



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

SMALL BUSINESS REVIEW

Regulation of the Retail Sector

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CONTENTS

REIV BRIEFING PAPER

INTRODUCTION	4
REIV RESPONSE	5
SUMMARY	6



ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

The businesses employ more than 10,000 people in Victoria in a market which handles over \$100 billion of transactions totalling 30 per cent of Gross State Product (GSP).

Members specialise in all facets of real estate, including: commercial and industrial sales, residential sales, auctions, business broking, buyers agency, property management, owners' corporations management and valuations.

Introduction

The REIV is the peak industry association for the Victorian real estate sector, representing the majority of the state's commercial and industrial agents and their landlord clients.

The Draft Action Statement – incorporating potential changes to the Retail Leases Act (RLA) 2003 and associated regulation – is of significant importance to our members as it directly impacts on their daily business practices.

With an active chapter dedicated to the commercial and industrial sector, the REIV has consulted with members from across the state to form our response.

Given the RLA is almost 15 years old, the REIV considers the scope of this review to be inadequate in addressing this impractical and now outdated legislation.

The Institute urges Government to undertake a review of the Act in its entirety, which would clarify the rights and obligations of retail tenants and landlords across Victoria and those tenancies that are regulated by the RLA

A recent Supreme Court decision deeming a cold storage facility to be a retail premises has also caused further confusion throughout the industry with many industrial tenancies now likely to be captured by the RLA.

REIV Response

The following outcomes were gained from the member consultation process.

Reform Area 4

Option 4.1 – Timely information for tenants

Feedback from REIV members indicates existing legislation adequately provides for the timely provision of a lease and supporting documentation to a prospective tenant.

In terms of notifying a tenant of all relevant price and non-price terms prior to a market rent review, the REIV considers the existing legislation is also appropriate. At present, tenants can vary the clause by negotiating a fixed increase at the start of the lease rather than relying on a market rent review at the option stage. This provides clarity to the tenant regarding future expenses.

In addition, there are also relevant protection mechanisms within the lease itself for tenants who do not agree with a market rent review proposed by their landlord; i.e. the appointment of a Specialist Retail Valuer to determine the commencing rental for the new term.

Should this proposal be adopted, it may work against tenant's interests by allowing landlords an ability to force a retail tenant to vacate their premises by advising of a high rental prior to the exercise of the tenant's option.

While the REIV does not support this proposal, easily accessible information for small business tenants on their rights and obligations would significantly reduce confusion in the marketplace. The REIV suggests this information should be available on the Small Business Commissioner website.

Furthermore, the REIV does not foresee this proposal providing any cost savings for landlords or tenants. In fact, any cost savings would be inconsequential compared to the disruption and confusion that would ensue from forced changes to current industry practices. It's important to note that commercial landlords contribute a significant amount in land tax to the state's revenue.

Option 4.2 – Introduce a time limit for returning bonds and bank guarantees

As bonds and bank guarantees are linked to tenant obligations, the REIV believes the introduction of a time limit should not apply in instances where there is a dispute relating to payment of rental, outgoings or the condition of the property.

The REIV's prescribed retail lease agreement includes a 14 day timeframe for the return of the bond or bank guarantee on the proviso that the landlord or agent is satisfied with the condition of the property. As such, the REIV supports the introduction of a time limit for the return of bonds, provided that this time limit only commences upon the completion of the tenant's obligations to make good the premises or pay outstanding monies.

It is important that any future legislation protects the landlord's right to the security if the tenant has not complied with lease terms.

Option 4.3 – Develop and distribute a free standard retail lease

The Institute sees no benefit in developing a standard retail lease as both the REIV and the LIV already offer prescribed retail lease agreements, which are widely used throughout the industry.

Negotiated terms within retail lease agreements are often complex and require a detailed knowledge and understanding of the RLA, corporate entities and structures and should be negotiated and documented by a solicitor or experienced real estate agent. A 'one size fits all' approach does not apply in the retail sector as specific terms are relevant to individual properties and tenant circumstances and a standard document would not allow for these.

Simply downloading a form and allowing a landlord or tenant to just fill in the blanks will lead to additional disputes between landlords and tenants, creating further stress and expenses on the parties, the mediation process and VCAT. As such, the REIV urges Government to reject this option.

Summary

As a long-term advocate of real estate agents in Victoria, the REIV urges Government to undertake a comprehensive review of the Retail Leases Act 2003.

A review of the Act in its entirety would clarify the rights and obligations of retail tenants and landlords across Victoria and those tenancies that are regulated by the RLA.

The REIV thanks the Small Business Commissioner for the opportunity to provide input to the Small Business Regulation Review (Retail Sector).

We look forward to liaising with the SBC as the review progresses.

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