailers and also for landlords who have sites in various states, the different tenancy laws in each state cause considerable expense and confusion.

If national legislation could be achieved, it would be a positive step for all of the stakeholders in the industry.

I support the draft recommendation in relation to this matter at page 211.

MARKET INFORMATION, TRANSPARENCY AND DISCLOSURE

In relation to the draft finding at page 142, my experience has been that the current requirements for information in Disclosure Statements have assisted me being able to properly advise landlords and tenants of the major matters that have to be taken into account before signing a lease.

It is true that there are now many opportunities for intending landlords and tenants to be educated in relation to leases, and also there are a number of consultants who can assist. However, my experience is that so many people are keen to open a retail business that they ignore advice if it is not what they want to hear.

I believe that it would be of considerable assistance if landlords, particularly those that operate shopping centres and agents who lease shops should have to spell out the risks to intending tenants.

I draw the analogy with stock market investments where the risks must always be set out in each prospectus.

REASONS FOR FAILURE

My observation is that there are two main reasons why retailers who don't succeed fail. They are:

- Lack of experience;

- Undercapitalised.

I do not believe that legislation and regulation can prevent these failures from occurring. However, as the potential risk can be highlighted as proposed in the previous paragraph, it may assist some people to avoid failure.

VOLUNTARY CODE OF CONDUCT

In principle I support the concept of a voluntary code as suggested at pages 212/3.

However, on behalf of the ARA some years ago, I was involved in the drafting of a voluntary code with the shopping centres. The problem was that none of the major landlords were prepared to adopt the code and it was ineffective. It would be critical to ensure that all of the major landlords of shopping centres were prepared to adopt the code for it to be effective.

THE PURPOSE OF RETAIL TENANCY LEGISLATION

When introducing such legislation, governments have always stated that it is introduced to protect small business.

My view is that the purpose of the legislation should be to spell out best practice in leasing and so it should apply to all leases and all landlords and tenants. Equally, the provisions should also apply to all commercial leases – not only retail leases.

ALTERNATIVE DISPUTE RESOLUTION

As an active mediator and a member of the ADR panel of the Office of the Small Business Commissioner of Victoria I am convinced that the procedures of that office have saved considerable sums of money and time for the parties who have participated.

It is a model that I highly commend.

TODD TREVAKS