



SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE
COUNCIL OF AUSTRALIA

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NO NEED FOR STATE GOVERNMENTS TO BE ESTABLISHING RETAIL LEASE REGISTERS

We have previously noted that the Victorian Government has established a working party to examine "whether or not the introduction of a retail leases register is feasible in Victoria and, if so, recommend a preferred implementation option." ([Shop Talk 13/6/13](#)). The Australian Retailers Association said recently in an email to members that the working party's establishment was "at the behest of the ARA". Unlike in Queensland and NSW, the registration of leases in Victoria, although voluntary, is very unusual. This is because the Victorian *Transfer of Land Act* eliminates the need for lease registration in order to ensure tenants are protected against having their interest in the property overridden by subsequent registered interests. The public availability of lease information in NSW and Queensland – which is a *byproduct* of lease registration, not the *reason* for registration – does not occur in Victoria.

The Shopping Centre Council has previously supported widespread lease registration but has been convinced by the Law Institute of Victoria that it makes no sense to mandate registration where there is no legal requirement or benefit. Registration adds additional regulation and compliance costs for lessors (in preparing the lease for registration) and for lessees (paying the government lease registration charge). Experience with the former section 25 of the Victorian *Retail Leases Act* suggests the cost to industry would be in excess of \$1 million a year ([Shop Talk 13/9/12](#) & [25/10/12](#)). There would also be a risk for taxpayers if a government body was required to maintain the register. If there is little demand for the information – which is possible given how few retailers have taken advantage of voluntary registration – then cost recovery would fall well short, leaving taxpayers with the bill. The Victorian Competition and Efficiency Commission is also unlikely to endorse such additional unnecessary red tape.

It is puzzling why the ARA, if it truly believes there is strong demand from retailers for a lease register and that this would be of benefit to its members, does not just go ahead and establish a register without involving the Victorian Government. If there is widespread retailer support for a retail lease register, as the ARA has asserted on many occasions, there is presumably no reason why retailers and retail chains will not provide relevant lease information to the ARA to enable it to compile and maintain such a lease register. The ARA, in order to cover its costs, would be free to charge for this service (and retailers would no doubt happily pay), as well as charging a fee to access details. If the ARA thought such a venture was beyond its own resources, there is no reason why it could not joint venture with other retailer associations. Alternatively it could 'outsource' the administration of the lease register to a commercial organisation with experience in collecting lease information.

This would be a sensible means of ensuring greater availability of lease information for tenants. This avoids the massive additional regulatory burden of requiring the registration of leases in Victoria given there is no legal reason for registration in that State. This would also not impose costs on the taxpayer, nor on lessors, which is appropriate since they derive no benefit from this measure. The scheme would also be voluntary and would mean that those retail tenants (apparently few in number, according to the ARA) who regard their lease details as being commercial-in-confidence would not be obliged to participate. The Victorian Government could, if lease confidentiality clauses were problematic, assist the ARA by amending the *Retail Leases Act* to void any provision in a lease precluding a tenant from *voluntarily* disclosing the rent under the lease. Other than this there is no reason for the Victorian Government, or any other government, to be involved in such lease registers.