

29 April 2022

Director of Consumer Affairs and Fair Trading  
Consumer, Building and Occupational Services  
Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001

via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

Dear Director,

**RE: TASMANIAN RETAIL LEASES BILL 2022**

The Australian Retailers Association (ARA) welcomes the opportunity to comment on the Tasmanian government's draft *Retail Leases Bill 2022*, which will replace the existing Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 when it is repealed on 1 January 2023.

The ARA is Australia's oldest, largest, and most diverse peak retail body, representing a \$360 billion sector that employs 1.3 million Australians. We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership.

We have a number of smaller, single-shopfront members in Tasmania, in addition to our large national members who have extensive retail operations across the state. On behalf of our members, we commend the Tasmanian government's implementation of the *National Cabinet Leasing Code of Conduct* and the efforts, outlined in this bill, to make further reform to the framework for retail leasing.

We also welcome the collaboration between industry and government in working towards the commons goals outlined in Productivity Commission's report, *The Market for Retail Tenancy Leases in Australia- No. 43*, released in March 2008.

Over the past decade, we have seen progress in eliminating some red tape, minimising costs and minimising the regulatory burden on both parties to a retail lease through effective national harmonisation of retail leasing legislation. Despite the complexity of the Australian jurisdictional framework, the retail industry is benefiting from the national harmonisation of the core principles of common minimum lease standards, including disclosures and end-of-lease expectations.

In principle, the ARA would encourage any measure taken by the Tasmanian government to move closer to national consistency and offers following recommendations in respect of draft *Retail Leases Bill 2022*. These recommendations have been informed by consultation with members of the ARA's [Tenancy Advisory Committee](#).

**ARA Recommendations**

**Definitions**

**Recommendation 1**

That the definition of "lessee" recognises a franchisee and/or licensee in occupation of retail premises as the lessee for the purposes of dispute resolution and outcomes mediated by the Director. Similarly, the franchisee and/or licensee should be recognised a lessee if the franchisor and/or head licensee fails.

<p><b>Part 1, Section 7 – When retail leases entered into</b></p>	<p><b>Recommendation 2</b></p> <p>That Item (a) be amended to read, “on the commencement date set out in the retail lease signed by all of the parties to the leased closed”</p> <p>We note that the draft stipulates as the commencement date that the lease is signed by both parties. However, this is often a different date to the intended commencement date noted in the first schedule of the lease.</p>
<p><b>Part 3, Section 18 – Determinations of codes of practice</b></p>	<p><b>Recommendation 3</b></p> <p>That the following industry codes be acknowledged in this section:</p> <ul style="list-style-type: none"> <li>• Casual Mall Leasing Code of Conduct</li> <li>• Sales Reporting and Occupancy Cost Code of Conduct</li> <li>• The Franchising Code of Conduct</li> <li>• The National Code of Conduct, Commercial Leases</li> </ul>
<p><b>Part 4, Division 4, Section 36 – statement of outgoings</b></p>	<p><b>Recommendation 4</b></p> <p>That Item (3) be reworded to clarify the current text, which could be interpreted as though the tenant must pay the total amount of outgoings specified in the statement (the statement being quarterly as set out in items 1, a, b, c and d).</p> <p><b>Recommendation 5</b></p> <p>That Tasmania harmonises statements of outgoings, of estimates and audits timing, in line with Queensland, NSW and Victoria Retail Lease legislation.</p>
<p><b>Part 4, Division 4, Section 37 – Audit of outgoing reports</b></p>	<p><b>Recommendation 6</b></p> <p>That Tasmania harmonises Clause (1) with corresponding State legislation in Queensland, Victoria and NSW. The current draft only triggers an audit of the landlord’s expenses upon a written request from the tenant.</p> <p><b>Recommendation 7</b></p> <p>That Clause (5) be removed and replaced with a requirement for the cost of the audit to be identified as a recoverable outgoing. The current draft places the burden of the cost of the audit on the tenant who requested the audit of landlord operating expenses.</p>
<p><b>Section 45 – Meaning of turnover rent</b></p>	<p><b>Recommendation 8</b></p> <p>That Item (m) be deleted and replaced with the following text “any amount related to the PBS of other such professional services amounts under the Health Act.”</p>
<p><b>Section 50 – Relocation of retail business premises</b></p>	<p><b>Recommendation 9</b></p> <p>That Item (4) is changed from 3 months to 6 months.</p>

Thank you again for the opportunity to comment on the Retail Leases Bill. We believe the above recommendations will support the continuing process of nationally harmonised legislative reforms with the objective of achieving a more transparent and fairer market for retail leases across Australia.

Any queries in relation to this submission can be directed to our policy team at [policy@retail.org.au](mailto:policy@retail.org.au).

Yours sincerely,



**Paul Zahra**  
Chief Executive Officer