



SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE
COUNCIL OF AUSTRALIA

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GRADUAL CREEP IN COVERAGE OF THE RETAIL LEASES ACT IN VICTORIA

Among many inconsistencies in retail tenancy legislation around Australia is the coverage of that legislation. Retail tenancy legislation only applies to 'retail premises'. If premises are not 'retail premises' the legislation will have no application to the lease. Unfortunately, as in other matters, the states can't agree on a common definition of 'retail premises'. NSW and Queensland define 'retail premises' as those 'listed' in a schedule to the Act, although all premises in shopping centres are covered (subject to the relevant floor space threshold). Victoria defines 'retail premises' as "premises . . . used, wholly or predominantly for the sale or hire of goods by retail or the retail provision of services" (section 4(1)). While the NSW/Q'd approach might seem cumbersome, it ensures some control over the coverage of the Act and limits the spread of unnecessary regulation throughout industry. The Victorian approach means that the definition of 'retail premises' ends up being subject to legal interpretation. Guidelines on "[What are retail premises?](#)", published by the Small Business Commissioner, for example, run to 23 pages. This means the determination of 'retail premises' ends up in the hands of judges, not legislators. Over the years it has been held that patent attorneys, solicitors, architects and medical specialists conduct businesses providing retail services and their leases are subject to the *Retail Leases Act*.

A decision by the Victorian Supreme Court in [Fitzroy Dental Pty Ltd v Metropole Management Pty Ltd \[2013\] VSC344](#) held that the hiring of a conference facility was a retail provision of services! Robert Hay, a prominent property law commentator in Victoria, has [stated](#): "The effect of the decision is that most tenants whose business provide any sort of service will be engaged in the 'retail provision of services' and the Act will apply." This outcome is nonsensical and condemns much of industry in Victoria to costly and unnecessary red tape.

WINNERS OF ICSC ASIA PACIFIC SHOPPING CENTRE AWARDS FOR 2013

Australian shopping centre marketing expertise was again acknowledged at the International Council of Shopping Centers' *2013 Asia Pacific Shopping Center Awards*, announced at the ICSC Asia RECon, held in Beijing this week. Congratulations to Ipoh Management Services, which won the Gold Award for 'Advertising' for the 'Era of Glamour' campaign at the Queen Victoria Building and to Stockland which won the Silver Award in the same category for the 'Believe Your Eyes' campaign at Stockland Merrylands. Congratulations also to Colonial First State Global Asset Management which won Gold in the 'Cause Related Marketing' category for the 'Sensitive Santa' campaign at Bendigo Marketplace. This campaign was also a winner in the 2013 Australian and New Zealand Marketing Awards. Gold winners are automatically eligible for the VIVA Best of the Best Awards to be presented at ICSC's annual convention, [RECon](#), in Las Vegas on 18-20 May 2014. Click [here](#) to view all finalists and winners.

FAIR WORK OMBUDSMAN INQUIRY INTO THE RETAIL INDUSTRY IN THREE STATES

The Fair Work Ombudsman is conducting an inquiry into the retail industry in South Australia, Western Australia and the Northern Territory. The inquiry will examine compliance with the *General Retail Industry Award*, the *Fair Work Act* and the *Fair Work Regulations*. Beginning in January the FWO will randomly select a sample of employers in these jurisdictions to audit employment records. Further details of the FWO campaign are available [here](#).

LATEST ISSUE OF INSIDE RETAIL MAGAZINE IS NOW AVAILABLE

The latest issue of *Inside Retail Magazine* is now available with the annual guide to shopping centre developments in 2014. Subscriptions (\$59.95 for six issues) are available at subs@octomedia.com.au.