

SENATE SELECT COMMITTEE ON RED TAPE: INQUIRY INTO THE EFFECT OF RED TAPE ON OCCUPATIONAL LICENSING

1. INTRODUCTION

Thank you for the invitation to make a submission to the Committee on this important inquiry.

The Shopping Centre Council of Australia (**SCCA**) is the national industry group for major owners, managers and developers of shopping centres. Our Chairman is Peter Allen, CEO, Scentre Group (owner and operator of Westfield shopping centres).

We have reviewed the Terms of Reference and are pleased to provide this submission for the Committee's consideration.

Based on existing successful commercial real estate licensing reforms in Queensland (2014), NSW (2016) and South Australia (2017), we respectfully recommend that the Committee recommends that further real estate licensing reform – noting that such reform is low-risk and low-cost-to-Government - is prioritised and implemented in other jurisdictions (e.g. Victoria, Western Australia). As has been the case with the existing reforms noted above, further reform can be achieved via regulatory amendments.

2. COMMERCIAL REAL ESTATE LICENSING

The reform of occupational licensing has been a longstanding critical issue for our industry; specifically – and to borrow a term from the Committee's Terms of Reference - the *redundant* notion that our members need to be 'licensed real estate agents' under relevant state-legislation – often to protect themselves (e.g. where the management of a shopping centre is undertaken by a related-entity of the owner of the shopping centre) as the so-called 'consumer'.

In the case of our members, as large, sophisticated groups, they do not want or need this regulatory protection.

In our case, those that have traditionally opposed such reform do not speak on behalf of the 'consumer'. Further, such groups do not speak on behalf of tenants.

In any case, our sector is highly regulated, and tenants have strong regulatory protections under state-based retail tenancy legislation (e.g. NSW Retail Leases Act), and related Federal legislation such as the *Competition and Consumer Act 2010*.

Aside from ongoing state-based engagement, we were closely involved in the then National Occupational Licensing System (NOLS) across 2010 and 2011.

The Committee may be aware that, on a strong evidence base and sensible policy rationale, the National Occupational Licensing Authority (NOLA) recommended, in effect, that commercial real estate agency work be de-regulated.

3. REFORM BENCHMARK: QLD (2014), NSW (2016), SA (2017)

We recommend that the Committee notes that there is a solid platform for commercial real estate licensing reform.

Since the NOLS was abandoned, the Queensland (2014), NSW (2016) and South Australian (2017) Governments have all taken the lead and progressively introduced sensible commercial real estate licensing reforms.

We have **attached** the latest public announcement (South Australia; 2017) and relevant media coverage (NSW; 2016) for the Committee's reference and information.

The above state-based reforms recognise the following key policy and legislative principles:

- The notion of 'large investors' – set at different thresholds – that don't require regulatory protection,
- The notion of a 'related entities' – that don't require protection (e.g. Scentre Group Shopping Centre Management, managing a shopping centre on behalf of Scentre Group).

These state-based reforms provide a sensible platform for the Committee to note and made recommendations for further roll-out.

4. RESPONSE TO TERMS OF REFERENCE

We have reviewed the Terms of Reference (ToR) and provide the following response.

ToR 1: The effects on compliance costs (in hours and money), economic output, employment and government revenue

While we don't believe that real estate licensing is relevant for our industry, compliance costs can be burdensome.

This includes the need to be licensed in performing certain real estate functions such as selling, purchasing, exchanging, leasing or managing property.

In one jurisdiction that still requires real estate licensing for our members, we have estimated a current annual cost of around \$1.6 million for our members, and an estimated loss of 13,800 hours of staff productivity.

This includes issues such as the need for staff to hold a real estate license, and the cost of associated requirements such as attending annual training courses to maintain their license through 'Continuing Professional Development' (CPD).

ToR 2: Any specific areas of red tape that are particularly burdensome, complex, redundant, or duplicated across jurisdictions.

Real estate licensing is burdensome, and redundant, for our sector.

As noted above, the 'consumer' being protected is not a typical 'consumer', including in any general sense (i.e. an individual) or a legislative sense (e.g. definitions under the Australian Consumer Law, provisions of the *Competition and Consumer Act 2010*).

As an example, large and sophisticated entities such as Scentre Group and Vicinity Centres do not want or need regulatory protection, including where certain real estate activities (e.g. management) are undertaken by a 'related-entity'.

ToR 3: The impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged.

Nil.

ToR 4: The effectiveness of the Abbott, Turnbull and previous Government's efforts to reduce red tape.

The previous efforts of Governments at the national level have had little impact.

ToR 5: Alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation

Nil.

ToR 6: How different jurisdictions in Australia and internationally have attempted to reduce red tape.

As noted above, Queensland, NSW and South Australia are the stand out examples who have reduced red tape in commercial real-estate licensing.

It is worth noting that in each case, these Governments have adopted 'thresholds' to ensure that de-regulation only applies to larger, sophisticated entities.

As an example, in Queensland, the threshold (under the *Protection Occupations Act*) provides that anyone that owns more than \$10 million or 10,000m² of commercial property is considered appropriately large and sophisticated and, therefore, exempt from the need to hold a real estate license or be protected by a licensed person.

In NSW, the reforms under the *Property, Stock and Business Agents Act* which commenced on 15 August 2016 provide that entities that own property with an aggregate value of \$40 million or more, or an aggregate gross floor area of 20,000m², do not require regulatory protection.

The South Australian reforms under the *Land Agents Act*, which were announced on 10 August 2017 (see **attached** Media Release), prescribe the same thresholds (\$10 million, 10,000m²) to Queensland.

ToR 7: Any related matters

Nil.

5. RECOMMENDATIONS

We respectfully recommend that the Committee notes and recommends the following in its final report:

- That commercial real estate licensing reform is a low-risk, and low-cost-to-Government, red-tape reduction initiative.
- That the existing and positive commercial real estate license reforms in Queensland (2014), NSW (2016) and South Australia (2017) should be the basis for further roll-out to other jurisdictions (e.g. Victorian, Western Australia),
- That commercial real-estate license reforms be implemented as a red-tape reduction priority across other jurisdictions, with a priority for Victoria and Western Australia.

6. CONTACT

We are grateful to the Committee for the opportunity provide this submission.

We would be pleased to discuss this submission with the Committee and participate in any hearing.

ATTACHMENT A:

SA GOVERNMENT MEDIA RELEASE: 10 AUGUST 2017

NEWS RELEASE



Chris Picton MP

Assistant Minister to the Treasurer

Thursday, 10 August 2017 (Simplify Day)

More red tape cut as part of the State Government's second annual Simplify Day

The State Government is removing more outdated and redundant laws and regulations through the introduction of its second annual Simplify Day Bill into State Parliament today.

This year's Bill proposes to eliminate 11 Acts of Parliament entirely, in addition to another 11 laws eliminated as part of the inaugural Simplify Day last year.

Another 41 Acts and 27 regulations will be amended in areas such as transport licensing and registration, fisheries and agriculture, second-hand vehicle dealers and commercial property management to reduce red tape.

Some of today's reforms include –

- Introducing an option for six month registration for light trailers and caravans – allowing people who only use their caravan for warmer months to save up to \$35 a year;
- Cutting red tape for small tourism operators by no longer requiring brand new vehicles to go through an additional inspection for use to carry passengers;
- Streamlining tuna farmers' applications for new lease areas, meaning applications will be fast-tracked by two-to-three months, part of a package of fisheries red tape reforms;
- Giving vehicle owners the flexibility to dispose of old licence plates securely themselves instead of having to return them to a Service SA office;
- Removing the requirement for certain commercial property owners such as shopping centres from unnecessarily needing a real estate registration;
- Abolishing stamp duty on the transfer of family farms, saving people cost and the inconvenience of having to wind up a company;
- Allowing an option for a number of government public notices to be published online;
- Abolishing 11 redundant and outdated Acts, including the *Statistics Act 1935*, the *Corporal Punishment Abolition Act 1971* and the *Liens of Fruit Act 1923*; and

The Government has also committed to a number of future considerations before the next Simplify Day, including –

- Investigating the concept of a single Business Identifier Number for businesses interested in working with government, reducing the amount of time businesses need to invest in tendering and quoting to win government work;

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- A focused approach on specific industry sectors with collaboration across Government agencies and industry, with the first two focus areas being "paddock to plate" small scale premium food and beverage producers, and regional tourism;
- The establishment of a joint State and Local Government Red Tape Taskforce with the LGA to identify and remove any duplication and overlap between state and local government regulations.
- Streamlining planning processes for fruit orchard netting, simple rural developments and public murals in the Adelaide City Council area.

Background

Simplify Day 2017 is the second annual government red tape reduction day, following successful legislation introduced last year.

This year's consultation process resulted in more than 200 submissions from South Australian industry, business and the community, identifying a wide variety of areas open to red tape reduction.

The reforms announced today complement the State Government's work on cutting red tape across government, including recent reforms in taxation, procurement processes, child protection, child protection screening, training providers and work health and safety.

Businesses and individuals with more ideas on cutting red tape can continue to contact the Simpler Regulation Unit by emailing simplifyday@sa.gov.au

For the full Simplify Day 2017 report, visit <http://www.treasury.sa.gov.au/public-sector-operations/simpler-regulation-unit/simplify-day>

Quotes attributable to Chris Picton, Assistant Minister to the Treasurer

Red tape gets in the way of productivity and economic growth. We want to make sure we get simplify government processes and abolish unnecessary regulations so SA businesses have more time to focus on their work at hand.

Many of these reforms have come from ideas from businesses. I encourage anyone with further ideas on how we can reduce red tape to let us know – we want to continue to identify and remove any unnecessary burdens and processes on businesses and households.

Quotes attributable to Brian Jeffriess, CEO of the Australian Southern Bluefin Tuna Industry Association

The South Australian tuna industry welcomes the further streamlining of the SA legislation on applications to realign tuna sites. This builds on the other changes following the regulation reviews in recent years.

Quotes attributable to Craig Wickham, Managing Director of Exceptional Kangaroo Island

The Simplify Day initiative provided a platform to suggest specific changes to support my business and make my interactions with government easier.

As business operators we often make broad statements about red tape but to create change you really need to engage with specific suggestions when opportunities like this arise.

I am pleased how open and responsive government has been to my suggestions and I'm confident that more reform will be achieved.

Quotes attributable to Angus Nardi, Executive Director of the Shopping Centre Council of Australia on cutting red tape for commercial property owners

This is sensible and practical red tape removal, which will reduce the cost of doing business in South Australia. It's pleasing the Government has engaged with our industry on this reform through its Simplify Day initiative.

Quotes attributable to Nigel McBride, CEO of Business SA on the investigation of a single business identifier for government contracts

This announcement to investigate a way of capturing general information once and only requiring information specific to a contract would be a huge benefit to local businesses.

Quotes attributable to Local Government Association President Mayor Lorraine Rosenberg on the joint Local Government Taskforce

As a partner in government and a part of the solution, we're looking forward to working with the State Government on this new initiative to reduce red tape in our communities.

Quotes attributable to Susie Green, Apple & Pear Growers Association of SA

We are supportive of the Government's initiatives to reduce red tape for businesses. Commitment to planning reform for netting over orchards and moving to a full bid for national plan health e-certification are two of these initiatives in particular that we look forward to working on with the SA Government.

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ATTACHMENT B:

AUSTRALIAN FINANCIAL REVIEW – 15 MARCH 2016

Big companies get exemption for NSW real estate licences

Su-Lin Tan

The NSW government has agreed to amend legislation that will exempt large commercial property managers, such as Scentre Group and Vicinity Centres, from holding real estate licences.

A bitter debate over the licensing of large property managers has raged for more than 15 years, but in the end the NSW government has decided the rule is little more than red tape.

The government will amend the Property, Stock and Business Agents Act to enact the exemptions.

"These changes are long overdue and form part of the NSW government's real estate reform agenda," Innovation and Better Regulation Minister Victor Dominello said.

"Training for training's sake is a drain on productivity. We must be always be vigilant to ensure that mandatory CPD is fit for purpose."

The Independent Pricing and Regulatory Tribunal's 2015 *Reforming Licensing in NSW* report recommends that large commercial property managers who manage an estimated property value of at least \$40 million, or a gross floor area of at least 20,000 square metres, or are managing properties for a related corporate entity should be exempt.

The Department of Fair Trading rarely gets complaints from large commercial property owners about their managers who adhere to legally enforceable commercial contracts, but the cost to managers to obtain licences is \$4 million a year.

"Removal of these licensing requirements will therefore achieve millions of dollars in savings for commercial property investors who are mainly people saving for, or living out, their retirement," Shopping Centre Council of Australia Chairman Peter Allen said.

Mr Allen said retail tenants were unaffected by the changes and the thresholds chosen were fair because they would ensure small commercial property investors remained regulated.

But the Real Estate Institute of Australia said it would not support any real estate transactions being conducted by non-licensed entities and would only support the amendments if they were restricted to related entities.

"The reduction of consumer protection is not warranted," president Neville Sanders said.

"With the removal of licensing for commercial transactions, the proposal will likely remove the requirement for funds, held during transactions, to be held in trust accounts as the non-licensed entity would not be eligible to run a trust account."