



# SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE  
COUNCIL OF AUSTRALIA

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## SUBMISSION ON ISSUES PAPER FOR COMPETITION POLICY REVIEW

The Shopping Centre Council has lodged a [submission](#) on the Issues Paper relating to the review of Competition Policy and Law ([Shop Talk 16/4/14](#)). In relation to competition law, our submission argues that there is no justification for changes to the unconscionable conduct provisions of the *Competition and Consumer Act*, until the 2012 amendments have been given a chance to be tested by the courts. We have also argued for the repeal of section 93AB (the collective bargaining notification provisions) and recommended section 50 of the Act be amended to ensure the renewal of a lease to a supermarket operator, and the exercise of an option in a lease to a supermarket operator, is not considered an acquisition of an asset.

In relation to competition policy, our submission addresses arguments that planning laws erect barriers to entry to the industry, a matter that has been addressed by the Productivity Commission in three separate inquiries in recent years, as well as by the Australian Competition and Consumer Commission in its inquiry into the grocery industry. Retail planning issues run the risk of being subjected to a never-ending round of inquiries, with little chance for reforms to be pursued, measured and refined. We have also drawn attention to a range of anti-competitive measures still included in state/territory planning schemes, including floor space caps, preferential zoning, variations in development contribution requirements and discriminatory design requirements. The Issues Paper also raised the issue of occupational licensing and the extent to which this can be used to erect anti-competitive barriers to entry to an industry. We have drawn attention to compulsory real estate agents licensing requirements and their irrelevance for large commercial property agency work. The submission also addresses the anti-competitive impact of the regulation of trading hours.

## STATE/TERRITORY MINISTERS SUPPORT UNFAIR CONTRACT TERMS EXTENSION

A puzzling [media statement](#) was issued by the Federal Small Business Minister, Bruce Billson, after the meeting of Australian State and Territory Consumer Affairs Ministers last week. The statement said State Ministers "have thrown their support behind an extension of unfair contract term protections to small business". This is despite the fact that a Consultation Paper on this matter has been released for public discussion and the closing date for submissions is not until 1 August ([Shop Talk 29/5/14](#)). Apparently the State Ministers don't feel the need to await the outcome of this public consultation process. Nor, as far as we are aware, have there been any consultations by these State and Territory Ministers with business organisations which may be affected by this extension. Consumer Affairs Ministers (who have an obvious and relevant interest in business-to-consumer contracts) are not the relevant Ministers in the States and Territories to consider the economic and other implications of the regulation of business-to-business contracts.

## SUBMISSION ON PROPOSED CHANGES TO THE FRANCHISING CODE OF CONDUCT

The Shopping Centre Council has lodged a [submission](#) on the exposure draft of proposed changes to the *Franchising Code of Conduct* ([Shop Talk 10/4/14](#)). Our submission opposes the proposed codification of 'good faith'. It is contrary to good regulatory and legislative principles to impose on a business relationship an obligation which can't be satisfactorily defined or explained and is open to a wide variety of interpretations.

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