

# SHOPTALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

**FRIDAY 14 JULY 2017**

## SOUTH AUSTRALIAN RETAIL LEASING AMENDMENTS TABLED IN PARLIAMENT

The South Australian Minister for Small Business, Martin Hamilton-Smith, has tabled in the Parliament the 14-page *Retail and Commercial Leases (Miscellaneous) Amendment Bill 2017*, which includes proposed changes to the *Landlord and Tenant Act 1936*. This Bill follows a [review](#) undertaken by retired District Court Judge, Alan Moss ([Shop Talk 23/9/16](#)). The Bill reinforces the existing rent-based threshold to determine the applicability of the Act, with the Minister detailing that it is intended to make "express that retail shop leases can 'move into' and 'out of' the jurisdiction of the Act". It is surprising that the Government is seeking to persist with a position which only perpetuates uncertainty for retailers and landlords, particularly when a much more certain and clear floorspace threshold operates effectively in other jurisdictions. The Bill borrows some components from the recent amendments to the NSW *Retail Leases Act* ([Shop Talk 23/6/17](#)), including by proposing to require a landlord return a bank guarantee to a lessee within two months of a lessee satisfying their obligations under a lease. It also contains a range of administrative amendments, for example, requiring a lessor to provide a lessee with a signed disclosure statement "in duplicate", allowing the Small Business Commissioner to certify exclusionary clauses, and amending clauses relevant to the execution and registration of leases. The Bill also contains significant increases to the penalties under the Act, which have not been reviewed since the Act commenced (the increases being generally equivalent to the rate of CPI from 1995 to 2015). The Bill does not progress amendments in response to a number of potentially detrimental proposals which came out of the Moss Review, including a proposal that the Small Business Commissioner 'hold' bank guarantees and that the Act should provide a legislative pathway for an orderly exit from a lease by a failing business. The Shopping Centre Council strongly opposed both of these proposals during the review process. In a [media statement](#), the Minister states that the proposals are important to "ensure that South Australia is the best place to do business".

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## SUBMISSION LODGED ON VICTORIAN RETAIL SMALL BUSINESS REGULATION REVIEW

The Victorian Government's review of regulation impacting retail small business continues, with submissions in response to a [Draft Action Statement](#) ([Shop Talk 2/6/17](#)) recently made public. The Shopping Centre Council's [submission](#) - one of only 12 made public - focusses on the proposals in the Draft Action Statement specific to retail leasing, including a proposal to introduce a timeframe for the return of a bank guarantee to a tenant once all obligations under the lease have been fulfilled, and the provision of information to a prospective tenant upon commencement of a lease negotiation. Each reform proposal relating to retail leasing seems to respond to perceived issues being experienced by tenants or a lack of information available to tenants, rather than being informed by evidence of a policy failure and systemic disadvantage among retail tenants. One specific proposal - that the Government prepare and make available a free (non-mandatory) standard lease - also indicates that the Government may, in its pursuit of making more information more readily available and easier to understand, be inappropriately taking on a role which is better served by a tenant seeking specialist legal and financial advice. It is expected that a final Action Statement will be released in the coming months. There is no clear timeframe for the implementation of any resultant retail leasing reforms.

## SUBMISSION ON QUEENSLAND ELECTRICITY AMENDMENT LEGISLATION

The Shopping Centre Council has lodged a submission to the Queensland Parliament's Public Works and Utilities Committee on its inquiry into the [Electricity and Other Legislation \(Batteries and Premium Feed-in Tariff\) Amendment Bill 2017](#) ([Shop Talk 20/6/17](#)). The submission details that we have no opposition to the proposed amendments in the Bill, so long as it does not impose additional costs, outside of the national energy rules, for embedded network owners. The Committee report on the Bill is due to be tabled in mid-August.

**PREVIOUS ISSUES**