SHOPPING CENTRE
COUNCIL OF AUSTRALIA

Productivity Commission Inquiry into the Economic Structure and Performance of the Australian Retail Industry

Submission on the Draft Report by the Shopping Centre Council of Australia

2 September 2011

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TABLE OF CONTENTS

1.0 Executive Summary

The Shopping Centre Council of Australia believes the Productivity Commission, in its Draft Report, has produced a rigorous analysis of the economic structure and performance of the Australian retail industry. While we have minor quibbles with some of the Commission's observations we accept these are matters of interpretation.

We agree with most of the draft recommendations proposed by the Commission. In particular, we strongly support the Commission's clear draft recommendation (9.1) in relation to the full deregulation of shop trading hours. We do not agree with draft recommendation 6.1 concerning the operation of the low value import threshold and consider there are reasons why the Commission should recommend this threshold be reduced to $100 immediately. Our reasons are addressed in section 2.2.

We generally agree with the recommendations in relation to planning and zoning regulation (Chapter 7). We have recommended, however, that some of the Commission's draft recommendations should be expanded to make clear that they do not simply favour so-called 'new retail formats' and therefore acknowledge that similar planning restrictions can hinder all retail formats. We have also suggested three additional recommendations which we consider the Commission should include in its final report.

We also agree that the Commission should not revisit matters covered in the Commission's inquiry into the market for retail tenancy leases in Australia in 2007-2008 and note that the Commission has found that "no new issues were identified by participants that were not previously raised and considered in 2008." It is beyond dispute that Australia already has the most heavily regulated retail tenancy industry in the western world. We made the point in our submission of 20 May 2011 (submission no. 67): "Unfortunately the existence of this detailed regulation has led to a 'protectionist' mentality on the part of a small but vocal group of retailers in Australia. Unlike retailers in countries such as the USA and New Zealand, the response of these retailers and some retailer associations in Australia to the inevitable risks and uncertainties of retailing is to call for even more government intervention and regulation." (p.25) This accuracy of this statement is demonstrated by recent media reports that the Franchise Council of Australia (which operates in a lightly regulated environment itself) is proposing a 'code of conduct on retail leasing' which will sit on top of the existing state and territory retail tenancy legislation.

Our detailed comments on the Commission's draft recommendations are set out in section 2.0.

2.0 Draft Recommendations

2.1 Trends and issues related to online retailing

Draft Recommendation 4.1

The ABS should monitor and report on online expenditure by Australian consumers both domestically and overseas either by upgrading existing surveys or conducting new surveys. The ABS should design surveys so they can disaggregate online spending with 'multi-channel' establishments and 'pure play' online retailers. The ABS should also redesign its surveys to show levels of employment associated with online retail sales as reflected by the size of the workforce of 'pure play' retailers and the online divisions of multi-channel retailers.

We agree with this recommendation but with one proviso. The Draft Report notes that "the collection of sales and employment data costs money." We are concerned that, without an increase in the ABS's budget, this may be at the expense of the Bureau's existing data collection on retail trade. In 2008, in response to budget cuts, the ABS was forced to cut sample sizes in the data it collects, as well as eliminating some categories of retail sales data. Although we understand that some of these decisions were reversed doubts still remain over the accuracy of the ABS Retail Trade series, particularly in the coverage of non-chain retailers and in the state-by-state data, where sample sizes tend to be small and therefore sampling errors correspondingly large. Any additional surveys of online expenditure must not be at the cost of existing data collection on retail trade.

2.2 Appropriateness of indirect taxation arrangements (Chapter 6)

We welcome the Commission's finding that there are strong in-principle grounds for the low value threshold (LVT) to be lowered significantly in order to promote tax neutrality with domestic sales. The Commission has noted: "Nonetheless, the GST, as a broad based consumption tax, should apply equally to all transactions. On these grounds it would be preferable, therefore, to have no low value threshold and subject all imported goods to the payment of GST and duty. This would minimise distortions in resource allocation, losses in efficiency, and consequent reductions in community welfare." (p.194) Unfortunately, the Commission concludes that the costs to the government and the community of lowering the LVT (by more than a token amount) would outweigh the amount of revenue collected and therefore on tax efficiency grounds it does not recommend a reduction at this stage. Incidentally, we agree with the Commission's conclusion that a small reduction or token reduction in the LVT makes no sense.

There seem to be two weaknesses in the Commission's analysis. First, the Commission continues to give little weight to the fact that most other countries have a much lower *de minimis* threshold than Australia. This suggests that either these countries are far more efficient in processing imports than Australian Customs (ACBPS) and Australia Post (and possibly the high LVT in Australia has contributed to that relative inefficiency) or that these other countries accept that the benefits that accrue from enforcing the principle of tax neutrality (which are spelled out by the Commission in the quotation above) outweigh the costs that are incurred along the supply chain from having a lower *de minimis* threshold. For Australia, alone of these countries, to adopt a very high *de minimis* threshold means that Australia is effectively imposing a 'negative tariff' or 'reverse tariff' on itself. In the absence of any move by these countries to increase their threshold, or in the absence of any international move to standardise the threshold, this simply makes no economic sense.

Second, we also believe the Commission's "very simplified" cost benefit analysis of reducing the LVT to $100 is flawed. The Commission estimates that the cost (to the Government and the community) of this action would be $1 billion while the revenue collected would be only $472 million. (p.185.) But the relevant costs here are the costs to the Government, not to the community. If we added the costs to the community as a relevant consideration, it is probably likely that the GST itself would fail as a tax on the tax efficiency test (because the costs of collection of the tax are costs largely borne by the Australian business community and, to some extent, by Australian consumers and these are ignored by the Government in assessing the efficiency of the tax.) On this basis, the Commission's cost benefit analysis on page 185 needs to be revised so that 'apples' are being compared with 'apples'. Only the costs to Customs of $360 million and perhaps (although even this is debatable) the cost to Australia Post of $120 million should be regarded as relevant considerations. On this basis the "very simplified" cost benefit analysis of reducing the LVT to $100 means the cost of collection is $487 million (or $367 million if Australia Post is treated, as it should be, as a cost to a business) and the revenue collected is $472 million. It could therefore be argued that reducing the LVT to $100 would be effectively revenue neutral, and possibly even revenue positive, if the application of the *de minimis* threshold is treated in Australia in the same way as it is in most other countries with which Australia tends to compare itself.

Draft Recommendation 6.1

There are strong in-principle grounds for the low value threshold (LVT) exemption for GST and duty on imported goods to be lowered significantly, to promote tax neutrality with domestic sales. However, the Government should not proceed to lower the LVT until it is cost-effective to do so – that is, at a minimum, the tax revenue should exceed the full costs of collecting it.

We disagree with this recommendation for the reasons we have outlined above. We maintain the Productivity Commission should recommend the LVT is lowered to $100, until there is international agreement to standardise *de minimis* thresholds.

Draft Recommendation 6.2

The Government should establish a task force charged with investigating new approaches to the processing of low value imported parcels, particularly those in the international mail stream, with a view to preparing for significant improvements and efficiencies in handling. The task force should be comprised of independent members, with the Australian Customer and Border Protection Service (Customs), Australia Post and the Conference of Asia Pacific Express Carriers providing advice. The terms of reference should outline the criteria that any new system must satisfy including: minimising the costs of processing and delivery delays, user pays, and without compromise to the border protection functions of Customs and AQIS. This review should report to Government in 2012. Once an improved international parcels process has been designed, the Australian Government should reassess the extent to which the LVT could be lowered while still remaining cost-effective.

We agree with this recommendation but only if the Productivity Commission does not accept that there are grounds for immediately and substantially reducing the LVT. Our concern, however, is that there is little incentive for Customs and Australia Post to improve the efficiency of import processing while the LVT remains at $1,000. Reducing the threshold to $100 would undoubtedly drive the efficiencies which the Productivity Commission is seeking.

2.3 Planning and zoning regulation (Chapter 7)

We have provided detailed comments on the Commission's six draft recommendations on planning and zoning regulation (see the sections below). We broadly support the draft recommendations, as well as the Commission's leading 'key point' (at page 199) that "competition among retailers is most intense when they are geographically close". Aside from the economic, social and environmental benefits, which the Commission notes at Box 7.1 (page 201) (e.g. infrastructure efficiency, housing density, labour productivity enhancement), the point that the Commission makes is the essence of well-developed and well-implemented activity centres policies. We have always been strong supporters of competition and ensuring there are no planning restrictions for any retailer being able to locate within activity centres.

Existing activity centres, across all relevant 'centre hierarchies', across Australia's metropolitan areas and regional centres, should continually be expanded to enable an increased supply, and broader range, of retail uses. In planning terms, this means that zoning provisions that apply to activity centres (generally business zones) should enable all retail uses as permissible development, with no technical or procedural restrictions. Development standards should also enable physical expansion such as increased retail space (i.e. not capped), increased densities and building heights. This should be pursued in a strategic sense, and not be up to developers to pursue these issues on an ad hoc basis, at their own expense, and with significant uncertainty. Genuine new activity centres (i.e. those that meet the benefits cited at Box 7.1) should also continually be identified in a strategic sense and then given effect through detailed planning instruments.

In addition, we welcome the Commission's comment (at page 221) that "some retailers have been able to achieve considerable competitive advantages by purchasing lower priced land outside activity centres and then successfully lobbying planners to have that land rezoned for retailing activities". Other inquiries have missed this point. The Commission has recognised that competitive advantage is gained by some retail formats – and not others (in particular, shopping centres) – by being able to locate outside activity centres and also develop to a lower standard (e.g. amenities, mixed-uses, finishes). The Commission notes that this is often achieved through ad hoc 'spot rezoning', and that this is often based on businesses pushing for "special considerations of their business type" (page 220). In other words, such businesses are gaming the system. What is missing in the Commission's analysis, however, is that such a competitive advantage, provided on the basis of special considerations, comes at the expense of the community benefits the Commission notes at Box 7.1. We raise this latter point as a critical issue, given the current work being undertaken to improve metropolitan planning by the Commonwealth's Major Cities Unit and under COAG (see further comments below).

Given the clear economic, social and environmental benefits which planning systems as a whole seek to achieve, the Commission should make it clear that activity centres should be the principal approach for retail development, while out-of-centre development should be the exception.

We also support the Commission's alignment of its six draft recommendations with the 'leading practices to support competition' in the Commission's '*Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*' ("the Planning Benchmarking Inquiry") released in May 2011. Broadly speaking, the Commission's main findings in relation to retail planning and competition in both of these thorough investigations include:

- Activity centres (and supporting policies) are the best approach to support planning and retail competition, but should be continually expanded and be less prescriptive in terms of permissible retail uses.

- There should be more 'as-of-right' (often referred to as 'code assessment') development processes to provide increased certainty and reduce the scope for 'gaming' by competitors.
- Impact on other businesses is not a valid planning consideration, however the viability of the activity centre should be considered, and this would be best undertaken at the strategic planning phase.
- Third party appeals should only be for valid planning reasons and costs should be awarded against vexatious claims.

As stated above, we broadly support these findings. We do, however, believe the Commission should go further on some issues, including in its recommendations.

Planning and zoning in general

We welcome the Commission's acknowledgement of general planning and zoning issues, as they affect not just the so-called 'new retail formats', but all retail formats that must engage with the planning system in order to conduct their business. Our members continue to experience significant challenges under the planning system and this includes under activity centres policies, or within activity centres, where the policy restrictions are not as a result of activity centres policies per se, but standard planning instruments such as planning scheme and local environment plan amendments, requirements for structure and master plans, and development restrictions.

We have outlined below a few recent 'headline' issues and examples in each state, including a number of distortions which negatively impact on our members but not necessarily on other retail formats.

- Queensland. In recent years, our members have experienced massive infrastructure charges, which reached levels around eight times that of Victoria. The Queensland Government has recently started to implement significant state-wide reforms but under this new regime, standard infrastructure charges for shopping centres are $180 / m2 of Gross Floor Area (GFA) while the charges for bulky goods outlets are $140 / m2. This means for a 10,000m2 centre a shopping centre is burdened with an additional $400,000 in government charges to that of a bulky goods centre.
- NSW. Our members recently lost eligibility under the "Part 3A" process, which means that they must now submit applications for major projects to local councils. Unfortunately this means that major projects are now at the mercy of the 'local politics' and 'NIMBYism' that bedevils local government. Local councils are also often not experienced in dealing with such major projects. We are also currently dealing with a draft set of 'Centres Design Guidelines' issued by the Department of Planning which seek to impose a litany of 'urban design' requirements on shopping centres, including intruding on retail fundamentals as tenancy type and size. Unfairly, out-of-centre developments would not have to comply with these guidelines.
- WA. We supported the new activity centres policy, released in September 2010, which removed the 'caps' or 'limits' on the amount of retail space available in activity centres. However significant challenges remain in getting development approved, including the need for other instruments to be approved before retail expansion can be considered to proceed. This includes the need for Scheme Amendments, and under the activity centres policy, the requirement for structure plans to be prepared and approved, along with retail needs assessments, sometimes even before the consideration of a Scheme Amendment (all of which can be held up by local councils). There are other requirements which add significant costs, time and uncertainty to development proposals.

- ACT. The ACT Government's 'Supermarket Competition Policy' is effectively an anti-Woolworths and Coles policy and this has a significant impact on our member's ability to expand. One member's expansion plans are being frustrated by the Government's determination to favour a smaller supermarket chain. While not covered by ACT policy, Costco and other retailers are also proceeding with a new development at Canberra, on land not envisaged for such a scale of development under the Territory Plan.
- SA. One of our members, under the Government's 'Transit-Oriented-Development' Policy, is having uses imposed on its own land to meet a desired future urban character and this is impacting on its future expansion plans. In effect, the Council is seeking to prevent a shopping centre's expansion, without also providing residential dwellings as part of the development (regardless of the state of the housing market, or impact on the commercial viability of the development).

Out-of-centre development

We note the Commission's reference to its earlier findings (at page 220) that "highly prescriptive zoning within activity centres led businesses to push for special considerations of their business type within activity centres or attempts to locate in out-of-centre locations or industrial zones where there are few land use restrictions". These "special considerations" are often overlooked in some debates about activity centres policies and out-of-centre development. This includes the farcical attempts to define some retail uses as a being a different use, adopting terms akin to industrial uses such as 'warehouse', 'showroom', 'factory' or 'outlet'. This is nonsense and the nonsense is compounded by the fact that these "special" definitions are often not picked up in general business zones (even though they could be more simply defined as a 'shop', which generally is permitted in such zones). The same advocates who plead for these special definitions, based on their so-called 'special circumstances', then complain about that fact that they are not being picked up in these general zones.

A recent example is the Victorian Government's announcement of a review of the definition of "restricted retail premises", announced by Minister for Planning, Matthew Guy, on 25 August at a Bulky Goods Retailers Association (BGRA) conference. While we understand that a genuine review will take place, the BGRA has treated the changes as a *fait accompli*. An analysis of its claims highlights the absurdity. The BGRA has been quoted as saying that "[bulky goods outlets] are ideal for industrial locations" on the basis that these formats sell bulky goods. But the BGRA then argues that these outlets should have no restrictions on what they sell so that they can sell goods which are not bulky in nature. But they still want the competitive advantage of locating in cheaper industrial zoned land. So are they selling bulky goods or aren't they? If so, then there is no reason why the planning definitions should not insist that their retail offer is bulky. If not, why do they still get to call themselves 'bulky goods' and why do they get the advantage of locating in zones, such as industrial zones, where no other retail format can locate, even if the retail formats which are prohibited in such zones (such as shopping centres) sell the same goods (i.e. bulky and non-bulky) or the same type of goods?

The so-called restrictions facing such outlets are often categorised as unnecessary and anti-competitive planning restrictions. But this ignores the fact that planning restrictions were actually dismantled in the first place to enable such outlets to locate in industrial areas (therefore enabling them to sell exactly the same type of goods that are commonly sold within activity centres, including by large shopping centres). It is also worth remembering that these restrictions were not dismantled for other types of retail formats, including shopping centres. To then argue that this environment, which essentially seeks to hold them to their word (i.e. that their retail offer is genuinely bulky) is now an unreasonable restriction is difficult to accept, particularly given the basis of the original argument - that their retail offer is "bulky" - now seems to be discarded.

The media surrounding the Victorian Government's review announcement has referred to the fact that the definition of "restricted retail" will be amended to include things such as baby equipment, cycling equipment and pet supplies. Are these goods bulky? Does anyone, even when they buy a bulky good such as a bed or washing machine, actually take it home in their motor vehicle or on the tram? It is our personal experience that such purchases are delivered a few days later by truck. In fact, this option is generally offered when you buy such goods, given you don't carry a fridge to the front counter of the shop. The claims from organisations such as the BGRA, that they are in an anti-competitive position, are difficult to take seriously.

Draft Recommendation 7.1

State and territory governments should broaden zoning within and surrounding activity centres to facilitate new retail formats locating in existing business zones.

We agree with this recommendation with one proviso. The recommendation should be extended to include all retail formats, and should not just be focused on 'new retail formats'. To focus only on 'new formats' would favour one group of retail formats over another and would be anti-competitive. The Commission should not assume that zoning issues only limit the ability of 'new' retail formats to locate in and around activity centres. To ensure fair competition this recommendation should apply to all retail formats, whether described in planning terms as "shops", "retail warehouses", "showrooms", "bulky goods outlets" or "restricted retail premises". We also believe this distinction of 'new' retail formats is dubious because, in planning terms, these are not new at all. In fact, most of these formats have not evolved at all, unlike shopping centres, in terms of their design, mix of uses and retail offer. Most of these 'new formats' remain as a standard block wall building with one entrance and a single retailer or a small number of retailers. This format has rarely changed. Compare this with shopping centres which have incorporated main street designs, central meeting places, new fine dining tenants, Wi-Fi areas, iPhone applications, market stall areas and signalled and valet parking.

Draft recommendation 7.2

Local governments should significantly reduce prescriptive planning requirements to facilitate new retail formats locating in existing business zones and ensure that competition is not needlessly restricted.

We generally agree with this recommendation but it should also be amended to be expressly applicable to activity centres. Similar to the point raised above, local governments should reduce prescriptive planning requirements for all retail formats in existing business zones. The draft recommendation, as stated, appears to suggest that only 'new' entrants experience restrictions under the planning system. No retail format should have a competitive advantage under the planning system over others, so zoning provisions and development controls should equally apply.

We question what constitutes a 'business zone' and for this reason we reiterate our recommendation to include the reference to activity centres. This would be entirely consistent with the Commission's leading 'key point' that competition is greatest when competitors are geographically close. This would also mean that regardless of the 'zone', the principal linkage is rightly the location and other factors of activity centres and benefits noted at Box 7.1. Without the application of this recommendation to activity centres the Commission is potentially seeking to only reduce restrictions for 'new formats', across any 'business' zone (does this mean any non-residential zone?).

Draft recommendation 7.3

Governments should not consider the viability of existing businesses at any state of planning, rezoning or development assessment processes. Impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation at major review.

We agree with this recommendation and consider that States and Territories should just 'get on with it'. We have never argued that the impacts on other businesses should be a planning consideration. This means that Governments and local councils will need to improve their performance and identify and expand activity centres and this is best identified and done at the strategic planning phase. This must then be carried through at the zoning phase, to ensure that developers do not encounter unnecessary restrictions, which are consistent with the broad policy and zoning objectives, such as rezoning/scheme amendments.

Draft recommendation 7.4

Local government should facilitate more as-of-right development processes to reduce business uncertainty and remove the scope for gaming by competitors.

We agree with this recommendation.

Draft recommendation 7.5

State and territory governments should ensure third-party appeal processes within planning systems include clear identification of appellants and their grounds for appeal and allow courts to award costs against parties found to be appealing for purposes other than planning concerns.

We agree with this recommendation.

Draft recommendation 7.6

State and territory governments should reduce the compliance costs associated with planning systems and development approvals by implementing the leading practices identified in the Commission's recent benchmarking report on planning, zoning and development assessments.

We agree with this recommendation. We have previously supported the Productivity Commission's 'leading practices to support competition' (pages 352-355, Chapter 8) in the report of its Planning Benchmarking Inquiry in May 2011:

1. Land use zones (and overlays) in activity centres which are less prescriptive and exclusionary to businesses and industrial zones which are available only to industry would enable planning and zoning systems to facilitate improvements in the competitiveness of city land use. (NB: similar to 7.1 and 7.2 above.)

2. Facilitation of more 'as-of-right' development processes for activities would reduce uncertainty for businesses and remove scope for gaming by commercial competitors. (NB: similar to 7.4 above.)

3. Impacts on existing businesses should not be a consideration during development assessments. To minimise the adverse impacts on competition, it is highly desirable that the broader implications of business location on the viability of activity centres be considered at a generic level during city planning processes rather than in the context of specific businesses during development assessment processes. (NB: similar to 7.3 above.)

4. Legislated access and clear guidelines on eligibility for alternative DA paths (where they exist) would increase certainty and reduce scope for businesses to manipulate development assessment processes to their commercial advantage. (NB: similar to 7.4 above.)

5. Third party appeals which are appropriately contained in terms of the types of DAs which can be appealed and the parties which can appeal are a highly desirable approach to enable planning systems to support competitive outcomes. (NB: similar to 7.5 above.)

Additional recommendations

We believe the Commission should make three additional recommendations in its Final Report which would be consistent with the Commission's observations and draft recommendations:

- All States and Territories should make clear that the principal approach for retail development should be through activity centres policies and that 'out-of-centre' retail development should be the exception and secondary to retail development within activity centres.
- All States and Territories should prioritise expanding existing activity centres, including through proactive rezoning and reducing prescriptions on retail uses and development.
- All States and Territories should discourage rezonings for ad hoc, 'out-of-centre' retail development.

2.4 Retail tenancy leases (Chapter 8)

We agree that the present Productivity Commission inquiry should not revisit the matters that were previously investigated by the Productivity Commission inquiry into the market for retail tenancy leases in Australia in 2007-08. That inquiry was extensive; it took one year to complete; and hearings were held around Australia. We note the Commission's comment in the Draft Report that "no issues were identified by participants that were not previously raised and considered in 2008." (p.240)

Draft recommendation 8.1

COAG should ensure that all current National Retail Tenancy Working Group projects are fully implemented. It should also re-examine the outstanding recommendations from the Commission's 2008 retail tenancy report with a view to expanding the work plan of the National Retail Tenancy Working Group.

We agree with this recommendation. We are not aware of progress in relation to the second and third NRTWG projects listed on page 243 of the Draft Report. In relation to the first item - the core national disclosure statement project (which incidentally relates more to recommendation 3 of Box 8.3 on page 244 rather than recommendation 1(c) as the Draft Report states) - we have previously drawn attention to the fact that this project remains incomplete. It remains incomplete not only because only three States (NSW, Victoria, Queensland) have adopted the national disclosure statement but also because we still do not have a single disclosure statement which can apply in all three of those States. (We refer to page 35 of our submission dated 20 May 2011 for the reasons.) We have now taken this up directly with the Victorian Government (through Small Business Victoria), which has had lead responsibility for this project, and have suggested this project be completed. It will be difficult to convince the remaining States and the two Territories to agree to this disclosure statement until it is truly a single national disclosure statement which can apply in all jurisdictions.

We agree that the NRTWG should also re-examine the outstanding recommendations from the Commission's 2008 retail tenancy report with a view to expanding the work plan of the NRTWG. We would suggest, however, that the NRTWG should call a meeting of major stakeholders (including the SCCA and Property Council of Australia representing landlords and the National Retail Association and the Australian Retailers Association representing tenants) before deciding on whether or not to expand the work plan. There seems little point in the NRTWG taking on projects for which there is no stakeholder support.

2.5 Retail trading hours regulations (Chapter 9)

Draft recommendation 9.1

Retail trading hours should be fully deregulated in all states (including on public holidays).

We agree with this recommendation. We noted in our first submission: "Deregulating shop trading hours, or 'effectively' deregulating trading hours, is therefore not a radical move; nor is it a step in the dark. It would be a major microeconomic reform in Australia." (page 23 of our submission dated 20 May 2011.)

We noted in that submission that there is little difference between the regulatory regimes which apply in Victoria and Tasmania, where larger shops and shopping centres can trade on all but 2½ days (Christmas Day, Good Friday and the morning of Anzac Day) and the deregulated regimes of the ACT and the Northern Territory (where large shops and shopping centres tend to close voluntarily on those days.) The practical outcome is effectively the same. When States maintain some restrictions, even minimal restrictions, on trading hours, however, they must therefore devote some government resources to administration/enforcement of these closed days (or they ignore enforcement, which means the regulation is a farce.) This is a waste of government resources. For this reason, all States should follow the two Territories and remove all regulation of shop trading hours.

It would be helpful if the Commission made clear, if this Draft recommendation is maintained, that this simply means that retailers will have the *freedom* to open their shops whenever they believe it is profitable to do so. Retail tenancy legislation already protects retailers from being forced to open outside 'core trading hours' if they do not wish to do so.

2.6 Workplace regulation (Chapter 10)

Draft recommendation 10.1

The Fair Work Ombudsman should address the difficulties experienced by employers in calculating applicable award wage rates through better promotion of its existing services and where necessary by making refinements to existing systems.

We agree with this recommendation.

Draft recommendation 10.2

The Australian Government should, within the context of the current system and consistent with the maintenance of minimum safety net provisions for all employees, examine retail industry concerns about the operation of the Fair Work Act. This should include consideration of options to address any significant obstacles to the efficient negotiation of enterprise-based arrangements, that have the potential to improve overall productivity. The post-implementation review of the Fair Work Act, which is to commence before 1 January 2012, should provide the appropriate review mechanism. The first review of modern awards, scheduled for 2012, is a further opportunity to address concerns that relate specifically to the operation of relevant retail awards.

We agree with this recommendation. We particularly endorse the Commission's suggestion that the proposed 2012 review of the operation of the *Fair Work Act,* which we believe should commence immediately, should "address any significant obstacles to the efficient negotiation of enterprise-based arrangements." In this context, the 'better off overall' test should be replaced with a 'fairness test' similar to that which applied initially under the previous *Workplace Relations Act,* before the adoption of the 'no-disadvantage' test. It is difficult to see how greater enterprise-based arrangements can be encouraged, or will hold out much advantage for employers, while a 'better off overall' or 'no disadvantage' test applies.

We strongly recommend that the review of the *Fair Work Act* should be conducted by the Productivity Commission since it is the overall impact of the Act on labour productivity which is the major concern.

2.7 Other regulatory burdens (Chapter 12)

Draft recommendation 12.1

Governments must prioritise efforts directed at the review and reform of regulations that are unnecessarily burdensome and reduce regulatory inconsistency across jurisdictions where that affords net benefits to business and the community.

We agree with this recommendation.

3.0 Shopping Centre Council of Australia

3.1 About Us

The Shopping Centre Council of Australia represents Australia's major shopping centre owners and managers. Our owners own and manage more than 11 million square metres of retail space. Our members are AMP Capital Investors, Brookfield Office Properties, Centro Properties Group, Charter Hall Retail REIT, Colonial First State Property, DEXUS Property Group, Eureka Funds Management, GPT Group, ISPT, Jen Retail Properties, Jones Lang LaSalle, Lend Lease Retail, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, Precision Group, QIC, Savills, Stockland and Westfield Group.

3.2 Contact

The Shopping Centre Council would be happy to discuss any aspect of this submission. Please do not hesitate to contact:

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