

16 November 2015

Research Director  
Education, Tourism and Small Business Committee  
Parliament House  
George Street  
Brisbane Queensland 4000  
by email: etsbc@parliament.qld.gov.au

Dear Sir/Madam,

### **Retail Shop Leases Amendment Bill 2015**

I refer to the above Bill which was introduced into Parliament on 13 October 2015 by the Attorney General and Minister for Justice, the Hon Yvonne D'Ath MP, and which has been referred to the Education, Tourism and Small Business Committee for consideration.

This Bill is the outcome of the statutory review of the *Retail Shop Leases Act 1994* conducted in 2013 and 2014. The Shopping Centre Council of Australia (SCCA) was actively involved in this review. The SCCA lodged a submission on 30 January 2012 in response to the 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 an active participant in the Reference Group established to make recommendations to the Government on possible amendments to the Act. We were also involved in the processes leading up to the preparation of this Bill and were consulted by the Department of Justice and Attorney-General on a draft Bill before it was introduced.

We congratulate the Queensland Government on the consultative nature of the review and the drafting. We 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. This willingness to consult with relevant stakeholders, and to seek to achieve consensus on legislative changes, contrasts with how such reviews have sometimes been conducted in other states.

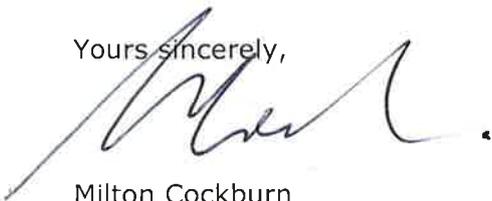
The Attorney-General noted, when introducing the Bill, several measures which seek to reduce the amount of unnecessary regulation in the Act and we strongly support these measures. These include the exclusion from the Act of retail shop leases with a floor area greater than 1,000 square metres "in recognition that these tenants are generally sophisticated business operators who do not require special protection" from the legislature (Clause 5). This amendment 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 and medium-sized retailers, particularly given Aldi's main competitors, Coles and Woolworths, are rightly excluded from the Act's protections. Since the average floor area of a specialty retail shop in a major shopping centre is only 104 square metres (i.e. 50 m<sup>2</sup> for food specialties and 122 m<sup>2</sup> for non-food specialty 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.

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 some 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 retailers 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 exert significant influence within these associations – and the Government has generally not adopted proposals by the Reference Group which did not achieve a consensus. We hope that this is a measure to reduce regulatory costs (for landlords and tenants) which will be addressed in the future.

The Bill does not include an operative date. Clause 2 provides that the Act commences on a day to be fixed by proclamation. In order to ensure that all lessors and lessees of retail shops in Queensland receive adequate notice of measures in the Bill which will impact on them, we respectfully request that the Committee recommends to the Attorney-General that the operative date of these amendments to the *Retail Shop Leases Act* be six months after the Bill receives Assent.

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

Yours sincerely,



Milton Cockburn  
**Adviser**