

ARCA Submission on Harmonising Retail Tenancies Across Australia

Australian Restaurant and Cafe Association Ltd
Submission to the Australian Treasury
8 October 2026

ARCA supports a nationally agreed minimum baseline for retail tenancies, implemented through Commonwealth, state and territory cooperation and backed by clear federal oversight where Commonwealth laws already apply. The current eight-regime system creates avoidable costs and uncertainty for restaurant and cafe operators, particularly when entering leases, comparing occupancy costs, selling a business, enforcing guarantees or recovering assets after re-entry.

The objective should not be uniformity for its own sake. It should be a practical national floor that preserves legitimate landlord protections while giving tenants consistent, intelligible and proportionate rights across Australia.

Submission details

Field	Details
Organisation	Australian Restaurant and Cafe Association Ltd (ARCA)
Representative	Wes Lambert, Chief Executive Officer
Sector	Restaurants, cafes and related food service businesses nationally
ARCA representation	More than 1,500 Member venues across Australia, as part of Restaurant & Café Segment with over 56,000 venues
Consultation	Harmonising retail tenancies and related commercial leasing
Confidentiality	This submission may be published

About ARCA

The Australian Restaurant & Cafe Association Ltd. (ARCA) is a member based not-for-profit Industry Association and is the strongest voice for the restaurant & cafe segment of the Accommodation & Foodservice Industry, representing a sector that employs 500,000 across over 56,000+ restaurants & cafes in Australia. Our membership includes independent operators, restaurant and cafe groups, franchisees and businesses operating across multiple states and territories. Leasing is one of the sector's largest fixed-cost and risk exposures. A venue may not readily relocate without losing fit-out investment, local goodwill, licences, staff and customer access. This creates a structural imbalance that is especially acute after a lease is signed.

Restaurants and cafes also carry unusually high sunk costs. Commercial kitchens, extraction, grease traps, refrigeration, plumbing, electrical upgrades, fire systems, accessibility works and dining fit-outs can require substantial investment that has little value outside the premises. That investment makes clarity about tenure, rent, relocation, make-good and assignment essential.

Executive recommendations

Priority	ARCA recommendation	Primary national mechanism
1	Adopt a national minimum baseline covering scope, disclosure, costs, assignment, guarantees, asset enforcement and dispute access.	Intergovernmental agreement and nationally consistent legislation, supported where appropriate by the Competition and Consumer Act 2010.
2	Create a statutory personal guarantee standard with caps, expiry, disclosure, mitigation and automatic release after a compliant assignment.	Competition and Consumer Act 2010, with targeted Corporations Act 2001 and state leasing amendments.
3	Create one process for landlord possession and disposal of tenant assets, preserving PPSA priorities and third-party ownership.	Personal Property Securities Act 2009, Corporations Act 2001 and complementary state property laws.
4	Standardise disclosure, outgoings, rent review, fit-out, make-good and urgent dispute procedures.	National minimum baseline administered through state commissioners and tribunals, with ACCC oversight of systemic conduct.

R1 Reciprocal turnover data

Where a landlord collects tenant sales data, require it to provide category-level centre sales and occupancy data before signing and every six months. Consultation Questions 12 and 13.

R2 National lease dataset

Establish a national lease dataset populated from disclosure statements and published in aggregate, as the first step towards a public register of achieved rents. Consultation Questions 1 and 2.

R3 National turnover definition

Define turnover once nationally, counting delivery-platform orders at the amount the tenant receives rather than the menu value. Consultation Questions 10 and 11.

R4 Rent disclosure

Disclose net effective rent, minimum rent for every year, the relevant ATO rent-to-turnover benchmark and, where turnover rent applies, the agreed breakpoint compared with the natural breakpoint. Consultation Questions 7, 10, 16 and 17.

R5 Security cap and release

Cap security in any form, including bank guarantees, at three months rent, including on assignment; set a statutory return period; and release outgoing tenants and guarantors from future liability after compliant assignment disclosure. Consultation Questions 9, 18 and 19.

These five recommendations supplement the wider national baseline, guarantee, tenant-asset and enforcement reforms above. They should be implemented through nationally consistent legislation rather than left to voluntary landlord practice.

Responses to consultation questions

1 Economic and market context

What are the most reliable contemporary data sources to estimate the number, characteristics and trends of regulated retail leases in Australia?

No existing source provides a complete national measure. ARCA recommends a linked evidence framework rather than reliance on a single dataset.

Source	Useful coverage	Frequency and limitations
State and territory lease disclosure or bond registers	Direct information about regulated leases where registration or lodgment exists.	Coverage is inconsistent; commercial bonds and disclosure statements are not centrally recorded in every jurisdiction.
Small business commissioners, tribunals and courts	Dispute type, pathway, duration and outcome.	Different classifications and publication practices prevent reliable national comparison.
ABS Counts of Australian Businesses and industry statistics	Business counts, entries, exits, employment and industry trends.	Measures businesses rather than leases and cannot identify whether a premise is covered by retail legislation.
Land valuation, titles and planning datasets	Premises, ownership, land use and location.	Do not routinely contain lease terms or total occupancy costs.
Commercial property and leasing datasets	Market rents, vacancy and some incentives.	Often proprietary, concentrated in larger assets and less representative of independent hospitality premises.
Industry bodies and member surveys	Practical experience, costs, delays and common clauses.	Voluntary samples require consistent questions and careful interpretation.

Treasury should establish a national retail-leasing data standard and annual reporting process. Existing administrative information should be used before imposing new reporting burdens on small tenants.

National lease dataset and achieved rent transparency

ARCA recommends a national lease dataset lodged digitally from the disclosure statement at lease entry, renewal and material variation, using one submission rather than duplicate tenant and landlord returns. Publish aggregated results by jurisdiction, locality, premises type, industry, floor-area band and shopping-centre status. Record achieved contractual rent and net effective rent separately from advertised asking rents.

The Productivity Commission identified lease information and disclosure as useful reforms in 2008 and recommended greater transparency and a more nationally consistent framework. This supports the direction of the dataset proposal; it does not establish a contemporary estimate of lease numbers or the savings from this reform. [2]

The aggregate dataset should be the first stage towards a public register of achieved rents. Treasury should consult on the register's publication detail, confidentiality safeguards and valuation uses before any identifiable lease-level publication. Publish cell counts, definitions, reporting periods and coverage limitations, suppress small samples and prevent identification of an individual tenant's sales.

What minimum data items would enable consistent national comparison?

- Jurisdiction, postcode, premises type, shopping-centre status and industry classification.
- Tenant and landlord size bands, without publishing commercially sensitive identities.
- Lease commencement, expiry, options, floor area and whether the lease is protected by retail-leasing legislation.
- Base rent, review method, incentives, outgoings, marketing levies and total occupancy cost.
- Security deposit, bank guarantee and personal guarantee type and maximum exposure.
- Fit-out contribution, relocation, demolition, make-good and assignment provisions.
- Dispute issue, forum, mediation date, resolution time, outcome and cost band.
- Assignment applications, response time, consent outcome and whether outgoing guarantors were released.
- Net effective rent, annual minimum rent schedule, rent-free periods, incentives and incentive clawbacks.
- Turnover definition, delivery-platform treatment, percentage rent rate, natural breakpoint and agreed breakpoint.
- Security value in rent-month equivalents, release due date and actual return date.
- Centre sales and occupancy reporting dates, category definitions and data coverage, where applicable.

Collection should be digital, standardised and proportionate. Publish aggregate lease statistics initially, with commercially sensitive identifiers and individual tenant sales protected. A later public register of achieved rents should proceed only after consultation on publication detail and safeguards.

2 Divergence and practical cost

What are the top three divergences imposing the greatest practical costs or uncertainty?

Divergence	Restaurant and cafe consequence	Most affected
Scope and disclosure	An equivalent venue may be protected in one jurisdiction but not another. National groups require different templates, advice and transaction timetables.	New entrants, franchisees, multi-site groups and smaller landlords.
Assignment and continuing guarantees	A sale can be delayed or fail; outgoing owners may retain personal exposure after losing control of the business.	Independent owners, retiring operators, guarantors and business purchasers.
Outgoings, rent review and dispute pathways	Operators cannot compare total occupancy cost consistently and face different verification, mediation and forum rules.	All tenants, especially low-margin venues and national operators.

These issues arise at predictable transaction points: every new lease, renewal, rent review, business sale and default. ARCA does not currently hold a sufficiently standardised national dataset to assign a defensible percentage or dollar cost. The absence of comparable data is itself a policy gap. Treasury should work with ARCA and other stakeholders on a national member survey before final regulatory impact analysis.

3 Legislative scope and coverage

Which aspects of scope and coverage most commonly lead to different outcomes?

The main causes are different definitions of retail premises, prescribed-business lists, floor-area and turnover thresholds, shopping-centre triggers, exclusions for listed or large entities, and treatment of mixed-use premises. Hospitality formats intensify the problem: kiosks, food halls, bakeries, bars, catering

kitchens, dark kitchens, hotel restaurants and venues with significant takeaway or delivery trade do not always fit traditional retail concepts.

Classification uncertainty affects disclosure rights, recoverable costs, assignment rules, dispute jurisdiction and available remedies. Parties can spend money arguing about whether the Act applies before the substantive dispute is considered.

Should elements of scope and coverage be standardised?

Yes. A national baseline should use a functional definition covering premises predominantly used to prepare or sell food, beverages or hospitality services to the public. It should expressly include restaurants, cafes, takeaways, bakeries, kiosks, food-court outlets and licensed hospitality venues. National turnover and floor-area thresholds should be consistent and indexed.

Local flexibility should remain for planning, liquor licensing, trading hours and genuinely local property matters. It should not determine whether a tenant receives core disclosure, assignment, guarantee and dispute protections.

4 Pre-lease disclosure and information

Which disclosure differences most affect decisions, timeframes or disputes?

Differences in timing, prescribed forms, draft-lease requirements and remedies create rework and uncertainty. For hospitality tenants, generic rent disclosure is insufficient because the viability of a site depends on services capacity, extraction, grease management, permitted use, licences, waste access, delivery access, trading hours, outdoor dining and redevelopment plans.

Late or incomplete information can lead an operator to commit to design, equipment and finance before learning that the premises cannot support the proposed kitchen or operating model.

Would a nationally consistent disclosure baseline improve outcomes?

Yes. The baseline should require the landlord to provide the same national disclosure statement and complete draft lease at least 14 days before execution or payment of a non-refundable amount. It should disclose:

- base rent, incentives, all outgoings and the estimated total occupancy cost;
- all security, guarantees and indemnities;
- approved use, known planning or licensing restrictions and essential-services capacity;
- fit-out standards, required contractors, landlord contributions and approval timeframes;
- known works, redevelopment, relocation and demolition plans;
- centre trading hours, delivery access and marketing levies;
- make-good methodology and an entry condition report; and
- assignment, change-of-control and guarantor-release requirements.

Materially defective disclosure should give the tenant a proportionate right to terminate, obtain compensation or prevent recovery of the undisclosed cost. Minor technical errors causing no prejudice should be correctable.

Comparable rent disclosure

Require the national disclosure statement to show minimum rent for each year of the fixed term, including predetermined increases, rent-free periods and any stepped rent. For CPI and market reviews that cannot be known in advance, show the formula, review dates and clearly identified assumptions rather than present forecasts as guaranteed amounts.

Disclose net effective rent after quantified incentives over a stated term, alongside face rent, incentive conditions and clawbacks. Separate landlord contributions to tenant works from the recurring rent calculation,

and publish one national calculation method so lease offers can be compared consistently. Outgoings and marketing levies should remain separately visible.

Include the latest available ATO rent-to-turnover benchmark for the relevant business type and turnover band, stating its income year and limits. Benchmarks are descriptive tax-return ratios, not a statutory rent cap, a recommended rent or a guarantee of viability. The disclosure should also calculate the venue's projected rent-to-turnover ratio and total occupancy-cost ratio using the same disclosed sales assumptions. Evidence Table 1 and Figure 1 illustrate the published benchmark ranges.

For turnover rent, disclose the percentage rate, the agreed threshold, the natural breakpoint and the rent formula. The natural breakpoint is annual minimum rent divided by the turnover-rent rate. For example, \$120,000 minimum annual rent at 8 per cent implies a \$1.5 million natural breakpoint. An agreed \$1 million threshold would trigger additional rent earlier; the effect depends on whether rent is calculated as base rent plus a percentage above the threshold or by another formula. This is an illustrative calculation, not market evidence.

5 Lease terms and conditions

Which differences most affect investment decisions or exit outcomes?

Minimum terms, option notices, relocation, demolition and renewal rules directly affect whether a venue can recover its fit-out. Short tenure paired with a high-cost kitchen investment transfers excessive risk to the tenant. Relocation can destroy local goodwill and require a second fit-out even if nominally comparable premises are offered.

A national baseline should not mandate a five-year term in every case. Operators need flexibility for trials and pop-ups. It should instead require clear disclosure, a voluntary short-term election, reasonable renewal notice and compensation where landlord-initiated relocation or demolition prevents recovery of investment.

What minimum lease-term standards should apply?

- No relocation or demolition termination without genuine redevelopment, adequate notice and evidence of the project.
- Equivalent alternative premises, reasonable relocation and fit-out costs, rent adjustment and compensation for unrecovered fit-out value.
- At least 12 months notice of whether an option will be granted or renewal negotiated, where commercially practicable.
- No loss of an option for an immaterial or remedied breach.
- A plain-English lease summary recording rent, term, options, security, outgoings and exit obligations.

Three month security cap and statutory return

Cap the aggregate security exposure required for a retail lease at three months rent, including cash bonds, bank guarantees, personal guarantees, indemnities and equivalent arrangements. The cap should apply at commencement, renewal, variation and assignment, preventing a landlord from stacking several forms of security or seeking additional security solely because the business is sold.

For implementation, ARCA proposes calculating the cap by reference to the current monthly minimum rent excluding GST and separately charged outgoings. Define contingent guarantee exposure as well as cash amounts, and prohibit related-party or side-agreement requirements that circumvent the cap. The security cap should limit collateral and guarantee exposure without cancelling the tenant company's legitimate accrued lease obligations.

Require return or cancellation of security within 30 days after the tenant completes the secured obligations or a compliant assignment takes effect. A landlord retaining any amount should provide an itemised, evidenced claim within that period, release the undisputed balance and use an expedited process for the disputed

amount. Bank guarantees must be returned or formally cancelled so the tenant's collateral is actually released.

This is a proposed national standard, not existing uniform law. NSW already requires return of a bank guarantee within two months after the secured obligations are completed, subject to its statutory provisions. The NSW example demonstrates an existing legislative approach to return deadlines; ARCA proposes a shorter, broader national rule. [3]

6 Rent and rent review

Which rent-review differences most commonly drive disputes or uncertainty?

The paper identifies material differences in permitted methods, review frequency, ratchet clauses, market-rent determination and turnover-rent regulation. Restaurants are particularly exposed because revenue can fluctuate materially while rent is fixed and fit-out makes relocation costly.

Turnover-rent definitions also need to reflect delivery platforms, catering, gift cards, refunds, service charges and online orders fulfilled from multiple venues. Without consistency, the same sale may be counted differently between leases.

One national definition of turnover

The national definition should expressly count a delivery-platform order at the amount the tenant receives, not the advertised menu value. Exclude platform commissions and fees retained by the platform, delivery charges retained by another party, GST, genuine refunds, cancellations and tips passed to staff. Identify platform-funded discounts or subsidies separately so the tenant's actual entitlement can be reconciled to settlement statements.

Record gross order value, platform deductions and net entitlement in the audit trail. A hypothetical \$100 order with \$30 retained by a platform contributes \$70 to lease turnover under this proposal, before any further prescribed GST adjustment. This is a proposed leasing definition; it does not change revenue recognition or tax reporting rules.

Gift cards should be counted once on redemption, not again at issue. Catering, click-and-collect and multi-venue orders should be allocated to the premises that fulfils the order under a disclosed rule. Standardise treatment of related-party sales, returns and non-trading receipts, and prohibit mid-term changes to the turnover definition without informed agreement.

Would greater consistency improve outcomes, and what minimum approach should apply?

- One clearly identified review method per review date.
- No ratchet or floor preventing a genuine market-rent reduction.
- No more than one rent review in a 12-month period.
- A national independent-valuer process with access to relevant comparable evidence.
- Standard turnover-rent inclusions and exclusions, protecting confidential sales data.
- No unilateral change to the rent methodology during the term.

7 Shopping centres

Which centre-specific settings most commonly create practical issues?

Marketing levies, centre-level charges, compulsory trading hours, turnover reporting, relocation and casual mall licensing are the main concerns. A restaurant may be required to open during extended hours despite low customer traffic and still bear labour, security and services costs. Marketing contributions may not be demonstrably directed to activity benefiting the contributing precinct or category.

Would minimum standards, a voluntary code or statutory requirements work best?

Core obligations should be statutory. A voluntary code is unlikely to provide consistent remedies where bargaining power is unequal. The baseline should require an annual marketing plan, audited expenditure statement, treatment of unspent funds, consultation on core hours, transparent extended-hours costs, confidentiality of turnover information and enforceable relocation protections. A voluntary code may supplement, but should not replace, minimum rights.

Reciprocal centre sales and occupancy information

A landlord that collects a tenant's sales data should share category-level centre sales and occupancy information with that tenant before lease signing and every six months thereafter. The pre-lease information should cover the most recent available period, with the subsequent reports using consistent six-month periods and category definitions.

Disclose aggregate category sales, sales per square metre where reliable, occupied and vacant lettable area, and the number of outlets included. Identify changes in category membership and provide like-for-like comparisons where feasible. This would allow tenants to assess whether their trading performance reflects their own operations or changes in centre conditions.

The obligation must protect individual competitors' confidential turnover through aggregation and small-cell suppression. It should not authorise collection of sales data otherwise prohibited by local law. Treasury's consultation paper identifies divergence in centre disclosure and turnover-information rules, including more detailed disclosure models in Queensland and Western Australia. [1, Appendix A6]

8 Outgoings and operating expenses

Which categories and practices most often create uncertainty?

The greatest problems are broad or undefined management charges, capital expenditure presented as repairs, structural works, depreciation, landlord financing costs, vacancy allocations, insurance recoveries, related-party services and marketing expenditure. Estimates may be too general to allow a tenant to compare two sites on total occupancy cost.

What nationally consistent minimum approach is workable?

- A standard pre-lease estimate by nationally defined categories.
- An annual statement of actual expenditure and reconciliation within three months of year end.
- Independent audit or certification, with proportionate exemptions for genuinely small properties.
- Disclosure of allocation methodology, vacancies, related-party payments, rebates and insurance recoveries.
- A national prohibited-cost list covering capital improvements, structural defects, depreciation, financing, leasing commissions, landlord income tax and costs caused by landlord negligence.
- No recovery of an outgoing not properly disclosed, unless the omission was minor and promptly corrected without prejudice.

9 Fit-out, incentives and make-good

Which aspects most commonly lead to uncertainty or disputes?

Restaurant fit-outs involve high-value services and building interfaces. Disputes arise over approval delays, landlord-nominated contractors, services capacity, ownership of fixtures, incentive conditions, depreciation of contributions and the extent of make-good. End-of-lease clauses may require removal of improvements the landlord approved or intends to retain.

The practical cost can include duplicated design fees, delayed opening, lost trading, removal of usable kitchens and disputes over whether equipment is a fixture or personal property. ARCA recommends

collecting actual cost bands through the national data project rather than embedding unverified estimates in legislation.

What should be standardised?

- A fit-out responsibility matrix before signing, including services capacity and approval deadlines.
- Disclosure of landlord-nominated contractors, fees, rebates and related-party interests.
- Written incentive terms forming part of the lease documentation.
- An entry condition report and make-good schedule with an agreed methodology.
- No make-good beyond the documented commencement condition, fair wear and tear and tenant-caused alterations.
- No double recovery where the landlord retains, reuses or benefits from the fit-out.
- Clear classification of removable tenant equipment and landlord fixtures.

10 Assignment, subletting and changes of control

Which assignment differences delay or disrupt business transactions?

Different disclosure forms, consent periods, permitted refusal grounds and guarantor-release rules make national transactions difficult. A business sale may be conditional on landlord consent and finance; delay can cause finance approval, staffing arrangements or settlement dates to fail. Continuing liability is especially unfair where the seller no longer controls the assignee.

What elements should be standardised?

- One national assignment application and disclosure form.
- Consent not to be unreasonably withheld and refusal limited to prescribed grounds.
- A 21-day response period after complete information, followed by deemed consent or expedited review.
- Reasonable, itemised and capped landlord legal and administrative costs.
- Automatic release of the outgoing tenant and guarantors from future liability after a compliant assignment.

Release should operate by statute for future obligations once the prescribed assignment disclosure is provided and a lawful assignment is completed. Preserve liability for genuine breaches accrued before assignment, but void contractual no-release clauses that defeat the statutory protection. The national form should confirm the release date and require simultaneous return or substitution of the outgoing party's security.

NSW already provides conditional protection under section 41A of the Retail Leases Act 1994, extending to guarantors. The NSW Small Business Commissioner explains that compliant disclosure can invalidate a no-release clause; failure to comply may leave liability continuing. The reform case is therefore for simpler, consistent conditions and reliable release across jurisdictions, not an assertion that NSW lacks a release mechanism. [4]

- Change of control not treated as assignment where ultimate ownership and financial capacity are not materially weakened.
- Proportionate processes for franchise licences, concessions and intra-group restructures.

11 Personal guarantees

Although guarantees are not a separate consultation heading, they are integral to assignment, prohibited conduct, enforcement and exit. A personal guarantee is ordinarily a separate contractual promise, not a technical piercing of the corporate veil. Nevertheless, an unlimited guarantee can defeat limited liability in practical effect.

ARCA recommends that a retail-lease guarantee be enforceable only if maximum liability is prominent, falls within the aggregate three-month security cap, and is supported by plain-English disclosure and independent advice. Liability should exclude penalties and unmitigated loss, expire after two years of continuous compliance, and end for future obligations on compliant assignment. Apply existing cash or bank security before pursuing a guarantor, prevent double recovery, and require the landlord to mitigate loss. Unlimited guarantees must not supplement the capped security.

Renewal, relocation or material variation should require fresh guarantor consent. The restrictions must also apply to indemnities and principal-obligation wording so they cannot be drafted around.

12 Landlord possession of tenant assets

Hospitality premises often contain tenant-owned, financed and supplier-owned equipment. Physical control after re-entry does not establish ownership. Coffee machines, beer systems, refrigeration, point-of-sale equipment, stock, employee property and customer goods may belong to different parties.

ARCA recommends a nationally consistent enforcement process requiring an inventory, notice to the tenant and registered secured parties, third-party access, preservation of perishable goods where reasonable, independent valuation, commercially reasonable sale and full accounting for proceeds. The PPSA priority regime must prevail, including in insolvency. Wrongful retention or sale should attract compensation and civil penalties.

Australian Accounting Standards should govern financial reporting of property held pending resolution and disputed recoveries. They do not themselves confer a right to seize or sell property.

13 Dispute resolution

Which differences most affect cost, speed and accessibility?

The paper records different mediation gateways and post-mediation forums: specialist commissioners and tribunals in several jurisdictions, courts in others, and non-mandatory pathways in Tasmania, the ACT and Northern Territory. Restaurants can lose perishable stock, staff and revenue immediately after lockout, so ordinary dispute timetables may make a successful later remedy commercially meaningless.

Would greater consistency improve outcomes?

Yes. The national baseline should preserve local delivery but standardise access and service expectations:

- a single online entry point routing matters to the correct state body;
- mandatory good-faith mediation for ordinary disputes;
- a 48-hour urgent pathway for lockout, essential-services interruption and threatened disposal of assets;
- consistent power to issue interim preservation and access orders;
- published national categories for dispute data and outcomes;
- proportionate limits on legal costs; and
- recognition of mediated settlements and orders across jurisdictions where required.

14 Prohibited conduct and enforcement

Where do retail-leasing provisions and Australian Consumer Law protections overlap or create ambiguity?

Misleading conduct, unconscionable conduct and unfair contract terms may overlap with state disclosure, conduct and remedies. Parties can be uncertain whether to proceed under the lease statute, the Australian Consumer Law or both. The ACL unfair-contract-term regime also depends on threshold and standard-form questions that can become preliminary disputes.

What design features would improve clarity while maintaining protections?

- Expressly preserve the ACL while identifying which regulator and forum handles each remedy.
- Create a leasing-specific grey list of terms presumed unfair, including unlimited guarantees, future-rent acceleration, unilateral cost powers, automatic forfeiture of assets and landlord releases for negligence.
- Allow state tribunals to apply equivalent national baseline protections within their jurisdiction.
- Give the ACCC responsibility for systemic and multi-jurisdiction conduct, not every individual rent dispute.
- Protect good-faith reliance on approved national forms while retaining penalties for concealment, recklessness or repeated breach.

15 Harmonisation model

Which model is most workable and why?

ARCA supports a national minimum baseline implemented through an intergovernmental agreement and mirror or applied state and territory legislation. This is more achievable than an immediate single Commonwealth law and more durable than a purely voluntary model code. Jurisdictions could retain stronger existing protections but could not fall below the baseline.

The Competition and Consumer Act 2010 could support a mandatory industry code for conduct within Commonwealth power but should not be treated as the sole constitutional foundation for all interests in land. The model should combine Commonwealth oversight with state legislative implementation and local dispute delivery.

Who bears costs and who benefits?

Stakeholder	Transition costs	Benefits
Tenants	Learning new forms and systems; limited data provision.	Comparable occupancy costs, lower advice costs, safer exits and clearer remedies.
Landlords and managers	Updating templates, systems, staff training and reporting.	One national compliance framework, fewer drafting variants and earlier dispute resolution.
Advisers and valuers	Updating precedents and professional guidance.	More consistent instructions, evidence and valuation processes.
Governments and regulators	Legislative coordination, digital infrastructure and data standards.	Better national evidence, fewer boundary disputes and more targeted enforcement.

Implementation should grandfather substantive commercial terms in existing leases, while applying urgent procedural protections—such as asset preservation and dispute access—to current relationships where constitutionally and legally appropriate.

Which areas should be prioritised, and how should reform be sequenced?

Stage	Timing	Content
1	First 12 months	National definitions and delivery-platform turnover rules; disclosure form and dataset lodgement; rent schedules and breakpoint disclosure; assignment process; three-month security cap, return period and guarantor release.

Stage	Timing	Content
2	Months 12 to 24	Outgoings, rent review, fit-out and make-good; six-monthly reciprocal shopping-centre reporting; urgent dispute standards; initial aggregate lease dataset publication.
3	Months 18 to 30	PPSA and insolvency alignment for tenant assets; regulator protocols and full national reporting; consultation on a public achieved-rent register with privacy safeguards.

The first stage delivers early benefits at the transaction points most likely to affect entry and exit. It also creates the data needed to test later reforms.

What governance arrangements would maintain alignment?

- A Ministerial Council agreement with a standing Retail Leasing Harmonisation Committee.
- Membership from Treasury, state agencies, ACCC, ASIC, AFSA, small business commissioners, landlords and tenant representatives including hospitality.
- A single national custodian for forms, definitions and data standards.
- Annual public reporting and a statutory review every five years.
- A controlled amendment process requiring impact assessment and consultation before jurisdictions depart from the baseline.
- An expert advisory group with balanced landlord and tenant representation.

What are the risks and how should they be mitigated?

Risk	Safeguard
Lowest-common-denominator protection	Permit stronger local rights while fixing a national floor.
Reduced commercial flexibility	Allow informed elections for genuinely negotiated departures, but not from core disclosure, asset and enforcement protections.
Higher compliance costs	Use one digital form, proportionate thresholds, transition periods and safe-harbour guidance.
Reduced willingness to lease to start-ups	Permit capped guarantees, bank security and risk-based arrangements rather than banning security.
Forum duplication	Publish a jurisdiction protocol and give one body responsibility for routing each dispute.
Overreach into property law	Use cooperative legislation and confine Commonwealth enforcement to established constitutional powers.

Conclusion

Restaurants and cafes trade nationally within one economy, but their core occupancy rights still change at state borders. The consequences are most severe at entry, rent review, business sale, default and exit—the points at which operators have the least time and bargaining flexibility.

ARCA recommends a national minimum baseline that standardises coverage, disclosure, assignment, guarantees, outgoings, rent review, asset enforcement and urgent dispute access. The first stage should deliver reciprocal centre information, disclosure-based lease data, one national turnover definition,

transparent rent schedules and breakpoints, and a three-month security cap with timely return and statutory release. These measures preserve legitimate rent recovery while making risk and enforcement transparent, proportionate and consistent.

ARCA would welcome the opportunity to participate in detailed design, provide sector case studies and assist Treasury with a nationally structured survey of restaurant and cafe leasing experience.

Evidence tables and benchmark chart

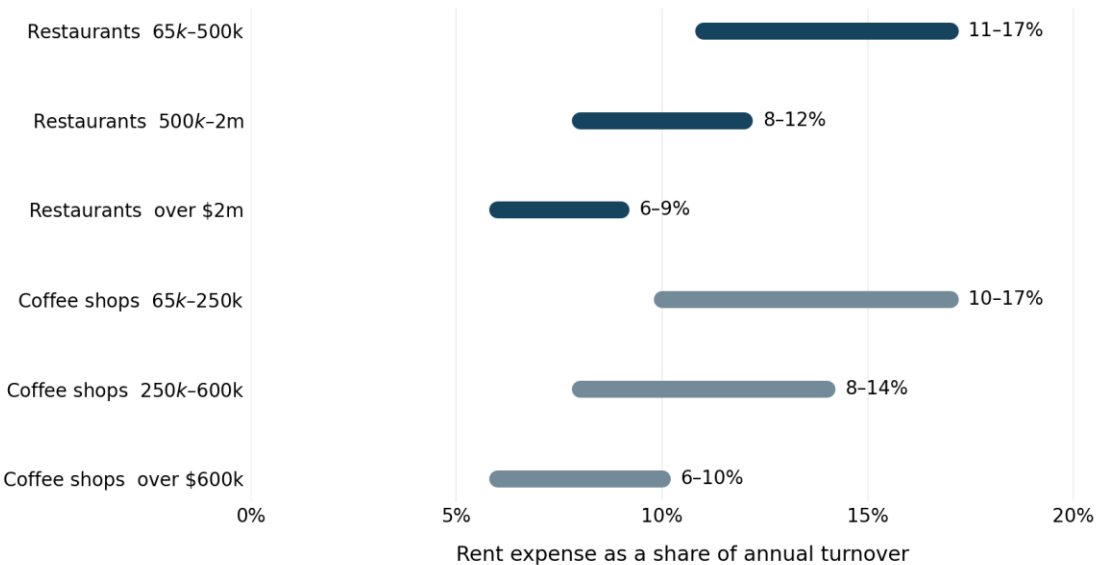
Table 1 Published rent to turnover benchmark ranges

These 2023–24 ATO benchmark figures are reproduced in the published sources listed at [5] and [6]. They describe reported rent expense relative to turnover. They are not total occupancy-cost ratios, rent ceilings or site-specific affordability tests. Restaurants and coffee shops use different turnover bands; compare a venue with its own industry and band. Noting, these benchmarks to not accurately represent the market conditions in 2026, which have elevated substantially due to inflation per member feedback.

Business type	Annual turnover band	Rent as share of turnover
Restaurants	\$65,000–\$500,000	11–17%
Restaurants	\$500,001–\$2,000,000	8–12%
Restaurants	More than \$2,000,000	6–9%
Coffee shops	\$65,000–\$250,000	10–17%
Coffee shops	\$250,001–\$600,000	8–14%
Coffee shops	More than \$600,000	6–10%

Source ATO Small Business Benchmarks 2023–24, as reproduced by Calso and Skai Solutions [5, 6]. The ATO dataset catalogue confirms the 2023–24 release and its March 2026 update [7]. Numerical values are taken from the identified published reproductions, rather than a direct extraction of the ATO dataset.

Figure 1 Published rent benchmark ranges by turnover band



Source Same published ATO 2023–24 reproduction as Table 1 [5, 6]. Bars show ranges, not averages or time trends.

Table 2 Existing protections and the proposed national baseline

Issue	Existing sourced position	ARCA national proposal
Centre data	Treasury identifies differences in centre disclosure and turnover-information rules. [1, Appendix A6]	Category-level centre sales and occupancy before signing and every six months when tenant sales are collected.
Lease information	Treasury identifies the absence of a comprehensive national lease dataset. [1]	Disclosure-based digital lodgement, aggregate publication and staged achieved-rent register.
Rent and turnover	Treasury records different turnover-rent and rent-review frameworks. [1, Appendix A5]	One turnover definition; net platform receipts; annual rent schedule, net effective rent and breakpoint disclosure.
Security return	NSW guidance identifies a two-month bank-guarantee return period after secured obligations are completed. [3]	Three-month aggregate security cap and 30-day return or cancellation with itemised retention claims.
Assignment release	NSW section 41A provides conditional assignor and guarantor protection. [4]	One disclosure process and statutory release for future obligations, with security returned or substituted.

References

[1] Australian Treasury, Harmonisation of retail tenancies and related commercial leasing, Consultation Paper 2026, supplied document Lease Harmonization 2026.docx. See Economic and market context and Appendices A5, A6 and A9.

[2] Productivity Commission, The Market for Retail Tenancy Leases in Australia, Inquiry Report No 43, released 27 August 2008. <https://www.pc.gov.au/inquiries-and-research/retail-tenancies/report/>

[3] NSW Small Business Commissioner, Retail Tenancy Guide, bank guarantees. <https://www.smallbusiness.nsw.gov.au/about-retail-leases/retail-tenancy-guide>

[4] NSW Small Business Commissioner, Understanding no release clauses in retail lease assignment deeds. <https://www.smallbusiness.nsw.gov.au/help/common-questions/understanding-no-release-clauses-in-retail-lease-assignment-deeds>

[5] Calso, ATO benchmarks for restaurants and cafes where your costs should sit, 2 August 2026. Published reproduction of ATO 2023–24 ratios. <https://calso.com.au/blog/ato-benchmarks-restaurants-cafes-cost-of-sales-2026>

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[8] Competition and Consumer Act 2010 (Cth), including Schedule 2 Australian Consumer Law; Corporations Act 2001 (Cth); Personal Property Securities Act 2009 (Cth).

[9] Retail Leases Act 1994 (NSW); Retail Leases Act 2003 (Vic); Retail Shop Leases Act 1994 (Qld); Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA); Retail and Commercial Leases Act 1995 (SA); Retail Leases Act 2022 (Tas), noting the commencement position in the supplied Treasury paper; Leases (Commercial and Retail) Act 2001 (ACT); Business Tenancies (Fair Dealings) Act 2003 (NT).

[10] Australian Financial Security Authority, Personal Property Securities Register guidance; Australian Competition and Consumer Commission, unfair contract terms guidance for small business.