

Chapter 1

1.1 On 25 June 2014, the Senate referred the matter of the need for a national approach to retail leasing arrangements to the Economics References Committee for inquiry and report by 30 October 2014.¹ On 28 October 2014, the Senate granted an extension of time to report to the eighth sitting day in 2015.² On 3 March 2015, the committee was granted a further extension to report by the 18 March 2015.³

1.2 The terms of reference are as follows:

The need for a national approach to retail leasing arrangements to create a fairer system and reduce the burden on small to medium businesses with associated benefits to landlords, with particular reference to:

- a) the first right of refusal for tenants to renew their lease;
- b) affordable, effective and timely dispute resolution processes;
- c) a fair form of rent adjustment;
- d) implications of statutory rent thresholds;
- e) bank guarantees;
- f) a need for a national lease register;
- g) full disclosure of incentives;
- h) provision of sales results;
- i) contractual obligations relating to store fit-outs and refits; and
- j) any related matters.⁴

Conduct of inquiry

1.3 The committee advertised the inquiry on its website and in the *Australian*. The committee also wrote directly to the Commonwealth, state and territory governments, industry groups and associations, academics and other interested parties drawing attention to the inquiry and inviting them to make written submissions.

Submissions

1.4 The committee received 28 submissions, including 3 confidential submissions. The submissions and answers to questions on notice are listed at Appendix 1. On 13 February 2015, the committee held a public hearing in Canberra. A list of witnesses is at Appendix 2. References to the committee Hansard are to the

1 *Journals of the Senate*, No. 36, 25 June 2014, p. 993.

2 *Journals of the Senate*, No. 61, 28 October 2014, p. 1629.

3 *Journals of the Senate*, No. 80, 3 March 2015, p. 2223.

4 *Journals of the Senate*, No. 36, 25 June 2014, p. 993.

Proof Hansard and page numbers may vary between the proof and the final Hansard transcripts.

Background

1.5 Retail tenancy legislation was first introduced at the state and territory level in the 1980s. Prior to the introduction of specific retail tenancy legislation, retail leases were treated under law as standard commercial leases. The intention of the retail tenancy legislation was to address perceived imbalances in bargaining power between shopping centre landlords and small retail tenants.⁵

1.6 Retail tenancy leases are currently governed by the following legislation and regulations in each state and territory:

- Australian Capital Territory (ACT)—*Leases (Commercial and Retail) Act 2001*;
- New South Wales (NSW)—*Retail Leases Act 1994*;
- Northern Territory (NT)—*Business Tenancies (Fair Dealings) Act 2003*;
- Queensland—*Retail Shop Leases Act 1994*;
- South Australia (SA)—*Retail and Commercial Leases Act 1995*;
- Tasmania—*Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998*;
- Victoria—*Retail Leases Act 2003*; and
- Western Australia (WA)—*Commercial Tenancy (Retail Shops) Agreements Act 1985*.

1.7 At the Commonwealth level, there is no specific legislation regulating retail leases. The *Competition and Consumer Act 2010*, however, contains generic provisions for regulating trade and commerce which apply to retail industry participants.⁶

1.8 Retail tenancy legislation covers a range of matters, such as lease terms, security bonds, disclosure of information and exclusion clauses.⁷ Retail tenancy dispute resolution processes exist at both state and territory level, and through the Australian Competition and Consumer Commission (ACCC) at a national level.⁸

1.9 Retail tenancy legislation was mainly intended to address the relationship between shopping centre landlords and specialty tenants. Even so, the legislation

5 Productivity Commission, *The Market for Retail Tenancy Leases in Australia*, Inquiry report no. 43, 31 March 2008, p. 2.

6 The Treasury, *Submission 15*, p. 5.

7 Productivity Commission, *The Market for Retail Tenancy Leases in Australia*, Inquiry report no. 43, 31 March 2008, p. xviii.

8 Productivity Commission, *The Market for Retail Tenancy Leases in Australia*, Inquiry report no. 43, 31 March 2008, p. 67.

applies more widely to all landlords (large and small) offering retail tenancies and in some cases to 'large' national tenants (depending on the size, location and ownership structure).⁹

Structure of the report

1.10 This report comprises four chapters including this introductory chapter:

- chapter 2—provides an overview of previous reviews into retail leasing arrangements; and
- chapter 3—discusses the issues and concerns raised in public submissions received by the committee;
- chapter 4—examines the issues raised in relation to the role of the Commonwealth.

Acknowledgements

1.11 The committee thanks all those who assisted with the inquiry, especially those who made written submissions.

9 Productivity Commission, *The Market for Retail Tenancy Leases in Australia*, Inquiry report no. 43, 31 March 2008, p. xviii.

