

21 August 2015

Mr John Chapman  
Small Business Commissioner  
GPO Box 1264  
ADELAIDE SA 5001

Via email: john.chapman@sa.gov.au

Dear Commissioner ~~Commissioner~~ John

## DRAFT RETAIL AND COMMERCIAL LEASING GUIDE

Thank you for your letter dated 6 August requesting feedback on the final draft *Retail and Commercial Leasing Guide*.

In providing our comments, we have reviewed our submission on the previous draft Guide addressed to your predecessor Mr Sinkunas dated 11 October 2013. We are grateful that a majority of our previous comments have been taken into consideration in the final draft Guide.

As a general comment, we support the development of the Guide to help better inform both existing and prospective tenants about the South Australian retail and commercial leasing environment. We are also keen to ensure that this becomes the definitive published Government information source on such issues, particularly to avoid possible duplication or overlap (e.g. the sa.gov.au website contains information on '*Leasing Commercial Property*'). Once finalised and publicly available, we will gladly advise our members about the Guide and also place a copy in the *Industry Information* section of our website.

We have some further comments and suggested changes for your consideration:

### 1. Introduction

In the third paragraph, it is stated that the Act governs leases '*where rent does not exceed \$400,000 per annum*'. This is slightly misleading. This suggests all leases with an annual rent of less than \$400,000 are covered by the Act which is in fact not the case (i.e. the Act does not apply to a lease to a public company or a subsidiary of a public company irrespective of rent). We therefore suggest the relevant sentence be amended to read as follows:

"...governs most leases over retail shops and commercial leases...subject to certain exceptions outlined in the Act".

### 2. Before you the sign the lease / Lease Documentation (page 2)

We note that the 'second tip' on page 2 of the previous draft Guide has been deleted, as suggested in our previous submission. Similarly, we believe that the last sentence under the '*Lease Documentation*' section should be amended to state that independent legal advice as to the contents of a disclosure statement should also be obtained (as opposed to just items that are not clear to lessees).

### **3. Option to renew (page 3)**

In the second sentence of paragraph 2, the words 2 months should appear after the words 6 months before and ends (consistent with the wording in section 36(1)(a) of the Act). This would also better align with the 'example' provided.

### **4. Lease registration benefits (page 6)**

The second paragraph states that the lessor must register the lease within one month after the lease is 'executed'. However, this is not consistent with the wording in the Act (section 16(b)) which states that the lease must be registered within one month after the lease is returned to the lessor or the lessor's lawyer or agent following payment of stamp duty. We believe the Guide should be amended so that it is consistent with the wording in the Act.

### **5. Condition of the premises – repairs and maintenance (page 7)**

The word structurally should be inserted before the word suitable in the second sentence of the first paragraph. This is consistent with the wording in section 18(1) of the Act). We note we made this suggestion in our original submission on the previous draft Guide.

### **6. Condition of the premises – warranty of fitness for purpose (page 7)**

Once again, the word structurally should be inserted before the word suitable in the first sentence for the same reasons in point 5 above.

### **7. Assignment (page 8)**

It appears that the exception in section 43(1)(d) of the Act (which states that a lessor can withhold consent to an assignment if the lessee has not complied with procedural requirements for obtaining the lessor's consent) has been omitted. We believe this should be inserted along with the other 'circumstances'.

### **8. Demolition (page 10)**

The word 'or' at the end of the second bullet point should be and to be consistent with section 39(1) of the Act.

### **9. Marketing plan for advertising and promotion (page 10)**


In the first bullet point, the word 'provide' should be replaced with the words make available to be consistent with the wording of section 54(1)(a) of the Act. In our view, 'provide' and 'make available' have two distinct meanings.

### **10. Glossary of key terms (page 12)**

- '**Retail Shop**' – A third bullet point appears to be missing (consistent with section 3 of the Act). We suggest the third bullet point should read classified by regulation as premises to which the Act applies.
- '**Disclosure Statement**' – We suggest that the words at the time its issued be inserted at the end of the last sentence to avoid any misconceptions.
- '**Certified Exclusionary Clause**' – This definition is incomplete. The words of a retail shop lease which requires a certificate to be should be inserted after the words 'Is a clause' at the beginning of the definition.

I would gladly discuss this feedback further with you or your staff as required. Please do not hesitate to have your office contact me on [anardi@scca.org.au](mailto:anardi@scca.org.au) or 0408 079 184.

Yours sincerely



21.10.2015

Angus Nardi  
**Executive Director**