



**OVER 100 YEARS OF SERVING
THE REAL ESTATE INDUSTRY**

Harmonisation of retail tenancies and related commercial leasing

October 2026

Submitted to:
The Treasury

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About REIA

The Real Estate Institute of Australia (REIA) is the national peak body for the real estate profession. Its members are the real estate institutes in each state and territory, collectively representing real estate agencies, property professionals and their clients across Australia.

The real estate industry is predominantly made up of small businesses operating under extensive state and territory licensing, consumer protection, tenancy, record-keeping, professional conduct, and dispute-resolution requirements. Through its member institutes, REIA engages with practitioners who prepare, negotiate, administer and manage leases across retail, commercial, industrial and related property markets.

REIA supports balanced regulation that protects smaller and less experienced businesses while recognising the need for clear, proportionate and commercially workable leasing arrangements for all parties.

Executive summary

REIA welcomes the opportunity to respond to Treasury's consultation on harmonising retail tenancies and related commercial leasing across Australia.

Although the existing frameworks pursue similar objectives, differences in coverage, definitions, disclosure, outgoings, lease administration, assignments, and dispute resolution can create cost, delay, duplication, and uncertainty.

REIA supports targeted national consistency where these impacts can be demonstrated. Priorities should include clearer coverage of retail tenancies and related commercial leasing arrangements within statutory scope, modern definitions, simpler disclosure and outgoings information, proportionate protections, clearer treatment of franchise and multi-party arrangements, more predictable assignment and dispute processes, and workable transition arrangements.

At this stage, REIA does not consider a single Commonwealth law to be the preferred first step. A nationally agreed minimum baseline implemented through model provisions in state and territory legislation may offer a more proportionate approach, provided it replaces inconsistent requirements rather than adding another regulatory layer. Noting that a national minimum baseline should represent the minimum necessary requirements to address demonstrated problems. It should not combine the most restrictive provisions operating across the jurisdictions or increase obligations in jurisdictions where existing processes are simpler and effective.

REIA's response is informed by Treasury's consultation paper, roundtable engagement, state-level material, stakeholder discussions and preliminary member feedback.

Recommendations

REIA recommends that governments:

1. Coordinate national, state and territory reforms through a shared roadmap and assess the costs and benefits of proposed changes.
2. Develop common coverage principles, definitions, and practical guidance for retail, commercial, mixed-use, service, short-term, and multi-party occupancy arrangements.
3. Establish a common core for disclosure and outgoings information, supported by digital processes and proportionate remedies for errors.
4. Clarify franchise, assignment, subletting, and other multi-party arrangements, including the responsibilities of tenants, occupiers, property owners, and related entities.
5. Improve the consistency and accessibility of notices, assignments, and dispute-resolution processes, while retaining effective local institutions.
6. Apply reforms prospectively with adequate transition, ensuring nationally consistent requirements replace, rather than duplicate, existing obligations.

1. Economic and Market Context

There does not appear to be a comprehensive, nationally comparable dataset covering the number and characteristics of regulated leases, coverage decisions, disclosure issues, outgoings disputes, assignment timeframes, transaction delays, compliance costs or dispute outcomes.

Relevant information may exist across jurisdictional regulators, dispute-resolution bodies, industry participants, and commercial data providers, but it is not currently collected or reported using consistent national definitions. Treasury has identified a similar evidence gap in its consultation paper.

REIA supports consistent national definitions and proportionate data collection in these areas. Data should cover lease type and property format, coverage basis, occupancy costs, disclosure problems, assignment timeframes, dispute type, resolution pathway, outcome and indicative administrative cost. Reporting requirements should also recognise the capacity of smaller agencies, lessors, and dispute-resolution bodies and avoid unnecessary burden.

Preliminary member feedback identified uncertainty about coverage, complex forms and notices, outgoings, repairs and maintenance, make-good, assignments, disputes, local flexibility and prospective transition. Feedback also highlighted the disclosure burden, overlap with general property law, modern business models, thresholds, practical guidance, and dispute-resolution processes as relevant reform issues.

Property businesses, agencies, landlords, tenants, and professional advisers are also required to respond simultaneously to other legislative, compliance, and market changes. This increases the importance of coordinated implementation and a clear assessment of cumulative cost. Reform should proceed where the likely benefits exceed these costs and where the identified problem cannot be addressed more efficiently through common forms, guidance, terminology, or administrative processes.

2. Divergence, Legislative Scope and Coverage

The most significant practical issue identified through REIA's engagement is determining whether a premises or arrangement is covered by retail tenancy legislation. This decision is often required before a lease is marketed, heads of agreement are prepared, disclosure is issued, access is provided, or fit-out begins.

Jurisdictions use different business-use lists, shopping-centre triggers, floor-area tests, rent or occupancy-cost thresholds, tenant characteristics, and exclusions. Other jurisdictions use financial or broader commercial leasing tests. These differences can mean that similar premises receive different statutory protections depending on location and business use.

There are also limits to older classifications and the need to consider contemporary business models. If coverage is unclear, parties may use the wrong lease precedent or disclosure process, seek additional legal advice, delay commencement or dispute the recovery of costs and the application of statutory rights. REIA supports common coverage principles, terminology, practical guidance, and worked examples. The framework should explain when coverage is assessed and how a change in business use affects the parties.

REIA supports proportionate statutory protections directed towards parties that genuinely require them. Bargaining power is not invariably held by the landlord, and a large national tenant may have greater commercial and legal capacity than a smaller property owner. Treasury should examine nationally consistent sophisticated-party criteria, but rent, floor area, occupancy cost, or corporate structure should not be adopted as a standalone test without further analysis. REIA's position on any specific exclusion remains subject to further member consultation.

3. Disclosure and information requirements

Disclosure appears to be one of the more practical areas for alignment. Our members have identified complexity, duplication, strict sequencing, technical errors and overlap with other legislation as practical concerns. Preliminary feedback identifies lengthy forms, unclear procedures, limits on electronic processes and inconsistencies between leases, disclosure documents, budgets, and invoices.

REIA supports a nationally consistent core disclosure dataset, common terminology, and a common minimum timeframe. This would give tenants more comparable information while allowing landlords, agents, and advisers to manage a more consistent process across jurisdictions.

It should make essential information easy to find, including the lease term, rent and review mechanism, incentives, outgoings, allocation methods, GST treatment, caps or exclusions, reconciliation arrangements, fit-out and make-good obligations, relocation or demolition rights and assignment requirements.

A common dataset need not require an identical document for every jurisdiction or transaction. It should prescribe the essential information while permitting digital formats and modules suited to different property types. Minor errors should be capable of correction, with stronger remedies reserved for material failures that affect a party's position.

4. Lease Terms and Rent Review

REIA does not support introducing a mandatory national minimum lease term without evidence that it would improve contemporary leasing outcomes. Lease duration should generally remain a commercial decision, supported by clear disclosure of the term, options, fit-out recovery, renewal rights, and end-of-term consequences. Waiver and independent-advice requirements should be reviewed to ensure they protect less experienced tenants without imposing disproportionate cost or delay.

There is value in clearer terminology, consistent disclosure, practical guidance, and procedural safeguards concerning minimum terms, renewal and end-of-term notices, relocation, demolition, compensation, termination, repairs, maintenance and make-good. Member feedback has identified uncertainty about several of these matters and supports plain-English guidance, condition reports and responsibility schedules.

Jurisdictions also differ in their treatment of rent reviews, market rent, turnover rent, review methods, valuation processes and timing. REIA supports clear disclosure of the rent review mechanism, relevant dates, assumptions and consequences, together with consistent terminology and practical guidance for market rent reviews.

Member feedback identifies market-rent terminology, notice periods, appointment of valuers, information provided to valuers, valuation determinations, and non-cooperation by a party as recurring procedural concerns. REIA supports greater consistency in these processes without prescribing commercial rent outcomes.

5. Outgoings, Fit-Out, Incentives and Make-Good

Outgoings information should use common categories and explain apportionment, recoverability, GST treatment, caps, exclusions, and reconciliation of estimates

against actual expenditure. The framework should distinguish repairs, maintenance, replacement, capital expenditure, and make-good obligations.

Outgoings estimates should be clearly identified as estimates, particularly where costs such as insurance, council charges, and statutory fees are determined by third parties. Reporting requirements should recognise the practical limits of forecasting and allow simpler arrangements for less complex non-shopping-centre leases.

Preliminary member feedback indicates that disputes can arise where the lease, disclosure statement, budget, and invoices do not describe the same charging arrangements. A common information standard would improve comparison and reduce administration while preserving flexibility for different property types and negotiated arrangements. Audit and reporting requirements should be proportionate to the size and complexity of the property.

Fit-out, incentives, refurbishment, and make-good can materially affect the value and risk of a lease. Their financial and operational consequences should be disclosed clearly and consistently, including who pays, what approvals are required, what works are expected, and what must occur at expiry. REIA supports standard information requirements, condition reports, responsibility schedules, and practical guidance over identical commercial outcomes for every property type.

6. Assignment, Sub-Letting, Franchising and Changes of Control

Assignment and business-sale processes can determine whether a transaction proceeds. Common issues include unclear information requirements, uncertain response periods, disclosure to incoming lessees, landlord and franchisor approvals, cost recovery and continuing liability of outgoing lessees and guarantors.

REIA supports exploring common assignment information requirements, clear response periods, electronic processes, standard notices where appropriate, and guidance on renewals, assignments, expiry, and make-good. Specific settings such as deemed consent or release of guarantors require further member consultation.

Franchise and other multi-party arrangements require specific attention. A property owner, franchisor, franchisee, related leasing entity, head lease, sublease, licence, or occupancy agreement may all be involved. The actual occupier may not be the direct tenant of the property owner. Further evidence is needed on who must provide disclosure, who receives statutory protections, and how property obligations interact with the Franchising Code of Conduct.

7. Dispute Resolution, Prohibited Conduct and Enforcement

REIA supports timely, proportionate, accessible and commercially informed dispute resolution. Jurisdictions should retain effective local institutions where those outcomes are achieved.

National consistency should focus on practical outcomes, including early access to mediation, clear pathways, electronic processes, and proportionate remedies. Many disputes could be prevented through clearer coverage, disclosure, notices, outgoings, and repair obligations.

Any national framework should map its interaction with general property, contract, consumer, franchising, and small business laws. Enforcement should distinguish material misconduct from technical non-compliance. Remedies should be proportionate to the harm while preserving effective protection against misleading conduct, undisclosed financial obligations, and inappropriate contracting out.

8. Harmonisation Options, Implementation And Governance

At this stage, REIA does not consider a single Commonwealth law to be the preferred first step. A nationally agreed minimum baseline implemented through model provisions in state and territory legislation may provide a more practical balance between consistency and local flexibility.

Any national approach should contain genuinely common and workable elements and replace corresponding jurisdictional requirements. It should not require parties to comply with overlapping national, state and territory systems.

Implementation should be staged, with early reform focused on definitions, disclosure, forms, and procedural requirements before more substantive commercial rules are considered. A formal government and industry review mechanism should maintain alignment and prevent jurisdictions from introducing new inconsistencies over time.

Initial priorities should be coverage and terminology, disclosure and outgoings information, assignment processes, practical guidance, and comparable data. Local flexibility may remain appropriate where it responds to genuine differences between property types, institutions, or regional markets.

Reform should generally apply prospectively, with clear rules for new leases, renewals, assignments, material variations, holding-over arrangements, and changes in use. Implementation should include adequate lead time, final forms and

guidance, education, and time to update documents, software, and business processes.

All tiers of government should coordinate commencement with other regulatory changes and establish a process to maintain alignment over time.

Conclusion

REIA supports targeted national consistency where differences between retail tenancy frameworks create demonstrated cost, delay, duplication, uncertainty, or disputes.

Reform should prioritise clearer coverage, simpler disclosure and outgoings information, proportionate protections, multi-party and franchise arrangements, assignment processes, and accessible dispute resolution.

Further member engagement is required before REIA settles its position on sophisticated-party exclusions, detailed franchise settings, particular rent-review rules, and the preferred legislative model.

Any reform should be practical, prospective, and designed to replace inconsistent requirements rather than create another regulatory layer.

REIA looks forward to continuing its engagement with Treasury and providing further practitioner evidence.



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