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Our ref 3522560

24 June 2014

adjudication@accc.gov.au

General Manager
Adjudications Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sirs

Application for authorisation on behalf of Jewellers Association of Australia

We act for the Jewellers Association of Australia (**JAA**).

The JAA seeks authorisation of conduct relating to a proposed retail tenancy database, which will involve the collection and aggregation of commercial tenancy lease information by jewellery retailers who are members of the JAA.

Please find **enclosed** the following:

(a) completed Form B: Agreements affecting competition or incorporating related cartel provisions: application for authorisation;

(b) submission in support of the application; and

(c) a copy of a letter from the Commission dated 24 June 2014, confirming that a fee waiver has been granted in respect of this application.

If you have any questions or require anything further, please contact the writer.

Yours faithfully
THOMSON GEER

Josh Simons
Partner
T +61 8 8236 1122
M 0414 370 774
E jsimons@tglaw.com.au

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:
Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:
(Refer to direction 2)

A91432 Jewellers Association of Australia ACN 000 024 162 (**JAA**).

(b) Short description of business carried on by applicant:
(Refer to direction 3)

The JAA is the peak professional organisation representing the interests of jewellery industry participants and consumers. It is a not-for-profit organisation. JAA members include organisations from across the jewellery industry including manufacturing, wholesaling, distribution and retail. The JAA has over 1,000 members, including 646 retail members.

(c) Address in Australia for service of documents on the applicant:

Josh Simons
Thomson Geer
Level 5, 19 Gouger Street
ADELAIDE SA 5000

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

The JAA seeks to establish a retail tenancy database for use by its members. The database will include de-identified information about the terms and conditions associated with retail tenancies. The database will be populated (at least in part) by information reported by members as to the details of their own retail tenancies, including the price paid and the total area leased.

The establishment of the retail tenancy database will therefore involve the making or giving effect to contracts, arrangements or understandings between the JAA and members of the JAA who lease commercial premises as to the nature of the commercial premises and the amounts paid by the JAA members under the terms of the relevant leases.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Please see attached submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial leases for retail tenancies.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Five years.

Please see attached submission for further information supporting this period of authorisation.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

This application is made by the JAA on its own behalf, and on behalf of each JAA member who operates a retail premises and agrees to contribute retail tenancy lease information to the proposed JAA retail tenancy database.

Contact information for JAA members can be provided on request.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Refer to section 3(a) above.

4. Public benefit claims

(a) Arguments in support of authorisation:
(Refer to direction 6)

Please see attached submission.

(b) Facts and evidence relied upon in support of these claims:

Please see attached submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

The relevant market is the market for retail tenancy leases in Australia.

Please see attached submission for further information.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please see attached submission.

(b) Facts and evidence relevant to these detriments:

Please see attached submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

Yes.

(b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Each member of the JAA who is a retail member may agree to participate in the proposed retail tenancy database. Accordingly, each such agreement with a JAA member will be a contract, arrangement or understanding in similar terms for which authorisation is sought.

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not known.

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Jewellery retailer who is a member of the JAA.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Josh Simons
Thomson Geer
19 Gouger Street
ADELAIDE SA 5000

Email: jsimons@tglaw.com.au
Telephone: +61 8 8236 1122

Dated: 24 June 2014

Signed on behalf of the applicant

(Signature)..

(Full Name) Josh Simons

(Organisation) Thomson Geer

(Position in organisation) Partner

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

   In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

   Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.

4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

   In providing these details:

   (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and

   (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.

8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Australian Competition & Consumer Commission

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Canberra ACT 2601

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Our Ref:
Contact Officer: Tess Macrae
Contact Phone: 03 9290 1835

24 June 2014

Mr Josh Simons
Partner
Thomson Geer

By email: jsimons@tglaw.com.au

Dear Mr Simons

Fee waiver request

I refer to your email of 20 June 2014 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed application for authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by the Jewellers Association of Australia (the JAA) be waived.

In support of your request, among other things, you submitted that:

- the JAA is a not for profit organisation with limited resources
- the JAA is experiencing challenging conditions and is currently operating at a loss.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that no application fee will apply with respect to the application for authorisation to be lodged by the JAA.

This decision will remain in force for a period of three months. The three month period will expire on 24 September 2014.

A copy of this letter should accompany the application for authorisation to be lodged by the JAA. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by the JAA after 24 September 2014, a full application fee of $7500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Tess Macrae on 03 9290 1835.

Yours sincerely

Dr Richard Chadwick
General Manager
Adjudication Branch

JEWELLERS ASSOCIATION OF AUSTRALIA

SUBMISSION IN SUPPORT OF APPLICATION FOR AUTHORISATION UNDER SECTIONS 88(1A)/88(1) OF *COMPETITION AND CONSUMER ACT 2010 (CTH)*

1 Jewellers Association of Australia

The Jewellers Association of Australia (**JAA**) is the peak industry association representing the interests of the jewellery industry and its consumers.

The JAA is a national not-for-profit organisation. The business of the JAA is managed at a national level by JAA's National Industry Advisory Council, and at a regional level by the State Committees. There are five State Committees covering the following regions:

(a) New South Wales and the Australian Capital Territory;

(b) Victoria and Tasmania;

(c) Queensland;

(d) South Australia and Northern Territory; and

(e) Western Australia.

The National Industry Advisory Council consists of up to 20 Councillors (currently 17 appointed), including the chair of each JAA State Committee and additional Councillors representing suppliers, retailers and other associations and groups.

The applicant estimates that the JAA's membership includes more than 75% of the jewellery industry. Membership is voluntary and members include organisations from the manufacturing, wholesaling, distribution and retail sectors of the jewellery industry. The criteria for General Membership is that the applicant derives the majority of its income or turnover from the jewellery industry, and that the person is domiciled in Australia. The Associate Membership category requires that the person or company derives at least some of its income or turnover from the jewellery industry, and includes buying groups, education providers, students and employees of jewellery businesses.

Relevantly to this submission, the JAA membership includes 646 jewellery retailers who collectively have more than 1,100 retail jewellery outlets nationally (**Retail Members**).

2 Functions of the JAA

The JAA functions include:

(a) maintaining a national body representing the jewellery industry in Australia, with chapters in each Australian State and Territory;

(b) promoting the highest business standards and ethics within the Australian jewellery industry;

(c) providing general guidance to the jewellery buying public, including information regarding jewellery buying, selling and insurance;

(d) implementing the JAA Jewellery Industry Code of Conduct, to which all JAA members are signatories, and which prescribes minimum standards of operation for the jewellery industry to ensure maximum protection of the jewellery buying public;

(e) conducting seminars and training for JAA members;

(f) conducting jewellery industry events and awards;

(g) providing jewellery industry career and training information and details of current vacancies; and

(h) managing a nationwide system of dealing with consumer complaints and enquiries, including promoting and maintaining the JAA Information Hotline which allows consumers to use a free call number to obtain information and assistance from the JAA.

3 Retail Tenancies Database

This application for authorisation relates to the proposed establishment by the JAA of a database to contain information regarding retail tenancy leases (**Retail Tenancies Database**).

A "retail tenancy lease" is a lease granting the lessee a right to occupy retail premises subject to the terms of the lease. Retail premises ordinarily occupied by jewellery retailers are located in shopping centres and retail shopping strips (as opposed to other types of retail premises such as factory outlet centres and homemaker centres).

There are already a number of publicly available databases that contain information regarding retail tenancy leases, including the market leaders RP Data (rpdata.com.au) and Leasing Information Services (leaseinfo.com.au), which is understood to hold information on approximately 60,000 leases, including all shopping centres in New South Wales, Queensland and the ACT, and some in other states. As discussed further in section 5.1 of this submission, the JAA understands that these providers source their information regarding the leases primarily from the Lands Title Office in each State.

The proposed Retail Tenancies Database will contain information regarding retail tenancy leases granted to jewellery retailers. It is proposed that the JAA will obtain this information directly from its Retail Members. The provided information will then be de-identified and added to Retail Tenancies Database for access by Retail Members through a secure website.

The proposed Retail Tenancies Database will contain categories of information including:

(a) location of the premises;

(b) size of the premises; and

(c) amounts payable under the lease.

The information that is made available for access through the Retail Tenancies Database will not include the full address of the applicable premises or the name of the tenant .

Authorisation is sought because, unlike existing retail tenancy databases which contain information sought independently from publically available information, the Retail Tenancies Database will be provided in a coordinated way (albeit separately) by Retail Members. Specifically, the application relates to the making of or giving effect to contracts, arrangements or understandings between two or more retail jewellers regarding the terms upon which they lease their retail premises, including the price payable.

The application for authorisation extends to each contract, arrangement or understanding that may be entered into with any new JAA member which is in similar terms to the proposed conduct.

4 Market definition

The applicant submits that the relevant market is the market for retail tenancy leases in Australia.

For further information regarding the characteristics of the retail tenancy leases market, the applicant refers the Commission to the Productivity Commission report of 31 March 2008.[1]

While the Retail Tenancies Database will be confined to information regarding premises occupied by retail jewellers, the premises are not so specialised as to warrant a narrower market definition specific to jewellery retailer tenancy leases.

5 Public Benefits

The authorisation, if granted, will allow Retail Members to access information, including pricing information, about the retail tenancy arrangements of retail jewellery outlets via the Retail Tenancy Database. Jewellery retailers will be better informed about the market value of commercial retail tenancies in the jewellery sector, and thus able to negotiate more effectively with landlords. At present, landlords are able to make representations about the value of a tenancy which jewellery

[1] Productivity Commission Inquiry Report, *The Market for Retail Tenancy Leases in Australia* (2008), pages XVIII-XIX.

retailers have very limited ability to test or validate. This puts them at a considerable disadvantage in lease negotiations.

The difficulties faced by jewellery retailers was highlighted in a recent article that appeared in Jewellers Magazine, Australia's leading jewellery industry magazine. A copy of the article is **enclosed** with this submission for the information of the Commission[2].

The applicant submits that the sharing of retail tenancy information (**RTI**) between Retail Members using the Retail Tenancy Database will give rise to the following categories of public benefits:

(a) availability to members of market data for retail tenancy leases throughout Australia;

(b) access to retail tenancy lease market data by and retention of smaller jewellery retailers;

(c) access to retail tenancy market data by landlords and jewellery retailers;

(d) competitive jewellery prices for consumers; and

(e) efficiency in resolving disputes regarding rental amounts.

Each is discussed in turn below.

5.1 ***Availability of retail tenancy market data throughout Australia***

Presently, information of the kind to be included in the Retail Tenancy Database is available through third party providers but only for retail tenancies in New South Wales, Queensland and the Australian Capital Territory (**Existing Lease Information Services**).

In these jurisdictions retail tenancy lease information is made publicly available by the registration of leases with the relevant government department (as compared to other jurisdictions where registration is either not required or is less prevalent).

This publicly available information is on a lease by lease basis (rather than aggregated), meaning that the review of relevant data for comparison by retailers is difficult and time consuming.

This publicly available information is obtained, analysed, grouped and made available by the Existing Lease Information Services. The Existing Lease Information Services charge a fee for access to their data.

The Existing Lease Information Services include services known as the 'Lease Expiry Diary' (provided by RP Data Pty Ltd) and 'Leasing Information Services' (provided by Leasing Information Services Pty Ltd). The Lease Expiry Diary is a database of information about retail tenancy arrangements in defined central business district regions in New South Wales and Queensland. The information includes details of the size of the retail premises and (for some regions) the amounts payable under the lease.

As a result, a large proportion of JAA members are unable to access market data for retail tenancy leases simply due to their geographical location (except access to more limited sources as discussed below).

Unlike the Existing Lease Information Services, the proposed Retail Tenancy Database will provide RTI for locations throughout Australia (as provided by Retail Members). The Retail Tenancy Database will therefore address this asymmetry in the current availability of RTI amongst Retail Members.

Tenants and industry participants, including providers of Existing Lease Information Services, advocate that access to such data provides valuable assistance in selecting and negotiating suitable retail tenancy leases[3].

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[2] A copy of the article is also available online at: http://www.jewellermagazine.com/Article.aspx?id=4012&h=The-rent-trap%3A-jewellers-versus-landlords&vc=419

[3] Productivity Commission Inquiry Report, *The Market for Retail Tenancy Leases in Australia* (2008), pages 157-159; Simon Fonteyn, Managing Director of Leasing Information Services, *Presentation to Productivity Commission – The Market for Retail Tenancy Leases in Australia* (2008), pages 5-6.

By providing Retail Members with access to RTI about retail tenancies in their geographical region and comparable regions elsewhere in Australia (insofar as members operate in those regions), the applicant submits that Retail Members will be better informed about the market rates and conditions for retail tenancy leases in the jewellery sector. In time, this is expected to lead to more competitive retail tenancy lease terms for Retail Members (through better informed negotiations with landlords) and, in turn, these savings are expected to be passed onto consumers through reduced jewellery prices resulting in a more competitive market for the retail sale of jewellery.

5.2 ***Availability of complete rental data***

The Existing Lease Information Services include RTI found on the face of registered leases. Any 'side deals', such as incentive payments made by the landlord to the tenant, are usually agreed in separate deeds. These are not required to be registered in New South Wales and Queensland.

Such incentive payments typically reduce the net amount paid to the landlord by the tenant during the lease. Since these payments are not included on the registered lease, they enable landlords to maintain an artificially high level of rent to the public (for example, on government registers in Queensland and New South Wales and the Existing Lease Information Services). This can deceive prospective tenants (and their brokers) who have researched comparable rental information (which is incomplete).

This only exacerbates the imbalance of power between the landlord and the tenant (and their broker), for the benefit of the landlord.

Without this information, the tenant is left to negotiate a retail tenancy lease relying on face rents (and then only in those jurisdictions with such government databases or Existing Lease Information Services). Similarly, brokers also only have such information, except in so far as they have created internal databases based on additional information gathered from tenants and landlords in the course of their business. In comparison, the landlord has knowledge of every 'side deal' negotiated and the actual effective rental in the relevant shopping centre and (if applicable) their other shopping centres.

The Retail Tenancy Database will enable the tenant to include all RTI regarding their retail tenancy lease arrangement. The Retail Tenancy Database will therefore accurately report the amounts payable, to the benefit of the Retail Members who will be better informed about the true market rates and conditions. In time, this is expected to lead to more competitive retail tenancy lease terms for Retail Members (through better informed negotiations with landlords) and in turn, these savings are expected to be passed onto consumers through reduced jewellery prices resulting in a more competitive market for the retail sale of jewellery.

5.3 **Access to retail tenancy market data by, and retention of, smaller jewellery retailers**

Large jewellery retailers with multiple stores often create private databases of RTI based on their own dealings (and other RTI available to them). This data is then used by the group when negotiating future retail tenancy lease arrangements.

In comparison, single outlet and other small jewellery retailers do not have the benefit of access to such RTI. This is exacerbated in jurisdictions where RTI is not available from Existing Lease Information Services.

In addition to such private databases, large jewellery retailers often have other leverage in lease negotiations due to ordinary market forces (for example, the number of retail tenancy leases such groups enter into and their proven financials and brand recognition with consumers).

These conditions create an asymmetry in the ability of large and small jewellery retailers to obtain competitive retail tenancy leases.

Since occupancy costs are one of the most significant operating costs for jewellery retailers, managing this cost is crucial to business viability and success. The applicant submits that it is aware of numerous small jewellery retailers who occupancy costs account for more than twenty percent of the value of their retail sales in any given period (a proportion which is generally considered unsustainable).

Providing access to the Retail Tenancy Database to all Retail Members, irrespective of their size, will address the asymmetry between large and small Retail Members in accessing RTI market data. The applicant submits that this will lead to more competitive retail tenancy lease terms and improved business viability for smaller jewellery retailers, thereby maintaining (or increasing) competition in the market for the retail sale of jewellery.

5.4 ***Increased competition in retail tenancy terms***

The applicant submits that retail jewellers are generally located in large shopping precincts, including shopping centres and large retail strips.

The landlords in these precincts usually own all or a majority of the retail premises available for lease. This creates an imbalance in negotiating power between the parties for a number of reasons. First, since the landlord has access to RTI market data about the majority (if not all) of the surrounding retail premises, which is not ordinarily provided to the retailer (and is generally only accessible to the retailer through Existing Lease Information Services, if any).[4] Secondly, for other market reasons not affected by the conduct the subject of this authorisation (for example, the landlord being an experienced negotiator and having the benefit of turnover information provided by the retailer).

Retailers may use retail tenancy brokers to assist in the negotiation of retail tenancy lease terms. Although this assistance can be limited in relation to market rent levels where the broker has limited access to information (for example, where there are no Existing Lease Information Services and the broker relies on their own private database). This is said to be reflected in the reduced numbers of retail tenancy brokers operating in jurisdictions not serviced by Existing Lease Information Services.[5]

The applicant submits that while the Retail Tenancy Database is unlikely to remove the need for such a broker (since the broker generally negotiates the terms of the lease, and provides strategy advice), it will give Retail Members access to RTI market data to complement the professional services offered by brokers.

5.5 ***Improved efficiency in resolving disputes***

The Productivity Commission's 2008 Inquiry Report into the market for retail tenancy leases in Australia notes the most common causes of retail tenancy disputes relate to '*occupancy cost, performance of a tenant or landlord under a tenancy contract and the trading amenity provided by the landlord to the trader'.*

The applicant submits that the incidence and duration of such disputes could be reduced where the retailer has access to RTI market data to objectively assess their position.

5.6 ***Competitive jewellery prices for consumer***

The applicant submits that the efficiencies created in the market for retail tenancy leases for retail jewellers outlined in paragraphs 5.1 to 5.5 above, will lead to increased competition in the market for the retail sale of jewellery from retail premises for the following reasons:

(a) improved ability for Retail Members to negotiate competitive retail tenancy lease terms;

(b) improved business viability for Retail Members with small numbers of retail outlets, thereby maintaining or increasing the prevalence of these operators in the market;

(c) the benefit of more competitive retail tenancy lease terms, including any savings in occupancy costs, being passed onto consumers through more competitive pricing of jewellery.

[4] Productivity Commission Inquiry Report, *The Market for Retail Tenancy Leases in Australia* (2008), page 163;
[5] Simon Fonteyn, Managing Director of Leasing Information Services, *Presentation to Productivity Commission – The Market for Retail Tenancy Leases in Australia* (2008), pages 1-2.

6 Public detriments

The applicant submits that the conduct the subject of the authorisation will give rise to no significant public detriment.

As noted, information regarding retail tenancy leases is already available through other providers of leasing information, or directly from the Lands Title Offices in most States. As such, the applicant does not believe that the conduct the subject of this application will give rise to reduced competition in the market for retail tenancy leases in Australia.

While the Retail Tenancy Database is proposed to only be available to Retail Members, each member will have different factors affecting the level of rent they are able to pay, and are in fact prepared to pay, under a particular retail tenancy lease. For example, the costs for members in running these businesses, such as premises fit-out, employment related costs and expenses, stock costs, gross profit and advertising expenditure, can be vastly different. These will be based on the outlook at the time of taking the lease and the projected outlook.

As such, the Retail Tenancy Database will not place tenants in a position where they can act as a collective and negotiate as a group as each member of the group will have different objectives, both financially and from a business perspective that will impact their decisions regarding the retail tenancy leasing arrangements. Indeed, negotiating with landlords will still be a considerable obstacle for Retail Members, notwithstanding that they will be better informed in entering into such negotiations.

The applicant submits that the availability of data from the Retail Tenancy Database will provide Retail Members with no ability to coordinate their conduct in relation to particular tenancies. To the extent that more than one jewellery retailer is ever competing for the same tenancy, they will have the same aggregated information about the value of similar tenancy spaces contained in the Retail Tenancy Database, but the information will not be so specific as to provide them with any meaningful indication as to the likely price to be offered by the other tenant in lease negotiations.

The information contained in the Retail Tenancy Database will undoubtedly be useful in the negotiating process to determine a reasonable effective rent, but it will by no means be determinative of the actual rent agreed between the landlord and tenant. It will simply ensure that Retail Members seeking to negotiate the terms of retail tenancy leases are better informed about the range of lease rentals and applicable conditions that are typical to the industry.

7 Time period

The JAA submits that authorisation for a period of five years is appropriate, as this will allow the authorisation to be reviewed in light of any changed circumstances.

At the time of making the Database available, most Retail Members will already be party to a retail tenancy lease. Retail tenancy leases commonly have a five year term[6]. To obtain the benefit of the Database, Retail Members will need to be at a point of negotiating a new or existing lease. Further, the JAA expects that development of the Database (including collection of the information) is likely to take 12 months or more once authorisation is obtained.

For these reasons the JAA submits that a period of five years is appropriate.

8 Conclusion

The JAA submits that the authorisation of the JAA Retail Members sharing information about their retail tenancy lease terms including pricing information is in the public benefit.

Any public detriment which may arise will be minimal, and inconsequential.

[6] Productivity Commission Inquiry Report, *The Market for Retail Tenancy Leases in Australia* (2008), page 105.

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NEWS

THE RENT TRAP: JEWELLERS VERSUS LANDLORDS

By Nick Lord

News that Bevilles Jewellers has entered voluntary administration clearly indicates that the industry continues to feel the strain of a changing retail environment, unrealistic leasing costs and inflexible landlords.

Bevilles announced its decision last week, with CEO Michelle Beville telling *Jeweller* that the 80-year-old retailer was constrained by "a changing retail environment in which the current business model wasn't viable due to higher operating costs and customers seeking specialist boutique experiences."

High rents on larger stores have also been cited as reasons for the retailer being placed into voluntary administration but Bevilles is not the only jewellery chain that has an issue with shopping centre rents.

Toby Bensimon, managing director of South-Australian-based Shiels Group, which owns and operates 50 stores across both the Shiels and Grahams brands, has been rallying for support both privately and publically against what he calls the "crippling" issue of shopping centre rent.

"Jewellery retailers are struggling under the same pressures as the wider retail sector but we also have the additional and significant cost burden of higher rents, where we pay 20 to 50 per cent more than other retailers," he says. "It's an unsustainable model that has to change."


Michelle Beville, CEO of Bevilles

The cost of tenancy in shopping centres is a hot issue for all retail sectors.

Whispers of lease dissatisfaction rose to a roar in March 2011 when leading retail group Premier Investments pushed back against landlords, threatening to close multiple outlets across its almost-800-store portfolio if rising rents weren't addressed.

The group, which controls Smiggle, Dotti, Portmans, Just Jeans, Jacqui E and Jay Jays, managed to negotiate rent decreases of up to 30 per cent at some stores; however, Premier Investments CEO Mark McInnes hit the headlines just six months later, savaging landlords after the company reported a 50 per cent drop in its full-year net profit.

"There is a disconnect between the CPI-plus rent increases and centre performance at the moment and all retailers are having this argument with landlords," McInnes told *Sydney Morning Herald* in September 2011. "We don't come to work every day just to make money for the landlord; we are trying to find a balance in the relationship with landlords where our shareholders make money and they get a return on their equity."

McInnes implied that the inflexibility of landlords had increased to the level that the only way retailers could approach any negotiation was from a "now or never" standpoint.

Store closures
Illustrating the point, Premier Investments closed 14 stores in the six months to end 2012 and McInnes warned that the retail group wouldn't hesitate to close more: "Further store closures will occur if the rents expected by the landlords are not in line with the performance of the centre and the market generally," he told *Property Observer*.

With the gate ajar, other major retailers followed. Myer reported improved profits in 2013 on the back of successfully renegotiating new leases for a number of stores, while rival department store group David Jones flagged plans for the group to explore "less robust demographic locations" for six DJ stores set to expire in the next five years.

Underpinning the push for rent relief has been an overall softening of the retail environment. Retail sales rose by just 1.1 per cent in the year to June 2013, failing to achieve pre-Global Financial Crisis glory days when high household debt propelled high discretionary spending.

In fact, Australian Bureau of Statistics figures show that the average growth in non-food retail sales over the past three years has dwindled at approximately 1.3 per cent annually, contrasting sharply with an annual average of 4.7 per cent across the previous 25 years, while other data shows a notable shift away from discretionary spending to non-discretionary.


DAVID GORDON, LOWE LIPPMANN CHARTERED ACCOUNTANTS AND BUSINESS ADVISORS — TOBY BENSIMON, SHIELS GROUP

Yet, despite lacklustre retail sector performance, there's been no end in sight to the seemingly ubiquitous demand from landlords for 5 per cent year-on-year rent increases (or 2 per cent plus CPI rent rise). No end, that is, until recently.

Sustained centre underperformance coupled with a strong push from major "anchor" tenants has finally caused some centre landlords to buckle under the pressure. First to concede was Stockland, followed closely by The GTP Group, the two companies announcing plans to lower rent on new leases by six and 10 per cent respectively.

Next came the big one: Westfield Group, which announced plans in August 2013 to drop retail rent for new tenants by as much as 10 per cent. The move was surprising but analysts such as David Gordon, partner at Lowe Lippmann Chartered Accountants and Business Advisors, agreed that Westfield had "no choice" but to provide some relief. "It is extremely well known that Australian shopping centre rentals are massively higher than everywhere else internationally," Gordon told *The Age* at the time.

Backing Gordon's claim, Sydney, Melbourne and Brisbane have all been named as three of the world's 10 most expensive prime global retail markets in a survey from global real estate services firm CBRE. The 2013 survey placed the three cities at five, seven and nine respectively, prompting Josh Loudoun, CBRE regional director of retail services, to remark that Australia's high, super prime rents "are now the major barrier for new market entrants".

Craig Woolford, senior analyst retail sector at Citi Investment Research, says the upward pressure on shopping centre rent is easing slightly, but suggests that the figures are driven by the underperformance of lower-grade centres rather than any change at premium centres, such as Bondi or Chadstone.

"Certainly the case that rent has been rising faster than retail sales for quite a few years now is starting to unravel," he says before explaining, "It's tied up in weaker sectors – it might be a centre in a catchment area that's too competitive or one that lacks attracting tenants so they're having to drop their rents – and it's mainly in higher rent-paying categories like jewellery and clothing where you're hearing about rent reductions."

It's a slow burning issue
Woolford denies that rents have peaked; however, and says retailers should treat any relief as cyclical change and not as evidence of the rental landscape altering indefinitely.

"Is there evidence to say we're hitting a rent ceiling? That's a big call," he says. "We think that there is potential for flat rent for the next three years or so while retail growth pauses, but retailers won't see a 'big bang' of falling rents – businesses will be able to negotiate a reduction only when they come up for renewal; it's a slow-burn issue."

South Australian Lease Management is a firm that negotiates leases for a wide variety of retail clients including Shiels. Director Brian Scarborough agrees there are more concessions available now but suggests that these concessions are tied to new leases rather than existing ones.

"A sitting tenant with a renewal proposition will always be worse off than a new tenant coming in," he says. "With much of the expansion work we've done for Shiels, the rent we propose will be well under what's being paid by a sitting jeweller and, more often than not, we'll have our proposition accepted."

It happens, Scarborough says, because existing tenants have far less wiggle room than new ones. "They [landlords] do that because they know the sitting [existing] tenant has a retail business in place, staff to look after, and an established business they wouldn't want to leave, so they inevitably screw the sitting tenant and there's not a lot the tenant can do unless they're big enough to walk away."

Background reading: Shocked jeweller not moving as rents soar

Walking away isn't an option for most small jewellers, according to Stephen Matthews, owner and director of five-store New South Wales chain Matthews Jewellers, and the landlords know it.

"The centres know that we can't walk away," he says. "Every time a lease rolls around, they come to us with ridiculous mandates on rent increases and it becomes a long and arduous task to try to negotiate it down. Our last situation was at Westfield Kotara where we initially faced a 46 per cent increase in a shopping centre with reduced traffic figures since the Charlestown Square shopping centre was developed. We still ended up having to accept a 32 per cent increase on top of the 5 per cent year-on-year that we already pay."

Part of the problem is the long-held belief that jewellers operate high-margin businesses, according to Rick Jobson, owner and managing director of eight-store Queensland chain Anthonys Fine Jewellery.

"Shopping centres used to believe, erroneously, that jewellers had very high margins but margins are much smaller now and it's impossible to pay 20c in the dollar to the landlord and have anything left over," Jobson says.

Matthews believes the charm and bead jewellery boom of the past five years fuelled the high-margin perception and says landlords are yet to accept that the trend has dwindled considerably in recent times.

"We've got sites that enjoyed that Pandora phenomenon and centres are still reflecting back on those turnovers regardless of the fact that sales have dropped by 30 to 40 per cent since that bubble burst," he says.

Exacerbating woes are many other factors that Bensimon says landlords leverage in order to extract maximum rent from their jeweller tenants. These include demands for costly fit-outs, clauses that force retailers to use the centre's own contractors, high premiums for preferential locations such as corner spots, and high insurance and security costs. Bensimon also believes shifting gold prices are partly responsible for recent pain.

"Jewellers encounter pressures that differ from other industries and this is what sets us apart as an industry," he explains. "Gold and precious metal prices have increased dramatically, putting our prices up and making us an unattractive proposition for customers so we've had to look at innovative ways of making our product more palatable. Also, diamond prices have increased by 30 per cent in the past five years. Jewellery is becoming extremely expensive, and it takes a while for the retail landscape to adjust to that."

Jewellery differs from other retail categories
Jobson agrees that jewellers have it tougher: "Those sorts of costs have put jewellers in a situation where they are paying rents that way outstrip the trade that's available in the stores. You can have a store that is turning over $1 million and you could be paying $250,000 in rent. Everyone knows 25 cents in the dollar is just not affordable for a jeweller. Rent should be where most other retailers are and that's down around eight to 12 cents in the dollar."

Surely the landlords are aware of these circumstances though. "Oh, they're aware, and they use that to our disadvantage, because they know it's going to be difficult to walk away from a store once you've spent $400k on a shop fit," Bensimon says.

So what options are available for jewellers looking to improve a restrictive lease?

Scarborough believes the most important action a jeweller can take with a landlord is to speak out.

BRIAN SCARBOROUGH, SOUTH AUSTRALIAN LEASE MANAGEMENT — STEPHEN MATTHEWS, MATTHEWS JEWELLERS

"It's never a wrong time to talk to the landlord about your rent being too high. It's almost a conditioning process – if you say nothing, the expectation is that everything is fine," Bensimon says.

Matthews declares; however, that any attempt to negotiate favourable terms with his landlords has failed: "We put a submission to National First State, who operates the Salamander Bay shopping centre, to show the pain we're experiencing and that we are at 21.5 per cent occupancy costs. They just ignored it. There was no negotiation except a note to say the request for rent relief had been denied."

Background reading: Jewellers squeeze shopping centres over rents

Australian Retailers Association executive director Russell Zimmerman says retailers need to be aware that obtaining lower gross rent is not the only way to benefit from a negotiation.

"Rent free periods and shop-fitting allowances are far more common in leases now," he says. "It's not uncommon to see a landlord contribute $50,000 towards a new shop-fit and then offer up to six months' free rent."

Jobson sees fit-out concessions as double-edged swords, stating, "Centres contribute funds towards a new fit-out to keep the value of the building up – they'd rather we were paying a 5 per cent increase on base rent of $100,000 than a 5 per cent increase on base rent of $50,000," he says. "Secondly, centres will now opt to give retailers money to cover category one costs, such as new air conditioning and sprinklers, and then claw it back by forcing you to use their own contractors."

Scarborough is also quick to point out that such concessions are again used to attract new tenants rather than help existing ones.
"The contributions for fit-outs are only being offered with new leases; there's nothing like that being offered in renewals," he says. "The only way you'll get concessions is if you put the landlord in a position that they either have to do a deal or bankrupt their tenant, leaving them with another vacant area."

Renegotiating better terms
Even with these concessions available, what chance do small to mid-sized retailers have to secure them when even the super-sized retailers are struggling to renegotiate better terms? The answer is none, according to Jobson.

"If you've got 200 stores, you have far better bargaining power when you could potentially walk away from 40 Westfields or 40 AMP centres," he says. "For the likes of myself and guys smaller than me, we have no power at all; we simply can't change the leases."

Zimmerman suggests single-store retailers must be prepared to play hardball at the negotiating table, and should be prepared to walk if landlords refuse to improve conditions. "You don't have to be a giant retailer to negotiate better terms," he says, "but sometimes you do have to be prepared to say 'This is my final offer before vacating the premises.'"

Furthermore, Zimmerman urges retailers to employ experts to negotiate for them: "The savings we've seen by using lease negotiators are terrific. Talk to a negotiator 18 months before the lease is due. The negotiator will search out the right information, call existing tenants to find out what they're paying, and negotiate a lease in line with the best deal in that centre."

For Bensimon, the key to any negotiation remains knowledge.

"We need to unite to put an end to this practice of charging jewellers too much," he says. "We need to increase our knowledge base so we can go into these negotiations with a fighting chance. If anybody wants to ring me about any rents I'm paying, I will happily give that information away. We don't need to look much further than our comrades in retail who do this on a regular basis – they have a much better handle on this than the jewellery industry."

The evidence is there to suggest that landlords are conceding more ground, particularly on new leases. What's left is for retailers to go forth and secure the best deal, even if it means changing locations. The time is right for retailers to reject the notion that they must be in a certain centre to succeed and instead address the reality of whether the rent on offer will still allow them to make a decent living. If not, then the whole thing may not be worth the headache.

More reading
Bevilles jewellers enters administration

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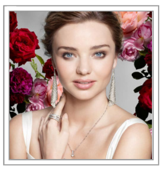
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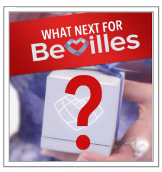

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