



SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE
COUNCIL OF AUSTRALIA

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SHOP ASSISTANTS LOSE APPLICATION FOR RETAILERS TO PAY FOR WORK JOURNEYS

The Fair Work Commission has [rejected](#) an application by the Shop Distributive and Allied Employees Association (SDA), in the *General Retail Industry Award* review, that retail employees working outside the central business district of capital cities, and who are required to pay a fee if they choose to park in a shopping centre car park, should be reimbursed by their retail employers ([Shop Talk 9/5/13](#)). In making the decision, Senior Deputy President, Justice Boulton, highlighted the limited evidence provided by the SDA which was based on two Queensland shopping centres which have introduced managed parking ([Shop Talk 30/11/11](#)). The SDA submitted limited arguments in support of its application. A strange argument was that because free parking was provided when Australia's first shopping centre opened in 1957, at what is now Westfield Chermside, employees have "historically held legitimate expectations of free, safe staff parking". The SCCA refuted this claim which highlights the SDA's ignorance of factors including the evolution of shopping centres, retailing, car ownership and urban growth. In 1957 that shopping centre was home to only 27 retailers. Fifty six years later it now has three department stores; three discount department stores; two supermarkets; cinemas; an entertainment and leisure precinct and 390 specialty stores. The centre now also has a bus interchange placing enormous pressure on the car park for customers. The centre also provides substantial numbers of subsidised staff parking places. The SDA acknowledged that parking at a shopping centre is safe and convenient, both for staff and customers, making it a superior transport option. The SDA still expects, however, such benefits to be provided at no cost. We appreciate the efforts of the National Retail Association (NRA) in defending the union's application and ensuring another absurd impost is not imposed on Australian retailers.

NEW GOVERNMENT TO WORK OUT HOW TO APPLY GOOD FAITH IN FRANCHISING CODE

One task facing the Federal Government to be elected on 7 September will be how to apply the recommendation of the [review](#) of the *Franchising Code of Practice* to include in the Code "an express obligation to act in good faith" (even though 'good faith' would be undefined). This is to apply in the negotiation of a franchise agreement; the performance of the obligations of the agreement; and in the resolution of disputes over the agreement. The Labor Government, in its [response](#) to the review's recommendations ([Shop Talk 1/8/13](#)), accepted the recommendation (in part) but was very cautious and pointed out that it is not clear (and will not be clear to the parties) just what obligations will be placed on those parties from an obligation to act in 'good faith'. This caution is not surprising. There is no clearly defined, well understood statutory doctrine of good faith, neither in Australia, nor elsewhere. Good faith is a simply a legal fad; not a coherent body of law. It would be contrary to good regulatory practice and legislative principles to impose on a business relationship an obligation which can't be properly defined or explained and is open to such a wide variety of interpretations. The new Government will have its work cut out implementing this recommendation.

PCA RETAIL PROPERTY ADVANCED COURSE IN BRISBANE FROM 17 SEPTEMBER

The Property Council has a three-day Advanced Course on Retail Property in Brisbane beginning on 17 September. Based on a case study this course challenges participants to make a recommendation to the owner as to how to enhance the investment potential of a retail property. This course is intended for those who have already completed the Retail Property Management and Marketing Introduction course. Details are [here](#); register online [here](#).