



**newsXpress Pty Ltd** ABN 99 098 073 833  
National Support Centre: Suite 10, 22 Home Street Elsternwick VIC 3185  
PH: 03 9524 8080 FAX: 03 9524 8000  
[www.newsXpress.com.au](http://www.newsXpress.com.au)

## **Further Submission to the Productivity Commission Inquiry into The Market for Retail Tenancy Leases in Australia on behalf of newsXpress newsagents**

newsXpress is a marketing and advocacy group currently representing, now, 150 newsagents in Victoria, New South Wales, the Australian Capital Territory, Queensland, South Australia, Western Australia and the Northern Territory.

Sixty percent our members are located in shopping centres and the remainder in high street locations.

We provide the following as comment on the Commission's draft recommendations:

### **1. Draft assessment**

#### **a. Market power**

The current shopping centre tenancy marketplace is grossly unfair for independent retailers. We are disappointed that the draft recommendations do not appear to address this situation.

The resources and power of the landlord see many issues go unreported and many of those that are reported fail because of inequality in resources.

We will provide details of one such a case study to the public hearing in Melbourne.

#### **b. Unconscionable conduct.**

We support the Commission's view that a national approach is needed in the areas of transparency and accessibility.

We note, however, that unconscionable conduct is unlikely to cease because of a change in language. We would prefer to see simple rapid response tribunal established nationally which can quickly deal, as a first step, with complaints of unconscionable conduct. This tribunal or some similar body could refer the matter to a more appropriate forum.

Our hope, in proposing a rapid response tribunal approach, is that matters could be resolved before the businesses of both sides is impacted too negatively.

**c. Lease registration**

We support the introduction of lease registration but would note that this cannot be something which a landlord can reject.

Independent retailers must have the opportunity of comparing leases, thereby achieving greater equity in the negotiation of said leases.

It is in the area of marketing and other levies where we would anticipate considerable differences be disclosed between tenancies.

**d. Voluntary code of conduct.**

The consideration of a voluntary code of conduct offers no certainty to independent retailers.

In states where participation in landlord dispute resolution is voluntary at present there is evidence that it fails for the independent retailer.

We will provide details of one such case study to the public hearing in Melbourne where one newsagency, one year after experiencing considerable disruption to the business and damage to floor stock remains locked in a battle to achieve a fair outcome.

**e. Lease term.**

The draft recommendation calling on State and Territory governments is not, with respect, a fair outcome for small businesses.

With a small business newsagency costing between three and four times net annual earnings to purchase, it is only once the business is in year four or five that the owner is achieving a return. Depending on where the business is in the lease cycle, the owner could be without a business. This offers no certainty to the new owner nor to the owner seeking to sell the business.

Newsagencies present a unique set of circumstances since the supply of more than half of what they sell is tightly regulated from supply quantities, trading terms and cover price. Newsagents have little or no capacity to act in a true entrepreneurial manner in the categories of newspapers, magazines, greeting cards and financial services as a result of this historic regulation.

We would prefer to see some rules established regarding security of tenure for a small business owner of good standing. They ought not lose their business

because another operator, usually of the same type of business, bids a higher and often above market value price for the tenancy.

Ideally we would like to see a base term and a guaranteed two renewals included in independent retail leases.

## 2. Further comments for consideration

- a. **Inability to viably relocate.** Newsagents do not have the flexibility to relocate as enjoyed by other retailers. Newspaper publishers, magazine publishers, magazine distributors and Lottery providers control where newsagencies, the most common retailers of their products, can locate. This control often results in newsagents not being able to move out of a shopping centre. Landlords know this and therefore know that a newsagent in a shopping centre has little choice but to accept the terms offered.
- b. **Occupancy costs.** We would like to see greater transparency on occupancy costs. While tenants pay the fees, few, if any, have a say in how the money is spent. Too often the money is spent on services which serve larger businesses and not independent retail – shopping trolley collection for example.
- c. **Marketing levies.** We would like to see greater transparency of the marketing levy collected and its application. Too often marketing monies are spent promoting events of little value to independent retailers.
  - i. Further, we would like to see small business members of proactive marketing groups treated as are major tenants in terms of the percentage of rent paid for a marketing levy.
- d. **Planning notices.** Landlords ought to be required to put proposed changes to a centre through stringent approval processes where the full impact of changes are advised to tenants in advance. Too often, changes are made which result in a negative impact on tenants without an opportunity for tenants to challenge the proposed changes.
- e. **National tenant behaviour.** Independent retailers in many centres rely on a Government owned Australia Post outlet to draw traffic yet suffer when Australia Post closes – Saturday afternoon, Sunday and in the evening. Independent small retailers are not afforded the opportunity of closing when they choose. Australia Post abuses its power by closing and hurts the performance of tenants around them.

- f. **Capital investment.** Where a landlord requires that a new shop fit be undertaken, a new full term lease, without any increase in fees, ought to be provided to commence from the completion of the shop fit.

In summary, urge the Inquiry to focus on the following outcomes:

- A. Guarantee of tenure on fair and equitable terms for newsagents.
- B. Leases with a guaranteed extension – to permit sale of the business on a going concern basis.
- C. Fairness and equity in rent for newsagents on a per square metre basis comparable with national brand retailers.
- D. Fairer rental increases which compare favourably to those negotiated with national brand retailers.
- E. Fairer marketing levy and other costs which reflect the external marketing activity of a newsagency designed to bring additional traffic to the newsagency and therefore the shopping centre.
- F. Reduced per square metre rental costs for non retail space as required by the nature of the newsagency business model.
- G. Elimination or significant discount of any marketing levy or contribution if the newsagent is a member of an active marketing group.
- H. Agreement on first right of refusal for an outpost / short term mall space rental in products which may compete with a newsagency.

Submitted on behalf of newsXpress Pty Ltd and all newsXpress newsagents by:

Mark Fletcher  
Director  
newsXpress Pty Ltd  
Telephone: 0418 321 338  
Email: [mark@towersystems.com.au](mailto:mark@towersystems.com.au)  
Website: [www.newsxpress.com.au](http://www.newsxpress.com.au)