



SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE
COUNCIL OF AUSTRALIA

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NO CONSULTATION ON CHANGES TO THE VICTORIAN RETAIL LEASES ACT

The Shopping Centre Council is seeking clarification of proposed changes to the *Retail Leases Act* in Victoria, arising from the [Courts Legislation Miscellaneous Amendments Bill 2014](#). We understand that neither representatives of landlords, nor tenants, were consulted on the amendments. The Bill seeks to clarify an ambiguity concerning the ability of the Victorian Civil and Administrative Tribunal (VCAT) and the Small Business Commissioner (SBC) to deal with claims against guarantors of lease obligations, while preserving a lessor's ability to seek remedies through the courts. We are concerned, however, that the drafting of the amendment – which is to enable guarantors and indemnifiers to refer a dispute to the SBC for mediation – could enable them to do so *after* the commencement of proceedings in a court. This has the potential to delay court proceedings already in train and place additional cost burdens on landlords who have elected to commence court proceedings. This also has the potential to cause parties to mediate twice given that commercial matters in all Victorian courts are, with limited exceptions, invariably referred to mediation (or a pre-hearing conference in the Magistrates Court). The Shopping Centre Council has been in discussions with the Victorian Government to clarify the provisions of the Bill.

DRAFT LEGISLATION SOON ON FEDERAL SMALL BUSINESS OMBUDSMAN

The Federal Small Business Minister, Bruce Billson MP, has [announced](#) draft legislation will be available soon on the new Small Business and Family Enterprise Ombudsman. This will replace, when legislation is passed, the existing position of Federal Small Business Commissioner. Although media reports said the Ombudsman would have power to 'name and shame' businesses, there is no mention of this in the Minister's announcement.

REPORT SHOWS VERY FEW RETAIL TENANCY DISPUTES IN SOUTH AUSTRALIA

The latest [annual report](#) of the South Australian Small Business Commissioner (2012/13) reveals the SBC successfully resolved all disputes that progressed to formal mediation. Unfortunately the SBC no longer includes a key table published in previous reports so it is not possible to find the actual number of 'cases' in which the SBC was involved last year. According to the previous annual report, however, the SBC was involved in 122 cases in 2011/12 of which only 28% (i.e. 34 cases) involved retail tenancy matters. The Productivity Commission estimated in 2008 that there were 20,000 retail leases on foot in SA. The number of disputes is therefore an infinitesimally small proportion of leases – only 0.17%. In other words fewer than 2 leases in every 1,000 resulted in a dispute requiring mediation. Remember: a lease is on foot 24 hours a day, 365 days a year, usually for five years. We've said before: if these were marital dispute figures, people would regard the state as a perfect society! Instead we have a South Australian Senator launching a federal inquiry into retail tenancy issues ([Shop Talk 17/7/14](#)). Go figure!

NO SHOP CLOSURES DURING THE G20 SUMMIT IN BRISBANE IN NOVEMBER

There will be no compulsory shop closures during the G20 summit meetings in Brisbane on 14-16 November. To keep abreast of operational details check [this link](#) regularly.

PROPERTY COUNCIL RELEASES NATIONAL AND STATE RETAIL BENCHMARKS 2014

The PCA's *2014 Retail Benchmarks: Survey of Operating Costs* is a valuable tool for evaluating the operational performance of shopping centres and preparing operational budgets. Click [here](#) for the National Retail Benchmarks and the individual State benchmarks are: [NSW](#), [QLD](#), [SA](#), [VIC](#) and [WA](#).