

29<sup>th</sup> April, 2022

Department of Justice  
Office of the Secretary  
GPO Box 825  
HOBART TAS 7001

To Whom it May Concern,

Thank you very much for the opportunity to provide feedback regarding the Retail Leases Bill 2022.

The API comprises a membership cohort of almost 7000 Australian property professionals, the overwhelming majority of which come from the Valuing profession. In Tasmania, we have 130 active members.

Representing a wide range of property professionals, we advocate for our members with a range of stakeholders, providing the professional recognition each member deserves. In turn, all members of the API are highly qualified, highly skilled professionals with up-to-date professional development and experience.

Our members are active across all sectors of the property profession – in private practice and the public sector. This broad base of qualified and skilled professionals is unique to the API as we are dedicated to expanding the expertise and knowledge of our members, building a solid base for the future of the property profession.

The members represented by the API include those working in valuation, property management, facilities management, property law, property education, property development, funds and asset management, town planning, property consultancy and advisory.

As you will appreciate, our members have the potential to be directly impacted by this legislation, so we have a keen interest in working with the Tasmanian Government to ensure the best possible outcome.

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With regards to the specifics of the Retail Leases Bill 2022, the API would like to make the following suggestions:

**Page 9, Section 6, the definition of Lettable Area:**

Since the Fair Trading (Code of Practice for Retail Tenancies) Regulation 1998 (Regulations), the International Property Measurements Coalition (IPMSC) has released the International Property Measurements Standards (IPMS) Retail, and the IPMSC is due to release IPMS All Buildings in the second half of 2022. The IPMS is the global standard for the measurement and reporting of a measured area, including calculating the lettable area of retail premises.

The API recommends the method of measurement be defined in the Retail Leases Bill 2022 (Bill) to ensure consistency and avoid any confusion for tenants, landlords and property professionals, including valuers undertaking rental determinations.

Undertaking this recommendation will ensure the advice provided to landlords and tenants from valuers for other purposes, say rental advice for a tenant entering into a lease, or rental advice for a tenant/landlord exercising an option onto the same page, will be on the same measurement basis.

**Page 10, Section 6, the definition of Retail Premises:**

This section was previously defined in the prior Regulations as (a) wholly or predominantly for one or more of the businesses listed in Appendix C or (b) for any business in a shopping centre. Appendix C was very prescriptive as to what was and wasn't defined as a retail premises.

The API suggests the proposed definition may be too wide-ranging. For instance, a valuation firm office, solicitor's office, mechanic's garage or panel beaters would all appear to fit the description of "business premises at which services are provided to the public". This may include traditional office space and industrial premises as "retail premises" under the Regulation. Such a broad definition may lead to confusion between valuers undertaking valuations in accordance with the Bill.

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**Page 12, Section 6 definition of Specialist Retail Valuer:**

This section is new and reads that any valuer with five years of experience valuing retail premises (undefined as to whether this is the valuation of market rents or the valuation of retail properties) is a Specialist Retail Valuer under the Bill.

The API seeks to highlight that this definition would most likely encompass every commercial Valuer in the State with over five years' experience.

**Page 13, Section 6 definition of Valuer:**

The reference in subsection (i) to "Australian Institute of Valuers and Land Economists" should be changed to "Australian Property Institute" to reflect the name change of the organisation in 1998.

**Page 50, Section 42 Meaning of *current market rent*:**

The API recommends 'current' be deleted from 'current market rent' throughout the Bill. A market rent valuation (such as an assessment, advice or a determination) happens at the specified date, which may be retrospective to the current date. Undertaking this change also creates consistency with Section 43. Which stipulates 'Review of valuations of market rent'.

The International Valuation Standards (IVS) defines 'market rent' at IVS 104 Bases of Value paragraph 40, which ties the rental assessment to a specific valuation date, which in the case of a rental review or a rental determination under the Bill, would be specified in the lease. The API has adopted the IVS in full, and the concept of market rent at a specific date is understood by market participants.

The API suggests Section 42 (1) be updated to include reference to "... at the relevant date" at the same time 'current' is deleted. That way, the 'market rent' under the Bill is tied to a specific date as per the lease and is in line with global valuation standards.

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**Page 52, Section 42 (7):**

Rental determinations undertaken by Valuers are often plagued by issues from the parties, such as not receiving documentation and requirements for joint confirmation on how to proceed with specific issues. Determination may take several months or even years in extreme cases. Recent events have also demonstrated the need for flexibility concerning hard deadlines. For example, we have all seen how all industries can be adversely impacted by lockdowns or quarantine periods restricting the abilities of professionals to undertake their professional duties.

The API recommends adding, “unless otherwise agreed between the landlord, tenant and Valuer” to account for those situations where the determination cannot be carried out within one (1) month of the acceptance of the appointment.

While we are aware official submissions close on April 30<sup>th</sup>, if there are any questions with regards to this submission or if you would like to discuss any of these matters further, please do not hesitate to contact me on the below contacts.

We look forward to working with you further.

Yours sincerely,

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