

## Property Law Bill 2023

**Submission No:** 9  
**Submitted by:** Shopping Centre Council of Australia  
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**Submitter Comments:**

9 March 2023

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

Via email: [LASC@parliament.qld.gov.au](mailto:LASC@parliament.qld.gov.au)

### Property Law Bill 2023

Thank you for the opportunity to comment on the Property Law Bill 2023 (the Bill). As the Committee may be aware, the Shopping Centre Council (SCCA) represents major shopping centre owners and managers in Queensland and across Australia.

The SCCA has exposure to the laws and practices in all jurisdictions in Australia, including in relation to leasing transactions and disputes. We have engaged with the Department of Justice and Attorney-General (the Department) in the development of the Bill since December 2021 to apply this experience and appreciation of various **issues, 'best practices', and practical application of the laws dealing with the landlord and tenant relationship**, including commenting on where those laws could be improved upon and strengthened.

We are confident that the Bill has been strengthened and refined throughout this extended consultation process and we are grateful to have had the opportunity to work collaboratively with the Department.

Our interests relate primarily to Part 9 – Leases. We have not reviewed, and do not provide comments in relation to, other aspects of the Bill which are somewhat removed from our mandate; there are other organisations with a greater interest and understanding of the relevant issues.

#### Position

Noting the above, we have reviewed the Bill and support its passage through the Parliament, subject to the comments below.

#### Comments

*Schedule 1 – Standard Terms – 3. Maintain and leave the premises in good repair*

Rather than have regard to the condition of the premises at the 'start of a lease', the time a lessee 'first occupies a premises' is pertinent as it would more adequately account for lease renewals.

The SCCA recommends that this provision should be amended as follows—

*(1)(b) at the end of the lease, whether by expiration of the lease term or otherwise, surrender and yield up the leased premises to the lessor in at least the same repair and condition in which the premises were **when first occupied in at the start of the lease.***

In simple terms, the standard term should ensure that a leased premises is returned to the landlord in at least the same condition as when a tenant first assumed responsibility for it, **i.e. 'when first occupied'**. However, if a tenant renews their lease then 'at **the start of the lease**' is inadequate as it would give effect to resetting the repair and condition of the premises to the start of each lease term, with no regard or reference to its initial state. This is unfavourable to landlords and will almost certainly be routinely contracted out of if not amended.

We raised this prospective amendment with the Department late in the drafting process and have not received feedback as to how this advice was received and why a drafting amendment was not made.

#### Recommendation

We request that the Committee refer our suggested amendment to the Department and/or the Office of the Queensland Parliamentary Counsel for advice as it would appear that the intent of this standard term is either not being met, or is needlessly unfavourable to landlords.

*The Bill should not be used or seek to advance non-leasing matters or improve commercial outcomes*

We anticipate that some stakeholders may view the Bill as an opportunity to pursue other policy outcomes; for instance, so-called 'force majeure' or early lease termination measures, enduring 'hardship provisions' or mandated rent relief, preferential end of lease rights, and/or other radical, opportunistic wants that would fundamentally erode property and lease law principles, unfairly transfer risk from tenants to landlords, and ultimately impact investment and contractual certainty.

Such arguments are inconsistent with the 'Property Law Act 1974 – Final Report' (2018) and the stated policy objectives of the Bill. Concerning Part 9 – Leases, page 5 of the 'Explanatory Notes' makes clear that 'The Bill simplifies the rules relating to leases'; no more, no less.

#### Recommendation

The Committee should disregard attempts to make substantive, eleventh hour changes that purely seek to advance non-leasing matters or improve commercial outcomes. The Bill has been extensively consulted on and the merits of competing arguments have been considered and resolved by the Department. Any subsequent outcomes or commercial objectives are more appropriately pursued through other forums.

#### **Follow up**

Thank you again for the opportunity to comment on the Bill. Please do not hesitate to contact me on [REDACTED] or at [REDACTED] as required.

On a final note, we wish to make clear to the Committee that the Property Council of Australia (PCA) does not represent major shopping centre landlords on retail leasing and legislative/regulatory issues. This is the agreed purview of the SCCA. Any perspectives shared by the PCA should not be considered representative of our members or sector, or contrasted or conflated with those of the SCCA.

Yours sincerely,

James Newton

**Manager, Policy and Regulatory Affairs**