SHOPTALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE COUNCIL OF AUSTRALIA

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FEDERAL BUDGET: NETFLIX TAX NOT THE SAME AS LOW VALUE THRESHOLD

As reported in *Shop Talk* last week, this week's Budget included the Goods and Services Tax (GST) 'integrity measure' to apply to the GST to intangible goods such as downloadable movies, music and television programs. This was initially agreed in principle at the 9 April Council of Federal Financial Relations meeting, and has been referred to colloquially as the 'Netflix tax'. Subject to the passage of relevant legislation, the measure will come into effect on 1 July 2017 and is forecast to raise $350 million across a four-year period. To put this in context, the GST is expected to raise around $60 billion in 2015-16. The *Exposure Draft Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015* was released this week for consultation until 7 July. A key aim of this Bill is "to ensure digital products and services provided to Australian consumers receive equivalent GST treatment whether they are provided by Australian or foreign entities". It's worth noting that reporting of this week's Budget measure has created some confusion, insofar that the 'Netflix tax' is not the same as the efforts to reduce the Low Value Threshold (LVT), which currently applies to imported tangible goods of $1,000 or greater. As an example, a *Sydney Morning Herald* article, under the heading of Budget "Losers" stated: "Offshore retailers/consumers: GST will be charged on goods sold to Australians". We have received a number of queries about this. It has been reported that that LVT is still the subject of discussion between the Federal Government and State and Territory Governments, with Assistant Treasurer Josh Frydenberg intending to raise the issue in future discussions. It has also been reported that the WA Government will not consider changing the LVT until the broader GST distribution formula is amended to better suit WA.

ADVISORY OPINION HANDED DOWN BY VCAT PRESIDENT

The VACT President, Justice Greg Garde AO RFD, handed down his advisory opinion on the matter referred last year by the Victorian Small Business Commissioner on Friday 1 May (*Shop Talk 12/2/15* & *26/6/14*). (The SCCA was granted leave to intervene in these proceedings and was represented at the VCAT hearing.) Substantially, this matter sought clarification as to whether a landlord can enforce a commercial lease obligation requiring a tenant to maintain the leased premises' 'essential safety measures' (ESM), or recover related costs incurred by a landlord through outgoings, giving specific reference to the operation of s. 251 of the *Building Act*. Justice Garde also addresses questions regarding the *Retail Leases Act*, including the operation of s. 52. In Justice Garde's view (which is not binding on VCAT, the Supreme Court, landlords or tenants), a landlord cannot contract out of its obligations to provide or maintain the leased property's ESM (ie. via a lease) and that any term in a lease which purports to require the tenant to carry out ESM compliance is void. Justice Garde has also formed the view that a landlord cannot transfer ESM compliance costs to a tenant and that any term in a lease which purports to require the tenant to reimburse the landlord for ESM compliance costs is void. Further, a landlord and tenant can agree (outside of a lease) for a tenant to carry out ESM compliance under s. 251 but at the landlord's expense. Since the advisory opinion was handed down we have been discussing its potential implications with our members who have exposure in Victoria, and taking ongoing advice from our instructing solicitor in this matter. It is likely that we will engage with Government and other key stakeholders in the coming weeks to discuss possible remedies to the potential implications of this advisory opinion.