

SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

FRIDAY 11 NOVEMBER 2016

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NSW RETAIL LEASES AMENDMENT (REVIEW) BILL TABLED IN PARLIAMENT

This week the Minister for Small Business, John Barilaro, tabled the [Retail Leases Amendment \(Review\) Bill](#) in the NSW Parliament. The progress of the Bill is a milestone in the statutory review of the *Retail Leases Act 1994* which started with the release of a Discussion Paper in late 2013 ([Shop Talk 28/11/13](#)). The Bill contains a range of procedural amendments to the administration of retail leases, including requiring a landlord to return a bank guarantee to a lessee within two months of the lessee satisfying their obligations under the lease, additional regulation around the provision of executed copies of a lease to a lessee and timeframes for the lodgement of leases for registration (where required), and increasing the jurisdiction of the NSW Civil and Administrative Tribunal from \$400,000 to \$750,000. The Bill also seeks to remove the requirement of 5-year minimum lease terms from the Act. The Minister's [media release](#) claims that the reform of the Act will 'ensure more transparency, certainty and fairness for all parties in the NSW retail leasing sector'. In his [second reading speech](#) to the Parliament, the Minister also announced that agreement had been reached between the Shopping Centre Council, the Australian Retailers Association, the National Retail Association, the Pharmacy Guild of Australia and the Franchise Council of Australia on a draft Code of Practice on sales reporting. This Code was negotiated to ensure that landlords can continue to collect sales data from retailers, while providing retailers the opportunity to access information in an appropriate form upon request. The Code still exists in draft form and stakeholders will reconvene to discuss finalisation and how, overtime, the Code will be rolled out in NSW and adopted in other Australian jurisdictions. It is expected that debate on the Bill will resume in 2017. The Shopping Centre Council made a submission in response to a draft Exposure Bill in September during a targeted consultation period. The Bill which has been tabled in the Parliament seems to be significantly improved from the earlier draft Bill.

CHRISTMAS TRADING HOURS ANNOUNCED FOR WESTERN AUSTRALIA AND SOUTH AUSTRALIA

The Western Australian Minister for Commerce, Michael Mischin, has [announced](#) an additional hour of trade for the Perth metropolitan area (7am opening, instead of 8am) on weekdays from Monday 5 December, with normal hours resuming on Tuesday 3 January. Major retailers will also be allowed to open at 7am on Saturdays and 8am on Sundays and public holidays. The Minister noted that the additional hours are 'in line with (the Government's) policy of gradually easing retail trading restrictions'. For greater Adelaide, SafeWork SA has [announced](#) two additional hours (9am to 11am) for the pre-Christmas Sundays of 27 Nov, 4, 11 and 18 December, as has midnight trading on Thursday 15 December, Thursday 22 December and Friday 23 December.

ACCC RELEASES REPORT ON PRE-COMPLIANCE ACTIVITIES FOR UNFAIR CONTRACT TERMS LAW

This week the Australian Competition and Consumer Commission (ACCC) released a [report](#) on its pre-compliance activities with 'potentially problematic' industries, including retail leasing, prior to the new unfair contract terms law coming into force on 12 November ([Shop Talk 4/11/16](#)). The report comes following the detailed, proactive and positive engagement of the ACCC with the Shopping Centre Council, led by ACCC Deputy Chair Dr Michael Schaper, since the legislation passed the Federal Parliament last year. The report notes that '...the SCCA and its landlord members were very proactive and fully cooperated throughout our review'. The report goes on to provide comment on several areas to which the ACCC dedicated attention, including termination clauses. The Shopping Centre Council has long maintained a strong case for an exemption for regulated retail leases under the new law to avoid duplication and potential uncertainty. This remains a matter for the Federal Minister for Small Business. We are continuing to discuss an exemption relevant groups and have offered to continue to engage proactively with the ACCC moving forward.

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