

16 October 2026

Riki Polygenis
Assistant Secretary
The Treasury
Langton Crescent
Parkes ACT 2600

via email: retailtenancy@treasury.gov.au

Dear Ms Polygenis,

Harmonisation of retail tenancies and related commercial leasing

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to Treasury's consultation on whether, and how, governments could improve consistency across state and territory retail tenancy frameworks.

Fragmentation of retail tenancy regulation across all states and territories has long been recognised as a drag on business productivity in Australia.¹ Treasury's Consultation Paper acknowledges that while regulatory divergence is not necessarily a problem, where it imposes real-world costs, it can create practical complexity and uncertainty for business tenants, landlords and advisers.

The ASBFEO supports harmonisation of retail tenancy regulation where differing state and territory requirements create unnecessary complexity, cost, delay and uncertainty for small business. Reform should target areas where there is a clear need for harmonisation and be progressed through a process that enables meaningful stakeholder engagement and input and is informed by the operating realities of small business.

Targeted practical harmonisation

Retail tenancy regulation comprises a patchwork of rules and requirements that seek to address a variety of often-competing interests of business tenants, franchisees, landlords, shopping-centre operators, property owners and investors across a range of policy contexts.

Given this complexity, the ASBFEO supports reform being pursued through a carefully designed, measured process that targets agreed priority areas for harmonisation and achieves practical outcomes before considering whether broader reform is needed. Such an approach appears most akin to the national minimum baseline model outlined in Treasury's consultation paper. We do not consider that pursuit of a single uniform law would be achievable in the short-to-medium-term and risks delaying practical measures to harmonising regulatory divergence.

By designing a process that prioritises areas of regulation and sequences the work towards harmonisation, retail tenancy reform can be informed by evidence and lessons from the preceding

¹ Productivity Commission (PC), 'The market for retail tenancy leases in Australia', *Inquiry Report*, No. 43, PC, Australian Government, 2008.

phase and move at a pace which enables effective consultation, negotiation and consensus building.

At the same time, it will be important to ensure the process is designed in a way which enables participants to flexibly respond to and seize on windows of opportunity for securing consensus on critical issues as and when they arise. This will help to avoid unnecessarily formal, cumbersome processes and barriers which might delay achievable reforms.

The process for designing the framework should be focussed on:

- identifying and engaging representative stakeholder organisations, alongside government officials
- agreeing on shared harmonisation priorities, focussed on the key regulatory divergences that give rise to the greatest cost, confusion or friction for small businesses
- agreeing on actions, responsibilities and milestones of progress, based on a national system for collecting, managing and reporting on data which measures work on these functions.

Focus on the key retail tenancy challenges facing small businesses

The process should identify and articulate how regulatory divergence between jurisdictions increases costs and complexity for small businesses, in particular, small businesses which are:

- operating across state/territory borders, which directly bear the costs of regulatory fragmentation in retail leasing
- only operating within one jurisdiction, but which can face higher costs due to the impact that regulatory fragmentation has on businesses that provide retail leasing-related services
 - this could include, for example, real estate agents, professional valuers, tradies and mediators, in addition to property owners.

The process should also identify good regulatory and administrative practices that could be adopted or adapted across jurisdictions.

Priority reform areas

The ASBFEO considers the following areas of retail tenancy regulation could be considered as priority areas for harmonisation:

- Pre-lease requirements, including pre-lease negotiations, and submission of the information guide and disclosure statement to the tenant from the landlord
- Lease disclosure requirements, including:
 - compliance with the prescribed form
 - time periods for submission and acceptance
 - incomplete or misleading disclosure.
- Assignment of leases, which can have a significant effect on sale and transfer of businesses.
- Make good provisions, which specify the condition in which the premises must be returned by the tenant at the end of the lease. These provisions can have a significant effect on the cost of entering, operating and exiting leased premises and is a known area of disputation

- Dispute resolution, including common causes of disputes and the efficiency of dispute resolution processes.

Longer-term harmonisation reforms

Once harmonisation work on the initial tranche of priority areas is well progressed, consideration could be given to other areas of retail tenancy regulation where harmonisation would benefit, to be addressed over the longer-term or where an earlier window of opportunity for negotiation arises.

The patchwork of retail premises definitions and thresholds which determine whether a lease is covered by retail tenancy legislation is one potential area for reform. For example, while the size of the premises is the key criterion for most jurisdictions, for others it is financial thresholds. Such divergences can affect access to statutory protections and give rise to unnecessary complexity and uncertainty on the fundamental question of whether retail tenancy legislation even applies. Eligibility thresholds should therefore form part of the longer-term harmonisation framework, or earlier if an opportunity arises.

The process should also enable consideration of where harmonised retail tenancy regulation can address other, broader regulatory issues of national importance, and in doing so draw on jurisdiction-specific policy innovations. An example of this is the national impact of illicit tobacco. Several states have recently enacted legislation to help combat sale of illicit tobacco, by strengthening lease termination and business closure powers where tenants have been found to be selling illicit tobacco.² However the regulatory frameworks, and their intersection with retail leasing, differ between jurisdictions.

Standardised national data

Treasury's Consultation Paper highlights the absence of a comprehensive, national retail-tenancies dataset. A credible and sustainable framework of harmonisation requires a reliable system for collecting, managing and reporting on data to measure progress in its implementation. This should be built around:

- consistent definitions and data standards
- measures for evaluating progress towards agreed objectives
- regular publication of national data.

If you require any further information, please do not hesitate to contact the ASBFEO Policy and Advocacy team at advocacy@asbfeo.gov.au.

Yours sincerely



Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman

² Australian Small Business and Family Enterprise Ombudsman (ASBFEO), "Submission to the Senate Legal and Constitutional Affairs Committee": Inquiry into the illegal tobacco crisis in Australia, ASBFEO, 26 March, 2026.