

15<sup>th</sup> July 2014

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Australian Competition and Consumer Commission  
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By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Dr Richard Chadwick,

**Jewellers Association of Australia application for authorisation A91432 – interested party consultation**

Thank you for the opportunity to comment on the application made by the Jewellers Association of Australia ('JAA') for the authorisation to establish a retail tenancy database by its members.

Leasing Information Services supports the application on the basis that there is a definitive need for greater transparency in retail leasing as well as a solution to the current problem of information asymmetry between landlords and retailers, particularly in shopping centres.

## **Background**

Leasing Information Services ('LIS') is the largest independent provider of retail leasing data. LIS provides extensive data coverage on NSW, QLD and ACT based shopping centres and key retail strips. Within those States legislation exists which makes it necessary to register retail leases over three years and therefore publicly available. Other States and territories throughout Australia do not have such a requirement therefore the availability of leasing information in the public domain is severely limited.

The lack of consistency within the State laws in relation to the registration of leases limits the services of data to retailers. Nevertheless, in the States where data is available LIS has been able to help thousands of retailers, investors and landlords make more informed retail leasing decisions based upon our data.

For further details about our company, please visit [www.leaseinfo.com.au](http://www.leaseinfo.com.au).

## Leasing Information Services supports this application

LIS supports the application made by the JAA based on two key reasons:

- 1) There is currently a state of information asymmetry within leasing markets between landlords and jewellery retailers; and also
- 2) Rent paid by jewellery retailers are usually the highest within shopping centres often leading to greater chances of price discrepancy adversely affecting jewellers relative to their competition.

Both of the reasons often leads to non-efficient pricing, in the form of unsustainable rents, particularly hurting smaller business and thereby reducing competition, which ultimately effects pricing and choice for consumers.

## The issue of Asymmetry of Information in Retail Leasing in Australia

Information asymmetry is an economic situation where one party possesses more or better information than the other. This creates an imbalance of power in transactions which can sometimes lead to market failure.<sup>1</sup> Market Failure is when the allocation of goods and services by a free market is not efficient. That is, there exists another conceivable outcome where a market participant may be made better-off without making someone else worse-off.<sup>2</sup>

Within retail leasing markets in Australian Shopping Centres, it is the landlord that possesses more and better information. This is due to the following:

- Landlords hold all the rental information for all the tenants within the shopping centre and
- Landlords hold all the turnover information for all the tenants within the shopping centre<sup>3</sup>
- Larger landlords such as Institutional Investors hold rental and turnover information across multiple shopping centres.

The retailer only holds their own lease in the case of smaller independent retailers or in larger chains, they may hold multiple leases.

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<sup>1</sup> Aboody, David; Lev, Baruch (2000). "Information Asymmetry, R&D, and Insider Gains". *Journal of Finance* 55 (6).

<sup>2</sup> John O. Ledyard (2008), *The New Palgrave Dictionary of Economics*, 2<sup>nd</sup> Ed.

<sup>3</sup> Some tenants are not required to provide turnover information in shopping centres, e.g. banks, pharmacies and some smaller shopping centres do not collect turnover information.

In States such as Victoria, South Australia, Western Australia and Tasmania, there is no mechanism for retailers to be able to access rental pricing information. Therefore a tenant's ability to access information to make fully informed decisions is compromised. Furthermore, tenants are often bound by confidentiality provisions within their leases and are therefore not permitted to share information. The result of such a bargaining position may lead to non-efficient pricing and market failure.

This information asymmetry mainly occurs within Shopping Centres, as retail strip shops do not require turnover information to be supplied. Also usually the Landlord is a single private owner and the bargaining power and available information is more evenly balanced.

The retailers that are most affected by this are smaller jewellery chain, who lack the information and often the resources to be able to obtain up to date rental information. This ultimately leads to market failures through a reduction in competition and which ultimately effects pricing and choice for consumers.

## Other Studies on this Issue

A number of other parties have previously examined the issue of asymmetry, including the NSW Government in the 2013 Review of the *Retail Leases Act 1994*, the South Australian Senator Nick Xenophon, as well as LIS' Submission to the Productivity Report in 2007.

The Australian Productivity Commission also examined the issue in 2008 under the Market for Retail Tenancy Leases in Australia Report. It found evidence of information differences and asymmetry existing within the lease market especially within shopping centres where the landlords hold a commercial advantage through repeated negotiation and the opportunity to establish effective tenant screening processes.

However it went on to comment that it is not in both parties' interests to take advantage of the other to the point of failure. Furthermore, those information asymmetries and differences would likely be filled through the development of market solutions with very little likelihood of such gaps being filled by additional market regulation. It pointed out that within the current lease market a return on superior information gathering and negotiating skills exists which provides a strong incentive for market solutions to develop to counteract any information differences that remain

between landlords and tenants. Therefore tenants would not lack information or be in a commercial disadvantage where they had their own information resources and/or repeated negotiations.

## **Jewellery Rents are often the highest rent paying category in the centre**

Research undertaken by Leasing Information Services ('LIS') and Urbis one of the leading retail benchmarking companies in Australia have shown that Jewellery Rents are consistently the highest category of rent payers within shopping centres. This is mainly due to the high margin items that are sold in jewellery stores. Note, LIS are prepared to provide access to the ACCC to show this, if required to do so.

This gives rise to the greatest chance of price discrepancy adversely affecting jeweller relative to their competition and to the rest of the retail leasing market.

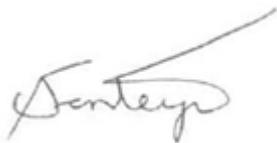
## **How the database will help Jewellers and consumers**

Leasing Information Services believes that the establishment of this database will greatly help the jewellers in States that are not transparent by facilitating the sharing of information without breaching existing lease covenants, and will assuage the asymmetry of information problem between landlords and tenants, identified above. Having more retail data through the database will give the jewellers an ability to make more informed and equitable decisions, ultimately leading to more efficient pricing which in turn would benefit all jewellery businesses and also the broader leasing market. Consumers would also greatly benefit as a result of increased competition within the jewellery market, therefore more choice and maintain downward pressure on prices.

For Further Information please contact Services on 1300 RETAIL OR email [simon@leaseinfo.com.au](mailto:simon@leaseinfo.com.au)

Yours sincerely,

**Leasing Information Services Pty Limited**



Simon Fonteyn

Managing Director

## References

- Journal of Finance December 2000.
- Market for Retail Tenancy Leases in Australia Report, 2008, Australian Productivity Commission.
- Review of the *Retail Leases Act 1994* NSW Government 2013.
- The New Palgrave Dictionary of Economics, 2<sup>nd</sup> Ed.