

MARKET RENT REVIEWS

SUBMISSIONS TO DETERMINING VALUERS

Submissions prepared by a property valuer are a key tool in Market Rent Reviews conducted under a lease and the Retail Leases Act 2003.

Having worked with tenants and landlords of varying experience for the past several years, I have developed a consistently effective rental submission format that I present to clients and the determining valuers. I am offering a free review of your lease to assist in your strategy to approach any upcoming market rent review for you and/or your clients for non-gaming hotels/pubs, motels or caravan parks.

The one aspect that holds true for both tenants and landlords is the uncertainty of a market rent review. Each party, rightly or wrongly, will have a strong opinion of the market rental. When there is an irreconcilable gap between these opinions, a determining valuer will be appointed either by agreement, between the landlord and tenant, or by the Small Business Commissioner.

It is imperative to first understand what is involved in Victoria, under the Retail Leases Act 2003 (RLA 2003), in providing a submission to a determining valuer.

A determining valuer is instructed under the lease or under Section 37 of RLA 2003 of Victoria to provide a rental determination at a relevant market rent review date. At this time a determining valuer will call for submissions, which allows the tenant and the landlord to put forward their opinion of market rental value.

Tenants and landlords tend to differ greatly in submissions to determining valuers – whether the submission is as simple as an emailed copy of the profit and loss statement to the determining valuer by the tenant to claim that the rent is too high, or a straightforward claim by the landlord, without evidence or rationale, that the rent is too low. Some submissions involve solicitors, accountants and business brokers, but the more astute landlords and tenants will engage an experienced valuer with in-depth knowledge of valuing the relevant asset and preparing submissions where the rent is in dispute.

The format I have developed assesses the current market rent in line with the RLA2003 and offers a strong argument for my client to the determining valuer.

My assessment is simple to understand and clearly sets out how I have assessed the market rental value. It also relies on leasing transactions as supporting evidence. The key elements for a successful submission are:

1. The submission is in line with the Retail Leases Act 2003

Below is an extract from Section 37(2) of RLA 2003. Under this section the determining valuer MUST consider these matters; my submission is structured so that I have accounted for each matter presented below:

The current market rent is taken to be the rent obtainable at the time of the review in a free and open market between a willing landlord and willing tenant in an arm's length transaction in regard to:

- (a) the provisions of the lease;*
- (b) the rent that would reasonably be expected to be paid for the premises if they were unoccupied and offered for lease for the same use, or a substantially similar use, to which the premises may be put under the lease;*
- (c) the landlord's outgoings to the extent to which the tenant is liable to contribute to those outgoings;*
- (d) rent concessions and other benefits offered to prospective tenants of unoccupied retail premises— but the current market rent is not to take into account the value of goodwill created by the tenant's occupation or the value of the tenant's fixtures and fittings.*

There are some contentious points above, a 2015 decision in the Victorian Supreme Court has found that the use of the Profits Method does not offend S37(2) (d) by taking into account the tenants goodwill, and, as discussed in Sam Hopper's post [Epping Hotel Pty Ltd v Serene Hotels Pty Ltd decision](#), it is best practice for a determining valuer to address each of the above matters rather than provide a generic statement indicating that the above matters have been taken into consideration.

2. Be Direct, Clear & Concise

The Executive Summary of my report includes property specific points that present the key considerations that a determining valuer should consider in any submission. An example may be that, Business Turnover has reduced as a direct result of increased competition through the establishment of a new motel in the same township.

3. Investigate & report on the management skills of the operator

An evaluation of whether the tenant is operating the business under the principles of "Average Competent Management" as described in the Small Business Commissioner's Guidelines to the RLA 2003. Social media is an important tool for a valuer. Sites such as the RACV/Star Ratings Australia, Trip Advisor and Google provide a valuable overview of guest feedback, and this in conjunction with discussions with the tenant, will provide an insight into a tenant's competency in managing the business.

4. High quality data and market evidence

Quality information is critical. This is a key component of the report that a determining valuer will review. When you instruct me, you gain access to a depth of market knowledge drawn from a database of market evidence that has been qualified and analysed to ensure the best evidence is used in the assessment of the market rent. Over time I have valued many accommodation complexes and hotels for mortgage security, litigation, family law and financial reporting purposes. Through this process I have developed a strong knowledge base of recently negotiated rentals that support my assessed current market rental.

5. Calculations & Rationale

The presentation of my rationale and calculations encompasses all the reported information to ensure a full and frank disclosure of all calculations and the best evidence used in arriving at the current market rental of the property. The Direct Comparison Method is used to assess the rent on a rate per room or site. The Turnover Method – or Profits Method – is used to assess the rent as a percentage of net profit and/or as a percentage of gross turnover depending on the information provided.

An inadequate submission can be financially detrimental as there may not be another market rent review opportunity for up to five years; this means any annual variation to the rent would be multiplied five-fold before any CPI reviews.

I am offering a **free confidential review for any lease that falls under the RLA 2003 with an upcoming market review** to minimise any expense and uncertainty.

All conflicts of interest will be disclosed prior to the review; this offer only relates to non-gaming hotels/pubs, motels and caravan parks across regional Victoria. To take advantage of this offer and receive the full terms and conditions please contact Stephen Lane on 0456 045 211 or email me on stephen.lane@ipnvaluers.com.au.

Liability limited by a scheme approved under Professional Standards Legislation.