

# SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

FRIDAY 24 MARCH 2017

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## MINOR AMENDMENTS PROPOSED TO QUEENSLAND RETAIL SHOP LEASES ACT

In May 2016, the *Retail Shop Leases Amendment Bill* passed the Queensland Parliament with the inadvertent omission of an existing lessor safeguard with regard to its lessee disclosure obligations, specifically the circumstances under which a lessee can terminate a lease in the event a 'defective' statement has been provided (former section 22(5)). During the Parliamentary debate ([Shop Talk 12/5/16](#)), the Attorney General, Yvette D'Ath, noted that 'status quo' provisions would prevail. However, a minor drafting error saw the provisions omitted completely. We wrote to the Attorney General drawing attention to this omission prior to the commencement of the amending Act. Yesterday, the Attorney General tabled the [Court and Civil Legislation Amendment Bill](#) which proposes amendments to 30 Acts within the justice portfolio, including correcting the earlier omission and reinstating the existing lessor safeguard in the *Retail Shop Leases Act*. The Bill also proposes to make permanent what is currently transitional regulation which confirms that the Act continues to apply to leases covering a tenancy greater than 1,000m<sup>2</sup> entered into prior to the commencement of the Amendment Act in November 2016. The Bill has been referred to the Legal Affairs and Community Safety Committee for review.

## QUEENSLAND UNDERTAKES CONSULTATION ON CONTAINER RECYCLING SCHEME

The Shopping Centre Council has lodged a submission to the Queensland Government's *Implementing Queensland's Container Recycling Scheme* Discussion Paper. The introduction of the Container Recycling Scheme (CRS) is part of the Government's plastic pollution reduction agenda and is due to commence on 1 July 2018. There are several agreed arrangements to provide consistency across existing schemes, such as those in SA, and, shortly, NSW. It is already confirmed that there will be a 10-cent refund payment for all eligible containers returned to a collection point. The Paper sought feedback on the operation of the CRS, and mentions the possibility of using shopping centres as locations for container refund points.

## SUBMISSION LODGED IN RESPONSE TO DRAFT SEQ REGIONAL PLAN

The Shopping Centre Council has lodged a submission in response to [ShapingSEQ](#) – the draft update of the South East Queensland Regional Plan. We also had the opportunity to meet with Government officials to discuss our priorities during an initial consultation phase ([Shop Talk 9/6/16](#)). The draft Plan flags the establishment of a Centres Review Working Group following the release of the final *South East Queensland Regional Plan 2017-2041*. We have requested an invitation to participate in the working group and have made recommendations about the group's Terms of Reference, specifically that the review should not become a vehicle for the vested interests of some retail sector stakeholders which would have the integrity of the activity centres network diluted by facilitating greater access for so-called large format retailers to access out-of-centre locations for development. The draft Plan also revisits the 'bandwagon' policy issue of value-capture infrastructure funding and revisits the Government's intent to, where feasible, capture "a proportion of associated land value uplift to help fund (projects)". A revised final South East Queensland Regional Plan is due for completion mid-year.

## VICTORIAN SUPREME COURT JUDGMENT RAISES QUESTIONS ABOUT RETAIL SERVICES

The Victorian Supreme Court, in its judgment *CB Cold Storage Pty Ltd v IMCC Group Pty Ltd [2017] VSC 23*, has, in effect, broadened the application of the Victorian *Retail Leases Act 2003* which may have implications for non-shopping centre assets, including industrial/warehouse landlords. Key to the judgment was the application of the 'ultimate consumer' test with regard to the provision of cold storage services by a warehouse tenant. The Court determined that the service provided by the tenant was 'retail' and, therefore, the *Retail Leases Act 2003* applied. This may have flow on implications to, for example, the recoverability of land tax and the parameters of market rent reviews. A helpful summary of the judgment by Gadens can be found [here](#).

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