Australian Property Institute Ltd.
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Retail Tenancy Consultation
Small Business and Not-for-Profits Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: retailtenancy@treasury.gov.au

Submission: Harmonisation of retail tenancies and related commercial leasing consultation

Dear Ms Polygenis,

Thank you for the opportunity to take part in the roundtable on 18 September 2026 and to respond to the consultation paper, and for the extension of time to lodge this submission.

The API supports the approach taken by Treasury in undertaking this review and consultation and agrees that a national baseline for retail leases is beneficial to markets.

This submission is confined to one part of the framework. When a retail lease goes to market rent review and the parties cannot agree, an expert valuer is appointed to determine the rent, subject to the lease terms. API valuers undertake this work. This is the “rent determination” process in lease terms and legislation. The matters raised below draw on that experience and on feedback provided by API members in New South Wales, Victoria, Queensland and Western Australia.

API has not addressed the questions that fall outside the determination process and takes no position on the balance of rights between landlords and tenants.

The Australian Property Institute (API) is the peak professional body for property valuers in Australia. The API has been an integral part of the rent determination process for decades, as the nominating body specified in lease terms and legislation across Australia. In New South Wales the Registrar of Retail Tenancy Disputes appoints determining valuers from lists prepared by four bodies, of which API is one. In South Australia the Chair of the API State Committee is the statutory appointer. Most commercial leases that fall outside the Acts name an API office as the nominator of an independent valuer. The API Chair Nominations register recorded 243 new nomination applications in 2025.

Issues and recommendations

1. Rent determination is missing from the national baseline

The illustrative national baseline at page 21 of the consultation paper does not address rent review. API submits that it should. Determining a market rent under the terms of a lease is a single task, but it is carried out under eight different sets of rules, and those rules differ in almost every element that decides either the figure or the timetable. The attachment sets out the position on timing alone.

The cost of that divergence is borne by the tenant. Where the rent determination process is unclear a determination takes longer, costs more and is more easily challenged, and the tenant is usually the smaller party.

RECOMMENDATION

The national baseline should include rent review terms, and a rent determination mechanism as outlined in the items that follow.
API can assist by providing technical advice to draft a nationwide rent determination mechanism.

2. The determination clock

Most Acts give the valuer a fixed period in which to complete a determination once the matter reaches them. The length of that period is not the difficulty. The difficulty is when does the period commence.

Western Australia, South Australia and Tasmania set no period at all. The five jurisdictions that do set one start it from six different events, because New South Wales runs two clocks: an original determination runs from the day the valuer receives the landlord's information (s 31(2)), and a joint review runs from the day the valuers are notified of their appointment (s 32A(6)). Victoria and the Northern Territory start from the valuer accepting the appointment, the ACT from the appointment being made, and Queensland from the last of several preliminary steps.

Members report that the clock commonly starts before the valuer is in a position to begin meaningful work. In a recent New South Wales joint review reported to API, the appointment letter carried an incorrect contact, and obtaining signed terms and fees from both parties took close to a month, so most of the statutory month had passed before the valuers could begin substantive work. A party that delays the preliminary steps can therefore defeat the process without ever refusing to take part.

RECOMMENDATION

A national baseline should set a single commencement event, with the determination period running from the point at which the valuer is in a position to begin, being the appointment accepted, terms and fees agreed in writing, and the required information, including the parties' submissions received. Section 37(7)(a) of the Retail Leases Act 2003 (Vic) is the closest existing model.

3. Provision of evidence

Several jurisdictions require a landlord, if requested by the determining valuer, to provide the valuer information about other leases, including full disclosure of any incentives or other inducements, in the same building or centre, within 14 days. Only Victoria attaches a penalty for non-compliance (s 37(4)). In South Australia and Tasmania the landlord may choose what select information to provide to the determining valuer. Members report determinations delayed, and in some cases compromised, where comparable leases and the incentives attached to them are not supplied, or are supplied in a form that cannot be used.

RECOMMENDATION

The duty to require the landlord to provide requested evidence, based on the Victorian model, should apply in every jurisdiction, with a penalty enforceable under regulation.

4. The definition of market rent

There are eight statutory definitions of market rent. Three jurisdictions require the rent to be determined on an effective rent basis and five do not, and only Queensland defines what that basis means (s 29(2)). The consequence is that a similarpremises, subject to the same incentives, and the same comparable evidence would result in a different estimate of market rent in different States for reasons unrelated to the market.

RECOMMENDATION

A national baseline should adopt one definition of market rent and one rule on effective rent drafted on the Queensland model. API guidance AVGP 301 treats gross effective rent as the best basis of comparison. API can assist by providing technical advice to draft a nationwide definition of market rent.

5. Measurement of lettable area

The majority of rent determinations are calculated based on a rate per square metre of lettable area, and comparable evidence is only comparable if every area has been measured on the same basis. None of the States prescribes how lettable area is to be measured, except Western Australia, and the Western Australian method is bespoke rather than a recognised industry standard. The same area measurement is the denominator for apportioning outgoings, further complicating the determination process.

RECOMMENDATION

One recognised measurement standard should be adopted for lettable area. Members have nominated the Property Council of Australia's Gross Lettable Area Retail and the International Property Measurement Standards. Either standard would be suitable, provided that one is adopted. IPMS is the global measurement standard adopted in numerous overseas jurisdictions, and publicly available at zero cost.

6. Who may determine the rent

The Acts contain seven different tests of who may determine a rent, and most amount to no more than a period of experience. New South Wales does not register valuers. Appointment is confined to lists prepared by four named bodies (s 32B(2)), so a valuer who is not accredited by a listing body cannot be appointed however experienced they are, and yet beyond the five year test in s 3(1) the Act says nothing about what a body must require before it lists a valuer. Victoria does not register valuers either, and its only test is five years' experience, which no person is required to verify before the appointment is made.

RECOMMENDATION

A national baseline should contain one definition of a determining valuer, expressed as criteria that includes more than the name of an industry body. The valuer should be certified subject to a minimum standard, be bound to industry standards, subject to complaints and disciplinary procedures, and insured. The same criteria should govern which bodies may supply a statutory nomination list.

7. Appointment clauses in leases

Older retail leases do not align with the determination provisions of the Acts and include clauses drafted years earlier. Members report clauses that name industry bodies which no longer exist, fall-back mechanisms that no longer operate, and appointment criteria that cannot be satisfied. One Western Australian lease names the President of a body that has not existed under that title for decades. Each of those defects delays the appointment of an independent valuer and adds cost before any valuation has begun.

RECOMMENDATION

A set of standard paragraphs for determining valuer appointment clauses should be prepared by the legal profession, with API supplying the technical content. A reference to a body that has ceased to exist should be read as a reference to its successor, as South Australia has legislated.

Priorities, risks and the legal vehicle

Priorities: Any implementation of a national baseline should be staged. The commencement of the determination process and the provision of evidence requirements should be given priority via a regulation. Alignment of the definition of 'market rent' and who qualifies as a determining valuer could occur at the same time or afterwards.

Risks: A national text could settle at the lowest standard already in use. A definition of the determining valuer that omits insurance requirements may leave parties with an uninsured decision-maker and no potential remedy. Requirements drafted for metropolitan centres may also fail in regional markets where the appropriate valuer may need to come from an adjacent region. Both risks can be addressed in the drafting rather than by abandoning the baseline.

The legal vehicle: API's interest is in the content of the baseline rather than the vehicle that carries it, and API makes no submission on the choice between a single national law, a model law and a national minimum baseline.

For any further information, or to discuss this submission, please contact Harriet Warr, General Manager Policy and Standards, at hwarr@api.org.au or 0474 772 291.

Yours sincerely,



Victoria Gracie
Interim Chief Executive Officer
Australian Property Institute Ltd.

Attachment: the determination clock in eight jurisdictions

Jurisdiction	Statutory time limit	When the clock starts
NSW	1 month for a determination (s 31(2)); 1 month for a joint review (s 32A(6))	s 31(2): on receipt of the lessor's s 31(1)(d) information. s 32A(6): on notification of appointment
Victoria	45 days (s 37(7)(a)), extendable by agreement or by the Commission	After accepting the appointment, which the Commission makes after the parties accept the valuer's terms
Queensland	1 month (s 32)	The latest of the request, the submission and response deadlines, the provision of information, or a QCAT order
ACT	28 days (s 53(1))	Appointment by the Magistrates Court
NT	1 month (s 29(2))	Accepting the appointment
WA	None	Not applicable
SA	None	Not applicable
Tasmania	None under the Code; 60 days under the uncommenced 2022 Act	Not applicable