

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

Retail Shop Leases
Amendment Bill 2014
Submission 001

18 December 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Mr Berry,

Retail Shop Leases Amendment Bill 2014

I refer to your letter of 2 December 2014 seeking submissions in relation to the above Bill which was introduced into Parliament on 25 November 2014 by the Attorney General and Minister for Justice, the Hon Jarrod Bleijie MP. This Bill is the outcome of the statutory review of the *Retail Shop Leases Act* in 2013 and 2014.

As the Attorney-General indicated in his speech introducing the Bill there has been considerable stakeholder consultation during this statutory review. The Shopping Centre Council of Australia (SCCA) lodged a submission on 30 January 2012 in response to the Government's Discussion Paper issued in November 2011. We also lodged another submission on 3 July 2013 in response to the Options Paper issued in May 2013. The SCCA was also an active participant in the Reference Group, established by the Attorney-General in June 2013, to make recommendations to the Government on possible amendments to the Act.

We congratulate the Government on the consultative nature of the review. We would note that there were five retailer association representatives on the Reference Group, as well as a retailer advocate and a representative of a broader small business association, so it cannot be said that the views of small retailers have not been heard during this extensive review.

We strongly support those measures in the Bill which seek to reduce the amount of unnecessary regulation in the Act. The Attorney-General has noted in his speech that one provision (clause 61(5)) excludes from the Act retail shop leases with a floor area greater than 1,000 square metres "because tenants of such areas are generally sophisticated business entities not requiring protection under the legislation". We support this move which will bring retail tenancy regulation in Queensland into line with that in NSW, Western Australia, South Australia and the Northern Territory. It makes a mockery of the purpose of the Act for large retailers, such as Aldi, to have the benefits of an Act which was introduced to protect small retailers, particularly given Aldi's main competitors, Coles and Woolworths, are excluded from the Act's protections. Since the average floor area of a speciality retail shop in a major shopping centre is only 104 square metres (i.e. 50 m² for food specialties and 122 m² for non-food speciality stores), it can be seen that 1,000 square metres is a sufficient (and probably excessive) floorspace threshold to determine coverage of the Act. There is little chance of genuinely small retailers being denied the protections of the Act as a result of this amendment and we are unaware of any such anomalies arising in the other States listed above.

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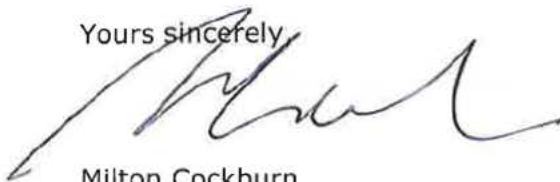
We are disappointed that the Government has not taken a further (and probably more significant) 'red tape reduction' opportunity and also excluded from the Act those retail shop leases entered into by public companies and their subsidiaries, as is the case in Victoria and other States. The protections afforded by the Act should not be extended to large retail businesses that are more than capable of looking after themselves in negotiations with property owners and who are larger and more economically powerful than the owners with whom they negotiate. Listed retail companies usually have stores which number in the hundreds which gives them enormous bargaining strength. It is absurd that large listed Australian and international retailers are provided with the protection of the Act, particularly when these international retailers do not have the benefit of retail tenancy legislation in their home countries or in other countries in which they operate. An exclusion from the Act of retail shop leases to listed retailer would substantially reduce the regulatory burden on both retail property owners and on these retailers.

Nevertheless we accept that this proposal did not win the support of the retailer associations – unsurprisingly since these listed retailers have significant influence within these associations – and the Government has generally not adopted proposals by the Reference Group which did not achieve a consensus.

We have some drafting concerns in the Bill and propose to accept the invitation of the Attorney General, in his parliamentary speech introducing the Bill, to make a submission directly to him on these concerns.

The SCCA represents Australia's largest shopping centre owners, managers and developers. Our members operate across metropolitan, regional and rural areas and include: AMP Capital Investors, Blackstone Group (Australia), Brookfield Office Properties, Charter Hall Retail REIT, DEXUS Property Group, Eureka Funds Management, Federation Centres, GPT Group, Ipoh Management Services, ISPT, Jen Retail Properties, JLL, Lancini Group, Lend Lease, McConaghy Group, McConaghy Properties, Mirvac, Novion Property Group (formerly CFS Retail Property Trust Group), Perron Group, Precision Group, QIC, Savills, Scentre Group (owner and manager of Westfield shopping centres in Australia and New Zealand) and Stockland.

Yours sincerely



Milton Cockburn
Adviser