



Thursday 1 April 2010

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MAJORITY OF RETAIL TENANCY DISPUTES RESOLVED QUICKLY

Associate Professor Frank Zumbo, of the University of NSW, is running a public campaign for the creation of a position of retail ombudsman in NSW on the grounds of the "growing cost of justice" at the NSW Administrative Decisions Tribunal. So what are the facts? First, according to the ADT's latest [annual report](#), only 197 retail tenancy disputes (ie. excluding those simply seeking the appointment of a specialist retail valuer) were filed in 2008-09 and this represents only 0.2% of the number of retail tenancy leases in NSW. Second, 157 applications were dismissed because they were withdrawn or agreement was reached between the parties, leaving only a small proportion that went forward for adjudication. The ADT also reports that 66% of dispute applications were disposed of in under 6 months and 87% were disposed of in under 12 months. While this still leaves 13% that took more than a year to be resolved, there is no evidence from the ADT that these were the result of a landlord dragging out proceedings. As we have previously noted ([Shop Talk 5/3/10](#)), in the case which sparked this debate, it was the tenant, not the landlord or the ADT, who was responsible for the delays. Mr Zumbo's call for a retail ombudsman is simply code for lessors having to surrender the very few legal rights they currently possess, in situations where tenants have done the wrong thing. As the Productivity Commission noted in the report of its 2008 inquiry into the market for retail tenancy leases: "The number of retail tenancy disputes lodged with state or territory authorities is very low relative to the size of the market. . . The vast majority of disputes, once registered, are settled before escalation to a tribunal or a court."

PANEL RECOMMENDS MORE UNCONSCIONABLE CONDUCT CASES

One of the little noticed recommendations in the [report of the expert panel](#) on unconscionable conduct was that "regulators should pursue further test cases [on unconscionable conduct] to inform their guidance material, over time" ([Shop Talk 12/3/10](#)). The Federal Government has made no comment on this recommendation so far. There are several problems with this recommendation. The first is the offensive notion that the Federal Government (if it accepts the recommendation) should be able to give directions to an independent regulator – in this case, the Australian Competition and Consumer Commission – on how it should do its job. The second is the very real pressure such a direction places on the ACCC to pursue unconscionable conduct cases to a conclusion in the courts, and possibly even to pursue cases with little legal merit, instead of seeking sensible settlement of such cases, thereby providing certain and immediate relief to parties who have been wronged. Such directions also run the risk of imposing direct costs on taxpayers (in pursuing long legal cases), as well as imposing costs on aggrieved parties who would otherwise have their concerns resolved more quickly by settlement. The Federal Government should reject this recommendation and, instead, respect the independence and integrity of the ACCC.

REMINDER ABOUT NATIONAL EASTER TRADING RESTRICTIONS

Details of Easter (and Anzac) weekend trading restrictions around Australia are listed [here](#).

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