

SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

THURSDAY 30 JUNE 2016

[SUBSCRIBE HERE](#)

QUEENSLAND CREATES A 'SMALL BUSINESS CHAMPION' TO SIT WITH COMMISSIONERS

The Queensland Minister for Small Business, Leeanne Enoch, has [released](#) the Government's [Advancing Small Business Strategy 2016-20](#). This strategy formalises a number of initiatives flagged in Queensland's 14 June Budget, including the appointment of a Small Business Champion within a new Office of Small Business. The Minister has detailed that the new Office will coordinate services for small businesses to help drive business and jobs growth and that the Small Business Champion is to perform an advocacy function across all levels of government and "...represent Queensland at a national level on the Small Business Commissioners' forum...". The Strategy also flags a 'knowledge and data hub' and, among other things, an annual report on the status of small business in Queensland and "...policy development related to small business...". The exact scope of this policy development function is not clear in the Strategy. The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell AO, has welcomed the announcement, noting that "...the more voices we have standing up for small business the better...". The Office of Small Business will sit within the Department of Tourism, Major Events, Small Business and the Commonwealth Games.

EXCLUSION OF LONG-TERM LEASES FROM THE VICTORIAN RETAIL LEASES ACT

Leased premises in Victoria that are "retail premises" within the meaning of section 4(1) of the Victorian *Retail Leases Act* are excluded from the operation of the Act where the lease term is 15 years or more and under certain conditions. The conditions are specified in a Ministerial Determination made on 23 August 2004. There has always been some uncertainty over the interpretation of parts of this Ministerial Determination but this appears to have been resolved in a recent VCAT case *Luchio Nominees Pty Ltd v Epping Fresh Food Market Pty Ltd* [2016] VCAT 937. For a useful discussion of this issue by Robert Hay SC see the Property Law Blog [here](#).

ACCC CLARIFIES MEANING OF 'UPFRONT PRICE' IN NEW UNFAIR CONTRACT TERMS LAW

The 'upfront price' of a contract cannot be challenged as unfair under the Australian Consumer Law ([Shop Talk 19/11/15](#)). While the 'upfront price' of a 'consumer contract' is relatively straightforward, this is not so for a 'small business contract'. Some items will not be known with certainty at the time the contract is entered into. This poses particular difficulties since, as well as being excluded from challenge, the 'upfront price' also determines whether or not the contract falls within the monetary thresholds to determine whether it is a 'small business contract' in the context of the extended unfair contract terms law. The ACCC has now issued further clarification. The term of a contract "*that includes the contingent payment is unlikely to be . . . challenged as unfair provided it was disclosed at the time the contract was entered into. However, for the purpose of determining whether a contract falls under the relevant threshold (\$300,000 or \$1 million) to meet the definition of a 'small business contract', any amounts that cannot be calculated with certainty at the time the contract is entered are unlikely to be included in the calculation of the upfront price payable.*" See the ACCC's 'Unfair contract terms FAQs' [here](#), particularly Example 2 in 'What is the upfront price payable?'. For a useful summary of the new law see this [note](#) by Gadens.

SCCA MARKETING AWARDS NOMINATIONS OPEN TOMORROW AND CLOSE ON 8 AUGUST

Nominations for the Shopping Centre Council of Australia Marketing Awards open tomorrow, Friday 1 July at 9am, and close at 5pm on Monday 8 August. The nomination guidelines are in the [Call for Entries booklet](#). This year the runner up for the Sabina Rust Memorial Prize for Campaign of the Year will be awarded a prize of \$5,000 to assist with the professional development of a member of the marketing team. The Awards Gala Dinner will be held on Thursday 27 October 2016 at the Westin Ballroom in Sydney. More details are available on the [SCCA Marketing Awards Website](#).

[PREVIOUS ISSUES](#)