Queensland Law Society

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Your Ref:

Our Ref: Succession Law Committee: 21000348/49 5 June 2012

Department of Justice and Attorney-General
Retail Shop Leases Act Review
Strategic Policy
GPO Box 149
Brisbane Qld 4001

By email: [redacted]

Dear Ms Flower

RETAIL LEASES ACT REVIEW – FURTHER SUBMISSION

Thank you for your email of 20 April 2012 inviting the Queensland Law Society to make any additional comment on an industry stakeholder's submission concerning section 43(1)(f) of the *Retail Shop Leases Act* 1994 (the 'Act'). For convenience I have attached a copy of your email and the stakeholder's submission.

This letter was written with the assistance of the Property and Development Law Committee of the Queensland Law Society.

The stakeholder's major concern is that the retention of section 43(1)(f) as well as sections 46C to 46K create a 'double compensation regime'. That concern has some merit.

The Society's position, as expressed to you in my letter of 13 February 2012, is that section 43(1)(f) should be retained, as it may apply in circumstances other than those triggering sections 46C or 46H. It was suggested, however, that section 43(1)(f) should be expressed to be subject to those other sections.

The issue stems from differences in drafting between sections 46C and 46H of the Queensland Act and the corresponding sections of the NSW legislation (sections 34A and 35).

It is clear from the NSW legislation that sections 34A and 35 apply to all leases which contain a relocation or demolition provision. The clauses therefore codify the lessee's entitlement to compensation in these events. That is, a lessor may only terminate a lease under a relocation or demolition clause where the criteria in the sections are satisfied.

In contrast, in the Queensland Act, sections 46D to 46G are expressed to apply by virtue of section 46C where the lease contains a provision allowing the lessor to terminate the lease if the lessor proposes refurbishing, redeveloping or extending the building in which the leased shop is situated during the term of the lease or any renewal of it and the works can not be carried out practicably without vacant

possession of the leased shop. Therefore, on a literal interpretation it would be possible for a lease to provide for relocation where, for example:

(a) where it would be possible to carry out the works without relocating the tenant but the landlord believes it would be preferable to relocate the tenant); or

(b) the landlord wish to adjust the tenancy mix of the centre.

In these two scenarios, sections 46D to 46G do not apply and the tenant's statutory right of compensation would need to be governed by section 43(1)(f).

In circumstances where sections 46D to 46G *do apply*, we expect it was Parliament's intention that the right of compensation was to be limited to the relocation costs in section 46G and that it was not intended that the lessor should have to pay additional compensation under section 43(1)(f). We agree that section 43(1)(f) needs to be amended to clarify this.

Similar comments apply in relation to sections 46H to 46K. Where a lease provided for the lessor to terminate the lease (without the need to offer the tenant alternative premises) for the purpose of refurbishing the centre as opposed to demolishing the premises, sections 46I to 46K would not apply and the tenant would need to rely on section 43(1)(f) for compensation.

A tenant would also have no right of compensation other than by virtue of section 43(1)(f) if a lease were to allow a landlord to terminate without cause at any time during the term of the lease.

The Society considers that it would be prudent for Parliament to consider stating in section 43 that section 43(1)(f) does not apply where a lessee is otherwise entitled to reasonable costs or compensation under sections 46C or 46H.

Yours faithfully

Dr John de Groot
President