



# **HOUSE OF REPRESENTATIVES**

**STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY**

**Reference: Fair trading**

**CANBERRA**

**Monday, 24 February 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Members:

Mr Bruce Reid (Chair)

Mrs Bailey	Mr Jenkins
Mr Baldwin	Mrs Johnston
Mr Beddall	Mr Allan Morris
Mr Martyn Evans	Mr Nugent
Mr Richard Evans	Mr O'Connor
Mr Forrest	Mr Zammit
Ms Gambaro	

The committee will inquire into business conduct issues arising out of commercial dealings between firms, including claims by small business organisations that some firms are vulnerable to and are not adequately protected against 'harsh or oppressive' conduct in their dealings with larger firms.

1. The committee is asked to investigate and report on:

the major business conduct issues arising out of commercial dealings between firms including, but not limited to, franchising and retail tenancy;

the economic and social implications of the major business conduct issues particularly whether certain commercial practices might lead to sub-optimal economic outcomes.

2. The committee is asked to examine whether the impact of the business conduct issues it identifies is sufficient to justify Government action taking into account, but not limited to :

existing State and Commonwealth legislative protections;

existing common law protections;

overseas developments in the regulation of business conduct.

3. The committee is asked to examine options and make recommendations on strategies to address business conduct issues arising out of dealings between firms in commercial relationships, taking into account, but not limited to:

the potential application of voluntary codes of conduct, industry self-regulation and dispute

resolution mechanisms, including alternatives to legislation and court-based remedies, and mechanisms to support these measures;

legislative remedies.

4. In developing options, the committee will seek to ensure certainty in the market place, contract dealings and other commercial transactions, minimise the regulatory burden on business, and keep litigation and costs to a minimum.

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HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

*Fair trading*

CANBERRA

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Present

Mr Reid (Chair)

Mr Beddall

Mr Jenkins

Mr Martyn Evans

Mrs Johnston

Mr Richard Evans

Mr Allan Morris

Mr Forrest

Mr O'Connor

Ms Gambaro

Mr Zammit

The committee met at 9.00 a.m.

Mr Reid took the chair.

**CHAIR**—I declare open this public hearing of the House of Representatives Standing Committee on Industry, Science and Technology. Today we will be taking evidence from the Property Council of Australia, Lend Lease Property Management Australia, Westfield Shopping Centre Management and AMP Shopping Centres.

The purpose of today's hearings is to give representatives of the owners of major retail shopping complexes an opportunity to address some of the serious concerns raised in evidence to the fair trading inquiry about the way in which retail tenants are treated around Australia. Today's hearing will also be an opportunity for the Property Council to give its views on options recommended to the committee for extending further protection to retail tenants.

**BRIGGS, Mr Alan, Chairman, Australian Council of Shopping Centres, Member of National Council, Property Council of Australia, Level 26, Australia Square, 264 George Street, Sydney, New South Wales 2000**

**DEAKIN, Mr Geoffrey, Manager, Retail Policy, Property Council of Australia, Level 26, Australia Square, 264 George Street, Sydney, New South Wales 2000**

**MARTIN, Ms Louise, Member, Property Council of Australia, Level 36, Australia Square, 264 George Street, Sydney, New South Wales 2000**

**McDERMID, Mr Dale, Member, Australian Council of Shopping Centres, Member, Education Committee, Level 26, Australia Square, 264 George Street, Sydney, New South Wales 2000**

**CHAIR**—I welcome the representatives of the Property Council of Australia. Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as a contempt of parliament.

The committee prefers that all evidence be given in public but should you at any stage wish to give evidence in private, you may ask to do so and the committee will give consideration to your request.

We have also received a response to an inquiry following our hearing on 4 November 1996 from the Property Council of Australia.

Resolved (on motion by Ms Gambaro):

That the committee receive as evidence and authorise the publication of the supplementary submission of 19 February 1997 received from the Property Council of Australia for the inquiry into Fair Trading.

**CHAIR**—Would you care to make an opening statement before we commence our questions?

**Mr Deakin**—Thank you for the opportunity to appear again at this inquiry into fair trading. The Property Council of Australia also greatly appreciates the time given by members of this committee to participate in visits to shopping centres in Sydney, Melbourne and Perth.

During the public hearing we attended on 4 November 1996 the committee sought information in a number of areas that in brief opening statements we will attempt to provide today prior to your questions. To assist the committee's deliberations, the Property Council has provided the committee with a number of brief papers covering some of these

issues. These papers were prepared by the law firm, Minter Ellison, and summarise the protections currently available for retail tenants under state retail lease legislation in the following areas: dispute resolution procedures, compensation for relocation and disturbance and lease term statutory provisions.

In addition, today we propose to table a paper prepared by an independent firm of economists and researchers for the retail industry, Jebb Holland Dimasi, entitled *The effect of landlord and tenants strategies on retail rents in shopping centres*. We believe that this paper may assist the committee and the secretariat to gain a broader understanding of the key principles that apply to rentals in shopping centres.

We have also assisted the secretariat staff with their research by providing information on trade practices type legislation in the USA, the UK and Europe, a summary of all state-based retail lease legislation, a recent McKinsey study on productivity in Australia's retail sector, a code of practice for leases in England and Wales and information from the International Council of Shopping Centres.

I would further like to advise the committee that senior representatives of the Property Council of Australia and the Australian Retailers Association, the nation's peak retailer representative body, met on 11 February this year in formal session as the Retail Industry Liaison Forum, a body we foreshadowed in our evidence last November. The forum is a major initiative to create better dialogue between owners, managers and retailers. We have agreed on a range of initiatives that will be undertaken to create a better business environment for all retail industry participants. This forum and this dialogue is a breakthrough, but no-one around this table would pretend that it will be easy.

I would add that as an example of the participants' willingness to tackle the difficult issues, we have included in our agenda for discussion at the forum the sitting tenant issue, correctly identified by this committee as requiring special attention by the industry. We have also agreed to look very closely together at the issue of harmonised state based lease legislation.

To commence our presentation, Mr Briggs will present a number of solutions that the committee might consider as it seeks to come up with clear recommendations that address the problems that we clearly acknowledge do exist in the retail industry in this country, as in other industry sectors. Mr Briggs will be followed by Mr McDermid, who will speak to the three papers that I have previously mentioned that were prepared for this committee of inquiry. I will now hand over to Mr Alan Briggs, Chairman of the National ACSC Committee of the Property Council of Australia.

**Mr Briggs**—Firstly, I would like to put on record that everyone on this side of the table accepts that our industry faces problems which need addressing. We can argue about the extent of those problems. Obviously looking at the submissions to this inquiry, there are many tenants who are distressed. However, there are also many in shopping centres who trade successfully and are happy with the relationship with the manager of those shopping centres. I refer you to a recent survey that was taken by *Inside retailing*, which is an industry magazine which indicates what I have said to be true.

To a large extent, the problems that exist are caused not simply by shopping centre owners but by the current economic climate and structural changes which are taking place in the industry reflecting societal changes. We do not accept some of the alarmist comments about our industry. The underlying fundamentals are sound. The Jebb Holland Dimasi research shows that in large regional centres there is a 1.8 per cent vacancy factor. In sub-regional centres, that figure is 2.3 per cent. It is hardly an industry that has underlying fundamental problems.



While we can argue about the extent and cause of the problems, there is no argument that it is up to the Property Council of Australia as the leaders in the industry to work to resolve those problems. To do this, we would like to offer to work with the retailer's representatives and the secretariat to attempt to work out recommendations which this committee, if it is in agreement with them, can include in its report.

From what we can see, the issues which need resolving appear to be: the position of a sitting tenant and the owner of a property upon renewal; the concept of market rent on renewal; a speedy and affordable mechanism for dispute resolution; the role of education as a means to minimise disputes; harmonised legislation; assignor/assignee issues; and franchisor/franchisee relationships. While not diminishing their importance, most of the other issues that have been raised here are already contained in various forms within state legislation and are more a matter of communication to this committee and to the wider retail industry and the retail property industry.

In this regard, the key items that we put forward are the Minter Ellison papers, which are a summary of lease term statutory provisions covering the rights of tenure terms under legislation in all states. A lot of those are available, and Mr McDermid will talk about them. We also put forward a summary of provision for compensation in case of relocation and disturbance, again which is available in all states, and a summary of dispute resolution procedures, again available in all states.

We have tendered the Jebb Holland Dimasi paper, which talks about the meaning and operation of the concept of market rent, why different tenants pay different rents in different shopping centres, which is an issue the committee brought forward, whether tenants pay more or less rent on renewal or as new tenants and whether renewing tenants are paying rental above market.

If I may quickly go over those again: the Jebb Holland Dimasi paper; the meaning and operation of the concept of market rent; why different tenants pay different rents in different shopping centres, which is a key issue here; whether tenants pay more or less rent on renewal or as new tenants; and whether renewing tenants are paying rental above market. The Jebb Holland Dimasi paper puts forward arguments and we would recommend that Reg Jebb, a principal of that company, would be of great value to this committee. We do strongly urge that Mr Reg Jebb be asked to give his views on the industry. He has extensive knowledge of the industry and works on all sides, retail and landlord.

Other items have been included in papers requested by the committee. They include the information that we provide to tenants on variable outgoings and promotional expenditure, which I am very happy to answer questions about. But most of the issues, as I have mentioned, are proscribed in various state legislation and require communication and education.

Finally, I would like to propose a number of measures for the committee to consider when making its recommendation. Firstly, harmonised lease legislation. Inconsistencies in the retail lease legislation in each state and territory are an impediment to good business practice for retailers and retail property. The Property Council strongly advocates harmonised lease legislation. This issue is at the top of the agenda in discussions with the Australian Retailers Association and, while we accept the dialogue at times will be difficult, I can personally attest to the goodwill and resolve on both sides to achieve genuine results.

Very recently—as Mr Deakin outlined—we had a meeting with the Australian Retailers Association and the Retail Industry Liaison Forum and have in fact begun to delegate tasks to each side to begin to seek solutions where we can agree on harmonised lease legislation. They are strong advocates of it as well, as we understand.

As to dispute resolution, while there are workable provisions in all state and territory lease legislation for mediation conciliation, more needs to be done to make this avenue of dispute resolution more accessible, more consistent and to ensure that it continues to be affordable, particularly for the speciality retailers.

We recommend that the committee urge the government and all industries to support the dispute resolution initiative being sponsored by the ACCC. The second meeting of that body will be held on 18 March to discuss a paper, *Benchmarks for avoidance and resolution of disputes*. I think we made some genuine headway in that meeting last time and I expect to do more.

In education, we share the view articulated by the ACCC that education and access to information is a key component to solving problems for small and microbusinesses in the shopping centre industry. The industry has committed millions of dollars within major companies educating centre executives with the bulk going to retailer education. All of the companies that are represented here spend an enormous amount of money internally educating their own people and educating retailers. In addition, property owners' contribution to the Property Council's \$430,000 investment in education courses has resulted in its courses being given full tertiary status.

As to franchisor/franchisee relationships, while we do believe that sound, well run franchises are an excellent vehicle for investors to enter small business, particularly for those with little retail experience, there are problems that need to be addressed urgently and I understand that the committee is talking with the franchisors.

Turning to rental renewals with a sitting tenant and the concept of market rent, we have as an industry formally recognised the issue of the sitting tenant and the problem of market rent on renewal, which is one of the most vexatious issues that faces all of us. It is a key component of retailer argument right the way round the country. We are actively working with the Australian Retailers Association and are committed to seeking a resolution. Indeed, one of our party has put together some preliminary work which we will work on to see if we can get it to fruition. This commitment is shared by the shopping centres Australia-wide under the aegis of the Property Council.

And finally, with assignor/assignee issues our experience indicates that many problems faced by merchants relate to assignees who have paid large sums for a business only to find that they cannot run the business at the same level as the previous incumbent or, as in a large number of cases, information provided by the assignor was erroneous. We strongly advocate the matter of a binding disclosure statement between assignor and assignee. This document is in addition to the disclosure statement required to be provided to the assignee by the shopping centre manager. So we are asking for a disclosure statement between assignor and assignee.

Finally, the wellbeing of retailers is directly in the interests of property owners and investors. Our

drive to seek a solution is imperative and universal. We would ask for the committee's support in outlining those problems that I addressed in the beginning of this document. We would again be prepared to work with the Australian Retailers Association, retailers generally and with this committee secretariat to resolve the problems that we have outlined at the beginning of this paper. I would like to hand over to Mr Dale McDermid.

**CHAIR**—I would ask you to be brief with your statement so that we can move on to questions.

**Mr McDermid**—I was just looking to touch upon the three main areas of some information that was requested of us at our first visit in November last year. They particularly relate to dispute resolution procedures, compensation for relocation and disturbance and also a summary of lease term statutory provisions. These papers have been provided to the secretariat. My understanding is that they have not, however, been circulated at this stage to the committee. So there are a number of details.

I will summarise of each of these. Firstly, starting with the dispute resolution procedures, some of the key features are that in all states there are statutory provisions for mediation and conciliation. In all states except Victoria the first stage of dispute resolution costs applicants no more than \$105 and in fact in three states it is actually free. The majority of disputes that have been submitted for mediation have been so far resolved successfully. The available success rates from each of the state government departments range from 65 to 91 per cent in regard to their success and we are endeavouring to gain more of this information. We have had a number of discussions with our state groups of the Property Council of Australia to build their relationships with the state government departments so that we can have better access to this information.

There is no doubt that the challenges in this particular area are increased education and knowledge, because it is clear that the number of retailers and also some property owners are not aware of the access to these dispute resolution procedures and also to ensure their relevance to the industry. Because of the time I will not go into those in any detail.

Secondly, the summary for compensation for relocation and disturbance. Again in all states there are statutory provisions for compensation for disturbance to the tenants' enjoyment of the lease. In all states except Western Australia there are statutory provisions for compensation if the tenant is required to relocate. In the majority of states the tenant may terminate the lease on receipt of a relocation notice. In fact much of the state based legislation has been based both on the Queensland and New South Wales legislation. We and the Australian Retailers Association between us agree that this forms best practice for the industry. We are endeavouring to ensure that this balanced argument is taken to the other states where currently there are reviews being undertaken of retail lease legislation. Particularly in New South Wales a relocation notice cannot be served unless there is a serious refurbishment or extension of the centre which is being proposed. In many cases—in fact in mostly all cases—the landlord has an obligation to pay for these relocations, subject to negotiation with the tenant that is being proposed to be relocated. As for disturbance, it is also clearly documented as to the parameters and procedures that are to be taken in regard to a disturbance of quiet enjoyment for the retailer.

Thirdly, moving on to a summary of lease term statutory provisions, the key features again in all states except Queensland are that the tenant has a right to a five-year retail lease. In a majority of states the

tenant also has the right to waiver that five-year term, if for some reason the retailer would like a shorter term lease. In all states the landlord must give the tenant advance notice as to whether they intend to extend or renew the lease. In the case of New South Wales it is a minimum of six months, which is certainly what both the retailers and ourselves would support. In summary that covers those three main provisions.

**CHAIR**—Any comment from Ms Martin?

**Ms Martin**—No.

**CHAIR**—Thank you for your statements and your ready acknowledgment that there are many problems in the area. We received evidence from the Australian Institute of Business Brokers to this inquiry that shopping centre rentals are very much inflated to as high as 50 per cent. Their comment to the committee was that the bubble is about to burst. Do you have any comment to make about rentals in centres that you have knowledge of?

**Mr Briggs**—I read the paper with great interest. I believe that that particular group put what they saw as their view forward, but I can only reiterate what I said before, and that is that vacancy rates in Australian shopping centres are 1.8 per cent and in subregional centres they are 2.3 per cent. If the shopping centres were over rented, as the business brokers have stated, then those vacancy rates would by necessity be much higher than they currently are. The statement that they are making is totally erroneous. This industry is focused on by analysts from around the country, as you can imagine, and not one single analyst has ever said anything to my knowledge which equates anywhere near to what the business brokers are putting forward.

**CHAIR**—Can I take you back to the economic fallout in the late 1980s. Was there a readjustment of rentals throughout shopping centres at that time?

**Mr Briggs**—In the late 1980s the major issues that arose at that particular time related to commercial properties. There was some adjustment to rentals and, indeed, those adjustments are still going through, but they are very minor. In the office area, I am aware that people were offering as a standard thing 30 to 40 per cent of the face rent as an incentive to come into the building. But in retail—except for perhaps in what we would call C space or in very poor centres—that has not been the practice.

**CHAIR**—In other words, there was no noticeable readjustment down following the late 1980s crash.

**Mr Briggs**—There was an adjustment. Using the term ‘crash’ is one issue. There was a correction in the office market which was very, very overheated. It has not been the same in the retail market.

**CHAIR**—Surely the property values of the shopping centres were affected by that economic climate at the time as well.

**Mr McDermid**—If I might comment in my role with our organisation, we are actually a manager of shopping centres and do not have a proprietorial interest. In fact, we probably saw a different position than Mr Briggs in his role at Westfield as the owner of the centres, because a number of our clients very quickly turned from being developers and institutions into being receiver managers and mortgagees in possession.

I think there is no doubt that during the period of the late 1980s, and even through to the early 1990s and still in many cases occurring in recent times, there was a readjustment of certain properties in their market shares. Whether that in fact was just in relation to the crash of property values, but it had a far broader effect in regard to the economic climate generally. There was the recessionary period, a lack of consumer spending and real growth and the lowering of inflation. The retailers and shopping centre owners and managers had to cope with those more broad issues and in many cases the property values of shopping centres and rental growth has not really been there in real terms.

**Mr Briggs**—I think what Mr McDermid is saying is true. Where we are offering the larger regional shopping centres in AMP, Lendlease, Westfield and others, there was not the same correction as there was in smaller centres, as has been alluded to, that is C class space or smaller more difficult centres to run.

**Mr ALLAN MORRIS**—Just before the property market became overheated it seemed that the commercial property industry was saying much the same as you are saying now. The over supply in both Melbourne and Sydney seemed to happen very suddenly. Afterwards analysts were saying there were plenty of warning signs but they were ignored. People kept going ahead and building more office blocks, in Melbourne in particular. I can recall being advised of that during a previous parliamentary inquiry. The investors were ignoring the signs. People are saying now that the shopping centre developers are ignoring the signs. The amount of floor space per person in Australia and the amount of empty space in other kinds of shopping spaces is in fact quite large. Those two indicators are there and people are saying to us that it is not simply the valuation, but the oversupply question is currently building. Do you agree with that?

**Mr Briggs**—No, not particularly and not in total. Like many of these issues, there are different concerns in different areas. In the commercial property market, in fact what happened was that when business got tough in the late 1980s people did come out of offices. It was one of the first things that they could reduce their expenses on. Quite simply, if you are paying \$600 a metre in an office space and you want to save some expenses, you can without hurting your business at all move to a \$100 a metre a space, save a lot of money and still run your business.

**Mr ALLAN MORRIS**—The growth was still going on. Milton was still building office blocks at a time when analysts were saying 'Hey, the demand has dropped off'. People are now still building shopping centres when we are being told demand is dropping off.

**Ms Martin**—Can I make a comment on that? Retail goes through cycles, as do most property sector groups. At the moment, the growth of retail turnover is not as great as it has been in the early 1990s. However, that is on a general trend across Australia. You have to look at specific trade areas. In high growth areas, such as the south-west corridor of Sydney we have a centre called Macarthur Square. In Darwin, Smithfield and Clifford, there are a number of centres in our portfolio and I am sure Mr Briggs would have the same sort of cross-section of trade areas. Where there is high growth within the trade area, there is still demand that can be satisfied. It is only in those areas that Lend Lease—and I am sure it is the same for my colleagues—would be developing any more floor space in the next few years. Lend Lease, on behalf of the funds it owns, APPF and GPT, has no development plans for the next couple of years except for those particular areas.

In terms of rents, across our portfolio we are finding a flattening of rents because as retail sales flatten, obviously retail rents cannot increase. In fact in the 1996-97 year increases at rent review time and lease renewals were flat. They were at 0 per cent increase. Given that CPI was running at 1.6 per cent, that means there was an actual negative in real terms. The budget for 1997-98 is even greater which shows there is a decline in rents in real terms. Retail is cyclical. It did not go through the dramatic fall that commercial experienced in the late 1980s. It is going through a flattening period at the moment and that will be met across the board in a flattening of rents and development in those trade areas that cannot support it. But in growth areas where demand is not satisfied, you will still see growth.

**CHAIR**—Can I move on to the topic of market rents and the negotiations? The committee heard during the course of the inquiry that some of the market rents negotiated at the commencement of the lease or mid-term market review are not necessarily paid. I wonder if you have any knowledge of this and some idea of the extent of that practice in obtaining discounts or rebates off market rents in major retail shopping centres?

**Mr Briggs**—If we are talking about major shopping centres, then the evidence from the Jebb Holland Dimasi paper is that there is no real evidence that there is a major difference between starting rents for new tenants or renewal rents for sitting tenants. However, generally in the industry it is accepted that the start-up cost for a retailer in a new shop or a new centre is higher than when they have been there for a few years. Because if they go into a new centre, they are building the shop from scratch. There is a lot of fit-out work to be done and a lot of expense in setting up.

**CHAIR**—Are discounts offered? Are rebates offered to tenants? Are some of the anchor tenants perhaps receiving some form of rebate or a holiday?

**Mr Briggs**—Again if I can talk about our area, that does not happen in major regional centres. However, there is no doubt that major retailers do pay less rent per square metre and in certain circumstances do receive some support with fit-out of their property. However, the plain fact of the matter is that if you do not have a major, you do not have a shopping centre. It is as simple as that. As well, a major retailer works on a vastly different margin to a speciality retailer.

**Mr McDermid**—Can I just add an additional point to that. We have to acknowledge that in this country we have very few retailers. In the department stores, we have two major groups. In the discount department stores, we have three—two of which are owned by the one organisation. In supermarkets, we have very limited choice as well. So I think it is a well-known fact that if you need a major retailer in a development and you want that development to work, then you have to work with that major retailer to try and get the best commercial result for the landlord, but also the retailer is going to be very definite as to the parameters which they are trying to achieve.

**CHAIR**—So there could be a rebate or a holiday or—

**Mr McDermid**—I do not know whether I could describe it as a rebate, but there are certainly, as Mr Briggs stated, by way of negotiation different rental structures and different incentives which are agreed to with major retailers for them to anchor either new or redeveloped shopping centres.

**Mr BEDDALL**—Just following that point through, historically it has been the case that an anchor tenant was crucial to making the whole centre work. We received a large body of evidence before this inquiry that your anchor tenant now is actually in direct competition with all your other tenants, particularly in the food area. Woolworths and Coles and Franklins—the three we are talking about—now offer a range of variety of hot breads, butcher items and all those things. In fact, there is a general feeling amongst those retailers that not only are they paying bigger rent, but they are now facing competition within the centre from a subsidised tenant. The trend is changing. This is only a 20-year-old industry in terms of big regional shopping centres.

**Mr Briggs**—You are spot-on with what you are saying. That situation has arisen. In the last couple of years, Woolworths and Coles, in particular, have done an outstanding job in changing their marketing method and positioning to the public. They definitely have. Ten years ago it was a speciality retail market. The majors were floundering around, not quite sure where they were going, and the speciality retailers got the growth.

Then Woolworths first, followed by Coles, followed by Franklins picked up their act and started to supply what the customers wanted. As a result of that there were competitive pressures on the speciality retailers. They are facing a real issue. But two things have happened generally in centres. Instead of having three butchers, you may now have one butcher. Instead of having three fruit and vegetable shops, you may have one. Instead of having two or three bread shops, you may now only have one bread shop or two bread shops, or a speciality cake shop. In fact, that industry is just beginning to turn back again and starting to have some growth.

At the same time, what happened was that on re-leasing and leasing those stores—to butchers, bakers and candlestick makers—the rental levels for those particular stores dropped, and dropped quite significantly, within the total mix. As we said before, within the shopping centre itself we are able to get better rental levels out of sports, for example, or leisure or books or some of those areas where, in fact, there is definite growth.

But to cover your point, you are spot-on. The major supermarkets now are doing an outstanding job. That created competitive pressure. That means fewer of those operators within the centre—it does not mean to say they are gone—and less rental today.

**Mr BEDDALL**—But there is an argument because of the size of these groups that it is an anti-competitive environment that you work in. If you look at comparative analysis with the United States markets, you would find nobody anywhere near the levels of a Coles Myers group, and when Coles Myers became a group they promised, hands on their hearts, to the government of the day that they would never abuse market power.

**Mr Briggs**—Yes. The substantial difference in this country is the fact that we are trying to build a market with 17 million people. I had a boss a long, long time ago who told me that there would never be any more than two or three national chains ever in this country. My father-in-law was the Executive Director of the Grocery Manufacturers of Australia and he said to me over and over, ‘Dear boy, I cannot tell you how many Americans I have had to speak to about how narrow the market is here in this country.’ And that is a

fact. We are trying to deal with 17 million people and put economy of scale into it so that the consumer can buy good quality material at a good price.

In America you are talking about something like 360 million people and you have the ability to have that diversity. That is the fundamental difference. Again, a comment was made by Mr Morris about supermarket margins. The first reaction to competition is margins because it is the quickest thing that you can do. However, from there one must build a point of difference. I could talk about a fruit shop in Liverpool which has got a Woolworths upstairs doing an enormous amount of money. He is the only fruit shop in the centre. He is a very large fruit shop. He is not the cheapest in Liverpool by a long way but his service is fantastic. His standards and his quality are very high and he does tremendous business. It is possible.

**Mr ZAMMIT**—Mr Briggs, we have noted your comments that the vacancies in major shopping centres are minimal. What percentage of shopping centre tenants are in there on a lease of less than five years, in other words, temporary leases?

**Mr Briggs**—The answer is in two parts. If there is no expansion of the shopping centre planned then I suggest that that percentage is very high, probably in the order of 80 to 90 per cent. That is because there would be less than five years if a retailer wanted to have a lease of less than five years. However, may I qualify that by saying that this concept of five-year leases arose around 1990-1991 so there still are people coming off the three-year lease and onto the five-year lease.

However, if there is a major expansion planned for a centre then clearly it is economically ridiculous for the landlord to provide a further five-year lease for a merchant and in those circumstances they are advised that expansion is planned and usually they are on monthly holdovers. It is the practice of the Westfield company, and I think maybe others do the same thing, to at the same time offer a letter of comfort. That letter of comfort generally states that we are about to do a refurbishment, that they are on month-to-month leases but that a new lease will be offered to them in the new centre when that arises.

**Mr ZAMMIT**—Just so that I understand it completely, in shopping centres that have no plans for expansion, are you saying that 90 per cent of the tenants in those shopping centres are on a temporary or short-term lease?

**Mr Briggs**—No, they are on a five-year lease. Marion was a centre which was planned for redevelopment but unfortunately the economic circumstances prohibited us from doing it. They were waiting six years and some of them longer. If I take you to Carousel in Western Australia, they have been waiting for eight years. We put forward a plan and, to our chagrin and to the chagrin of the merchants in that centre, the council knocked it back. They have been waiting for eight years and that is terrible.

**Mr ZAMMIT**—So for three years or less, what percentage would that be?

**Mr Briggs**—Mr Zammit, you are asking me to guess. As I say, in 1990-91 the concept of five-year leases was introduced. I believe almost everybody has changed over to that cycle. If there is no large change then I would say 80 to 90 per cent of leases—and I am guessing but it is my gut feeling—would be around the five-year period.



**Mr ZAMMIT**—What percentage would be on a month-to-month basis?

**Mr Briggs**—Three to five per cent, a very small number. Very often it might be a month-to-month basis because the merchants themselves are not quite sure what they want to do, or they have asked for that shop around the corner that they would like to go into and we have said, 'Okay, it is not available yet'. In fact, maybe the figure is less than that. We are all handling different sizes.

**CHAIR**—Can we come back to the question of goodwill in shopping centres? One of the key retail tenancy issues that has arisen in this inquiry has been the question of whether there is goodwill or not in a regional shopping centre, particularly at the expiry of their current lease. How do you view goodwill and the small retailers in those shopping centres? Is there goodwill?

**Mr Briggs**—The value of goodwill decreases, depending on the term available to the merchant. We hold that there is no inherent goodwill attached to a lease, with the exception that if a merchant has a five-year lease, let us say, then it has some value. The cashflow of that business has some value across the period of five years. One year into the lease it is four years; two years in it is three years, and so on as it gradually diminishes, but at the end of the lease there is no goodwill.

**CHAIR**—At the end of the term?

**Mr Briggs**—There is no goodwill.

**CHAIR**—No goodwill.

**Mr Briggs**—That has been clear in this business, and I note there are judgments dating back to 1870 which say that, if there is any goodwill at all, it in fact belongs to the landlord. But we are prohibited in fact by legislation from charging any incoming tenant with that goodwill. We are unable to pass it on, or to recover it.

**Mr RICHARD EVANS**—Do you advise the tenants who sign leases that there is no goodwill at the end of their lease?

**Mr Briggs**—We are constantly doing that. Unfortunately, we are not listened to very often. That is why in this area we suggested, and very strongly—and I believe there is some backing for it within the Australian Retailers Association—that there is a disclosure statement between the assignor and the assignee. Very often, when a merchant comes in and sits down in front of us for an assignment, they are interviewed by the leasing person from the centre management and are told, in some cases, that the lease may not be renewed and that we do not guarantee the renewal of the lease.

**CHAIR**—Are you aware of the United Kingdom legislation which gives sitting tenants some right, as I understand it, to compensation for the loss of goodwill or extension of the lease?

**Mr Briggs**—It is the only country in the world that has such legislation. That is not to say that these things are wrong, but it is the only country in the world that has that legislation; and we do not agree with it.

**Mr McDermid**—Also, the structure of the industry in the UK is vastly different from the structure of the industry here. In the UK there are very restrictive planning and zoning requirements. There is nowhere near the number of shopping centres, particularly out of town in the UK, as there are here.

**Mr BEDDALL**—But it is expanding very rapidly. ‘Save the High Street’ is a major campaign—

**Mr McDermid**—It is. And in fact the Lend Lease development at Blue Water in Kent is probably the last of out-of-town shopping centre developments in that country.

**Mr Briggs**—If one can understand it, there are different imperatives. If retailing goes from the centre of a city like Bath in England, then Bath is gone. It is dead. So they quite rightly say, ‘No; we do not want a shopping centre on the outside of Bath.’ And from that position I support them.

**Mr ALLAN MORRIS**—What about Mornington?

**Mr Briggs**—Mornington Peninsula?

**Mr ALLAN MORRIS**—Mornington in Victoria. They are saying they do not want a shopping centre. They are having demonstrations in the main street.

**Mr Briggs**—The interesting thing is that when one wants to know whether the public actually wants a shopping centre or does not want a shopping centre, one looks at the customer count coming through the door and the business that is done.

**Mr ALLAN MORRIS**—Can I just clarify something, Mr Briggs? Are you saying, therefore, that all people who sign leases in shopping centres are signing them at no value. They do not sell anything other than—

**Mr Briggs**—No, not at all.

**Mr ALLAN MORRIS**—What are they selling, then?

**Mr Briggs**—They are selling the cash flow of that business.

**Mr ALLAN MORRIS**—For a period of time.

**Mr Briggs**—For a period of time.

**Mr ALLAN MORRIS**—I find that puzzling. We have got a new terminology now. We do not call it ‘goodwill’. We call it ‘cash flow’ that is being sold. We have not heard that before. No-one has ever told us that before. They have told us they are selling a right to run a two-year lease, but you are saying that that is only a right to a cash flow.

**Mr Briggs**—On the presumption there is a certain cash flow. I am perhaps actually getting to the meat of the argument. What are you buying? You certainly are not buying a lovely shop in a lovely centre. You are buying the cash flow, the business.

**Mr ALLAN MORRIS**—To take you back to a previous question about commercial properties, what the landlords discovered back in those days in terms of the commercial property collapse was that existing tenants moved to attractive new centres, and suddenly there was great desperation among owners to try and keep their tenants; whereas, before that, they had all been trying to turn them over, because new tenants paid more. There had been a fashion of getting a new tenant at a higher rent, and so the old tenant tended to be kind of discouraged from continuing. It seems to me—

**Mr Briggs**—Mr Morris, I am sorry but I do not agree with that.

**Mr ALLAN MORRIS**—I am referring to a parliamentary inquiry which went into that in quite some detail in the early 1990s. I am suggesting now that, if a similar thing is repeating, whereby to date there has been a great supply of tenants out there who would come in at a higher rent and hence you get rid of goodwill—in other words, the conversion of goodwill to a higher rent ratio—you will actually need, as an industry, to consolidate your existing tenants rather than turn them over.

**Mr Briggs**—Let Mr McDermid answer that question.

**Mr McDermid**—I think what we are talking about really is a much broader issue than perhaps Mr Chairman's first question about goodwill at the end of a lease term.

**Mr ALLAN MORRIS**—It is about goodwill.

**Mr McDermid**—We have to remember that we want to retain the best quality retailers that we can. In many cases, when a retailer comes to us and says that they have got someone that wants to run their business, we in fact encourage them to surrender their lease, and we enter into a new lease with the purchaser. This is because it is not in the purchaser's best interests—or in the vendor's—to have two years to run on a lease. In fact, it is in our own best interest for our industry to protect quality businesses and to help them develop. So, if someone wants to invest substantial amounts of money in purchasing a business, we want to give them the longest tenure that we can.

**Mr ALLAN MORRIS**—What are they purchasing?

**Mr McDermid**—They are purchasing the cash flow. You can call it whatever you like.

**Mr ALLAN MORRIS**—A two-year cash flow?

**Mr McDermid**—No. I am saying to you that we are changing the fundamentals so that they are purchasing a five-year cash flow of a business instead of what might have been a two-year cash flow if they were assigning the business. I am saying that we are getting involved in the process to help both the vendor and the purchaser to complete a transaction which is going to have a win-win situation for all three parties.

In fact, because we operate in a dynamic environment, we have to retain some flexibility to ensure that the offer is always relevant. As we talked about in November, there are usages that were in the shopping centre industry five years ago, just as there are ones now. We may take mobile phone kiosks as an example. I

am sure that, in three or five years time, there will not be mobile phone kiosks. You have to be relevant to the offer at the time. We cannot restrict our offer so much that we are going to lose that flexibility, yet at the same time bring in the good quality retailers and retain them.

**Ms GAMBARO**—Mr Briggs, I have a couple of questions. The first one relates to your summary of the legislation. You particularly singled out New South Wales and Queensland as having the most effective legislation, to date. In Queensland, there is not a minimum term of lease for five years. Has there been an increase in disputes regarding term leases because of that? Or why is Queensland—

**Mr Briggs**—It is a good question. In actual fact, when this document was first put together, Ms Gambaro, we said, ‘Oh, you’ve made a mistake: it is available in Queensland too.’ And it was double-checked by the people responsible and they said, ‘No, it is not in the Queensland legislation.’ Surprisingly, there has never been an issue in Queensland about five-year leases. I can only talk for my own group here, but we still have a tendency to offer five-year leases. I am only talking about my own group, but I think most good operators do this. When legislation was introduced in New South Wales for disclosure statements, we carried that into other states when it happened. But I cannot answer as to why—

**Ms GAMBARO**—No reason, and no increase in disputes regarding that particular area?

**Mr Briggs**—None at all. However, under harmonised legislation, we would encourage that that legislation be put into Queensland, to give Queensland retailers the same protection that other retailers have.

**Ms GAMBARO**—Carrying on from a question Mr Beddall asked about anchor tenants and smaller retailers, a number of submissions we have had have been regarding, for example, a sports owner going into a shopping centre where he believe his is the only sports store there, and then another sports store opens. Say that I was opening a unique store in a shopping centre: do you not think it is a bit unrealistic to enter into an agreement not knowing what my competitors would be down the track and having that retail tenancy mix change? I think that is pretty unrealistic. Don’t you?

**Mr Briggs**—Mr McDermid referred to the dynamics of a shopping centre, and it is a dynamic situation: it is growing and changing every day. In fact, all of us as major operators would—and I know that this is in the Westfield disclosure statement, and I am sure it is in others—not guarantee exclusivity, because we never can. Again, to use the example of the phone kiosks and the phone shops that are around right now: it is a hot business; everybody wants to be in it; there is enormously high demand; and there may be, in a large shopping centre, up to five of these outlets. There may have only been one Telstra outlet five years ago, but today there could be five in a centre.

If, for example, we said to Telstra that we were going to offer them exclusivity, and then the other four operators went out somewhere else, then the centre itself would suffer because the customers, who really are the ultimate drivers of this, will want to have that choice and they will go where they can get that choice. That is what a shopping centre is all about. It is unfortunate that you can never, never have that guarantee that your business is the only business that is going to be of your type in the centre.

**Ms GAMBARO**—I can understand that with the Telstra example and where you have a number of

different products. But when you come into a shopping centre with a unique product, let's say it is a sports store, and a big sports co-op opens up across the road, your profitability will be affected by that.

**Mr McDermid**—The difficulty that we do not want to get ourselves into is that, to use your example of a sports retailer, if we give the sports retailer exclusivity for five years and, for whatever reason, that retailer does not fulfil the type of retail offer or the dynamics that we are all hoping that they will, the shopping centre's offer is then compromised for the five years in which you cannot bring in another retailer. This is just one example of many that we could go through if we had the time. It is very important we do not take out that flexibility and the dynamics.

We might have a sports retailer that is concentrating on what we might describe as hardware—selling cricket bats, tennis racquets and fishing gear. We might have another sports retailer that is concentrating on the apparel side of the business which is high on fashion footwear and apparel for sport. We see that there is a very complementary mix of those two retailers surviving and actually working together and strengthening the overall sports offer in a shopping centre. We need to be sure that we are getting that best offer.

The other difficulty is that, in the very competitive market that we are all in, we could have a sports retailer open across the road—Rebel Sport or another category killer type of retailer. We need to make sure that we have got the best quality offer within the shopping centre environment to combat whatever comes across the road or in the next shopping centre down the road. It is a fine line between making sure that that retail business is protected in some regard, but still giving the best offer to the customer over a period of time.

**Mr BEDDALL**—Across the road, in a major regional shopping centre, is not across the road. It is some considerable distance away.

**Mr McDermid**—I am not talking about just majors. You have to understand that I am coming from a background of a wide variety of shopping centres. I think there is a danger in just talking about major regionals.

**Mr BEDDALL**—Sure. There is also a danger in talking about 'across the road'. In Ms Gambaro's example, what we are talking about is in a major shopping centre where there is a tenant with a significant product and the fact that someone may say, 'Gee, that's a good business. I would like to compete.' The competition is because that business is a good business, not because there is a new product.

**Mr Briggs**—It is a very good point. The overriding balance on that, Mr Beddall, is the amount of rental that you can generate. We make mistakes. But clearly, if you get into the position of putting too many people in, the rental levels that you can attract do not materialise or they fall away.

**Mr ALLAN MORRIS**—When do you know it is too many?

**Mr Briggs**—We spend an enormous amount of time analysing our business. As a fundamental, in any shopping centre, we would do regular research, using ABS statistics, which would tell us what amount of business is available in a particular market, what amount of business is being satisfied within the market and

what business would be available to the shopping centre. It is fairly scientific and fairly accurate.

**Mr McDermid**—It is a key reason why we have turnover figures.

**Mr FORREST**—I would like to move on to the question of disclosure, but I was pleased to hear you make that statement, that that is something which you want to see reinforced. I was moved by some evidence the committee has received from a practising lawyer who said that he could not believe the implications that were involved in the signing of a lease which he had in fact signed. The distortion and the bias towards the property owner's interests was just unbelievable, in his view. I was wondering if the Property Council has done any work towards developing a universal, standard lease across Australia—and in plain English—so that we do not have that problem to contend with.

**Mr Deakin**—When the retail lease legislation came in in New South Wales in 1994 it had never existed before, so there was a whole range of owners, managers and retailers who had no exposure to retail lease legislation. We did two things at that time. Firstly, the Property Council wrote a document *Don't sign that lease*. It was originally written by the Property Council but, ultimately, it became a document from the Retail Traders Association, the government, the Real Estate Institute and the Property Council—or BOMA, as it then was. We produced that for all retailers and it was distributed free to every retailer, manager and owner. That document goes through a whole range of protections that they should be aware of.

The second thing that the Property Council did was to develop, at its own expense, what we called a model lease. That was a lease which we had a law firm draw up, in constant communication with both the government and the Retail Traders Association. That lease was ultimately signed off by the Retail Traders Association as a reasonable and fair lease, primarily suitable for small and medium sized shopping centres where there was not the knowledge and information that there often is with retailers in the larger areas, but suitable for all retailers. We have promoted that model lease broadly, both through newsletters and direct mail and through the government's own disputes unit, to try and get more and more retailers and shopping centre owners to use it. They only have to pick up that model lease and see that it has been endorsed by the retailers as well as the owners to know that they are on reasonable ground.

**CHAIR**—Could a copy of that document be left with the committee?

**Mr Deakin**—Certainly.

**Mr FORREST**—The problem is that, whilst that kind of information is floating around, there is always some uneducated, uninformed sucker who does sign. What can you recommend that this committee could do about improving the status of that lease? Also, you have not addressed the issue of bias towards the property owners.

**Mr Briggs**—First of all, there has been much comment in the material that has been supplied to this committee by the ACCC and others that education is primarily an issue. As much as we try to talk about all of these things, education is an issue.

On the question of the bias of the statements, the disclosure statement that was put together was put

together by the legislators, not by the property industry. In the case of New South Wales, we had retailers and property owners sitting on either side of the table talking about what needed to be in that disclosure statement. We were very much driven then by the government who said, 'This must be in, that must be in, that must be in,' and we put it in.

**Mr BEDDALL**—Mr Briggs, on the question of education, nine years ago we did an inquiry and the answer was education. It is still supposedly the answer, but nobody is doing it.

**Mr Briggs**—Once again you are spot on, but there is not an endeavour in Australian life which does not need education and continuing education. As we all know, the pace of life today and the amount of information we look at is just unbelievable, so one needs to keep up to date constantly. Secondly, as I said at the outset of my statement, we have committed \$430,000 within the Property Council to educate the council executive, that is, the executive within retail shopping centres. It has been accepted now as tertiary level. We spend millions of dollars within our companies educating our own people if they have not been retailers—although many of them have. I was a retailer for 20 years. I started at 15 with an apron, a pencil and an audit pad.

On the education issue, I think you will hear a little from the Westfield submission about the fact that we have bought somebody in especially to do education. Lend Lease has the Lend Lease Foundation where they do education. Even in the smaller shopping centres they attempt to educate retailers. I am sure, as you know, you cannot educate someone against themselves. That is the fundamental problem.

**Mr BEDDALL**—But you could put in a barrier, that there needs to be an effective cooling-off period and that, within that cooling-off period, someone should undertake an education program. It is not in your interest to get bad tenants.

**Mr Briggs**—No, absolutely not. In Germany, as Mr Maher will outline, if you have not had previous retail experience you cannot take up a tenancy without having to go to a course. I do not suggest that we go quite that far, but one needs to be educated to actually get there. The only problem with cooling-off periods is not so much the landlord, very often, as the tenant. If a tenant has made a commitment, got his finance in place, maybe sold one business waiting to take up the next one, it is the tenant who has that drive and urgency. For him, it is his whole business; for us, it is one small part of a total business. So they very often say, 'We don't want this. We want to do it now.'

**Mr BEDDALL**—Anything done with a sense of urgency is usually never a good decision.

**Mr Briggs**—You are right.

**CHAIR**—Before we move to any final questions, I want to pursue the last statement you made about the urgency of it and the timing of 14 days after the disclosure. Is 14 days adequate time for a retailer to obtain all of the advice that he needs to make a decision about entering into a lease?

**Mr Briggs**—If the retailer has done what the retailer has to do—their homework in advance—mostly they will employ someone to sit in the centre outside the location, or proposed location, of the store to count

customers. They will have spoken to retailers right along that row to get information. Retailers, I must say, are sharing more information now than they ever have. If that retailer has done their homework then 14 days is more than adequate for people to get the advice.

**Mr RICHARD EVANS**—We have heard a lot of evidence from retailers from all over Australia, suggesting that their rents probably are too high and that they are finding it hard to maintain their rentals. We have heard some evidence from the business brokers, which you have refuted. We also heard evidence from the Institute of Valuers regarding property values. All have suggested that the market is heated and that there may be some correction in the future. Your evidence today suggests that that will not be the case, although Ms Martin did say that there is some flattening of rentals at the moment. Do you see, in the immediate future, some opportunity for retailers to negotiate downward rentals? If you maintain that there will not be a correction of property values, do you see the current system of rental determination being maintained?

**Mr Briggs**—There are a number of questions within that. First of all, a lot of adjustment of property values is happening all the time, both down and up. It happens within the Westfield Trust. It is common knowledge. It also happens with Lend Lease.

**Mr RICHARD EVANS**—It is not reflected in rents, though, is it?

**Mr Briggs**—Generally speaking, yes, because the value of a property is driven by the rent.

**Mr RICHARD EVANS**—That is not the evidence that we have heard in this committee.

**Mr Briggs**—I am afraid it is. The value of any business is driven by the income that you can earn and by the bottom line profit that you can make. Our industry is no different from any other. That is just one of a number of criteria that a valuer would put into place—but it is of primary importance. If there is a suspicion that the rentals will not be maintained, then the valuer is duty bound to base his valuation on that instinct or knowledge or premise.

**Mr McDermid**—Can I suggest also that the retail market—Mr Morris was talking earlier about the commercial market—is quite different because the retail market has its own individual sets of circumstances where it is trading in its own environment. You can have a very flat geographical area where you see real decreases in rental lots of times, where new centres have been developed or, for whatever reason, the economic climate has changed in that geographical location. Quite often, over the last five years, since we have had difficult trading times because of the economic climate, there have been real reductions in rentals. Some centres have had to face the fact that, if they had not come to terms with those rentals, they could have a vacancy factor of 40 or 50 per cent or more.

There is no doubt that that has happened in certain circumstances. On the other hand, we are there to try to maximise the business environment and not reduce rentals unless it is the last alternative. Therefore we will continue to look at it in a proactive way to try to make sure that that does not happen. I, like Mr Briggs, have a retail background. When we were both retailers I am sure we never told anyone our rent was too low. But we have to temper that with the facts of making sure that the business environment and the occupancy costs of those retailers are manageable so that both parties continue to be profitable.



**Mr RICHARD EVANS**—By implication, though, what you have said is that, if you are not maximising your rent, your profits or your rentals, the property value will decrease. Therefore, if a tenant is not maximising their profit to the extent where it is profitable for the landowner, it is better for you to replace that tenant.

**Mr McDermid**—Not in all circumstances, no, because the majority of the tenants we have now have five-year leases. That is one of the main factors in us having to work with the retailers: it is in the best interests of all of us to make that retailer successful. That is, in fact, where a lot of the money goes in regard to training: working with the retailers. Because many of us do have retail backgrounds, quite often we have sat down with the retailer and written their business plans for them, met with their suppliers, met with their advertising people, and purchased and negotiated advertising for them at better rates than they could ever have negotiated themselves. It is in the best interests of all of us to make that retailer work. But, at the end of the day, if all of that has been carried out and we do not think that the retailer can be more profitable or turn over the sort of money he needs to to make that business profitable, then we have to look at the alternatives—whether it is a problem with the usage or that particular operator—for the best interests of the shopping centre at large. We are running more than one business; we have to do what is best for the centre.

**Mr Briggs**—We will, in fact, try to seek out alternative tenants to help them out of their predicament. What has not been mentioned here is the concept of rental rebates. All of us within the business world apply rental rebates to tenants who are having temporary difficulty.

**Mr BEDDALL**—We have heard in evidence that you give rebates instead of rent reductions to keep the value of the property up.

**Mr Briggs**—No.

**Mr BEDDALL**—That is the evidence given to this committee.

**Mr Briggs**—I know. I saw that evidence and I tore my hair out when I saw it because it is just simply not the case. Again, let me talk about what I know—Westfield—and I am sure the others are the same. If we have a pot of money which is being driven as income from all sorts of sources, it trickles its way past expenses and down to the bottom line. If we actually supply half a million dollars worth of rental rebates, that half a million dollars comes off the bottom line. That reduces the bottom line by half a million dollars, ergo the valuer who, if he is doing his job, reflects that in the value of the property.

**Mr ALLAN MORRIS**—That was not the valuer.

**CHAIR**—Regrettably, we have gone over—

**Mr ALLAN MORRIS**—Just give me one minute.

**CHAIR**—You will need to be very quick, Mr Morris.

**Mr ALLAN MORRIS**—I will be very quick because it is actually a question on notice for them. It

seems to me, from our inquiries, that there are three really key issues. I would have loved to have talked to you for some time about dispute resolution because I think your answers were absolutely off the planet. The fact is, it is not working. We know that. We are hearing it over and over. If it was working none of us would be here. The three issues are transfer or assignment or extension of lease, hence goodwill; dispute resolution within centres; and rent methodology. Those are the three really key issues. I suggest that what is happening now in recent times, with the hearings and submissions coming forward, is that constructive ideas and suggestions are being brought forward to us. Is the Property Council prepared either to sit either with our secretariat or—

**CHAIR**—Can those questions be taken on notice? Perhaps you could respond to the committee on those issues.

**Mr ALLAN MORRIS**—or with committee or other bodies to see if we can actually find some common ground on those three areas? Those three areas are, I think, the ones that we would all like to see clarified.

**Ms Martin**—Absolutely.

**Mr Briggs**—We volunteered that in our opening statement.

**Mr ALLAN MORRIS**—I knew you had but I wanted to specify those areas in particular.

**CHAIR**—I would like to thank you for attending the public hearing this morning. We have well and truly run out of time; however, obviously there are still some matters that the committee would like to raise. If you are agreeable—you did say you were in your opening statement and I thank you for that—the secretary will put to you in writing any further issues that the committee may wish to pursue. I thank the Property Council of Australia for your time this morning and also your agreement to provide further information to the committee.

[10.08 a.m.]

**CARROLL, Mr Christopher Michael, General Counsel, Lend Lease Property Management (Australia) Pty Ltd, Level 12, Australia Square, Sydney, New South Wales 2000**

**DREVERMAN, Mr Graham Andrew, Marketing Director, Lend Lease Retail, Lend Lease Property Management (Australia) Pty Ltd, Level 12, Australia Square, George Street, Sydney, New South Wales 2000**

**MARTIN, Ms Louise Julie, Managing Director, Lend Lease Property Management (Australia) Pty Ltd, Level 12, Australia Square, Sydney, New South Wales 2000**

**CHAIR**—Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as contempt of parliament. The committee prefers that all evidence be given in public but, should you wish to answer a particular question in camera, you may ask to do so and the committee will give consideration to your request.

The committee has received your written submission and has authorised its publication. Would you care to make any additions or alterations to your submission?

**Mr Carroll**—As we have seen this morning, there is an acceptance by the industry that there are problems within the industry. As Alan Briggs said, we can disagree as to the extent of those problems and we can probably disagree as to the cause of those problems. But what we need to do is to work on the resolution of those problems. For instance, if you look at the issues at Charlestown, they are probably pretty typical of some of the issues that come up throughout the industry. We can take it as fairly typical: the way we deal with those issues and why those issues come up. But the problems we have got in the industry will, I believe, continue until the economy picks up and even then it may not resolve the problems because there are some structural changes that have taken place in society over the last two or three years. And I am talking about things like gambling, mobile phones et cetera, which have had an impact on the retail industry.

Before, someone touched on one of the main problems—the sustainability of rentals. There are two elements there: whether or not rental is too high or whether or not sales are too low. It is a combination of both, obviously. Whilst we may not be the cause of the problems—they are to an extent structural—what we have got to do is to be the leaders in getting ourselves out of the problem.

Certainly, at Lend Lease Property Management, we are fully supportive of what the Property Council of Australia put forward this morning and that is, that we would like to work very closely with the secretariat of this committee and also the retail industry—the other side of the retail industry, if you like—in coming up with some of the solutions, and Alan Briggs touched on some of those things.

I will just come back to something that David Beddall said—that education is the key. It may have

been the key nine years ago; a lot of steps have taken place in the meantime; it is obvious that a lot more steps need to take place. When I talk about education, it is not just in tenants' rights, it is not just in disclosure statements, but it is how we, as managers of shopping centres, can educate our own staff and our own managers to deal with the emerging problems that we have in the industry because a lot of these problems that have come up have come up in the last two to three years. They are things that people have not necessarily experienced before and how they deal with them is, to a large extent, new and a totally different environment. So, as an organisation, we are very keen to put forward in-house education on those issues as well as being involved in educating the rest of the industry.

One of the key things that I see also is the education of retailers and our staff in ensuring that we do not allow retailers in that do not have good business plans. That, to me, is a major issue. What we should be doing is ensuring that every retailer that comes in has a well thought out business plan. I was involved in putting together the New South Wales legislation in 1994 and I mooted at that stage that it should be compulsory in the act for tenants to put together a business plan and for them to have compulsory legal and financial advice before they entered into a lease. That was not taken up but I think it is certainly something which would alleviate some of the problems that we face.

As I said, certainly from a Lend Lease viewpoint, we would like to reiterate that there is a problem, that we want to work with the rest of the industry and also with this committee in resolving those problems. I think we should also realise that, having said that, it is not a problem in every single tenant in every single shopping centre. There are growth areas; there are traders who are trading very well. In my role, you can tell when times are tough because the number of section 52 actions, and the like, increase. People do not take legal action when they are trading well. Obviously, you only have to read the newspapers to see that, at the moment, people are not trading well. So I will leave it at that.

**CHAIR**—Mr Dreverman, do you have anything to say?

**Mr Dreverman**—No.

**CHAIR**—Ms Martin?

**Ms Martin**—No.

**CHAIR**—Thank you very much for those comments. Lend Lease is principally an owner of shopping centres?

**Ms Martin**—No. Lend Lease Property Management is a management company that has a property management contract with the owners of shopping centres. General Property Trust is a public trust. There is a trust deed that manages that trust. Unit holders—many millions of Australians—actually own those properties. Lend Lease Property Management has a contract with general property trusts to manage those properties on behalf of that trust, likewise the other property trusts. Lend Lease does not own property.

**CHAIR**—Does General Property Trust pay your salaries or your management fee?

**Ms Martin**—Yes, the management fee.

**CHAIR**—Directly to you from the owners.

**Ms Martin**—Yes, from the bottom line.

**CHAIR**—Well, when you say from the bottom line, yes, who pays it?

**Ms Martin**—Yes, part is passed back to the tenants and part is paid by the owners.

**CHAIR**—How much part?

**Ms Martin**—The majority is paid by the tenants.

**CHAIR**—So the tenants really are the employer of Lend Lease, are they not?

**Ms Martin**—No; General Property Trust is.

**CHAIR**—How does that structure, in fact, work then?

**Ms Martin**—The tenant pays rent and outgoings and part of the outgoings in a centre is the management of that centre. Outgoings include items such as cleaning, security and management.

**CHAIR**—Don't the managers work in the interests of the owners?

**Ms Martin**—And the tenants, because both objectives have to be maximised.

**CHAIR**—Mr Beddall.

**Mr BEDDALL**—This is the point I wanted to raise. One of the complaints we have is that, whenever you get a dispute, it is because two people are not actually communicating or someone is not listening. And it seems to us that the role here of centre management is crucial. But, in fact, quite often, tenants feel alienated from centre management, particularly when there is a dispute because they see the centre management as representing the owners even though they are paying the majority of the fees.

We have also heard a significant amount of evidence that there is a great discouragement of retailers coming together in any sort of association. I want to hear your views on two things: firstly, that the tenants of a particular shopping centre should have the right to have some say in who the centre management is—not the overall company but the centre manager who is going to look after their centre. And secondly, shouldn't it be almost compulsory that all tenants in a shopping centre be part of a retail association for that shopping centre so that there are genuine issues discussed? Now the evidence that we have had is that any meeting of a group of tenants is actively discouraged by many centre managers—not necessarily by centre management but by centre managers.

**Ms Martin**—In regard to the first question, the tenants have a say in the centre manager—you mean, the actual individual not the company?

**Mr BEDDALL**—Yes.

**Ms Martin**—Not the company. The company obviously appoints the manager to the centre. If there is a problem with that individual, we will change that individual and, over time, yes, we do have problems with centre managers, as any business has problems with staff, and we change that staff. And we have recently had an incident where we had to change a centre manager basically because the relationship between that centre manager and tenants was not the best of relationships. So, if there is an issue, we will change that centre manager.

In regard to the second question relating to retail associations, we like to think—and, obviously, there is some evidence that we are not successful in most cases—that we have a reasonable relationship with our tenants. We convene regular meetings with our tenants. If you have a look at the Charlestown document that we have previously submitted to this committee, you will see at the back the list of scheduled meetings we have had with tenants as a group and also with commodity groups, so that the tenants are fully aware and briefed of all the changes that are going on in the centre and know how we are spending their marketing money as well. If there are not enough meetings or the information that is exchanged at those meetings is not sufficient, then obviously we can look into that area, as well, at the tenants' request.

**Mr Carroll**—I think the other issue, apart from the sort of normal communication, is that we will not meet with groups of tenants to discuss impacts on various tenants businesses. That is an issue that we believe should be confidential between the tenant and the landlord. And, it is to protect the tenant as much as to protect anyone else—to ensure that those details are not given out in a general forum.

**Mr BEDDALL**—There are general issues in a centre where the tenants will have a view that is not necessarily the view of you or the centre manager. We are talking about centres in dispute and we find that there is frustration that they cannot express to anyone, and they are actively discouraged from doing so. It may not happen in Lend Lease centres, but it does happen.

**Ms Martin**—It may happen in other centres. As I said, our policy—and I am sure it would be the same with the other major managers—is that we have an open door policy. Tenants are more than welcome to come in and talk to the centre manager at all times. As I said before, if there is a problem, we will change the management and we have done so in one particular centre.

Likewise, if tenants feel they cannot talk to the centre manager or they would like communications at other levels, we do have regular meetings at, for instance, Graham's level—marketing director—with a number of retailers or retailing groups, likewise all of our leasing executives are there for communication as well. I am sure there are some centres under other managements where centre managers do not talk to tenants.

**Mr FORREST**—I would like to get back on the lease issue again. We have heard evidence from a lot of people that they have been put permanently, almost, on a month by month arrangement. In fact, when

you look at the standard lease that you have offered as evidence, in clause 4 it gives the property owner or the manager the right to assign the lease on that basis, which is part of the bias that I am quite concerned about. In what circumstances do you justify that step?

**Ms Martin**—As Mr Briggs gave evidence earlier, the percentage is very small—I could not give you the exact figures for Lend Lease, but I could provide them but it is probably three to five per cent. The situation in which you would put a tenant on a monthly lease is, as he explained, when you know redevelopment is coming up and you are extending the centre and you want to do what we call retail mixing into particular precincts—fashion precincts, food precincts, entertainment precincts. You do that to maximise the sales in each precinct and hence to maximise sales for the whole centre. So you need the flexibility of moving tenants around.

Other than those centres going into development—and as I said earlier today, there are very few centres going into development—it would be very rare to put a tenant on the monthly lease.

**Mr FORREST**—Do you know examples where new tenants have been put on that basis of lease?

**Ms Martin**—Not that I am aware of. We sometimes do what is called casual leasing. If you have a vacant shop, you might get an operator in for three months to take that vacant shop while you are looking for a permanent tenant. Sometimes that temporary tenant may become a permanent tenant if they trade well during that period.

**Mr Dreverman**—There are no instances where we would enter into a new arrangement on a less than five-year term, unless requested by the retailer and the retailer's solicitor, and we require notification of that request.

**Mr Carroll**—Just by way of clarification, on the clause that Mr Forrest is referring to, the monthly tenancy only actually comes into being at the end of a lease term. It is a holdover provision, it is not something that says that we can do it at any time, it says that if at the end of a lease they have not entered into a new lease, they can go on a monthly tenancy which they or we can terminate on a month's notice.

**Mr FORREST**—Do you not think that a more appropriate clause would be to give the tenant some right to a much more sizeable ongoing lease, given the investment that they have got tied up?

**Ms Martin**—As Mr Briggs stated earlier, if you know you are going into development and you had sitting tenants, and you do put them onto monthlies, there is usually an understanding between yourself and the tenant, a letter of comfort or whatever, saying that you will get a new lease in that redeveloped centre.

That is in a development scenario. If we have a look at centres that are not going under development—and the majority are not today—in most instances we renew the lease. In fact, over the last five-year period we have only not renewed 10 leases. We have the evidence here. In those 10 cases it was usually because the trader was a poor trader.

**Mr Carroll**—So that is 10 out of a portfolio of 3,500.

**CHAIR**—Just before we move to Mr Morris with a question, can I just ask you about the standard lease that you use in Charlestown Square in New South Wales—is that identical to the property council model?

**Mr Carroll**—No it is not, Mr Chairman. Lend Lease developed the plain English lease which, as you will see, is a short form of Lend Lease leases—it is something like 10 pages in its main body. We developed that. It probably goes a little bit further than the Property Council of Australia lease, which is along similar terms.

We took the view that the shorter the lease, the easier it is to negotiate. The other thing we did when we were putting together our lease was to say it was not a one-sided landlord lease. It took into account all the things that tenants normally ask for and that we gave away during negotiations. In coming up with it, I drafted it with the Centre for Plain Legal Language in Sydney and I discussed the second draft with retailers in Melbourne and got their input into it as to whether or not it would be acceptable.

They endorsed it wholeheartedly and very enthusiastically. They came up with some very constructive comments which we then incorporated into the lease. To be honest, from a Lend Lease viewpoint and from a tenant's viewpoint, this has been a terrific step forward.

**Mr ALLAN MORRIS**—I could draw on your Charlestown submission, which seems to be a bit misleading. I could discuss some of the cases where I feel you are probably in breach of the Trade Practices Act. I could query you about the class action at Parkmore and what that is all about. However, I will instead talk to you about the three issues I raised earlier. Firstly, there is dispute resolutions within centres as opposed as between the individual tenants and the landlords. Secondly, there is the right of renewal so that there is some process to allow people to either sign or to renew so that they feel confident in their business and are investing and maintaining investment in their business. And, thirdly, there is that rental question.

I will start with dispute resolution. Mr Beddall raised earlier this question about involvement of tenants. It seems to all of us that a centre is a whole society with somebody at the top giving orders. It is the old style system with a feudal lord handing down orders to the others. Of course, all the serfs are saying, 'How about me?'. It would seem to me that any centre manager that has a problem arising out of that centre, and I think I have referred earlier to the insurance company model, the ICA model, would be a failure if he or she could not resolve his own problems. That manager should not be there. There also should be much more involvement of tenants in all of those issues, whether it be tenant mix, promotion, cleaning—

**CHAIR**—Perhaps Mr Carroll might respond to that.

**Mr Dreverman**—I will respond. The whole issue here is one of a two-way relationship, and it is certainly the philosophy in which we run the business. There will always be instances, as Ms Martin pointed out earlier, where certain managers in certain organisations may not fulfil their obligations or the philosophy of the organisation they work for.

Certainly, with Lend Lease we are very active. Ms Martin talked earlier about the open door policy of the organisation. That open door policy goes right up the line. What we will do in the future is invest in



some more formal document a dispute resolution clause which allows retailers to know that they have the right to go to their manager's manager, and beyond that also to a committee of management which would hear disputes prior to going to an external mediation. We will put some formal—

**Mr ALLAN MORRIS**—Are you proposing a process in centres where people can actually do more than simply attend a meeting where your manager announces what they are doing, something a bit more organic where—

**Ms Martin**—We have taken steps to address that issue. As I said before, we are not doing many developments but in those developments or remixing which we are doing in the next year or two we have undertaken a policy of getting the tenants involved in the retail mix. For instance, we are currently doing a development in Casuarina in Darwin which is a high growth area. We gave an undertaking to the existing tenants that they would be part of the retail mix process, and they have been. We have had a number of sessions on it. We have discussed all the market research, the availability of expenditure in the trade area, how many ice cream shops, how many T-shirts can be supported, et cetera. That has been debated with those retailers. That was our first one, Casuarina, and we will do it in any of our centres where there is a major remix or redevelopment going on.

**Mr BEDDALL**—We have had some evidence that the general rule is that when the centre manager wants to see you it is within 30 seconds, but when you want to see the manager it is within 30 days. That came from a whole range of centres.

**Ms Martin**—I have a policy in our company that every tenant's phone call must be answered within 24 hours, and likewise their letter, and that policy is restated every couple of months. Obviously, sometimes that policy is not adhered to by centre managers but we constantly remind them that they are there to serve the tenants.

**Mr Dreverman**—It does form a strategic part of their business plan and is one of the major benchmarks or key performance indicators of their job role.

**Mr BEDDALL**—My question is actually related to the lease contract. Now we have heard evidence that we have moved to a standard five-year lease, that we are moving to that across Australia. The previous was usually the three-plus-three option. For some reason the option seems to have totally disappeared. One of the pieces of evidence we have received from people who invest a lot of money in their business is that the five-year period is so finite that, if they are to amortise the cost of the business over five years, then it is a very heavy investment—\$100,000, say, for an average shop with \$20,000 a year trade—before you actually even start to make gross profit let alone net profit. In any circumstances, do you consider giving an option, a five plus-type lease, or have you just now moved to a standard five-year lease?

**Mr Dreverman**—I will answer that, if I could, Mr Beddall. The issue of longer term leases is one which has been on the issue plate of Lend Lease for many years. We have always entered into longer term arrangements. It is not fixed that it must be a five-year term. The issue of option, of course, in a relationship is that it is a one-way arrangement. It is only a put option or a call option, one or the other. In our view a longer term lease is a far more equitable arrangement, and there are many instances across our portfolio

where that discussion has occurred as part of the negotiation process. In terms of getting an acceptable return over a longer period where a high capital cost is required up-front, then we have entered into many arrangements for longer terms.

**Mr BEDDALL**—That is not just for big retailers; the small ones as well?

**Mr Dreverman**—I am talking about specialty retailers. Across our portfolio there are many instances. Of course, in New South Wales they are all registered leases on the title, so it is all public knowledge.

**CHAIR**—I think you responded to Mr Beddall then mainly in the terms of a longer initial lease period. He raised the issue of options which I would like you to address a little bit further. Do you in fact offer an option period to small retailers within the centre?

**Mr Dreverman**—No, we do not.

**CHAIR**—None at all?

**Mr Dreverman**—No.

**Mr FORREST**—On this lease contract, are you prepared to concede some sort of exclusivity to a new tenant in terms of the line that they are retailing? For example, if I am a hairdresser and I make the commercial decision, I am not expecting to have within a few years other hairdressers in the shopping centre. This is a complaint that we have heard. How can you expect somebody to make those decisions with the uncertainty that there could be other specific retailers in their very item? Can you at least concede some willingness to give exclusivity such as that to a new tenant on a particular line? Someone else commented earlier in regard to a sport store that somebody might focus on different aspects of that, but when it is very specific, like a hairdresser—

**Mr Dreverman**—Well, a hairdresser or any other commodity group, it is the same principle. I think the issue is one of the dynamic nature of retail. It was addressed certainly by the Property Council earlier today. But the issue is no different for us. Lend Lease obviously have a requirement in maintaining the leading edge retail plan for its shopping centres and in offering to consumers what they require. Others have used other examples.

I always use the jeans category as an example. If we had in fact given exclusivity for jeans and surf wear five or 10 years ago, we would not have been fulfilling customers' requirements today. It is one area, even in the fashion area, that is still firing particularly well across the country. In most major centres there would be five, six or even seven retailers meeting the different needs and the different niche market requirements for customers. If we had had an exclusive arrangement, we would not have been able to fulfil those consumer requirements over the period of the lease.

**Mr FORREST**—Tell me about hairdressers. That is very specific.

**Mr Dreverman**—Hairdressers? I do not think we have problems at all. Obviously from our side we

talk about the planning basis of each shopping centre. We look very much to the available dollars in each trade area. In fact our retail plan is driven by market conditions and historical sales performance across our portfolio, and with the support of external consultants. So we do not just willy-nilly make a decision to put four or five hairdressers in; that is a market-driven decision based on market size and market capacity which we are able to substantiate before we in fact come up with a retail plan.

**Mr JENKINS**—How does that place somebody who has provided you with a business plan to be a hairdresser? You say there have been shifts in market demand that prompt you to want to have additional competitors on a line. Does that mean you go back to the original tenant and work through their business plan and try to explain to them that what you are saying is correct rather than what they feel is being threatened, that there will be additional competition?

**Mr Dreverman**—We would always, in a negotiation, be very clear that any retail plan is at this stage only and is always subject to change. That is made quite clear. So there is certainly no undertaking that, if it is four or five in a shopping centre, that it will continue to be four or five because there may be, even in the hairdressing categories, some major shifts that occur in consumer requirements which we must continue to fulfil.

**CHAIR**—Can I just ask you some questions about the market rent reviews? We have had suggestions at this inquiry that some rental increases have been as high as 150 per cent, but your submission indicates that merchants at Charlestown Square have faced increases of only five per cent on average over the last three years. You do not specifically address the question of the increase of 150 per cent that we have had suggested are rental increases in centres. Have you had any major increases of rentals that might balloon out for some reason or other, and could you give us the background as to why they might go out to that level?

**Ms Martin**—The figures given in this report are obviously averages. I am not aware of any specific tenant that may have had an increase of 150 per cent but, if there is one, then there may be particular circumstances and we will address them. But I guess we need the name of the tenant.

**CHAIR**—It is fine to talk about average increases, but obviously within that averaging somebody has taken a larger increase than some other tenant. Can you give me the background as to why one tenant might increase substantially over another?

**Ms Martin**—Yes. If there are differences, it can probably be explained by the underlying turnover of the various tenancies. A market review reflects what is going on in the market and, if one commodity group is firing—and, as Graham said, there are some commodity groups that are firing such as sportswear and jeans and surf wear—then that could explain it. The market review reflects what is happening in the marketplace.

**Mr BEDDALL**—Can I raise the market review, because we have had a lot of evidence about what is considered to be unconscionable conduct on behalf of shopping centre owners. Centre management, or whoever sets the rental, will go around to the various shopping centres in the district and have a look at what the rents are, the market rent being charged in other centres, and come to a view about what should be the market rent. Before we had evidence that if someone is having difficulty, instead of actually reducing the

rent, you actually give a rebate but the rent stays the same. So the market rent is still at that unrebated level. So when you come round in the circle, you have an ever-increasing spiral of market rent.

**Ms Martin**—Perhaps I can answer that one. Likewise, we cannot talk about generalities because—

**Mr BEDDALL**—I will be very specific. In Perth, we have Fremantle, there are a very large number of very successful coffee shops. What they did, a certain centre went down and found out what the rent was for those coffee shops and charged it in their centre. They were very different circumstances.

**Ms Martin**—I am not aware. We do not have a shopping centre in Fremantle. If I can just reiterate what I said in our earlier discussion, that is, in the Lend Lease portfolio, in the 1996-97 year—and once again it is averages, and of course there are variances, as we know, within that—our average increase is a negative 0.5 per cent and that, of course, is compounded by the effect of inflation. Likewise, in 1997-98, we are looking at an even further decrease in our reviews and our renewals of leases.

**Mr Dreverman**—Can I further comment that there are many instances on a market review when in fact the rent drops. We do not keep it at an inflated level. There are many instances across our portfolio—

**Mr ALLAN MORRIS**—How many in Charlestown?

**Mr Dreverman**—In Charlestown there are several where the market rent will in fact drop from the rent they were paying previously. In the interim period, of course, the view of Lend Lease is that an abatement or a rebate is the right methodology. Obviously, from our point of view, our major focus is on increasing sales where both parties win—it is a win-win—rather than obviously reducing rent where it is a win-lose, if you like. Our priority is always on maximisation of sales rather than reduction of rent. But, at market review, it is an open market rental calculation and in many cases they drop.

**Mrs JOHNSTON**—I would suggest to you that it is not actually quite ethical to say that, because the turnover goes up, therefore the rent should be in some way factored into that. The turnover may well go up, but the bottom line is that you do not make any more profit. In actual fact you may make less profit. Given that the rental of any business is one of the largest components in running a business, I think that should really be taken into consideration, particularly in economically tough times.

Now you have mentioned before on several occasions that rents do actually go down sometimes. You obviously are much more experienced in this than I am, but I have to tell you that my anecdotal evidence from talking to shopkeepers is that I cannot name one who has ever said that their rent went down. When that turnover goes up very quickly their rent is increased, but when that turnover goes down there has never been a reduction in rent. Could you explain that a bit more?

**Ms Martin**—First of all, yes, I should correct my earlier statement about rental increases being directly related to turnover. Obviously there are other factors that we take into account. It is not just turnover. There is obviously the profitability of that business, the margins and what is happening in that commodity group at the time. However, turnover is an important factor and it is an indication of what is happening in that commodity group at the time.

As I said before, and I have all of the evidence in front of me, this year and next year we will be putting rental increases into effect in those shopping centres that exist in trade areas where there is underlying growth. In those shopping centres where there is underlying growth, in most cases rental increases are either zero or in some cases negative. So that is a direct response to the market—that is, for those tenants that are only going on market review this year or a renewal of the lease. As I said earlier, it depends what trade area you are in and what commodity group you are in as well.

**Mr BEDDALL**—This is just a thought. Do you have a philosophy on what percentage of turnover is an appropriate level of rental? We have heard evidence before this committee that it varies from seven to 21 per cent, and they reckon at 21 per cent nobody can make a living. There are lots of averages, although I have not seen your average. Do you think there is a level which is not sustainable no matter what the category or commodity is?

**Ms Martin**—Yes. We have benchmarks which across the industry we all use; Westfield, Byvan, AMP, we all use benchmarks. However, once again there are great variances. The benchmarks vary according to the commodity group and also to the individual retailer as well.

**Mr ALLAN MORRIS**—Have the benchmarks been provided publicly?

**Ms Martin**—I think we make mention of it in our Jebb Holland Dimasi report. I am sure through the Property Council we could have a discussion on what those benchmarks are.

**Mr Dreverman**—If I could just elaborate on that statement, unfortunately retail is much more sophisticated, much more detailed than being able to come up with an average across the board. Businesses run on a very different basis. I also, like the other members of the Property Council, come from a retail background, and there are many cases where profitable businesses have what would be perceived to be extremely high occupancy costs, but on the basis of the way they run that business they are able to make exceptional profits and exceptional returns. So I would hate to use a figure. Some businesses could only sustain a five per cent occupancy cost on the way they run their business; others can sustain a level much higher than 20 per cent.

**Mr ALLAN MORRIS**—In the same business?

**CHAIR**—Mrs Johnston, I think, wanted to pursue that issue.

**Mrs JOHNSTON**—No, I just want to digress back to education now. There has been a lot of discussion about education. I am glad to see that everybody is now agreeing that there should be some further education, but what mechanism would you like to see in place to actually ensure—without perhaps compelling the potential merchant who comes into your centre—that some sort of education is undertaken by the merchant? It is all very well for you and for Mr Briggs earlier to say how much money you are spending on the courses that you executives and your centre managers attend—that is great, fantastic; but in the end it really comes down to the amount of knowledge that, as Mr Forrest said, the poor sucker who comes into there has, who sees it as a pot of gold but has absolutely no understanding, is sucked in and before we know where we are we have another bankruptcy on our hands. So what mechanisms would you like to see in place

to ensure that education by the merchant is actually adhered to?

**Mr Carroll**—I would like to see it legislated that they have to have financial advice, legal advice et cetera, and that business plans have to be provided.

**Mrs JOHNSTON**—Business plans can be done by an accountant or by anybody else. That does not give the merchant any more capacity to understand what they are letting themselves in for.

**Mr Dreverman**—I think that a condition would also be retail skills specific to running a business.

**Mr FORREST**—I think you must realise that if that kind of education was achieved, no-one in their right mind is going to sign the lease contracts that you offer. They have to pay for your costs to prepare it, they have the awful uncertainty of whether they have any assurance that a major competitor is going to set up across the aisle or next door. No thinking person would sign these contracts. I certainly would not. There is just so much distortion towards the property manager's direction. I find it quite unbelievable. If people are really educated to the extent that you are saying they would be, they would not sign these contracts, so therefore something has to change as to what is actually written into the contract.

**Mr Carroll**—Firstly, there are a lot of very educated tenants out there who do sign these leases. Secondly, I am a great believer in plain language et cetera and we have gone a long way towards that. That is something that can be further improved. But at the end of the day educated people do enter into these and they do realise that there is a risk in entering into any business arrangement. That risk, as far as they are concerned and as far as we are concerned, must be minimised by full disclosure, by everyone acting in good faith. But at the end of the day there is a risk in entering into business.

As we have seen, entering into a business in a shopping centre is a lot less risky than it is entering into business in a strip shop. I would disagree with you that no-one will sign these things. They do sign these things. There is room for improvement in the type of document. But at the end of the day people have got that decision to make for themselves.

**Mr Dreverman**—Can I also add that the lease document that we use was drafted in consultation with retailers and the retailer bodies.

**CHAIR**—Finally, can I ask you one question relating to the submission from the Australian Institute of Business Brokers. They recommended to the inquiry that retail rents should be set as a percentage of turnover, in other words, there would be no such thing as base rental. Do you have a view on that?

**Mr ALLAN MORRIS**—For the type of business area—for particular business types.

**Mr Dreverman**—I do. I think it is totally unworkable in the industry, as it would be in any other industry, to have sales calculated purely on a percentage.

**Mr ALLAN MORRIS**—It works in Myer's in Brisbane. Isn't it the Myer Centre in Brisbane that we were told last week—

**CHAIR**—May I have a response from Ms Martin.

**Ms Martin**—If rental deals were based purely on turnover and there was no base rent, then I think you would be very unlikely to see any investment in retail property by property trusts or developers whatsoever. There must be a surety of income, otherwise investment will not occur. If you are a unit holder—and I think probably a lot of people would be here—of GPT or Westfield Trust or whatever, you will want some surety of your income. So I think before that is explored you must look at the other side, what the ramifications are.

**Mr ALLAN MORRIS**—Is it a problem if we are not investors in GPT?

**Ms Martin**—No. Look, what I am suggesting is, of course, as you must know, superannuation funds invest in those property trusts.

**CHAIR**—We have run out of time. I want to thank you for attending the public hearing this morning. There are still, obviously, some matters that the committee would like to raise with you. If you are agreeable, the secretariat will put to you in writing any further issues that the committee wishes to take up with you.

**Mr ALLAN MORRIS**—And they are happy to cooperate in possible liaison in terms of some of these issues that we are raising here?

**CHAIR**—I think we had that agreement from the outset of your evidence to the committee, and I thank you for that.

**Mr Carroll**—There is some time set aside at the end of the sessions for confidential in camera. I do not think there is anything that has been raised in this that we need to refer back to that, or whether or not there is something that you want to ask us in camera later on.

**CHAIR**—I think we will wait until we get to that period.

[10.51 a.m.]

**MAHER, Mr Graeme, Corporate Merchant Relations Manager, Westfield, 100 William Street, Sydney, New South Wales 2011**

**NEWTON, Mr Ian, General Manager, Leasing Division, Westfield, 100 William Street, Sydney, New South Wales 2011**

**CHAIR**—Welcome. The committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as a contempt of parliament. The committee prefers that all evidence be given in public, but should you at any stage wish to answer a particular question in camera you may ask to do and the committee will give consideration to your request.

Thank you for providing information which was requested by the committee and has been accepted as exhibits to the fair trading inquiry. We will be referring to this material in some of our questions today. Would you care to make an opening statement before we commence the questioning?

**Mr Newton**—Yes, thank you. The committee has sought the views of Westfield on a number of matters concerning retail tenancies. We are happy to share our experience in these matters. My own experience has been gained over the last quarter of century in the property industry, the last 13 years as general manager of leasing at Westfield.

There are two preliminary matters which we have found important in considering any aspect of retail tenancies. First, everything is driven by trying to meet the requirements of the public. This determines the location of shopping centres, the layout of those centres, the retailer mix and the products sold. For example, regardless of my own personal views on Sunday trading, the public voice their desire for shopping on Sunday by making this a major shopping day. It is our view that it is fundamentally wrong to interfere with what the public want.

Secondly, retailing in Australia is highly competitive, both for the owner and the retailer. As part of this is the recognition of the shopping centre is not simply a group of retailers working as a team to serve the public; it is a number of retailers who are seeking to maximise their profits and lower their rents. They are highly competitive with each other, frequently fiercely competing for the same consumer dollar. Financial success, and sometimes survival, depends on which retailer is able to serve the public best. In this environment, there will inevitably be retailers who do very well and those who do not survive. It is our view that it is fundamentally wrong to interfere in this competitive process.

The first matter on which our views are sought is on rent reviews on the basis of market rent. Our preference is to agree to a rental package which comprises a base rent, with separate outgoings for the term of the lease, with fixed annual increases. Most leases are for five years and, like other long-term supply contracts, contain some mechanism for price adjustment to keep pace with inflation and other factors. Over



the years we have tried various ways of doing this, and we recognise that there are a number of competing approaches to periodic rent reviews. No way is perfect. Our own experience is that we find the most workable for us and the retailers is the form of package I have mentioned. Both the owner and the retailer are then able to predict with certainty the rent for the next five years.

I should also outline what happens in the negotiation of a new lease. We have a view on what the rent should be and the retailer has a view as well. We then negotiate on an agreed rent. Each shop in the centre has a value determined by external forces. No shop has an intrinsic market rent. For example, the shop right next door to Big W may have considerably less retail value than a shop on the centre court. Not so long ago Franklins did not sell fruit, vegetables or meat and it was desirable for a fruit shop and a butcher to be located right next door. Today the situation is quite different.

A prominent site, with high density foot traffic passing by, will achieve a higher rental than a site with significantly less foot traffic. To us, the rent is the same for a site irrespective of the usage, as we do not control the retailer's competence, position in the marketplace, staff training, marketing, advertising or business acumen, therefore we do not consider his turnover as an ability to pay levels of rental.

Supply and demand for a particular shop at a particular time determine the market rents. There is some talk that shopping centre rents are artificially high. Retailers have a vested interest in keeping down rent and promoting this idea. Every three or four years or so I hear this talk about rent being excessive. If rents were excessively high, there would be mass vacancies in shopping centres but the reality of life in our shopping centres is that we currently have a vacancy factor of 0.51 per cent of our gross leasable area. Another barometer that we measure ourselves by is our debtors. Our debtors at 31 December 1996 were only 1.2 per cent of our December billings, so if this was the situation and rents were too high vacancies would occur.

Westfield has been in the shopping centre industry for almost 40 years and most of the business that we do is of a repeat nature. An example of this is the new shopping centre we opened in Tuggerah on the New South Wales central coast where 140 retailers, most of them national chains, followed us into development in a small but growing trade area, in a lot of cases on a 'because Westfield must know what they are doing' basis. The centre has justified most expectations.

Generally, the first term of a retailer's lease is at a lower rent due to the risk factor they face. They also pay less rent due to establishment costs which are able to be amortised over the term of the lease. All things being equal, a retailer's first term of lease is the most costly due to the establishment costs.

The second matter is a disparity of rent between different retailers. A department store may pay a different rent per square metre than a discount department store. David Jones, for example, may pay a different rent to Big W; a dress shop may pay a different rent to a department store; Country Road may pay a different rent to Myers. At first glance, it may appear that David Jones is getting an unfair advantage in paying a lower rent per square metre than a Country Road shop, but if this were the case David Jones and Myers would be substantially more profitable than Country Road, but this is not necessarily the position.

Why is it that those stores which pay one of the lowest rents per square metre are less profitable than

those stores which pay much greater rent per square metre? The simple answer is that the smaller stores feed off the bigger stores and are able to trade out of a much smaller area. What is frequently critical is not the rent per square metre, but the rent per shop measured against total sales from the shop.

Even between similar retailers there may be a disparity of rents. This reflects a number of factors, including location of the shop; for example, is it closer or further away from the parking or David Jones at the time the lease is negotiated, or is it next to a competitor—one hairdresser next to another hairdresser. Department stores and other majors have a unique market position and are able to negotiate to take advantage of this position.

The third matter is information provided to retailers about variable outgoings in promotional expenditure. In our company, at the end of September, an audited statement is sent to each retailer by the centre manager and signed by an external auditor relating to expenditure of variable outgoings from the previous year. By 1 June each year, a copy of an estimate for the variable outgoings for the next financial year is sent to each retailer.

In general, in real growth terms, our stabilised shopping centres' recoverable expenses over the last five-year time frame have been roughly in line with increases in the CPI. In the last three years, because of zero based budgeting and focused management, approximately 90 per cent of our centres have received a credit on their recoverable outgoings at the end of the financial year. This is despite the fact that both the retailers and the shopping centre customers have lifted their expectation of shopping centre standards.

We also prepare, on a half yearly and a yearly basis, an externally audited receipts and expenditure statement of promotional expenditure. Total retailers and owners contribution, including categories for expenditure, is provided. Included in the information provided to our committee is a paper called *Let's talk outgoings*. It will be our intention to circulate this to prospective merchants in addition to statutory requirements required in respect to outgoings.

The next matter is non-renewal or termination of lease. Where a retailer and owner agree on a lease, they agree that at the end of the lease term the retailer will vacate without compensation. This is the essence of the agreement reached. The retailer must therefore make his profit from the shop during the currency of the lease. This means that any cost to fitout must be recouped during the lease term. It would be unfair to change what the parties have voluntarily agreed upon.

No retailer is willing to oblige himself to pay rent for an undetermined period. Similarly, no owner is able to commit the premises for an undetermined period. From the prospective of an owner of a shopping centre, there are a number of special reasons. The first is that the centre will require constant upgrading to remain competitive and the owner must have the flexibility to take back premises for this purpose. The second is that the retail mix and public requirements will change. The third is that the retailer may not perform well for a number of reasons.

Westfield has the philosophy of offering the retailer a renewal of lease while we consider the market rent. This somewhat restricts our ability to react to changes to the marketplace, however it gives the lessee a chance to be proactive rather than reactive in determining their own future.

In stating that renewals must be set at the current market rent, we are precluded from setting rents which are unachievable from other operators in the marketplace. A lease is not renewed when a shopping centre is to go to an extension, in which case the affected retailer is put on a short-term lease and given the attached letter of comfort—which I would just like to read into the record, if I may. The letter says:

We enclose herewith a proposal to renew the lease on the above premises. As you are aware, it is our intention to carry out extensions and refurbishment works to the Shoppingtown, and this renewal is therefore on a monthly basis.

However, once we are in a position to do so we will offer a five (5) year lease either in the same premises or alternate premises depending on the situation at the time.

The second reason why leases are not renewed is if the retailer is in substantial breach of their lease for, say, non-payment of rent. It has always been our policy to evaluate the performance of our executives by the number of vacancies that occur in a particular shopping centre. So there is an incentive for executives to negotiate renewals of lease rather than let people vacate. Vacancies not only affect the bottom line profit, but also have an impact on the valuation of the centre and substantial vacancies can devalue a shopping centre.

It is worth noting that in the last financial year, 68.6 percent of the secondary vacant space leased in our centre was below the previous rent level, and 28 percent of the 304 renewals undertaken in 1996 by Westfield were achieved at either the current rent or below the current rent paid. The average increase over the current rent being paid by the 304 merchants was 3.19 percent.

The next matter is the requirement of fitout by retailers. May I first clear up a misunderstanding that may exist. There is a perception that a retailer's fittings have some value to the owner. In our case, they are valueless and they are not taken into account for the valuation of a centre. In addition, where a new retailer comes in, he invariably is unable to use any of the fittings left behind. In fact, there is usually a significant cost to the owner to make good the premises when they become vacant.

When a retailer first moves into a centre, we are concerned to ensure that his fitout is in accordance with the standard of the shopping centre and surrounding shops. Unless this is done, the standard of the centre drops and it ceases to be attractive to the public. A lessee/lessor fitout manual is sent out to each merchant with every proposal, outlining the requirements of the owner.

Our experience over the years is that the views of fitout very much correspond with that of the prospective retailer. Both parties are anxious to present the best image to maximise sales for the retailer. Because of the volatile nature of the retail industry and the changes in retailing techniques, it is essential that both retailer and shopping centre developer use best practice to keep premises at the leading-edge status.

It is our policy that retailers fit out their premises to a negotiated standard at the beginning of their new lease term, which is usually for five years. The benefits to the retailers in refitting are that they avoid customers becoming store blind and bypassing the premises to go elsewhere. It is conceded by the retailers that their upgrade does benefit their performance because it gives them the ability to use new techniques in the marketing of their stores and products. Upgrades are not required on short-term tenancies.

The next matter is requirement for relocation by retailers and compensation. In a Westfield centre, a

retailer may be asked to relocate for the purposes of construction for extension or to improve the retail tenancy mix. The current thinking is that similar retailers should be relocated into compatible precincts to give the time-poor shopper a better opportunity to make comparisons. As shopping centre patterns change, so may this thinking.

If a lease is on foot and the retailer agrees to relocate, he is compensated for his inconvenience—down time, loss of profit and his relocation costs will be paid by Westfield. If a lease is on a monthly tenancy, this situation will vary. A national chain, for example, would be expected to relocate at its own cost and will not receive compensation for down time.

Due to commercial pressure, the situation changes for a small chain or owner operator in that we generally have to make a significant contribution to the retailer for down time, loss of profits and relocation of his shop to temporary sites, even though we have no legal obligation to do so. This is acknowledgment by us that the small operator would have difficulty in surviving were this assistance not forthcoming.

It is commercial reality that, where a retailer can demonstrate genuine hardships caused by redevelopment, they will be given assistance in the form of reduced rental. This assistance does not generally extend to national chains, but it is limited going to the small operator. If we do not assist the retailer, we may lose them and face additional vacancies.

It is quite often the case in redevelopment that adjoining retailers are affected differently. This comes back to different attitudes of the retailers and relies very heavily on the determination and ability to take advantage of the positive sides of these events. I have a number of comments, Mr Chairman, to make in camera to support these facts I have just talked about.

Finally, the last matter we would like to raise is what should be done when the retailer gets into trouble. Firstly, we believe it is necessary to understand why retailers are in trouble. This may have occurred from a series of factors, some personal, some financial. Common personal facts are the split-up of a husband and wife partnership, alcohol, poor health, et cetera. Financial problems may occur from aggressive competitors; from paying too much for the business; from paying too high franchise fees, which means they are highly leveraged; or from a downturn in trading, with the consequence that the business expenses, including original agreed rent, make the business uneconomical.

What we seek to do is to try and understand the problem. We then see what assistance we can provide. Sometimes this assistance is in the form of market consultants and sometimes rent reductions. We do this because it is in our interest to keep good retailers. On some occasions, the best assistance for the retailer is to vacate and to relocate. Ultimately, the matter is for the individual retailer to determine. Whatever the position, the facts are always complex and there is no easy answer. We do not believe however, that government legislation is the answer. In the end, the decision is that of the retailer.

**CHAIR**—Thank you for your statement. I wonder if I could ask you about your knowledge of Marion Shoppingtown and whether you would be able to respond to questions on that particular centre.

**Mr Newton**—In camera, if I may, because I must give specific answers rather than give general

answers.

**CHAIR**—I wonder if I could pose a question to you about temporary leases. We have had evidence to this inquiry that Westfield kept many of their merchants in Marion Shoppingtown on temporary six-month leases to avoid the need to comply with the South Australian legislation. I wonder if you would respond to that. It has been claimed that this was done to avoid claiming of relocation costs to the tenants.

**Mr Newton**—We have certainly entered into a number of negotiations with merchants on six-monthly leases. The net effect of such negotiation means that there are, say, 90 merchants in Marion that run with a holdover basis. Some are monthly tenancies. When the legislation changed, those people that came up for renewal at that time went on to a six-monthly lease.

The economics of the situation is that if you take 90 merchants and you say the fit-out costs of those 90 merchants is \$100,000 each, that means—if the owner had to fund that \$9 million additional cost—that the project would not go ahead. Let us say you were looking at a centre like Marion and you were to say that, with all things being equal, the centre would yield around about 8¼ to 8½ per cent. If you add another \$9 million to that factor, it reduces the owner's potential to go to borrow money and, in our view, the project would not go ahead. That is involved with the fact that the centre had reached the end of its life cycle. It was very old and tired, and we were urging the owner to redevelop it but, with an additional imposition of \$9 million in relocation costs, we could not have proceeded with the redevelopment.

**CHAIR**—What was the maximum period that any of those retail tenants were kept on that temporary lease?

**Mr Newton**—Some received five-year terms, where they would not be required to relocate for the purpose of the extension, but the majority were on a maximum of six months.

**Mr ALLAN MORRIS**—For how long?

**Mr Newton**—Six months is not very long because that is only recent. But with the monthly tenancies: up to five years.

**Mr ALLAN MORRIS**—I also understand that at Marion your lease document of rent details has rent as a percentage of turnover or a minimum rent, whichever is the greater.

**Mr Newton**—Correct.

**Mr ALLAN MORRIS**—We have just heard Lend Lease tell us that that does not work.

**Mr Newton**—Correct.

**Mr ALLAN MORRIS**—How come you succeed?

**Mr Newton**—It is fairly established in the industry that there is a percentage rent factor in every lease. We do not receive percentage rent from our small merchants. Probably less than half a per cent of our rent roll would come in from percentage rent, simply because we believe that the rent we charge up front is the market rent. We do not believe that we need to get additional rent from the merchants under those circumstances.

**Mr ALLAN MORRIS**—So you have no problem with the concept of a percentage of gross sales, or a minimum, and that is the way you work normally? But you are saying that your minimum rent, your—

**Mr Newton**—We believe that is sufficient.

**Mr ALLAN MORRIS**—base rent, is usually so accurate and you are so good at what you do that you do not require the turnover?

**Mr Newton**—I do not think we would be happy driving the rent any higher than it is. We set a rent that we believe is a market rent. You see, we do not control the merchant's turnover. We do not control any factors that go into making up the turnover.

**Mr ALLAN MORRIS**—Are you prepared to make public your averages for the various industries that you use in these contracts?

**Mr Newton**—I am sorry; I am not sure what the question means.

**Mr ALLAN MORRIS**—I am looking at the rent details on your contract, the method of calculating rent and the formula: a minimum rent of X dollars per annum equal to X per cent of gross sales per annum made up from the premises to the extent that such amount exceeds a minimum rent. Does that percentage vary from business to business, say, from eateries to hairdressers?

**Mr Newton**—Yes, it does.

**Mr ALLAN MORRIS**—Are you prepared to make that information public?

**Mr Newton**—Yes, of course. Because we do not put a lot of focus on percentage rent, the percentage we charge is usually between two and three per cent below the industry norm, in other words: what the industry considers is normal. A fashion shop could be eight or nine per cent; we would only charge them five per cent. That means the break-even point is much higher than what it would have been if we had a higher percentage.

**Mr ALLAN MORRIS**—I am with you. I am quite happy with what you are saying, but our difficulty is that we hear these things but we do not see the industry norm. If you would make available publicly the industry norm, and the ones that you use, that would be very helpful for us to actually assess.

**Mr Newton**—Absolutely. I am very happy to do that.

**CHAIR**—I return to another item, which is variable outgoings. You have provided the committee with a copy of the audited statement of outgoings for Westfield Shopping Town at Marion in South Australia. I wonder if you could respond to us about when this statement was provided to the merchants at Westfield Shopping Town in Marion, and how that statement was provided to them. Was it mailed out to each merchant, or were merchants required to collect a copy from the centre management?

**Mr Newton**—No, I understand that those statements are mailed to the merchants, as are their rent statements. I do not believe that they are given out by hand. I would imagine that they are given out by hand to those sole tenants that are in the centre. But if a national chain's office is not at that particular shopping centre, they would be sent by mail.

**CHAIR**—We are talking about each merchant. You said you think they were mailed out to the major tenants but—

**Mr Newton**—Let me tell you this: with someone that is domiciled in the centre, a sole trader, his statement is taken down by hand and given to him in the shop. With the chain stores that do not have a head office in the centre, they are sent by mail to the head office.

**CHAIR**—Thank you.

**Mr RICHARD EVANS**—You have given a description of what variable outgoings are, but how are they distributed amongst the tenants and under what basis?

**Mr Newton**—The area of the shopping centre is calculated and given the merchant proportion that it bears to the percentage of the total outgoings their outgoings are charged on the same basis. So if they have one per cent of the space, they have one per cent of the outgoings.

**Mr RICHARD EVANS**—Including majors?

**Mr Newton**—No, there is a component that majors do not pay in the outgoings. That component is paid by the owner of the shopping centre in every case in our situation. In other words, if the full amount of money to be paid by Myers was, say, \$1 million, and—by negotiation in previous years—they would only pay \$600,000, the \$400,000 shortfall would be paid out by the shopping centre owner and not spread across the other merchants.

**Mr JENKINS**—Is that the only component that the owner would paid of the variable outgoings or are there other things within the total variable outgoings that the owner pays?

**Mr Newton**—If there is a vacancy in the shopping centre, for example, and that vacancy accrues notional outgoings, the owner pays for those outgoings while the shop is vacant and, again, that is not spread over the rest of the merchants in the centre. It is paid for by the owner.

**Mr RICHARD EVANS**—Do the other tenants know that the owners are paying the share of the major's variable outgoings?

**Mr Newton**—I do not believe, listening to my colleagues, that that is a common factor. It is in the document that we have distributed to you, and it is in the document that we are going to put out to our merchants later this year. I do not believe it is common knowledge. It obviously is not common knowledge.

**Mr RICHARD EVANS**—It would be helpful if it was.

**Mr FORREST**—I would like to go back to Mr Morris's question earlier. I do not think you actually defended the accusation that at Marion the temporary leases are simply there to get around the South Australian legislation. In fact, if you look at your sample lease at clauses 25(15) and 25(16), it seems to me that they are actually providing the means to get around the South Australian legislation. I would like to hear you defend this accusation that has been put clearly before this committee.

**Mr Newton**—I can only tell you that the motivation to avoid paying \$9 million in additional capital cost is certainly very strong. We know for a fact that if we had had to absorb the additional cost of the \$9 million the development would not have happened. It is a commercial decision that we conform with legislation where we always conform with it. But the fact is the legislation provided for us to step outside that legislation. As a result of that, we took the option to give six-monthly tenancies, which means we are not constrained by that \$9 million—or it could have been \$10 million or \$12 million or \$15 million.

**Mr FORREST**—But you screwed that off the tenant.

**Mr Newton**—Sorry, 'screwed' is not the word, sir.

**CHAIR**—Order! I think Mr Forrest was following that—

**Mr FORREST**—That \$9 million is not being asked from the property owners. It is being asked from the tenants to make the contribution to that cost.

**Mr Newton**—Let me come back a step. Most of those shops in that shopping centre are old and tired—they have been there a very long time—and most of those people would have been required to refit their shop to a modern standard to compete in the marketplace so that they could compete with their colleagues and so that the shoppers got the advantage of the new techniques. We told the merchants: 'Please put this on hold. Please don't spend your money until we come up with a new concept, a new shopping centre.'

It is a matter of fact that everybody who is in that centre knew that at some point in time they would be required to spend that money going forward. We chose to spend it in a new environment, rather than put money into an old environment. There was no surprise to the merchants, Mr Forrest, when they knew they had to spend money on a refit. It was always to be spent—in the old centre or the very brand new centre.

**Mrs JOHNSTON**—Mr Maher, I would like to address my question to you. You are described here as being responsible to the board of directors to help with advising the board of directors on relationships between themselves and the merchants. Could you expand on your role a little. Is this a unique situation or do other shopping centre managements have similar positions? Also, does it benefit the merchants and, if so,



in what way?

**Mr Maher**—Mr Chairman, could I make a statement and that could answer—

**CHAIR**—If it relates to the question.

**Mr Maher**—Yes.

**CHAIR**—Thank you. Proceed.

**Mr Maher**—I have had 34 years experience in retailing. First, I was with Woolworths, and then I was part-owner and managing director of the Suzanne Grae ladies fashion chain, which we grew from Wagga Wagga through various small towns—Temora, Junee, Tumut—into a very large 150-store Australia wide chain, before we sold it. I was a councillor of the New South Wales Retail Traders Association for seven years and a member of the Small Business Development Corporation. I have leased approximately 180 stores around Australia. There is no more dynamic nor exciting business than retailing. It is one of the hardest—

**CHAIR**—Due to the time, Mr Maher, I wonder if you could respond to the question.

**Mrs JOHNSTON**—Let us be briefer.

**CHAIR**—I think the statement is going to—

**Mr FORREST**—What is the benefit to the tenants?

**Mr Maher**—The tenants benefit in a very big way. In my role, I report directly to the directors of Westfield. It is a very proactive role to improve the relationship between the merchants and the company. I have four major thrusts to the role, and they come through retail education. That is probably the area that I identified when I came into the role. What principally attracted me to the role was that I felt that I could play a very important role in putting a focus on the education process because of my credibility on the retail side and with the property companies. Once a year, I hold retail education seminars—within the company—across the four states. Last year, in excess of 2½ thousand retailers attended those seminars. Those seminars are high quality days with government ministers in each state in attendance.

**Mrs JOHNSTON**—Is there a charge applicable?

**Mr Maher**—Yes. We charged \$30 last year, which is a minimal charge. The other area I focus on is what we call 'servicing the retailers'. This is one of the key areas I am addressing. We have face-to-face consultation with the retailers, and we are spending up to a million dollars a year through consultants coming into the business in this process. I do a lot of these things with them myself as well. I am taking a study tour of retailers to the US this year. We will take a retail expert—such as Michael Headbury—with us, so that we can conduct clinics, talking to our retailers as we go around the centres about the importance of gross profit control, stock turns, financial management, et cetera. This was also one of the key thrusts I had in the education seminars. In business, we have so many people who have very little knowledge or understanding of

the basics of business, so I am spending an enormous amount of my time in that area as well.

We have management skill development courses for our own people. Again, we bring an expert such as Headbury in to have a two-day seminar with our people so that they can spend time teaching our people about how to analyse small business. This has been very successful because, if we can assist our retailers in improving their turnover, the rental levels do not become a problem. The retail market has changed dramatically in the last two to three years. In my 34 years in retail, I have never known such change as has happened in the last two to three years.

**Mr ALLAN MORRIS**—Hear, hear. You are the first one to admit it.

**CHAIR**—I would like you to conclude your response to Mrs Johnston, because I have Mr Jenkins and Mr Evans waiting with questions.

**Mr Maher**—All these matters are brought to the attention of the directors of the company and then it filters down from there.

**Mrs JOHNSTON**—Is yours a unique position or are others—

**Mr Maher**—Yes, it is a unique position.

**Mrs JOHNSTON**—I would encourage other shopping centres to follow that, but you should not charge \$35 for the seminars. That must go back towards paying your wages. Thank you.

**CHAIR**—Mr Jenkins and then Mr Evans.

**Mr JENKINS**—Just before the questions, Mr Chairman, perhaps Mr Maher's opening statement, the bit he did not get to read into the record, could be incorporated. It was starting to get to be an interesting story and I thought we might share it all.

**CHAIR**—There being no objections, it is so resolved.

*The document read as follows -*

**Mr JENKINS**—Mr Chairman, I am seeking clarification because I am not sure that I have the right handle. Obviously with some tenants the owners-managers make a loss on those tenants. Basically the way it all works out, if you look at some of the larger stores with the lower rents based on their lower margins et cetera, compare that to any fixed costs against the floor space or anything else to do with the building, it must mean at the end of the day that on some tenants on the basis of the rental that they pay that there is a loss to the owner.

**Mr Maher**—I could not comment on that. Could you?

**Mr Newton**—No, I do not think you can call it a loss to the owner, Mr Jenkins. I think the fact is that you look at all your income for the new shopping centre, you look at the cost of building it and financing it, and then at the end of the day there is a return to the owner which is high or low depending on the circumstances surrounding the things we have talked about.

**Mr JENKINS**—But the return to the owner is a summation of the income that comes in, and that varies on the basis, as has been explained to us, of who the merchant is, what they are into and things like that.

**Mr Newton**—Yes, but the only time the owner would go into a loss situation is if his borrowings were not compensated for by the income he receives.

**Mr JENKINS**—I appreciate that in the total about profit or loss, but I am saying, if you have a Myer store, which is a large area, the borrowings on building that portion of the whole shopping centre are fixed, and it just seems to me that there is not an equal sharing amongst all the tenants of the costs of the overall shopping centre.

**Mr Newton**—I am not quite sure how to answer your concern, but the thing is, just in relation to the way the shopping centre is structured, if you are alluding to the fact that there is a disproportionate amount of money paid by the small shops versus the big shops—I am not sure if that is where you are heading?

**Mr JENKINS**—That is part of it.

**Mr Newton**—There is obviously a discount given by the owner for volume space. The bigger the space you occupy, the lower rent you pay. That applies not only in the majors but also it applies in big specialty shops. For example, a specialty shop that occupies 1,000 metres pays less per square metre than, say, a shop that has only got a small area. So there is a discount for volume. The fact is that, as we have said earlier, unless you can actually have the department store in the shopping centre it does not go ahead, it just physically will not happen. And people come to visit the department store, they do not come and visit speciality shops. It is an intrinsic part of making the whole thing work. You cannot isolate it into the components you are endeavouring to do. It cannot be looked at in that light.

**Mr JENKINS**—I appreciate that. Can I do a sort of trick like Mr Morris does. I want to ask a question. If you cannot answer it in a short time you might take it on notice.

**Mr ALLAN MORRIS**—It is a very good process. It gives them time to consider it.

**Mr JENKINS**—There has been a notion put to us that perhaps the idea of rental is a wrong concept and that there should be a concept of a trading right, which the more I think about it appears to better explain what a shopping centre owner is really trading, in that he provides the space for people to trade their goods and that perhaps better explains the concept of the relationship between the owner-manager and the merchant. Also, the notion of the rental-trading right based on a percentage of turnover where there would appear to be, on the surface, a sharing of the risk between the owners-managers who are trying to maintain the level of their shopping centre, to try to maintain people visiting the shopping centre, using the shopping centre, with the merchants. It just seems to me that in that way, in an open way, a rental trading right based on turnover is the sharing of the risk.

**CHAIR**—The scenario that Mr Jenkins has proposed obviously would require a response from you and, bearing in mind the time, you might respond in writing to the committee about that if you have a view on it.

**Mr Newton**—Okay. I think you made a statement rather than asked a question and I was not quite sure where the question was coming.

**Mr JENKINS**—Well, it was about your response to the notion of a trading right. Throughout the evidence this has been raised, and it is a notion that perhaps more precisely explains the relationship between the shopping centre owner and the merchant over a whole host of the things that we have been talking about.

**CHAIR**—Will you take that on notice and respond?

**Mr Newton**—Yes, we will, certainly.

**Mr RICHARD EVANS**—Mr Newton, you said before that with rental negotiations, 28 per cent were in fact negotiated down.

**Mr Newton**—On the vacant secondary space. I am sorry, on renewals you talked about. Yes, we did.

**Mr RICHARD EVANS**—Yes, 28 per cent was negotiated down. That means that 72 per cent was negotiated up. Of those, were there any rental rebates offered?

**Mr Newton**—Rental rebates are not offered on a renewal of lease. Rental assistance is only given when somebody gets into trouble, so the answer is no.

**Mr RICHARD EVANS**—So the only time in your organisation that rental rebates are given is when someone is in trouble? You do not give it at any time as an inducement?

**Mr Newton**—No. Well, let me go back again. The shopping centre industry over the past had a very serious malaise in relation to incentives being given to merchants to come into particular shopping centres.

For example, we were building a very large shopping centre at Miranda and, out of the 240 negotiations, we had completed around about 150. Other competing shopping centres were being built within the country and, because the owner was not able to fill those centres, they were offering incentives and inducements. Eventually that flowed into our centre at Miranda, even though it is in a different marketplace. So the owner contributed in some cases capital towards fit-outs of those shops, but we never ever negotiated the rental. The contribution was by way of a contribution to a fit-out but not a contribution to the rent.

**Mr RICHARD EVANS**—Just to qualify this: you only give a rebate when a tenant is struggling to maintain his current rental?

**Mr Newton**—That is correct.

**Mr RICHARD EVANS**—So that really is artificially inflating the rental income of that particular property?

**Mr Newton**—No, it is not, because—

**Mr RICHARD EVANS**—If they are not able to pay the rent and you are subsidising that rent, surely that is an artificial figure.

**Mr Newton**—No, because there is still a diminution of the owner's return by the amount of money that you rebate and that still comes back to the bottom line. So, instead of the owner making one million dollars, he makes \$950,000 because he has given away \$50,000 to the merchant, for example. So it still affects his bottom line the same.

**Mr ALLAN MORRIS**—It affects his bottom line but it projects an artificial valuation in terms of returns.

**Mr Newton**—No, because valuations are not just done on rent alone; evaluations are done on things other than rent.

**Mr RICHARD EVANS**—Rent is a major component of valuation, surely.

**Mr Newton**—But so are expenses, and so are other factors that have to be taken into consideration. Certainly, in your scenario, the rebates given to the merchants have an effect on the valuation of the centre and the profit the owner is making.

**CHAIR**—Regrettably, we are well over time. I want to thank you—

**Mr ALLAN MORRIS**—I am sorry, Mr Chairman, this is the one chance we have to ask some of these questions. I will not be here in camera; I am forgoing the hour in camera deliberately. Be aware of that. I refuse to talk in camera.

**CHAIR**—One question, please.

**Mr ALLAN MORRIS**—Firstly, thank you for providing industry standards, publicly. I would be grateful also if you could advise us from your organisation how many of your tenants are below the industry standard and how many people are above the industry standard in terms of their minimum, of their current rent. I would be grateful for that in public as well, because I refuse to be involved in in camera sessions.

My question to you—and you may wish to think about it—relates to the difficulty of people getting valuers independently to assess businesses and shopping centre information. This will allow purchasers to get absolutely independent advice on how that centre is trading and whether or not the business they are thinking of buying is actually inflated in value. I cannot find a case yet where somebody has been able to bring in a valuer to actually assess a business.

**CHAIR**—What is the question, Mr Morris?

**Mr ALLAN MORRIS**—The question is a complicated one. Does your centre give access to independent business assessment for your tenants? If not, why not and will you consider doing so?

**Mr Newton**—Everything is confidential. We do not share information between merchants. We are just not allowed to do that.

**Mr ALLAN MORRIS**—If I want to buy a business off Joe Blow in your centre and I want to get it assessed, I cannot.

**Mr Newton**—A valuer would make an assessment. First of all the lease is a matter of public record.

**Mr ALLAN MORRIS**—The starting lease only.

**Mr Newton**—No, all leases in New South Wales are registered.

**Mr ALLAN MORRIS**—The starting rent only, not three years later, not current rent.

**Mr Newton**—No. If you come to our centre management, you are representing a merchant and you have a letter for example from the merchant saying, ‘I want this gentleman to evaluate my business.’ As long as you have the authority, we would sit down and talk to you about the rental component of the business. We are not qualified to talk about the other parts of the business. We are just not qualified to do that and it is impossible to do that.

First of all, we do not understand the profitability of the business to any great extent because all we get is retail sales which we use to monitor the progress of the centre. We have no idea about the merchant’s balance sheets and most merchants secretly—and very purposely—keep that away from us. We do not see profit and loss statements or balance sheets so we cannot comment on those sorts of things.

**Mr ALLAN MORRIS**—Are you aware of what you are saying?

**CHAIR**—Thank you, Mr Newton and Mr Marr, for your response. I am afraid I will have to call a halt there, Mr Morris. We will have to conclude. We have other witnesses waiting.

**Mr ALLAN MORRIS**—This is serious. Mr Newton may have misled this committee, Mr Chairman, and inadvertently so. He may have been in quiet conflict with his organisation. I suggest that he actually thinks very carefully and responds further on what he said, because what he said so far is in fact quite different to what has been put forward implicitly by both the Property Council of Australia and his organisation on education and access to information.

**Mr Newton**—Certainly not Westfield. You are talking about for the purposes of valuation. We do not have access.

**Mr ALLAN MORRIS**—No, assessment.

**Mr Newton**—We do not have access to people's profit and loss statements. We have 300 merchants at the centre. We do not have a profit and loss statement from all those merchants. That is private and confidential.

**Mr ALLAN MORRIS**—You should think about it and respond later.

**CHAIR**—We have had the response. I thank you for your time and also Mr Marr for attending the public hearing. We are well and truly overdue. If you are agreeable, the secretariat will put to you in writing any further issues. I invite Mr Morris to discuss that with the secretariat and respond to those further inquiries. Thank you very much.

[11.38 a.m.]

**BOOLER, Mr Thomas Edward, Regional Manager, AMP Shopping Centres Pty Ltd, Level 1, 9-13 Young Street, Sydney, New South Wales 2000**

**FAGG, Mr Neil, National Leasing Manager, AMP Shopping Centres Pty Ltd, Level 1, 9-13 Young Street, Sydney, New South Wales 2000**

**HARRISON, Mr Brian Terry, Managing Director, AMP Shopping Centres Pty Ltd, Level 1, 9-13 Young Street, Sydney, New South Wales 2000**

**CHAIR**—Welcome. Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as a contempt of the parliament.

The committee prefers that all evidence be given in public, but should you at any stage wish to answer a particular question in camera, you may ask to do so and the committee will give consideration to your request. Thank you for providing the information requested by the committee which has been accepted as exhibits to the fair trading inquiry. We will be referring to some of this material in our questions today. Would you care to make an opening statement before we commence our questioning?

**Mr Fagg**—Yes, we would like to make an opening statement and submit a paper in support of that. Because of a shortage of time we will be very brief and only take parts of that paper.

**CHAIR**—It is agreed that the paper be accepted as evidence to the committee.

**Mr Fagg**—By way of introduction, AMP Shopping Centres is a wholly owned subsidiary of the Australian Mutual Provident Society and is responsible for the management of AMP's directly owned retail property portfolio. We have approximately 1.6 per cent of Australia's total provision of retail space and just over two per cent of retail sales in Australia go through our centres.

The AMP has in excess of two million policy holders in Australia. These ordinary citizens have entrusted their funds to AMP to provide for their security, either through market competitive investment returns for their retirement or to cover insurance pay-outs. AMP has an obligation to meet the needs and expectations of these policy holders and therefore seeks to have committed competent retailers in its centres who will provide both excellence in service and products.

By optimising the trading potential to the centres under management, AMPSC maximises a sustainable rental income from retailers. Coupled with close control and minimisation of operating expenses, this provides the basis for improved property value and returns for the AMP's two million policy holders.

The dynamics of retailing has been alluded to a number of times this morning. I just want to take a



moment of the committee's time to emphasise the vast structural change that is in place. If we take the Australian Bureau of Statistics household expenditure survey for 1988-89 and five years later 1993-94, we see the following movement. We have to realise that household expenditure is about \$200 billion a year, of which about half or \$100 billion ends up in retail in which about \$180,000 businesses participate.

**CHAIR**—Before we move any further, what is the date of that report from ABS?

**Mr Fagg**—It is 1993-94 and this is compared with 1988-89, which was the same household survey done five years prior. In recreation and leisure, in 1988-89 the percentage of household income was 11.8 per cent. In 1993-94 it was 13.1 per cent, plus 1.3 or another \$3 billion worth of expenditure. If we go to clothing, footwear and apparel, in 1988-89 that was 6.1 per cent and in 1993-94 it was 5.6 per cent. That is a swing of 0.5 percentage points, but that is equivalent to nearly \$1 billion in sales. That is equivalent to 2,000 businesses averaging sales of \$500,000 per annum. A huge swing. In the interests of time, I will not dwell. I will simply reinforce comments made about lifestyle retailing, computer shops, telephone shops and the growth of cinemas, other entertainment and leisure.

**Mr ALLAN MORRIS**—And Jeff Kennett's gambling.

**Mr Fagg**—Jeff Kennett's gambling or Victorian gambling is included in recreation and leisure. Changing dynamics of necessity are reflected in the tenure, lease term, usage, rental and indeed goodwill of retail businesses and shopping centres. In simple terms, today's successful business may not survive until tomorrow, not necessarily because of the trader, but because of the dynamics of the retail marketplace. We in AMPSC have an obligation to our policy holders, retailers and shoppers—the consumers—to provide a contemporary tenancy mix of skilled and commercial retailers in this competitive marketplace.

Briefly on rentals, we simply want to make a comment on AMP and are willing to answer questions later. We have a suite of offers that we are prepared to negotiate individually with each retailer and, as most retailers seek some degree of certainty during their lease term in regard to payments, the majority of our contemporary specialty shop leases contain annual adjustments to the base rent in the form of either CPI or fixed step increases.

In regard to rentals for continuing and new tenants, our lease says that in any rental negotiation or determination we assume the premises are unoccupied. We suggest that with respect to these negotiations sitting retailers who are competent and efficient have strong negotiating leverage with managers as owners cannot afford to lose such retailers at lease expiry and therefore the sitting retailer is not disadvantaged. Conversely, inefficient retailers who are not providing a competitive offer are a burden to their neighbouring retailers and they do not provide a benefit to the centre shoppers on which the other retailers depend.

These retailers do not, and we suggest indeed should not, have leverage. The owner then has the opportunity to exercise its right not to renew a lease and can introduce a replacement contemporary usage or another retailer which is for the benefit of all interested parties in the shopping centre.

In regard to outgoings, we in AMPSC undertake extensive research, be it in exit interviews, telephone interviews within the trade area or focus group discussions in customer attitudes and expectations of each of

our shopping centres. This research demonstrates the increasing importance of amenity in a shopper's choice of shopping centres. The amenities and facilities which shoppers now seek and expect in the well managed centre include: safety and security particularly in the car park and especially at night; clean, odourless, safe and graffiti free toilets and parenting rooms; good illumination; comfortable and healthy air conditioning; information kiosks; and other customer services. These services are part of the variable outgoings expenses, but they are clearly to the mutual benefit of retailers, owners and shoppers.

With respect to goodwill, the Retail Traders Association of New South Wales in their June 1995 monthly newsletter provided the following advice to retailers, 'When the lease is up, the lease is up.' Another quote is, 'Goodwill has a diminishing factor the closer the retailer comes to the end of the lease.' In assessing the goodwill of a retail business, retailers and their advisers must make a prudent judgement on the expected value of the goodwill having regard to the unexpired lease term. This advice is very relevant to purchasers of businesses through assignments of existing leases, particularly those that are close to expiry.

We at AMPSC are very concerned about the increasing number of prospective assignees or indeed franchisees who are financially sound, often frankly with a nest egg out of superannuation, but who have little or no experience in retail and who therefore have a low probability of successfully conducting a retail business. It is our experience that all too often these people appear to have received inadequate advice from so-called independent legal and financial advisers, and we can only restate that, with all the advice in the world, in any small business venture there is an element of risk.

I will just make a comment on lease terms at Garden City, Booragoon, in terms of fit-outs. We expect retailers to constantly upgrade their premises and improve their offer at least every five years, but where they undertake substantial amounts of capital we will provide an extended term. At Garden City there are 17 leases or about 15 per cent of tenancies where the leases exceed five years because of the amount of capital.

The average tenure of occupation, including unexpired lease terms at Garden City, is 10.6 years. Over the last four years, out of 79 leases we have renewed 69 by mutual agreement. Six retailers have vacated for a host of personal reasons, some of which were mentioned previously such as family divorce, dissolution of partnership, et cetera. At Booragoon currently, out of 115 specialty leases there are three lessees on monthly hold-over, which is less than three per cent. Advanced negotiation is under way for relocation of those.

As to marketing, professionally managed merchants' associations or marketing committees provide effective mechanisms for communication and exchange of ideas between centre managers and retailers on issues that impact on retailers' businesses. We actively support these forums, but unfortunately that view is not necessarily shared by a significant number of retailers who fail to take advantage of those forums. AMP contributes up to one-third of the contributions made by retailers to marketing funds and, where appropriate, will provide additional funds.

Briefly I want to touch on the Trade Practices Act. Section 52(1) of the Trade Practices Act states:

A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Consequences of breaching the act include fines of up to \$200,000 for companies, \$40,000 for individuals for making false representations or unfair representations under its consumer protection divisions, which include harsh and unconscionable conduct. Not only that, damage is available to injured parties.

In the interests of time, our conclusions and recommendations are very much in accord with those put forward by the PCA. We wish for harmonised lease legislation. We believe we in the industry have to work much harder with the retail associations and we include, which has not been mentioned before, professional advisers in this because we believe it is external professional advice that sometimes lets the ship down a bit. We also believe that, to protect the buyer of a business, a business valuation must be obtained from an independent qualified accredited valuer before assignment is possible, and to assist the owner a disclosure statement must be provided by the prospective purchaser of a new lease or to a new lessee.

Finally, to assist in arriving at constructive solutions, AMP Shopping Centres would welcome any opportunity to cooperate with the secretariat in formulating your final recommendations. Thank you.

**CHAIR**—Thank you very much for that additional statement and evidence that you have submitted to the committee this morning. I wanted to follow up one issue with you and that is in respect of the standard retail lease used at a particular shopping centre in Western Australia. Are the AMP lease agreements and disclosure statements identical all around Australia, or are they different from state to state?

**Mr Fagg**—They are marginally different from state to state because they have to comply with each state retail lease legislation, and you will note in the back of the Booragoon one there is in fact an addendum that refers to Western Australia particularly. So the body of the lease is constant in all states.

**CHAIR**—Can I come to that particular centre then, Garden City, Booragoon? The disclosure statement A14 shows that it is not possible for rent to be reduced on review for merchants at that centre. The same provision may not be valid in a retail lease in New South Wales, for example. It talks about increases.

**Mr Fagg**—It is certainly our philosophy, and it is accepted in other states, that the rental may go down at the negotiation of a review during the term of the lease.

**CHAIR**—Under the disclosure statement for Garden City, Booragoon, it is not able to be done, apparently.

**Mr Fagg**—That is correct. It is a very strong trading centre.

**Mrs JOHNSTON**—Could I just ask you, Mr Fagg, in regard to the discussion that we had last week—and thank you very much for the very good visit that I had there that you arranged—the comment was, however, made by one of the representatives from the traders' or merchants' association that he too felt that the way that the market reviews were achieved or arrived at was perhaps not satisfactory, particularly given the economic climate of the last four or five years. Would you like to make a comment on that, please, bearing in mind the merchants' opinion?

**Mr Fagg**—First of all, if it is a rent review, legally within the lease it can be taken to the third party

for determination—that is, during the term of the lease—so that right is always available to any tenant, any retailer. Secondly, we would point out that Garden City again is one of the strongest trading centres in Australia and we have had very little occasion to expect in that centre that rents would decrease very significantly. I think, while not quite answering your question, we should put on the record, as our colleagues have done, that there are other centres which we own where there have been noticeable reductions in rentals at new lease negotiations, and particularly we would refer to Knox City in Melbourne where there has been a diminution in rental on lease renewal negotiations.

**Mrs JOHNSTON**—If I could just follow on the question I asked, I understood from the comments made by the particular merchant that he felt in his view it would be fairer if rent reviews were actually more in line with economic expectations or, indeed, the CPI. I think he used the example that if the CPI is only five or 10 per cent, or whatever it may be, to have a rent review of 50 per cent at the same time is not realistic. Those figures are not precisely what he said, but I am just using them as an example. At that time I do not think an expressive comment was made to him because this is obviously something that gets negotiated between the management there and himself, and I would not expect for you to make a comment in public at that time. However, now you may like to comment on that.

**Mr Fagg**—The only comment I would make on public record at this stage is that if he were to renew his lease at this point of time we would certainly willingly look at having a five-year lease period, or even longer, if he were to spend a significant amount of money on a new fit-out, et cetera. We are more than willing now to accept one of the suites that we mentioned earlier, so we may settle, for example, on CPI increases only during the period of that lease and drop out any provision of a market review. But again the market review historically was part of the very strong trading pattern of Garden City, Booragoon. Like the rest of Australia, trading conditions are tightening up in that centre as well.

**Mr RICHARD EVANS**—How does AMP Property Group handle variable outgoings? Is it as per the lease arrangement here, that it is proportional to floor area?

**Mr Fagg**—It is proportional to floor area. Any shortfall in majors, if any, or because there are vacant shops, are paid for by the owner. We issue an estimate in writing by mail to all lessees within that shopping centre for each outgoings year. We provide, after that year, an audited statement of the actual outgoings for that year and either refund, which tends to be the case more these days, or, if for some reason they have gone up, there are some extra charges.

**Mr RICHARD EVANS**—Would each tenant know what percentage of the lettable floor space that they in fact have?

**Mr Fagg**—I am not sure. Mr Booter may be able to answer that question in more detail in regard to that Booragoon lease.

**Mr Booter**—Yes, they should do.

**Mr RICHARD EVANS**—It is not just at Booragoon; it is right across the board.

**Mr Booler**—As a standard thing, yes, that should be the case.

**Mr RICHARD EVANS**—That they actually know what the percentage of the total lettable is.

**Mr Booler**—Yes.

**Mr RICHARD EVANS**—In your lease here as well you have got a merchants' association. It gives the impression that perhaps your management group is not very happy about merchants' associations. Correct me if I am wrong, but it does say here clearly in clause 8.9 that a lessee may not object if the centre does not have a merchants' association or if the merchants' association is wound up. Have you got something against the people coming together as merchants' associations?

**Mr Fagg**—No, not at all. Because where we have marketing levies, as I think an earlier speaker today said, one of the advantages of marketing levies is that we see them running much the same way. We see there being representatives of each particular commodity group on them. Sometimes though, to be frank, they are a little easier to administer if in fact you do not have the majors necessarily influencing power on it. But, equally, we are open-minded about it. Some of our centres are still on merchants' associations; some are not. Some of us will argue they are very good; some will argue marketing levies are better. The principle is the same.

**Mr RICHARD EVANS**—I guess this clause is included in your lease because merchants' associations may not just talk about marketing, they may talk about other things. Is this a protection for yourselves? Is there some sort—

**Mr Harrison**—If I can answer that, there has been a move across the world away from merchants' associations to marketing levies. The merchants' association is locked in by voting power and other situations. There has been a move away from that around the world, and the provision in the lease there is in case we head that way with Booragoon. But so much for the merchants' association. Our evidence has been that it depends on your retailers, but it also to a large degree depends on your centre manager and how he runs and controls that merchants' association. If he does it—

**Mr ALLAN MORRIS**—Controls?

**Mr Harrison**—Well, how he runs it. If he does it for the good of the retailers, then it is of great benefit. If he does it in an incorrect way, then all you get is aggro and you will get no benefit from it. So the reason in a lot of the places that they have gone away from merchants' associations is because they have not worked the way they were meant to work. But they do work where you have got a good committee and where you have got a good manager.

**Mr RICHARD EVANS**—The management fee of managers within a shopping complex or generally—is that determined as a percentage, or is it a set fee or is a total cost associated with that management? Is it payable by variable outgoings, and are there any contributions at all by the AMP Property Group?

**Mr Harrison**—It is paid by the variable outgoings, and it is calculated in most instances on a percentage of income.

**CHAIR**—Could I just ask a couple of questions about the disclosure statement A12? You are only disclosing redevelopment plans for the shopping centre for which development applications have actually been lodged. It has been suggested that prospective tenants should make their own inquiries as well. But does that in fact mean that AMP could have plans on the drawing board for major redevelopment of a shopping centre which would not be disclosed to a merchant in lease negotiations?

**Mr Fagg**—It is a question very much of degree. If we take Garden City, Booragoon, we have had an application before the City of Melville, which is the local council, back to the Western Australian Planning Commission—it has been going on for something like three years—where we are trying to extend the centre from 48,000 square metres to 65,000 square metres. Now we have no surety that that will (a) be approved, or (b) when it will be approved. To us that is a—

**CHAIR**—Do you believe that you have a statutory duty of care to disclose all of that information in your possession to the merchants?

**Mr Fagg**—It is a question, I believe, of fairness. What if we were to say to somebody, ‘This is the plan we have from a centre’? I could take perhaps another example, Pacific Fair, which I think is generally regarded as one of the strongest shopping centres in Australia. That took something like four years between planning and starting work to get it off the ground and there were probably something like 70 different schemes in that process. One of the down sides of saying something today is, in fact, that it may bear very little, if any, resemblance to that which we do, nor can we usually quantify or spell out the time when we can do it. So, on one side, I take your point that we should be disclosing everything that we know; on the other hand, we do not know what the final product will be, or when the timing might be. We have a juggling act.

**CHAIR**—When you receive the information, do you disclose it to the merchants that you are negotiating with over a new lease?

**Mr Fagg**—Yes. We must do that because if we do not I am personally liable for a fine of \$40,000 for misrepresentation. So the answer is that we are personally liable if we give out misleading information.

**Mr ALLAN MORRIS**—I have a couple of questions. The first one is that you, very pleasingly I thought, spoke about the weakness of independent advisers. How much do you cooperate, in terms of a business or somebody bringing in an independent adviser to assess the viability of the business, or a business potential? How much support do you give them? How much information do you give them? How much cooperation do you give?

**Mr Booler**—If the retailer who is selling is—

**Mr ALLAN MORRIS**—Or a prospective new franchisee, for example, that has not been before.

**Mr Booler**—Are we now talking vacant space?

**Mr ALLAN MORRIS**—Both. Can I give you a range—an assignment: a new tenant and a change in a business.

**Mr Booler**—Can I start with a circumstance where a business is changing hands. If the selling retailer is happy to disclose the information and tells us that, then we are happy to disclose whatever information is available to us.

**Mr ALLAN MORRIS**—Only about that one business.

**Mr Booler**—The rest of the information is confidential. So, yes, only about that one business. But whatever else we can disclose—that is not strictly confidential—we would.

**Mr ALLAN MORRIS**—But how could an independent adviser give very good advice, if all they get is a very small snapshot of a very small sliver of a very large operation?

**Mr Booler**—It depends on what information specifically you are talking about. If we are talking about the general trend of sales and those sorts of things within categories—

**Mr ALLAN MORRIS**—If you were advising a prospective buyer, what would you need to know about the business and its environment that the owner kept secret?

**Mr Booler**—If I was a prospective buyer, I would want to know—

**Mr ALLAN MORRIS**—No, if you were advising a prospective buyer, what would you need to know if you were acting for them?

**Mr Booler**—I would tell the prospective buyer that he would need to know all that he could about the rental arrangements, the lease itself and the sales.

**Mr ALLAN MORRIS**—Tenancy mix in the future? Prospective plans? Levies? How many people are paying over-rent, how many people are paying under-rent? You would want to know a lot more than simply about that one business, wouldn't you? So how can you, on the one hand, say the independent adviser let people down and then say that you hold all the information but actually keep it secret on the grounds of confidentiality? It is a massive contradiction between yourselves and the PCA and commonsense.

**Mr Fagg**—If I could answer very briefly, we also, in our leases, state that we have an obligation of confidentiality to each one of those tenants. So we really cannot go running around disclosing our views of other people's businesses to somebody coming in.

**Mr ALLAN MORRIS**—I did not say you did.

**CHAIR**—Thank you for your response.

**Mr ALLAN MORRIS**—That was only the first strand. The second strand was about your concerns

and, I think, your comments about goodwill. On the one hand you want tenants to stay on, but at the same time you say there is no business beyond the lease, which is what tends to lead people to deal—What is happening more and more is that people will milk business until the lease expires so that, at the end of the lease expiration, you have got a business which has been milked as much as they could. That does not seem to be in the interest of the centre. If, on the other hand, there was better independent advice and evaluation or assessment of the business, and more confidence of lease renewal or assignment, would that not be in the interests of the centre, the tenants and yourself?

**Mr Fagg**—The simple answer to your question is yes, although I think your introduction to it was fairly sweeping.

**Mr ALLAN MORRIS**—Very sweeping, but based on the evidence we have heard so far, pretty accurate.

**CHAIR**—Can I ask one final question before—

**Mr ALLAN MORRIS**—I have a third one, Mr Chairman.

**CHAIR**—Bearing in mind the time, it will have to be brief.

**Mr ALLAN MORRIS**—I will be, Mr Chairman, but bear in mind that I shall not stay for the confidential sessions, so you will have an advantage over me.

**CHAIR**—I understand that, but we are well over time.

**Mr ALLAN MORRIS**—Concerning the prospect of goodwill, or the sale of a trading right, whatever you want to call it, if there was decent independent assessment of the business viability, if there was a decent expectation of longevity or renewal and assignment, wouldn't that go a long way towards providing some assurance? Forget the word 'goodwill'; call it what you like. Somehow the person who builds the business must believe that they will get a benefit at the end of it and not milk it on the way through.

**Mr Fagg**—In simple terms the answer is correct. Equally, we would just like to put on record that within the paper, the submission we have given to you in writing, there is a fairly extensive definition of goodwill which is taken out of US constitutional law where it talks about a number of factors including dependability, patronage, skill and all of those things which, if they build up, add to a goodwill factor. The goodwill factor includes, we would suggest, the capacity to renew a lease with an owner, which I think is the point.

**Mr ALLAN MORRIS**—So the safeguard then would be, if there was an independent business assessment being done for the seller, that it would be required to be visible to you as well. So if a prospective buyer was going to pay more than what the assessment said was a sustainable level then you as a landlord could say, 'I do not like this, you are not required to renew.' I am trying to think of a way in which we can both satisfy your needs for longevity and confidence and security, and the business person's needs to actually say that for all the years of work that they have put in, they actually have something to transfer or



sell at the end.

**Mr Harrison**—One of the main problems here is that we have to be very careful that we do not over-protect the inefficient retailer and operator, and that is where a sweeping type of thing will be damaging to the centre and to the retailers in the centre.

**Mr ALLAN MORRIS**—But an independent assessment, if it is adequately sourced with information—which it is not at the moment because of all the things we have talked about—would in fact—

**Mr Harrison**—An independent assessment is fine. I am just very wary of the fact that we have to be careful that we are not trying to do too much to legislate against the inefficient operator.

**Mr ALLAN MORRIS**—I agree, there has to be a licence to go broke.

**CHAIR**—I am going to conclude this session now. Thank you for attending the public hearing this morning. We have well and truly run out of time. There are still some matters that the committee would like to pursue with you. I note your agreement in your opening statement to provide us with further information. I thank you for that. The secretariat will be in contact with you in relation to matters which members wish to raise.

Resolved (on motion by Mrs Johnston):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

*Evidence was then taken in camera—*

**Committee adjourned at 1.24 p.m.**