



20 March 2009

SCOCA Australian Consumer Law Consultation
Competition & Consumer Policy Division
Treasury
Langton Crescent
PARKES ACT 2600
By email: australianconsumerlaw@treasury.gov.au

Dear Sir/Madam

An Australian Consumer Law: Fair Markets – Confident Consumers

The Property Council of Australia would like to respond to two of the questions posed in the Consultation Paper:

- *Should the scope of the TPA's existing definition of 'consumer' be expanded to cover a wider range of circumstances, such as goods used in a business context?*
- *Should a new definition of 'consumer' specifically deal with small businesses and farming undertakings?*

The definition of 'consumer' in any legislation that addresses unfair contracts will determine the scope of such legislation. The Property Council considers that, in relation to non-residential (or commercial) leases, the answer to both questions should be 'no'.

Commercial leases are by their nature business to business contracts and, as such, should not be regulated by legislation designed to protect consumers.

Moreover, commercial leases are not 'take it or leave it' contracts. They represent the outcome of negotiations that can take several months to conclude and are informed by lawyers on both sides.

A major office lease will run for many years and be worth many millions of dollars. As a result it is generally the subject of intense negotiation before it is signed.

The Property Council supports the submission by the Shopping Centre Council of Australia and believes there is no evidence that would justify Government interference in commercial contracts such as non-residential leases.

Yours sincerely,

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Chief Executive

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The Voice of Leadership

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