NATIONAL RETAIL ASSOCIATION RESPONSE TO THE DRAFT REPORT

PRODUCTIVITY COMMISSION 2007

***The Market for Retail Tenancy Leases in Australia,* Draft Report, Productivity Commission, November 2007**

The following comments are made in response to the invitation to comment on the Draft Report, in writing and/or by attending the proposed public hearings.

In addition to the following response, the National Retail Association (NRA) together with Corporate Property (Qld) Pty Ltd, intends to be represented at the Public Hearing to be held in Brisbane on Monday 11 February 2007 by its Retail Tenancy Consultant Mr Malcolm Macrae, who was involved in the preparation of its original submission.

Please note that Mr Macrae, besides being appropriately qualified, has had extensive experience -

- In the development and management of shopping centres particularly from 1966 to 1987;
- As a member of the Ministers Industry Working Groups that has reviewed the Queensland Retail Shop Leases Act in 1990,1994, 2000 and 2005.
- As a former member of the Retail Council of Australia and (later) Australian Retailers Association Tenancy Committees, and as Retail Tenancy Consultant to the Retailers Association of Queensland, and its successor the National Retail Association and its members.
- As a member of the Queensland Retail Shop Leases Tribunal since 1992;
- And as a Specialist Retail Valuer under the Queensland Retail Shop Leases Act.

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- In business valuations for banks for lending purposes

- as an expert witness in shopping centre valuation litigation

- Mr Macrae consults to Corporate Property (Qld) Pty Ltd which specializes in tenancy matters, and provides ongoing services to clients in most States.

As there is no direct correlation between the listing of "…Issues for Consideration" in the Commission's "Call for Submissions" to which the NRA has responded in that order, and the structure of the Draft Report, comments will be addressed in the first instance to the Key Points at Page XVI, Overview from Page XVII, and matters arising from the remainder of the Draft Report, and the following Summary of Conclusions and Recommendations, which are not however exhaustive. .

SUMMARY OF CONCLUSIONS, FURTHER COMMENTS AND RECOMMENDATIONS

1. There should not be any arbitrary lease term. However, lease term and conditions should seek to reflect the necessary objective of matching ALL required costs with revenues over the term certain of the lease period and any options, at market-related levels of costs and profitability, on the assumption that leases will not be renewed on expiry. This may at least partly resolve ongoing contentious "end of lease" and lease renewal issues.

2. There should be improved information available and disclosed in the relevant markets, for better informed decisions by all stakeholders, including landlords, legal and financial advisers and business financiers – e.g., benchmarks comparing shopping centres, retail categories that are similar or substantially similar, and business benchmarks by category.

3. There should be consistent if not uniform legislation in each States, AND/OR

4. A Code of Practice enforceable under the Trade Practices Act, in State jurisdictions, may, subject to content reflecting the "best" of existing legislation, be a preferable alternative. Most points in Box 10.8 are commendable, subject to rent levels and determination having regard for the bases of market rental value set out in most State legislation – and the statutory requirements in e.g., Section 29 of most State legislation that properly excludes from consideration "the value of the goodwill of the lessee's business or the lessee's fixtures and fittings in the retail shop". Based on experience and commercial imperatives, no landlord would unilaterally and voluntarily enter into and observe a Voluntary Code that was enforceable.

   Any such Code of Practice should prescribe that rental outcomes be consistent with the test of market rental value as defined by the Australian Property Institute and the bases prescribed by state legislation, with appropriate appeal as to whether those bases were applied.

   Given the commercial requirement in some cases for lease periods of up to 8-10 years, to trade profitably whilst amortizing all costs, and the "changing market dynamics" together with "market"changes made within shopping centres, *"The consequences are unfair, if rents reserved under a lease are not periodically reviewed; and the adverse effects can damage lessor, lessee or guarantor as market conditions move against one or other of them". (Commercial Rent Reviews – Law and Valuation Practice – Law Book Company – back page).*

5. Legislation should be confined to retail leases, and NOT extended to commercial leases, due to important differences in premises, uses, markets, risks, goodwill retention, market power and transparency, and generally available alternatives.

6. It should be recognized that costs of compliance should be considered against the total investment well in excess of $100 billion, in retail property and businesses, and the economic costs to parties of non-compliance with a Code of Practice and/or relevant legislation, and are therefore negligible particularly for corporate landlords.

7. The “Market” referred to in the Draft Report, should include the related markets within which each business category operates; the “market” managed by the landlord in shopping centres which differentiate uses, rents and business risks, and the “market” that operates between a landlord and prospective lessee, and the “market” that operates between those parties on lease expiry.

8. The adoption of gross or preferably semi-gross rental provisions would reduce lessees exposure to charges partly of fully controllable by landlords, reduce or eliminate controversy about recoverable outgoings, arguably reduce total operating costs, improve landlords returns, increase rental “value” by reducing lessee risk.

9. The argument for existing tenants “business goodwill”, where it exists, on lease expiry (which also includes the “going concern” value of tangible assets) being subsumed into rent on lease renewal, or for an alternative lessee for the same of similar use, is absurd and if promoted would further prejudice the credibility of shopping centre valuations. The separation of business goodwill from site goodwill is a basic principle of valuation of income-producing property.

   Business goodwill is a product of business profitability. It may be concluded that the same or new lessee would be progressively “beggared” by inadequate profitability. The deterioration in the “genetic stock” of specialty retailers has been of publicly stated concern by at least one major landlord.

10. The “goodwill reversion to landlord” assumption on lease expiry and renewal or re-lease fails to maintain the necessary distinction between “site goodwill” and “business goodwill” and consequently inflates the perceived property value, and should be confined to “site goodwill” only, about which there is extensive valuation and case law.

    “Business goodwill” - to the extent that a business is profitable, arises from:

    - The skills and personal inputs of lessees

    - The contribution by lessees to marketing funds until the last day of lease expiry, that generate aggregate and ongoing centre business, and shopping centre “brand”.

    - The separate advertising and promotion expenditure of lessees and product “brands”.

    - The quality of lessees fit-out, plant and equipment, on lease commencement; further refit/refurbishments during the lease; continuity of operation to the last day of the lease with consequent “going concern” value of fitout and services on lease renewal or new lease.

11. The inclusion of the value of lessee’s fixtures and fittings or business goodwill in rental value is a breach of the “market rental value” provisions in most state legislation, and in wider commercial leasing practice (e.g., Refer Section 29 of the Retail Shop Leases Act Qld). Valuation of shopping centres on passing rents that include any element of business goodwill, also breach basic property valuation principles.

12. The apparent misunderstanding by the Commission of the previous submission by this Association and the Pharmacy Guild, at dot point 7 of Page 112 of the Draft Report, to those submissions that could substantially resolve "end of lease" issues – that "*In the event of lease renewal not being offered, there should be compensation for the "going concern value of existing tenants fixtures and fittings, to the extent that they would be relevant to a new lease, or where the expiring lease term was not adequate to amortize the original shop fit and any subsequent refurbishment required by the landlord". .* Clearly, there would be no "going concern" value if the business was not sufficiently profitable. And the value must be relevant to a new lease. Further, the incidence of such payments would only arise in the stated exceptional circumstances of non-renewal of an otherwise profitable business lease, with the benefit of higher rental for the transfer of those assets, and the benefit of the refit or refurbishment in the overall presentation of the centre.

    Currently, landlords seek to appropriate that value into higher rents, whether for the existing for new lessee, and some such provision, together with proper market rental outcomes, may substantially resolve most "end of lease" issues.

13. There is further distortion in shopping centre markets in that shopping centre valuations based on passing rentals assume business continuity, and on the evidence of some landlords, reversion of that part of goodwill attributable to lessees and their assets, whereas prudent business valuations should not assume business continuity, particularly when a lessee is directed under a lease not to assume that a lease will be renewed.

14. The consequent progressive reduction in business viability for this and other reasons such as relatively higher expansion of regional shopping centres would inevitably result in the lower productivity with which the Commission is concerned. The National Retail Association provided information about the reduction in specialty tenant productivity in real terms in Regional Shopping Centres, from the Urbis/JHD Retail Averages, whilst rental costs increased disproportionately.

15. Disclosure of sales by lessees in shopping centres that constructively manage their tenancy mix to differentiate different uses, areas and locations, should be maintained, other than for pharmacies that are substantially regulated by Government, and where relevant legislation prohibits pecuniary interests in pharmacy businesses.

16. The use of sales information for rental purposes should have adequate regard for the gross profit margins and consequent gross profits, that are better indications of business productivity.

17. The concept of appropriate Government regulation via legislation for <u>individual</u> small retail tenants, franchisors and franchisees, whether within or outside shopping centres, having regard to accepted imbalances in "market" power, as between giant corporations, and landlords with stronger negotiating powers, is consistent with other regulations of powers and prices for telecommunications, infrastructure providers, and employment laws.

18. Shopping centre rentals in particular are subject to extreme upward pressure from "market" forces of interest rates, financial gearing, stock market expectations, and competition with the highest performing LPTs. Instances of rent increases of more than 50% are being proposed.

NRA COMMENTS ON DRAFT REPORT KEY POINTS SET OUT ON PAGE (XVI)

3rd Dot Point – It is not correct that "The main intention of specific retail tenancy legislation is to address perceived bargaining imbalances between large shopping centre landlords and small retailers". As the Commission indicated, a relatively small proportion of total specialist retailer tenancies are located in the large shopping centres, or indeed with the "large shopping centre landlords" – though this sector of the "market" generates disproportionate public controversy.

There is in my experience more effective resolution of issues in lower-order shopping and strip centres and "main street" retail premises, where there may be more direct personal relationships, more value is placed on good tenants and lease continuity, and lessees may be less affected by specific landlord control and changes affecting trading conditions.

However wide disparities in interests remain in many cases, more particularly repairs/maintenance issues, outgoings, the resolution of retail-specific market rental reviews and negotiations, and lease renewal processes, where retail leases legislation is highly relevant.

The first such legislation was the Queensland Retail Shop Leases Act 1984, which was primarily but not solely "triggered" by serious issues that received extensive publicity in the then pre-eminent Indooroopilly Shopping Centre, when there were relatively fewer larger shopping centres, and only a few "large shopping centre landlords", compared with the current listed and financially engineered and managed unlisted property trusts and private owners.

Specialty tenants including national chains and franchisors in shopping centres owned or managed by large shopping centre landlords are particularly reluctant to initiate disputes, which generally fracture future relationships that may also impact adversely on significant numbers of other leases and franchises. Nor do they wish to be identified individually with agitation for reform of retail leases legislation, as this may invite retribution.

Many such lessees may also be sub-lessors of franchises and are deeply concerned that, notwithstanding being "sophisticated" lessees, they are nonetheless particularly vulnerable to imbalances of information, negotiating power and questionable processes specific to their retail leases. This is so particularly leading up to, and at lease expiry, given the importance of business continuity for most if not all of their leases, to themselves and franchisees, and the mis-matching of lease conditions with profitable trading objectives within the typical 5-year lease term.

To the extent that the legislation is stated to be "highly prescriptive", this is largely the result of inevitable efforts by landlords and their legal advisers to circumvent the intent of legislation, which remains largely ineffective with regard to management charges, landlords changes in trading conditions during leases responsibility for which is disclaimed, but that are not possible of assessment during lease negotiations, market value, and complex end-of-lease and lease renewal issues. Examples are:

- The history of progressive legislative changes to the market rent review basis and required processes to better secure current market outcomes, which landlords have now largely abandoned because of the more recent prohibition of "ratchet" rental clauses that subverted

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market rental processes and outcomes. There are now very few market rental review provisions in shopping centre leases, which has given rise to a systemic ignorance of the concept of market rental value, which prejudices informed negotiations and adds significantly, mainly but not exclusively, to lessees business risk.

- The history of abuse of Outgoings charges in addition to base rent in leases, that has required progressive definition of and accountability for properly recoverable outgoings.

There remain significant concerns about the level and basis of management fees in such outgoings that are not directly incurred in the operation, management and maintenance of the particular centre or building, which are currently beyond the effective recourse for disputation by individual small lessees.

The high values placed on management rights of shopping centres, that are not transparent, indicates that such charges, in the nature of de-facto rent increases at the mangers discretion, are in some cases unreasonable. "Values", of the order of $5 billion have been mentioned in relation to the current Centro debacle.

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The beneficial owners of shopping centres with external management and control of the "responsible entity" such as unlisted trusts, may also require protection against possible "double dipping" of management fees, both from their own tenants and their trust, that adversely affect their property value and growth. There is real or apparent conflict of interest in such cases. Even where there is a "stapled security" structure, some elements of management fees may be "de-facto" base rent increases.

- The progressive development of defined remedies and compensation available to small tenants for business disruption, relocation and early termination of leases.

A study of the development of legislation regarding disclosure, outgoings recovery, market reviews, and consequences of business disruption are no more prescriptive than other areas of commercial activity such as employment law, consumer protection, trade practices legislation and the like. Arguably there are parallels between "unfair dismissals" in Employment Law, and the processes by which "end of lease" issues are managed, which also impact on small retail tenants livelihood, personal assets, capital and employees.

The Commission refers to "some 700 pages across jurisdictions" – where there are eight such jurisdictions – i.e., average 89 pages – relatively small given the general similarity of objectives, the adversarial nature of the process, the quantum of investment by both parties, and importance and complexity of the commercial and public interest issues.

The Commission states that "Aspects of the legislation have constrained the market, lowered productivity and added to compliance and administrative costs". This is incompatible with a comparison of the increase in specialty retailers rent compared with the increase in sales productivity for specialty tenants in for example Regional Shopping Centres as referred to at Pages 3-5 of the NRA Submission.
The rental increases for specialty tenancy space on a $m2 basis, has appropriated the greater part of increases in specialty tenancy sales on a $m2 basis over the past 5 and 10 years, by reference to the Urbis/JHD Retail Averages.

The Urbis/JHD Retail Averages indicate a reduction in Specialty Retailers sales $m2 of (26.5%) after adjusting for CPI and GST between 1995/6 and 2005/6, with an increase in occupation costs from 14.4% to 16.8%, and a reduction on the same basis of 8.5% with an increase in occupation costs from 15.4% to 16.8% between 2000/1 and 2005/6. This co-incided with increases in average gross lettable areas of 50% and 26% respectively over the same periods.

There has therefore been a high level of ongoing investment in the expansion of regional shopping centres whilst there has been substantial deterioration in specialty retailers productivity in real terms. Arguably this can only be attributed to superior market power of such landlords/managers, and where additional investment is made that is beneficial to decision-makers, who have the demonstrated capacity to increase rents with reduced productivity.

Productivity is also prejudiced by increased supply of space relative to business potential, and by lease tenures and conditions that are able to be enforced against the existing stock of specialty retailers, that are commonly inconsistent with continuity of business activity and productivity, and the basic principle of "matching of costs with revenues" over the reasonably required lease term and conditions. Clearly this can only be achieved at the cost of necessary retailer profitability, or if that is maintained, by higher prices to the shopping public.

It is a paradox of the Industry that lower interest rates have encouraged over-valuation and over-investment with higher debt to equity ratios and lower capitalization rates, by some shopping centre landlords which requires even higher rentals to service debt when interest rates increase, from lessees who are also suffering the consequences of higher interest rates and more competitive markets.

The stock market has for some time been making some corrections via the diminishing value of Listed Property Trusts, which generates increasing pressure for higher rentals, together with higher interest rates and other operating costs for lessees. This is inconsistent with the operation of a normal or responsive "market".

It may be argued that compliance with sound principles of retail property economics embodied in the objectives of retail leases legislation would result in higher quality and more productive leases, rental streams, property and business values. THESE ARE THE PRODUCTIVITY ISSUES WITH WHICH THE COMMISSION SHOULD ALSO BE PRIMARILY CONCERNED.

The argument that legislation should not interfere with the investments of the superannuation funds that invest in the shopping centre industry, is absurd. It is of little value to shopping customers who are also investors through the superannuation fund industry, to pay higher retail prices and in the longer term have their investments prejudiced by unsustainable investment practices, about which the "market" is increasingly aware, as indicated by the fall in value of most LPTs and unlisted trusts, over the past 12 months.

Reference to aspects of the legislation having "added to compliance and administrative costs" if quantifiable should be compared with the added value that some aspects of the legislation could give to property values by improving the "quality" of leases and their consequent rental values.

It is a small price to pay for better quality outcomes for all stakeholders, compared with the very substantial costs to all stakeholders of poor investment decisions. There are compliance

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and administrative costs of most legislation, which is not a valid argument given the consequences of absence of reasonable commercial disciplines and basic property economics.

4th dot point – to the number of innovations listed may be added

- Relatively low-cost access to compensation for losses and damages (derogation of grant not otherwise available) arising from certain actions of landlords/agents.

- Definition and some regulation of recoverable outgoings.

- Definition of some "market rental value" bases and assumptions specific to retail leases, that should be relevant to lease renewal terms – e.g., Section 29 of the Queensland Retail Shop Leases Act, regardless of whether a negotiated outcome, or an independent expert determination.

- Some provisions to regulate the use and confidentiality of individual lessees sales information required to be disclosed under shopping centre retail leases.

- Requirement for professional legal and financial advice reports by smaller lessees, before entering into retail leases. It was expected from the 2000 review of the Queensland Act that it would be taken seriously particularly by larger landlords concerned with corporate governance, but is largely ignored.

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5th dot point – the assumption that "…the market is working reasonably well overall…" is disputed, as evidenced by the above matters, and by the level of ongoing agitation for reform to give some effect to the tests of unconscionable conduct under Section 51AC of the Trade Practices Act, onerous but enforceable lease terms, against lower sales productivity on a $m2 basis in real terms, and the increasing proportion of sales subsumed into rent and outgoings.

It may be argued that the only effect of the Section 51AC legislation was to increase the caution and disclaimers of landlords in retail lease dealings, for actions for which landlords/managers would have accepted some responsibility – e.g.,

- Reserving the right to adversely change trading conditions at any time without recourse, the consequences of which cannot be anticipated or measured during lease negotiations, whilst enforcing liability under mandatory guarantees in leases.

- Distancing themselves from the earlier basic principle of shopping centre management of balanced tenancy mix and the importance of individual business viability.

- Decision-making about rental requirements and lease conditions that is increasingly remote from the "shop floor", and to guarantee landlord certainty of rent increases whilst consequently increasing business risk. .

There are also a number of relevant "markets", e.g.,

- The financial markets affecting retail property financial gearing and "engineering", and rental outcomes that are directly driven from the stock market rather than the shop floor.

- Certain changes in shopping centre property valuation practices, based on "passing rentals" without regard for business viability and sustainability of rentals of all specialty tenants that contribute the order of 70% of rental income out of 30% of retail space.

- The limited and incestuous market for shopping centres, that has led to capitalization rates significantly below risk-free bond rates, higher gearing levels, and increasing pressure for rent increases unrelated to total sales growth.

- The inclusion of management fees in recoverable outgoings that exceed "the lessor's reasonable expenses directly attributable to the operation, maintenance or repair of the centre or building". The value of management fees are now regarded as a substantial asset of the managers of such properties and trusts, and are largely funded by lessees rather than the beneficial owners/unitholders. It is reported that the value of the Centro Groups management rights was assessed at in excess of $5 billion!!

- The incidences of "Responsible Entities" as trustees of property trusts being effectively owned and controlled by their managers, with inevitable conflicts of interests.

- The proliferation of Listed Property Trusts (LPTs) and unlisted property trusts that now include shopping centres in smaller towns, with monopolistic market power in those communities.

- The multiple "markets" in which for example the Centro Group and its stakeholders now find themselves. The resulting enormous losses are arguably the consequence of aspects of the "market" to which the Commission refers.

- Importantly, the "market" for the customer, who together with the retail tenant, must share increased prices and costs, to satisfy the expectation of "above market" returns, as evidenced by the disproportionate share of aggregate value in the shopping centre industry.

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6th dot point – refers to the Commission considering that "the most fruitful approach to improving the operation of the retail tenancy market and reducing costs would be to:

- Further improve transparency, disclosure and dispute resolution, to reduce information imbalances and unwind constraints on efficient decision making; and

- Reduce the prescriptiveness of legislation and move to a nationally consistent retail and commercial lease framework, to increase efficiency and reduce costs.

- Referring to improving transparency, disclosure and dispute resolution;

- Transparency can be improved with mandatory registration of leases in all States;

- Improving the data in the Urbis/JHD Retail Averages such that ready comparisons can be made between the performance of a particular lease against its category of comparable

uses, which are mostly too broad for such comparison, and frequently misused for that purpose. Average sales performances within a number of sales ranges, such as in the FMRC Business Benchmarks, would greatly increase their usefulness for all parties;

- Extensive disclosure is required by specialist retailers in shopping centres, mostly for valid reasons, but is frequently not reciprocated in negotiations, even where the information is a product of lessees sales disclosures. Information about the number of shops in a particular comparable category, and their collective sales performance and rentals within a particular centre, is virtually essential for better-informed decisions, but is invariably refused, even when not being a breach of any individual tenants confidentiality.

The experience of retail leases legislation to date has been that to the extent that it is insufficiently prescriptive, it has been ineffective.

A nationally consistent retail framework is highly desirable, subject to retaining the best features of all existing legislation.

The draft conclusion that inclusion of commercial leases in a "retail and commercial leases framework" appears to ignore the fundamental differences between the retail and commercial tenancy markets. This is readily apparent from a comparative review of the typical shopping centre lease and the typical commercial/office lease, indicating some of the following differences:

- Commercial/office leases are for "generic" relatively homogenous space that is suitable for a wide range of uses, which may be equally acceptable to a landlord. A typical office building tenancy list indicates this fact. There is relative consistency in rental values, with relative market transparency and comparability, as distinct from the strict control of permitted use, the objective of complementary tenancy mix, and wide variations in rentals and rental value particularly in shopping centres.

- Most shopping centres require sales disclosures, for the necessary and legitimate reasons of better tenancy mix management, and to measure the effectiveness of promotional activities, not relevant to commercial premises.

- Most shopping centre leases are on a "net" lease basis, with more complex operational and management inputs, and total recovery of such costs and charges, at least against specialty retailers. Most commercial leases only seek to recover increases in certain specified outgoings, after the lease commencement date, with no reference to management costs or fees.

- Most shopping centre leases require continuity of trading until the last day of lease expiry, and prohibit "closing down" sales.

- Most retail lessees lose the benefit of continuity of business and loss of the value of existing business assets and goodwill on non-renewal of a lease, where there is reduced or no capacity to relocate those assets. This places such lessees at substantial negotiating disadvantage on lease expiry, particularly where the landlord has the benefit of lessees trading information. Most commercial lessees are able to take their business and

professional goodwill to alternative locations, without paying a premium over current market rental value.

- Commercial property landlords are not primarily concerned with the nature and profitability of the tenant, nor do they generally make decisions that impact on tenants business, nor seek to charge percentage rental on business revenues.

- There is no necessity for the collation by commercial landlords by e.g. the Property Council, of information comparable to shopping centre trading and tenancy information such as the Urbis/JHD Retail Averages for Shopping Centres, or the FMRC Business Benchmarks for particular uses.

The proposal to "move to a nationally consistent retail **and commercial lease** framework" would effectively make commercial leases subject to more prescriptive legislation to which they are not currently subject, when there has been no significant agitation for such legislation. It would also have the effect of complicating the legislative framework and reducing the effect of existing beneficial retail tenancy legislation that that has been developed over time with much consultation and negotiation.

The National Retail Association (NRA) re-affirms the essence of its submission as follows:

1. A nationally consistent retail lease framework effective in all States is highly desirable, subject to it not prejudicing the objectives of existing legislation, and achieving some further important and beneficial reforms.

2. The NRA does not advocate minimum lease terms, as they do not address the mutual desirability by both landlords and tenants for shorter term leases in particular instances, particularly where redevelopment of other changes may be desirable, with shorter-term leases being preferable to month-to-month "holding over" arrangements.

3. There should be the prescriptive objective of "matching costs with revenues" over the agreed lease period, which should be sufficiently flexible to reflect the needs of lessees to have reasonable prospects of recovery of all business establishment, operating and close-down/make-good costs with "market related" profitability sufficient to justify the investment.

4. There should be better information processing and availability of information particularly in shopping centres where tenants sales information is collected and collated in the Urbis/JHD Retail Averages for Shopping Centres. Retail Categories should be more specific to facilitate business benchmarking and comparison by the required business use against those "averages". The current "averages" cover an excessively wide range of uses, sales and rentals within broad categories (e.g., Apparel and Food) and should be collated within ranges that are reasonably comparable. In their present form, the Urbis/JHD Retail Averages are highly misleading when, as is often the case, they are used to justify particular rental outcomes.

5. There should be more financial information available via Business Benchmarking of all significant Retail Categories, such as by FMRC Business Benchmarking, for more informed negotiating and decision-making by landlords, existing and prospective tenants, financial advisers, financiers and property valuers.

6. There should be access to the market rental review process by tenants within a reasonable period of landlords tenancy mix/competition management decisions that significantly adversely impact on tenants trading and profitability that could not have been anticipated when the lease was entered into.

7. Where a lease renewal is not offered to an otherwise complying tenant, the existing tenants business has been profitable at the then current rent, and existing fixtures and fittings would have ongoing "going-concern" or "unexpired" value, compensation should be available to the extent of that value, where a lease is offered to another party for the same use.

8. Tenants should be able to introduce consultants/advisers into lease negotiations as of right, without discrimination.

9. Concerns about excessive management fees, the lack of independence of "responsible entities" controlled by the landlord, and disclosure of outgoings generally could be simply resolved by the adoption of gross rents, with management fees (as with commercial leases) being an internal management matter or resolved between the manager and landlord entity.

Due to time and resource constraints, this response does not address all of the Commission's draft findings and assessments, but it is hoped that it will be of some assistance to the Commission in preparing its final report.

Gary Black
Executive Director

LS:GB/NRA Response to Productivity Commission