



05 November 2009

Mr David Green  
Commissioner for Consumer Affairs  
Office of Consumer and Business Affairs  
GPO Box 1719  
Adelaide SA 5001

Dear Mr Green

The Property Council is pleased to provide a submission on the statutory review of the *Retail and Commercial Leases Regulations 1995 (SA)*.

The Property Council of Australia is the peak body representing property owners and developers across all asset classes including commercial, industrial, retail and residential property. With regard to retail, the Property Council represents the majority of owners of all investment grades of retail assets across South Australia. In total the Property Council represents the interests of more than \$33 billion invested in property in South Australia, including more than \$5 billion invested on behalf of working South Australians through their superannuation funds.

The Property Council is also a representative on the Retail Shop Leases Advisory Committee.

### ***Introduction***

In preparing our response, the Property Council has engaged our Retail Development Committee to identify areas of the Regulations that could be reformed to improve the operation of the Act. We understand the Office of Consumer and Business Affairs is keen to remake the Regulations in substantially the same form, however we have identified a few areas of the Regulations that could be amended to deliver greater operational effectiveness.

### ***Specific Comments***

#### **Section 6 – Minimum 5-year term**

This section provides for certain circumstances where the lessor is not required to provide a lessee with a minimum 5-year term. These include circumstances where the lessor and lessee are related bodies corporate and where they are related individuals.

While this is a suitable exception, in the Property Council's view it does not go far enough. The Property Council recommends that these types of relationships should be excluded from the operation of the Act in entirety (and therefore put in Section 4 of the Regulations).

The experience of the industry is that related bodies corporate (and, to a lesser extent, related individuals) often set up lease arrangements for convenience (as opposed to a real commercial dealing) and yet are required to comply with a number of the Act's requirements (including serving the Disclosure Statement).

**Recommendation: These types of relationships should be excluded from the operation of the entire Act (and therefore put in Section 4 of the Regulations).**

#### Section 7(2)(a)

This section should be amended to clarify exactly where in the Disclosure Statement the "Exclusion of Warranty of Fitness for Purpose" is to be placed. From industry's feedback, this exclusion is usually put immediately after the "Monetary obligations of lessee" (paragraph 11), however the lack of clarity has caused confusion within the sector.

**Recommendation: Amend this section to clarify exactly where in the Disclosure Statement the "Exclusion of Warranty of Fitness for Purpose" is to be placed.**

#### Section 7B – Exclusions from Part 4A Division 3 of Act

The Property Council is seeking clarification on the purpose and rationale of the exclusions listed under this section (properties (a) through (l)).

**Recommendation: Advise the Property Council of the purpose and rationale of the exclusions list under this section.**

#### Section 11 – Advisory Committee

This Section currently refers to the Building Owners and Managers Association of Australia Ltd (South Australia). This is now the Property Council of Australia (SA Division). The Section should be amended to reflect this change.

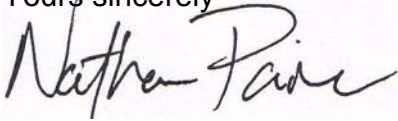
Since the establishment of the Regulations in 1995, the Shopping Centre Council of Australia (SCCA) was formed. As the national representative of the industry, the SCCA should also be provided a position on the Advisory Committee. This would also prove a more reasonable lessor/lessee balance on the Advisory Committee.

**Recommendation: Update the reference to the Property Council of Australia (SA Division) and include the SCCA on the Advisory Committee.**

**Conclusion**

The Property Council is pleased to provide these comments and we look forward to meeting with you in the near future to expand on the issues raised.

Yours sincerely

A handwritten signature in black ink that reads "Nathan Paine". The signature is written in a cursive style and is placed over a light pink rectangular background.

Nathan Paine  
Executive Director  
Property Council of Australia (SA Division)