



Mr Alan Moss
Head, Review of Retail and Commercial Leases Act 1995
C/- The Office of the Small Business Commissioner
GPO Box 1264
ADELAIDE SA 5000

Tuesday 9 June 2015

Dear Mr Moss,

I am writing to make a late submission to the review of the Retail and Commercial Leases Act in South Australia. Unfortunately I was overseas when the review was first announced and so missed that it was happening. I hope you'll still take the time to consider this brief submission.

The Australian Sporting Goods Association Incorporated (ASGA) was formed in 1981 as the national industry association representing a broad spectrum of sporting goods and active lifestyle industry participants, including manufacturers, brands, distributors and retailers.

ASGA is a leading industry voice on issues impacting the health, trade, regulation and taxation of the sporting and active lifestyle goods industries. ASGA aims to foster market growth, provide services and advocate for increased participation in sport and physical activity.

Members of ASGA include the world's leading sports brands and major Australian retailers. We represent over 1000 sporting and active lifestyle goods retail stores around Australia.

Sports retailers range from the very large (1,000+m²) like Rebel Sport and Sportsmart, through to franchisees like The Athletes Foot, family-owned businesses in the High Streets of regional towns and tiny golf club pro-shops. Ownership and business models include franchises, listed corporations, family-owned companies and vertically-integrated international brands.

South Australian sporting goods retailers are facing significant challenges, from a higher household saving rate to the low value threshold on goods purchased overseas.

High rents and an opaque leasing process are part and parcel of the major challenges faced by retailers.

Broadly, ASGA is concerned with issues including: the power imbalance between landlords and retailers currently in favour of landlords; transparency of information available to both parties; security of tenure; the use of retail turnover to determine occupancy costs; rent and fit out costs.

Retail tenancies are of particular concern within shopping centres. As noted by research conducted by the Shopping Centre Council of Australia (SCCA), shopping centres account for \$84 billion in retail sales each year, across 1,338 individual centres. These centres are very productive in comparison to strip shopping areas, with nearly 41 per cent of all retail sales in less than a third of available retail space across the country. The large centres attract in excess of 15 million shopper-visits per year.¹

Indeed, as pointed out in the Australian Retailers Association (ARA) submission to the Productivity Commission's *Economic Structure and Performance of the Australian Retail Industry* inquiry in May

¹ <http://www.scca.org.au/HTML%20Pages/Research.htm>

2011 “the smaller an individual business is, the greater the disparity in the power dynamic between the retailer and the landlord. This factor is further compounded by the very real notion that large-scale shopping centres are oligopolistic in nature. The fact that companies such as Stockland, Centro, Westfield and AMP are really the only providers in the market, retailers (even one with branches across different jurisdictions) are reliant upon securing sites within these premises. In addition, smaller retailers are further exposed to the inherit imbalance in the rental arrangements particularly when negotiating and continuing retail leases.”²

In particular, I note one of the issues identified in your paper, in the *Lease Documentation* section, is ‘Should it be mandatory to register a retail a retail shop lease?’

ASGA strongly supports mandatory registration of retail shop leases. ASGA members, particularly small businesses, have indicated they are often at a disadvantage when negotiating with landlords.

As noted in the PC Report: “The Commission was repeatedly told that there is an information imbalance in the relationship between shopping centre landlords and retail tenants. One retailer association stated that retailers often find themselves in an information ‘vacuum’ when negotiating or assessing their leases. While such claims are not new (similar concerns were expressed to the Reid Inquiry), they are made in the context of extensive information disclosure requirements under current regulations, considerable public information available from tenancy authorities and the development of a lease information and advisory sector.” (p. 153)³

It is vital that tenants have access to the full range of information when they are negotiating a lease with a landlord, particularly a large shopping centre landlord. Registering leases and including the full range of information on them is one method of providing all parties with access to equal amounts of data.

ASGA’s retail members – sporting goods companies – range in size and business models from large, publicly listed companies to tiny specialist shops. Some are ‘big-box’ retailers, others are in shopping centres or local shopping strips. All of them have raised concerns with ASGA about the difficulties they have with landlords and the different laws in each state.

We are very pleased this review is taking the time to consider the effects –intended and unintended – of the Act as it currently stands and we thank you for taking the time to consider our late submission.

ASGA is happy to discuss any of the recommendations in more detail and looks forward to further discussions with your office about retail tenancy issues.

Kind regards,



Shannon Walker
Executive Director
Australian Sporting Goods Association Inc.

² <http://www.retail.org.au/Portals/0/Policy/PCRetailInquiryARA%20submission%20-%20FINAL.pdf>

³ <http://www.pc.gov.au/projects/inquiry/retail-tenancies/finalreport>