

SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

THURSDAY 19 MAY 2016

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NORTHERN TERRITORY RETAIL LEASES ACT REVIEW HAS BEEN SHELVED

The Northern Territory Government has advised that it has shelved consideration of the repeal of the *Business Tenancies (Fair Dealings) Act* and the subsequent implementation of a slimmed down *Retail Shop Lease Code of Practice* under Part 13 of the *Consumer Affairs and Fair Trading Act* ([Shop Talk 25/2/16](#)). This is an opportunity lost to the Government to recalibrate its regulation to more appropriately reflect the relative size and sophistication of the market for retail leases. No evidence of market failure has ever been provided to justify the regulation via legislation of retail leases in the Northern Territory. This dates back to discussions around the then *Retail Tenancies Bill* in 2003. The Northern Territory's shopping centre and retail tenancy market make a Code of Practice eminently sensible. For example, retail leasing in Tasmania, which has an incrementally larger shopping centre market than the Northern Territory in terms of GLAR, but with over twice the resident population, is regulated via a *Code of Practice for Retail Leasing* under its *Fair Trading Act* 1990. We are not aware of any major concerns having been raised regarding this Code of Practice since it was introduced in 1998.

APPLICATION OF SMALL BUSINESS UNFAIR CONTRACT TERMS LAW IN WESTERN AUSTRALIA

The WA Department of Commerce has asked us to clarify an item we carried on the application of the new small business unfair contract terms law in WA ([Shop Talk 21/4/16](#)). We pointed out that the law will only apply to corporations, not to other forms of business structures such as sole traders or partnerships. This may have given the wrong impression that both parties to the contract needed to be corporations. In fact the new law will apply, from 12 November 2016, to unincorporated small businesses in WA but only if the other party to the contract is a corporation. The Department advises that work is proceeding to extend the law to include all other business structures but the necessary legislation is unlikely to reach Parliament until after the next WA election (due on 11 March 2017).

NSW PROGRESSES WITH 19 COUNCIL AMALGAMATIONS WITH NINE OUTSTANDING

The NSW Government has [announced](#) the creation of 19 new councils, with nine outstanding mergers to proceed subject to the resolution of legal proceedings. Administrators and interim General Managers have been appointed to the new councils who will remain in these positions until local government elections in September 2017 (councils unaffected by mergers will have local government elections in September 2016). The Government has advised that existing planning controls will remain in place in the merged council areas. It also reiterated its commitment that rate payers "will pay no more for their rates than they would have under their old council for four years". In addition to providing advice to Government on the strategic reform of the local government rating system ([Shop Talk 21/4/16](#)) the Independent Pricing and Regulatory Tribunal (IPART) has been tasked with interpreting the Government's 'rate freeze' policy as it is unclear how the 'freeze' will treat increases in the rate peg and special rate variations which would have otherwise occurred in the four year transition period. Last week, the Shopping Centre Council lodged a submission with IPART on its review of rates and highlighted the disproportionate and unjustified increases in rates which have been imposed on large shopping centres via rating sub-categories. We also recommended that IPART ignore calls to shift to a 'capital improved value' rate base as this is nothing more than a Trojan Horse to shift more costs to highly valued commercial property.

ROD SIMS TO BE REAPPOINTED AS ACCC CHAIR FOR A PERIOD OF THREE YEARS

Rod Sims was appointed Chair of the Australian Competition and Consumer Commission for five years, commencing in August 2011. In March the Federal Government recommended to the state and territory governments that Mr Sims be reappointed for a period of three years. It is understood this has been agreed by the states and territories but no formal announcement was made prior to the Government entering into the 'caretaker period' before the election.

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