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Ms Blackwell

I write in response to the recently released position paper on the Commercial Tenancy (Retail Shops) Agreements Act 1985.

The Australian National Retailers' Association (ANRA) represents the leading national retailers in Australia, across a broad range of retail products and services. Members of the Association include Australia's most trusted household names in supermarket chains, department stores and speciality retailers.

ANRA members do not support the position paper proposals for either a Shopping Centre Register or a Public Lease Register.

The Shopping Centre Register, in particular, would lead to different levels of disclosure requirements depending on where the retail outlet was located. It would also leave many retail leases outside the legislative net, given a large proportion of leases are not associated with a shopping centre.

In addition, both proposals involve the direct disclosure of commercially sensitive information to potential or existing competitors, which is of concern to ANRA members. For example, the proposed requirement to provide the Shopping Centre Register information only to a bona fide prospective tenant is impractical. Shopping centre owners have no test to establish who is bona fide and who is acting on behalf of a competitor.

An alternative approach, which ANRA offers in principal support for, would be a mandatory lease registration system.

The position paper argues that lease registrations are too low in WA to make this a useful tool. Making it mandatory would overcome this.

The position paper also argues that it would be costly for a prospective tenant to search all neighbouring leases. The experience of ANRA members in other states is that the system involves only a negligible search fee. In addition, since the prospective tenant is the beneficiary of the information they should also incur the associated cost – rather than pushing the costs onto landlords or shopping centre owners as the Public Lease Register and Shopping Centre Register would do.

If the WA Government made lease registration mandatory, then the State could achieve a more transparent lease market – as has been the outcome in NSW and Qld (where lease registration is voluntary but take-up has been much higher than in WA). In these states, professional search bodies use the lease registration system to gather information on behalf of potential new tenants or existing tenants that are re-negotiating leases. The experience of ANRA members who use these services is that they are low cost, quick and effective.

Western Australia already has the systems in place to operate such a solution, given there is a voluntary lease registration scheme currently. Consequently, the cost of establishing such a system would be less than the Shopping Centre Register or the Public Lease Register approaches.

Lease registration does not completely overcome retailer confidentiality concerns, but the use of professional search companies and the payment of a nominal fee offer more protection for retailers than either a Shopping Centre Register or a Public Register. Hence, ANRA members are more comfortable with a lease registration approach, and in some cases already register their leases under the existing voluntary systems.

A mandatory lease registration scheme would also mean that the other proposal in the position paper – changes to the Commercial Tenancy Act – would be unnecessary, as the information would be accessed via lease registration information rather than need to be directly provided by the landlord.

We welcome the opportunity to provide feedback on your position paper and hope that you will consider ANRA's suggestion for establishing a mandatory lease registration system, rather than either of the proposals put forward in the position paper.

Should you require more information on ANRA's submission, please contact Ms Margy Osmond, CEO, at [margyo@anra.com.au](mailto:margyo@anra.com.au) or on (02) 8249 4520.

Regards

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