

# SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

FRIDAY 17 JUNE 2016

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## NSW GOVERNMENT ESTABLISHES RETAIL EXPERT ADVISORY COMMITTEE

The NSW Government has established a Retail Expert Advisory Committee to “provide advice on appropriate reforms to improve the planning system for retailing and encourage competition and retail investment in NSW”. The establishment of this Committee was announced in March to coincide with sweeping changes to the Standard Instrument LEP to mandate ‘Garden Centres’ and ‘Hardware and Building Supplies’ as permitted uses with consent in the IN1, IN2 and B7 zones ([Shop Talk 17/3/16](#)). The Committee is chaired by Mr Gary White, the NSW Chief Planner. The Hon Patricia Forsythe, the Executive Director of the Sydney Business Chamber, is also a Committee member. Despite the dubious context of its announcement, this review is a chance to properly assess the playing field for retail investment NSW. We are urging the Committee to be mindful of existing Government strategies and directions which have a strong ‘centres’ basis, including the Government’s own strategic spatial plan for Sydney, *A Plan for Growing Sydney*. This is also in the context of the Harper Competition Report, which has been accepted by the Federal Government (after years of inquiry and analysis in various forums) ([Shop Talk 1/4/15](#) & [26/11/15](#)). We are hopeful that the Committee won’t default to lazy recommendations which would undermine the Government’s rhetoric about the importance of strategic planning and the delivery of vibrant places, and the Federal Government’s positive response to Harper’s recommendations and its broader ‘cities’ agenda. The Shopping Centre Council has long urged the Government to prepare a credible Retail Investment Policy to ensure a level playing field for retail investment in NSW. We [lodged](#) a report with the then Minister for Planning, Pru Goward, in December 2014, to nil action. (Curiously, the Government has since seen fit to appoint the author of our advice, Ms Sarah Hill then of Hill PDA, as the CEO of the Greater Sydney Commission.) Submissions are due to the Committee this week, and the review is expected to report by the end of the year.

## SCCA SUBMISSION ON THE REVIEW OF THE AUSTRALIAN CONSUMER LAW

The Australian Consumer Law (which is contained in Schedule 2 of the *Competition and Consumer Act*) is currently being reviewed by the various Australian governments, five years after the ACL began operation. The ACL was also substantially amended last year (beginning on 12 November 2016) to extend the unfair contract terms protections, previously applicable only to ‘consumer contracts’ to include ‘small business contracts’ ([Shop Talk 17/9/15](#) & [19/11/15](#)). The Shopping Centre Council has lodged a [submission](#) in response to the review’s [Issues Paper](#). Our submission argues for a widening of the current exemption from the unfair contract terms protections for terms required or permitted by federal, state or territory legislation. We have also sought an amendment to the definition of a ‘standard form contract’ and to the definition of ‘unfair’ in the ACL in order to remove some of the uncertainties which currently exist for businesses. The submission also addresses a number of problems created by last year’s extension of the unfair contract terms protections to include small business contracts. These include the need to insert a ‘safe harbour’ provision allowing a business to rely on what it is told by the counter party about the number of employees the counter party employs. We have also argued against a proposal raised in the Issues Paper, and also being championed by the Australian Competition and Consumer Commission, to remove the current prohibition on publicly listed companies taking action for unconscionable conduct ([Shop Talk 2/6/16](#)).

## FEDERAL LABOR PLANS TO INCREASE PENALTIES FOR ANTI-COMPETITIVE CONDUCT

Federal Labor has announced that, if elected, it will amend the *Competition and Consumer Act* to increase penalties for anti-competitive and anti-consumer conduct. Some revenues from the higher penalties will provide for an increased ACCC litigation budget. Find full details [here](#).

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