

# SHOPPING CENTRE

COUNCIL OF AUSTRALIA

13 March 2015

Workplace Relations Framework  
Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601

Via email: [workplace.relations@pc.gov.au](mailto:workplace.relations@pc.gov.au)

Dear Sir or Madam

## **Inquiry into workplace relations framework**

We are pleased to provide this submission on the Productivity Commission's inquiry into the workplace relations framework, referred to the Commission by the Treasurer, Mr Joe Hockey, on 19 December 2014.

The Shopping Centre Council of Australia (SCCA) represents Australian's major owners, developers and managers of shopping centres. In this regard, our members (full list provided below) largely employ a 'white collar' workforce and do not have a 'day to day' involvement with some key aspects of the workplace relations framework, such as modern awards.

However, we note that the background to the Inquiry's Terms of Reference outlines that the "*Australian Government believes that it is fundamentally important to make sure that the Fair Work laws work for everyone*". In this regard, we thought it would be useful to the Commission to provide the perspective of a sector whose operation and profitability are heavily exposed to the efficiencies, or otherwise, of the workplace relations framework, including modern awards.

Shopping centres principally derive their income from retail tenants in the form of rent. They are, therefore, heavily exposed to, or dependent upon, the retail whose staff costs and conditions are dictated by a modern award in the context of the current workplace relations framework (ie. the *General Retail Industry Award*, among others). Shopping centres also regularly contract services from sectors whose pay and conditions are dictated by modern award, including cleaning services. It is in the interests of both a shopping centre owner and its retailers to see these service costs (part of which are recoverable from retailers as outgoings) are kept as low as is fair and reasonable.

We hope that providing this perspective will assist the Commission construct recommendations which give due consideration to the broader economic and business impacts of the workplace relations system and appropriately consider the interdependencies beyond the fundamental employer/employee relationship.

### **Retail award**

As noted above, shopping centres principally derive their income from their retail tenants and we have a particular interest in seeing the retail sector grow, employ more staff and increase their profitability. The Commission estimated in 2008 that there are around 60,000 leases in shopping centres across Australia (there would be considerably more now).

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The Commission, in its recent study into the *Relative Cost of Doing Business: Retail Trade* commented that, "labour costs are the single largest area of expense for most retail businesses, whether based in Australia or elsewhere" (p. 17, Final Report). We also understand that, in recent times, the impact of penalty rates payable on Sundays and public holidays have, in particular, been identified by retailers as a significant issue in terms of business competitiveness and productivity.

As such, we support the specific efforts of the various retailer associations in their attempts to see Sunday penalty rates addressed (ie. lowered below the current 100% loading) in the context of the current review of the *General Retail Industry Award* by the Fair Work Commission. We also offer support to the desire of retailers for greater flexibility in terms of workplace conditions, including minimum shifts.

We do not want a workplace relations framework which results in the imposition of staff costs which, if satisfied, places the profitability of a retailer in question, or causes a retailer to reconsider the benefit of opening its doors on a particular day (ie. choosing to remain closed on a Sunday or public holiday to avoid the unsustainable additional staff costs). This outcome undermines our strong view that consumer choice, not regulation (whether that be trading hours regulation or workplace regulation), should determine when retailers open their doors and potentially mute the positive effects of the recent liberalisation of, for example, trading hours on Sundays in Perth, and the proposed liberalisation on Boxing Day in NSW.

## **Cleaning**

As noted above, shopping centre owners also contract out services from sectors whose conditions and pay are governed by a modern award.

A specific, and relatively high profile, example of our involvement with the current workplace relations system, and modern awards specifically, has been through exposure to the *Clean Start* campaign run by the union, United Voice. Central to this campaign was the union's attempt to secure 'above award' (*Cleaning Services Award 2010*) wage increase and conditions for cleaners in shopping centres. This involved general campaign tactics, including protest rallies outside shopping centres, and was protected industrial action. During this campaign we continually championed the independent role of Fair Work Commission in determining appropriate wages across the cleaning sector.

Despite being a subject of the *Clean Start* campaign, we reiterate that shopping centre owners do not generally employ cleaners directly, cleaning service providers do. We acknowledge that cleaners deserve to be treated fairly and with respect and embodied this position through the joint endorsement of a *Code of Conduct for Fair Service Provision in Shopping Centres* with the Building Service Contractors Association of Australia in 2012. However, we continue to oppose the proposed wage increases under *Clean Start*, as it would flow directly into increased costs for the provision of cleaning services, and higher outgoing costs for a shopping centre's tenants.

The Fair Work Ombudsman (FWO) has undertaken two separate investigations into cleaning contracting. The first, in 2010, was an investigation in the context of the transition to the modern award. The second was a follow up education and compliance campaign throughout 2012-13 which focused specifically on monetary entitlement compliance and record keeping obligations. As part of the campaign, the sub-contracting arrangements at 8 large shopping centres were audited. These centres were held by five different owners across New South Wales, South Australia, Queensland and Victoria, and 7 principle contractors were involved.

Pleasingly, the audit revealed that the contract prices were sufficient to allow the contractor to meet its wage obligations and that the sub-contracting arrangements

provided protections to ensure contractors were meeting their workplace relations obligations. This is reflected in the FWO report, *National Cleaning Industry Follow Up Campaign 2012 – 2013* (released on 12 March 2015), where the following was noted at page 11:

*"The results from the procurement assessments are encouraging and it was pleasing to find most property owners playing an active role in ensuring compliance with workplace laws at the lower levels of the procurement chain. This behaviour ensures vulnerable employees are receiving the correct entitlements and creating genuine competition for contracts leading to a level playing field in the industry."*

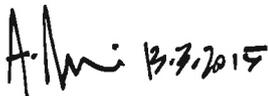
### **Unfair dismissal**

More generally speaking, some members have advised that the unfair dismissal processes under the current workplace relations framework are too heavily weighted in favour of the complainant and, as described in the Issues Paper, are costly and slow. This system should be revisited and rebalanced to ensure there is clarity and fairness for both parties.

### **Members**

The SCCA's members are AMP Capital Investors, Blackstone Group, 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, SCA Property Group, Scentre Group (owner and manager of Westfield shopping centres in Australia and New Zealand) and Stockland.

Yours sincerely,



Angus Nardi  
**Executive Director**