

**SUBMISSION TO TRADING HOURS REVIEW REFERENCE GROUP –
14 NOVEMBER 2016:**

REVIEW OF TRADING (ALLOWABLE HOURS) ACT 1990

The Shopping Centre Council of Australia (SCCA) welcomes the opportunity to provide a submission and recommendations on the *Review of the Trading (Allowable Hours) Act 1990*. We are also grateful for the opportunity to discuss the review with the Government across the consultation process. We have reviewed the *Issues Paper* in detail.

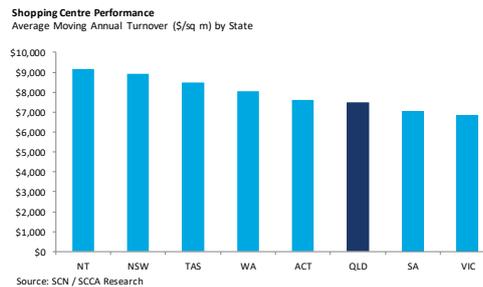
We have been involved in several applications to the Queensland Industrial Relations Commission (QIRC), led by the National Retail Association (NRA), including the recent successful South-East Queensland application where the full-bench granted 'non-exempt' shops the ability to trade from 7am-9pm, Monday to Saturday (TH/2014/23 – decision made on 14 October 2016). In the interest of transparency, we have been a member of the NRA's Trading Hours Committee for several years.

Our industry position is the full deregulation of trading hours for non-exempt shops, except for maintaining restrictions on the culturally significant days of Anzac Day, Good Friday and Christmas Day (like other jurisdictions).

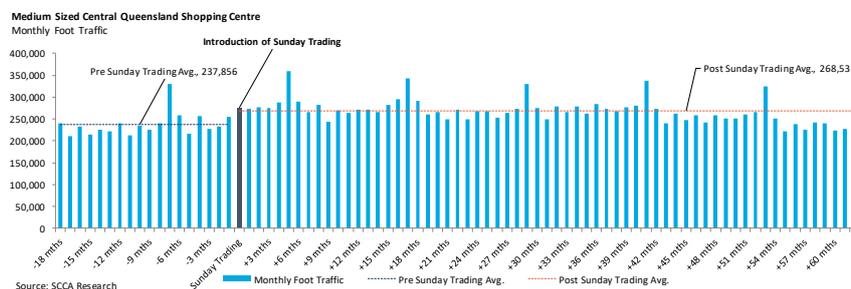
Short of this position being recommended by the Reference Group, we have made a number of recommendations for consideration, including a legislated state-wide trading hours regime of 7am-10pm, Monday to Sunday, whilst maintaining public holiday restrictions as noted above.

In short, we believe reform is needed to Queensland's trading hours regime, which we believe is relatively restrictive (e.g. compared with other jurisdictions), inequitable (e.g. some 'comparable' areas that can and can't trade at certain times) and outdated (e.g. with emerging retail trends such as the growth of Sunday and Friday evening trading).

As one measure of comparison, Queensland's major shopping centres rank 6th nationally in terms of productivity of average Moving Annual Turnover (MAT) – or retail sales - (\$/m²).



In addition, we are aware of strong customer demand when trading hours have been extended, as illustrated for one of our members' centres (below), which indicates a 13% increase in monthly customer foot traffic following the introduction of Sunday trading. Indeed, weekend customer traffic has also increased from an average of 17% of weekly traffic to 26%, with Sunday trading alone accounting for 11%.



Along with benefits like enabling all retailers the freedom to respond to consumer demand and trade, and amidst regulatory protections for retailers under the *Retail Shop Leases Act 1994* (i.e. retailers can't be 'forced' to trade), we commend the *Ergas Report (2014)*, commissioned by the NRA, to the Reference Group which noted various forecast economic benefits from full and partial deregulation (e.g. state-wide 7am-10pm). This is in addition to the findings and recommendations in various Productivity Commission reports, and the Harper Competition Report (March 2015) and the Federal Government's (November 2015) response.

We would gladly discuss this submission with the Reference Group, and Office of Industrial Relations, and provide any further information including to facilitate perspectives at a local (e.g. centre) level.

PURPOSE AND STRUCTURE OF THIS SUBMISSION

The purpose and structure of this submission is to provide the following:

- A **brief background** on our members and sector (Section 1),
- Our **issues with the current restrictions** (e.g. inequities with other areas and key trends) (Section 2),
- **Observations on barriers to reform**, based on our experience in this policy area (e.g. QIRC applications, Harper Competition Review, Productivity Commission inquiries, WA Minister for Commerce's 6 November 2016 declaration on extended Christmas trading hours, NSW 2015 Boxing Day legislative reforms) (Section 3),
- **Reform recommendations**, in broad reference to the 12 consultation questions (Section 4),
- **Further background analysis** to enable a better understanding of our sector (e.g. trends, customer demand, retailer participation), including analysis previously cited in public forms (e.g. Productivity Commission Inquiry into Workplace Relations) (Attachment 1).
- **The SCCA Sales Reporting Guidelines** which outlines the around 30 categories of retailer types by our members for their public and internal reporting and benchmarking (Attachment 2).

1 SHOPPING CENTRES: BRIEF BACKGROUND

Trading hours issues, including 'allowable hours' restrictions and reform, and related issues such as 'core trading hours' (*Retail Shop Leases Act 1994*), are highly relevant to our members.

Our members are Australia's major owners, managers and developers of shopping centres.

This includes family companies (e.g. McConaghy Group, McConaghy Properties, Jen Retail, Perron Group), ASX-listed companies (e.g. DEXUS, Stockland, Vicinity Centres) and sovereign and industry funds (e.g. QIC, ISPT).

Generally, 'non-exempt' shops are what's known as 'major' (or even 'mini-major') retailers in our members' shopping centres and it is these retailers that have large catchment areas and generate significant customer foot traffic to the centre. These retailers can also be known as 'anchor' tenants. The ability of these major retailers to open – or not open – has an impact on our members' centres and their retailers (e.g. smaller 'specialty' retailers).

The following outlines some key characteristics for our members, relevant to trading hours issues:

Property and investment risk + agglomeration

Our members own and manage around 170 shopping centres across metropolitan, regional and rural Queensland, covering around 8,600 retailers (~300 'major' retailers – akin to 'non-exempt shops', and 8,300 'specialty retailers – akin to 'exempt shops'), and a wide range of economies (e.g. mining, tourism) and demographics such as areas with low/medium/high Median Household Weekly Income (MHWI), population growth and employment.

These include, for instance, some of the nominated centres in the recent QIRC SEQ pre-Christmas 'midnight' trading case (TH/2016/3-12).

Our members' centres cover around 52% of all Queensland's shopping centres, and around 81% of 'gross lettable area of retail' (due to our membership including the largest centres across the state).

Our members take substantial property risk, which enables large and small retailers to agglomerate and have a network effect (the *Retail Shop Leases Act* defines a 'retail shopping centre' as a cluster of 5 or more premises) – a critical economic principle – and access lease-hold title rather than them having to outlay and risk substantial capital for their own free-hold title. Our members are hence also heavily exposed to retail and consumer risk, and other economic risks (e.g. mining), and the success of our retailers ensures our investment and community success.

Investment value + retail sales

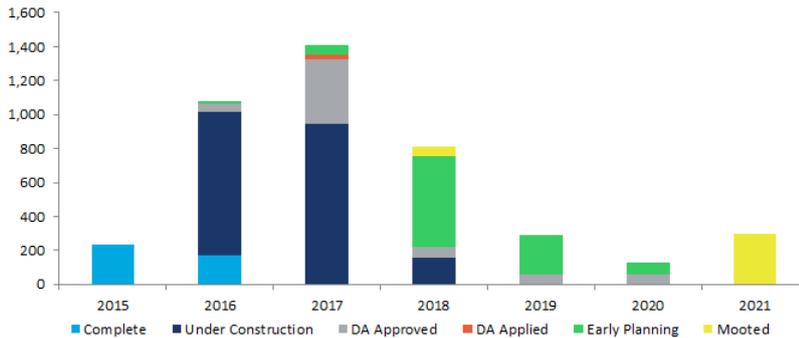
The market value of our members' assets across Queensland, and hence our investment exposure, ranges from around \$10 million to around \$1.7 billion per centre. We estimate our collective investment in Queensland is around \$20 billion.

The 10 largest centres in Queensland, by retail sales, account for around 10% (\$6.3 billion) of Queensland's annual retail sales (~\$60 billion – to latest ABS Retail Trade data, to September 2016), which highlights their agglomeration and productivity benefits.

In addition, our members have a \$3.3 billion development pipeline (see below).

Trading hours opportunities are relevant to the leasing and operating programs for these developments, as generally larger tenants that 'anchor' these developments, seek the broadest range of allowable trading hours for them to respond to consumer demand. As the leasing programs for some of these programs goes beyond the current 2016-18 three-year period, a de-regulated trading hours regime would provide maximum flexibility and opportunity.

SCCA Members Development Pipeline
QLD Project Value by Stage (\$ million)



Source: SCCA Research

Different types of shopping centres – different catchment sizes and markets

Our members' centres cover the general four types of shopping centre as follows (refer to Attachment 1 for more detail):

- **Regional** (i.e. large) – **10%** of all Queensland centres.
These centres have a department store (e.g. Myer, David Jones) as its main, and largest anchor tenant, with an average of five 'major' tenants in each centre. These centres have large trade catchments, and generally a wide range of 'major' (e.g. non-exempt) tenants such as Myer, David Jones, Big W, Target, Woolworths and Coles, 'mini-major' (e.g. non-exempt) tenants such as JB Hi-Fi, Rebel Sport, and a large number (up to around 450) of specialty tenants (e.g. exempt shops). Generally, these types of centres are located in major metropolitan areas (e.g. Westfield Garden City, Indooroopilly, Robina Town Centre, Sunshine Plaza, Pacific Fair).
- **Sub-regional** (i.e. mid-size) – **18%** of all Queensland centres.
These centres have a discount department store as its main and largest anchor tenant, with an average of 3 major tenants in each centre. In addition to being located in major metropolitan areas, these centres will also generally be located in major regional cities.
- **Neighbourhood** (i.e. smaller) – **66%** of all Queensland centres.
These centres have a supermarket as its main and largest anchor tenant, with an average of 1 major tenant in each centre. These will be spread across major metropolitan, and regional and rural areas, and are more targeted for 'convenience' shopping.
- **CBD** – **6%** of all Queensland centres.
These are types of centres in located in commercial districts, which with an average of one major tenant, and will comprise mainly of specialty stores (e.g. clothing and apparel, cosmetics) and also a separate food court.

Anchor (i.e. large) tenants

As noted above, across the different types of shopping centres is the notion of 'anchor' tenants. When compared to smaller tenants, anchor tenants have some key characteristics: (1) a large trade catchment (2) the generation of significant customer foot traffic to the shopping centre, (3) larger floor space (e.g. 3,000m² and above) (4) longer leases (e.g. 20 years), and (5) generally the major 'pre-commitment' tenant for a redevelopment.

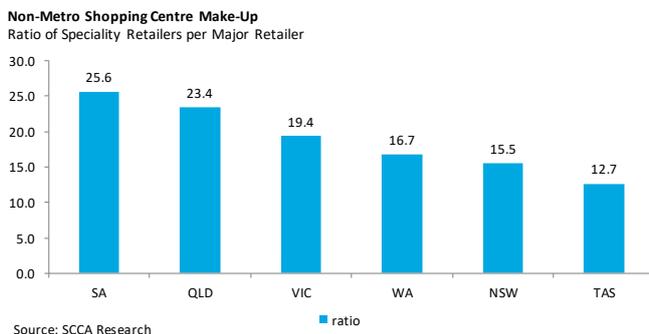
Anchor tenants are critical to a shopping centre being able to feasibly open to trade, particularly given they serve as major generators of customer foot traffic. Generally, if an anchor tenant (e.g. non-exempt shop) is unable to open, this makes it less feasible for a shopping centre to be able to open and trade due to relatively lower customer traffic, which benefits the smaller, or speciality, retailers within the centre (see below).

Small business opportunities

On average, for every major (e.g. 'non-exempt') retailer in one of our members' centres such as a supermarket or discount department store, there is at least an additional 28 speciality (e.g. 'exempt') retailers.

This means that smaller retailers are able to leverage and mutually benefit from larger retailers, such as the large trade catchment they service and the customer foot traffic they generate. In short, when large retailers can trade, numerous smaller retailers can benefit from their ability to trade.

In fact, Queensland's non-metropolitan shopping centres have the 2nd highest ratio (23.4:1) of speciality retailers which can open and trade for every major retailer that can open and trade (see below):



These 'smaller' retailers could be any one of more than 30 categories of stores (e.g. fruit and vegetables, butcher, poultry, newsagents) as defined in the *SCCA Sales Reporting Guidelines* (Attachment 2) which is the industry standard to ensure consistent reporting and benchmarking.

Regulatory protection for small retailers

It's worth noting that the majority of retailers within shopping centres are caught by the *Retail Shop Leases Act 1994* (N.B. new amending legislation commences on 25 November 2016), which affords them with substantial regulatory protection from shopping centre owners and managers.

In relation to trading hours issues, this includes matters such as 'core' trading hours, protection from being 'forced' to trade outside core hours, protections around the recovery of outgoings, and the ballot process by which core trading hours can be changed. We are not seeking to amend any of these protections in this submission.

Changing tenancy mix – changing customer demand

Tenancy mix within shopping centres is constantly changing, which includes the need to facilitate new market entrants.

As an example, around 15 years ago, ALDI entered the Australian retail market and has become critical in supermarket competition. In recent years, we've seen a wave of 'international' clothing retailers such as Zara, H&M and Uniqlo. A recent key trend in shopping centres also been new food and dining precincts. More recently, our sector has just seen the international motor vehicle company, Tesla, take out a tenancy in Chadstone shopping centre in Melbourne's south-east; highlighting the ever-changing nature of shopping tenancy mix, retail models and customer demand. As a Tesla spokesperson has recently said publicly, in 'very deliberately taking a non-traditional road in automotive marketing': "You'll see more retail based set-ups for us. You'll see like Apple-esque in regards to the store frontage, inside a retail store or stand alone one".

At Chadstone, once its current \$660 million redevelopment is completed in mid-2017, it will include Australia's only 'Legoland Discovery Centre', which is a major family entertainment facility, with the only other similar facilities in South-East Asia currently operating in Osaka and Tokyo, Japan, and Shanghai, China.

Community hubs + infrastructure integration

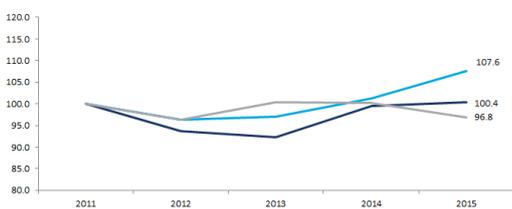
In addition, a key trend in our sector is the growth of 'non-retail' tenancies and services, such as banks, government services, medical facilities and parents rooms. Indeed, several of our members' centres have the electorate offices of Members of Parliament, noting their role as a community hub and part of the cultural fabric.

A lot of our members' assets are also integrated with Government infrastructure – on their land – such as bus terminals and interchanges which recognises their role as a hub and contributing to economic efficiency and productivity.

Government taxes: outstripping retail sales growth

There has also been a concerning trend in Queensland, whereby the growth of taxes, particularly council rates imposed on shopping centres and their retailers, have outstripped both statutory land valuation and annual retail sales (MAT). Increasing available trading hours could increase the opportunity to grow overall retail sales and reduce the growing gap between the growth of land valuation and state and local government taxes.

SCCA Sample Pool Land Tax & Council Rates vs. Land Value
Queensland Index of Total Value 2011 to 2015



Source: SCCA Member Data

2 OUR ISSUES WITH CURRENT RESTRICTIONS: CURRENT AND LONG-TERM

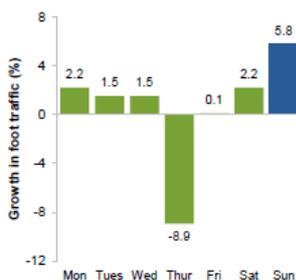
- Trading hours regulation has not kept pace with consumer, retailer and shopping centre trends, and we believe that regulation does also not properly consider the long-term (e.g. is it adaptable for when Amazon has a physical footprint and retail format in Queensland?).
- We cite several key trends here, for the Reference Group's consideration, to illustrate some of our critical issues.

SUNDAY TRADING

Fastest growth day

- Sunday has been the fastest growth day across one of our members' portfolios, as illustrated in the below over the five-year period from 2009-2015 (this chart appears in the *Productivity Commission's Inquiry into Workplace Relations Final Report* – where the Commission noted that "there has been growing demand for consumer services over weekends", and that there is a 'shift to a seven day consumer economy').
- The analysis notes that customer foot traffic on Sundays grew by 5.8%, which is more than double the rate of any other day of the week from 2009-2014.

Growth in average daily foot traffic in shopping centres, 2009-2014^a



Productivity Commission, page 426

- We also understand that this trend is also observed for major supermarkets, whereby Sundays (and Saturdays) are the busiest in terms of average daily retail sales.

Inequity between communities

- In this regard, and despite their view of there being local customer demand, several of our members are still unable to feasibly open their centres on Sundays in regional Queensland, due to 'non-exempt' shop restrictions (e.g. Kingaroy, Roma, Warwick, Mt Isa, Ayr).
- This is because shopping centres generally need to open when the larger, anchor tenants can open to trade given their ability to generate significant customer foot traffic.
- In addition to being contrary to the trend noted above, and also despite there being consumer demand, this raises inequitable comparisons between some areas that can and cannot trade (e.g. Mt Isa has a larger population than Gympie).
- The below outlines a comparison (based on available ABS data) of the population, population growth and density for the noted regional towns that are unable to trade against some of those that can trade:

Can't trade on Sundays

Location	2015 Pop.	5-yr Growth %	Density*
Ayr	9,693	3.9	140.5
Kingaroy	10,437	5.9	148.7
Mt Isa	21,821	3.0	347.5
Roma	7,618	7.6	98.0
Warwick	15,505	4.6	97.5
Total Trade Area	65,074	4.5	148.3

- Source: ABS (Cat. 3218.0) *persons per sq km

Can trade on Sundays

Location	2015 Pop.	5-yr Growth %	Density*
Townsville	19,081	6.1	9.2
Gladstone	25,396	17.1	3.9
Bundaberg	6,437	1.8	1,055.2
Mackay	30,764	4.0	769.1
Toowoomba	43,916	5.4	219.0
Gympie	20,810	5.7	300.3
Total Trade Area	146,404	6.9	16.5

- Source: ABS (Cat. 3218.0) *persons per sq km

Demand for earlier hours

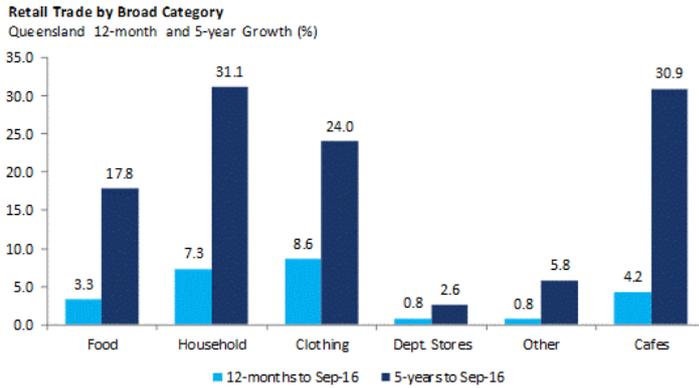
- In addition, in relation to Sunday trading there is strong demand for earlier hours which is something we also observe in other jurisdictions (e.g. in Perth, during the 'extended' Christmas hours period, ~50% of customer demand comes from the 8am-11am period).
- With this issue in mind, some areas that have Sunday trading hours regimes have an inappropriate range of allowable hours, such as 10am opening times in Townsville, which is one of the state's largest centres (with some current economic challenges) and where smaller cities and towns can have a wider spread of allowable hours.

Retailer/small business participation

- Average retailer participation outside 'core' trading hours, such as Sunday trading, is around 80% (if retailers could be 'forced' to trade, this would obviously be a 100% participation rate). Citing our previous analysis, this means an average of around 20 retailers open their business to trade, at their choice, for every major retailer that can open and trade.
- This challenges any claims that extended trading hours are solely limited to the benefit of non-exempt shops.

FRIDAY NIGHT – THE NEW THURSDAY

- Friday evenings, and the 'night-time' economy, and even Saturdays, have become more popular than traditional 'Thursday night' shopping. The 'Friday evening' trend also reflects a trend in increased food and dining retailing, including new major food and beverage precincts. In such areas, a 10pm or midnight closing time is more appropriate than a 9pm closing time, particularly in areas such as tourist zones and commercial districts.
- This trend is supported, in general terms, with the strong growth of retail trade in cafes (ABS) (2nd only to household goods) in Queensland over the five-year period to September 2016 as illustrated below. It should be noted that Department stores (generally 'non-exempt shops') experience the weakest relative growth over the past year and five-year period.



- If there is a growing trend for people to be out having dinner on a Friday evening, or engaging in some form of entertainment and leisure, why shouldn't they have the option and convenience to (for instance) shop late at a supermarket, including as a 'top-up' shop?

SHOPPING – A POPULAR TOURIST ACTIVITY

- Based on some of the Government's own plans, shopping is noted as one of the top activities for tourists (against, for instance, 'general sight-seeing' and 'visiting national parks': Sunshine Coast Destination Tourist Plan). Some tourism areas, including short-stay and international tourists, come from markets where extended trading exists, or their tourist activity means they want to shop later in the day or evening.
- A number of our members have confirmed the importance of tourists to their centres, including feedback from tour operators and customers of having a preference for extended trading hours.
- This raises the issue that 'consumer' demand in some areas is not limited to those residing in the trade catchment area of a shopping centre or their retailers, but from wider catchments such as domestic and international tourists.

EMERGING SOURCES OF RETAIL COMPETITION AND NEW CHANNELS

- There is also a need to consider emerging and future trends in the economy and retail sector, and ensure that trading hours regulation does not unnecessarily restrict or limit adaptability, competition or innovation.
- As an example, what if major competition comes from new entrants and sources such as Amazon, where retailing occurs from a 'warehouse' with 24/7 delivery?
- As a case in point, the Sydney Morning Herald reported on 14 November 2016 (accessed on smh.com.au), that Amazon "is on track to launch bricks and mortar grocery stores and an online supermarket in Australia within two years" (see below):



- The article also notes that Amazon stores would be 'similar in size to an Aldi store', and that "it would stock only the items people like to inspect before purchasing, namely fruit and vegetables, meat, dairy and alcohol...but customers would still be able to buy tens of thousands of products through an app or an instore kiosk or touchscreen...these products would not be stocked on shelves. Instead they would be stored in nearby fulfillment centres, for delivery to a customer's home".
- This example the ever-changing nature of retail, including within the supermarket sector, and that the trading hours' regime needs to enable retailers to adapt, respond and innovate.

3 OBSERVATIONS ON BARRIERS TO TRADING HOURS REFORM

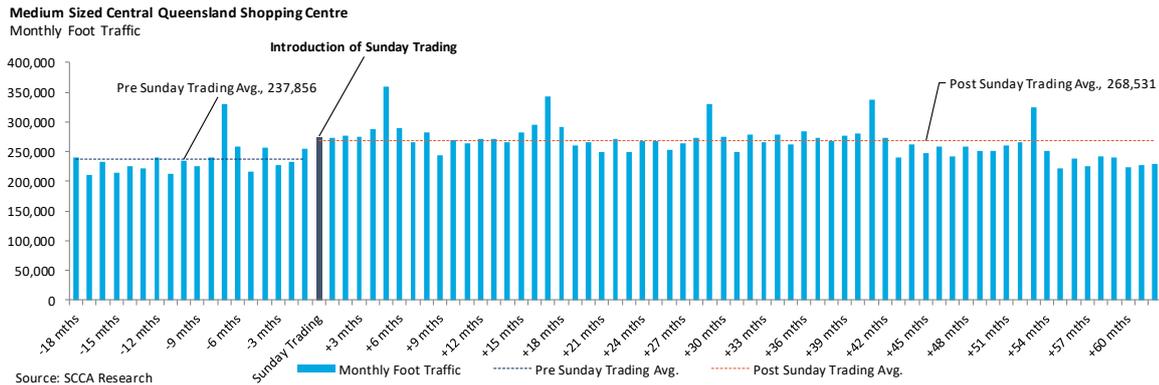
We make several observations on the challenges and arguments against progressing with trading hours reform, based on our experience with trading hours policy and legislation across various jurisdictions:

More than just supermarkets...

- There is too much focus on supermarkets in the reform debate.
- Trading hours reforms are too frequently viewed through the narrow lens of the supermarket sector, which is only one of 3 'major' retail tenancy types, alongside discount department stores and department stores (*SCCA Sales Reporting Guidelines* – see Attachment 2).
- The focus on supermarkets is possibly at the expense of other sectors who might want to trade (e.g. one of our members commented recently that opposition against their full-line supermarket trading on a Sunday means a discount department store and 30 specialty retailers also miss out on the opportunity to open and serve their customers).
- This could also lead to perverse outcomes (some people drive a couple of hours to do their 'total' shop at a regional centre that can trade on Sundays).
- Further, *Urbis' latest Shopping Centre Benchmarks* identifies that for all 'neighbourhood' shopping centres across Australia (i.e. smaller, convenience centres anchored by at least one supermarket), the average sales productivity (\$/m²) for 'national full range chain' supermarkets (average size 3,771/m²) 'other' supermarkets (average size 1,710m²) is \$11,711/m² and \$11,571 respectively.
- This possibly suggests that each supermarket type has a similar level of sales productivity (or at least no material lower level of trade for small supermarkets) where both co-exist in the same shopping centre.
- It should be noted that food specialty tenants (e.g. delicatessens, fruit and vegetable, butcher, poultry) have a much lower sales productivity of \$8,836/m².

No more people will go shopping – it will just spread out across the extended hours

- A view is often put forward that additional hours will not generate any additional customers, or sales, and that the same market will just be distributed across an extended range of hours.
- While this argument ignores possible consumer preferences as to when they would prefer to shop, our experience is that there is additional customer demand when hours are extended.
- As an example, analysis of one of our members' centres highlights the positive impact of being granted Sunday trading by the QIRC. In the 18-months prior to the approval of Sunday trading, monthly customer foot traffic average 237,856, whereas the proceeding 18-months, and the time since that Sunday trading commenced, it has averaged monthly customer foot traffic of 268,531 – an increase of around 13% (see below).



- Indeed, since the introduction of Sunday trading, weekend customer foot traffic has increase from an average of 17% of weekly traffic to 26% of weekly foot traffic, with Sunday trading alone accounting for 11%.

Small business...

- Claims are often made about the need to protect 'small business' or 'mum and dad' retailers from larger retailers, and therefore have a broader range of allowable trading hours.
- Ownership structures in retail have vastly changed over the years, particularly since the three shop categories (exempt, non-exempt, independent) were established.
- We believe that some of these arguments can be spurious when measured against the original intention of such shop-type differentiation, particularly given that the scale of some businesses in certain retail categories are quite large and sophisticated, including through franchising systems.
- Despite this growth into large retail operations, such businesses possibly benefit from being structured or defined within the rules of, say, and 'independent retailer'. It may be the case that some claimed 'independent retailers' are not 'small' businesses, but are actually large, sophisticated multi-store operations.
- We also live in an environment where, for instance, bakeries have gone from being 'small' businesses to successful national business (e.g. Bakers Delight), some of them under franchise systems. Even some 'independent shops', would likely surpass the Australian Bureau of Statistics definition of 'small business' which includes an annual turnover of up to \$2 million.
- We are obviously not privy to the labour costs of such businesses; however we estimate that a staff of 60 people could result in an annual payroll cost of more than \$2 million, let alone the retail turnover required to meet such labour costs.
- This raises the question about the merits of continuing with the 'independent' category to the extent they should shielded from any substantial competition or operate with more allowable hours than competing businesses.
- The continuation of the current categories may also undermine consumer outcomes in terms of choice, convenience and price.

Car parking and transport options...

- We have also observed previous claims that transport options, including access to car parking, should be taken into account when considering extended trading hours.
- Our members generally all have car parks at their shopping centres across the state to ensure that plentiful car park spaces, particularly 'premium' spaces located near centre entrances, are available to customers. Ample, convenient and low cost parking are key factors in the commercial success of shopping centres, and retailers within the centre.
- Indeed, the *Retail Shop Leases Act 1994* requires shopping centre owners and managers to disclose the number of car parking spaces during retail lease negotiations.
- Car parking facilities also cost shopping centre owners to provide (e.g. capital costs) and maintain (e.g. taxes applied to land, cleaning, electricity, security).

- The vast majority of these car parks have no specific charge, however some centres have introduced managed parking to better manage car-park demand, particularly from those not using the centre (e.g. commuters, nearby workers).
- While we are not able to comment on the nature of public transport options across the state, most centres provide car parking facilities that can be utilised by workers, and accessed at different times of day including mornings and evenings. Some of our members also have public transport facilities integrated with their centres.
- We also refer to previous analysis we've undertaken, as part of our statement in response to an application by the Shop, Distributive and Allied Employees Association (SDA) application to Fair Work Australia (2012/196), which identified data from our members that (at the time) up to 34% of car parking spaces are dedicated for staff in a shopping centre and that where charges apply, "these are usually supplied at heavily discounted rates, which are far more competitive than alternative transport and parking options".
- We would reject any recommendation made by the Reference Group to seek to impose any parking requirements on shopping centre owners, or their retailers.

Changing consumer preferences...

- The consumer is often directly missing in debates about trading hours reform, or their preferences are often cited in terms of what they *don't* want, or judgements made that they should simply do all their shopping on a Saturday.
- Any consumer surveys we have cited generally note a consumer desire for more flexibility to undertake their shopping to help-achieve a desired work-life balance. This may be due to broader factors such as weekday commute times or shopping being an activity that people undertake, or families do together, on weekends.
- This includes, for instance, the consumer preferences noted in the NRA's survey as part of its application on the recent SEQ trading hours case (TH/2014/23), which noted strong support for extended hours on weekdays (65%) and Saturdays (61%) – and essentially sees an alignment between expectations for allowable weekday and weekend trading hours.
- We also observe a line of argument about other issues which may be legitimate (e.g. sport, cultural, religious), but can be at the expense or ignore different demographics and communities, and shifting and modern day consumer trends (e.g. more frequent visit to shops, with smaller baskets of goods).

Retailers can't be 'forced' to trade, nor do they pay outgoings if they don't open to trade

- Another excuse we've seen used to argue against reform is that landlords will 'force' retailers to trade.
- Under the *Retail Shop Leases Act 1994*, retailers cannot be forced by landlords to trade outside of 'core' trading hours, which are the shopping centre hours when a retailer is required to be open for trade. Further, there are there no penalties for retailers if they do not trade outside core trading hours, and nor would it be a breach of their lease. The *Tradable (Allowable Hours) Act 1990* refers to the concept of 'core' trading hours.
- In the *Retail Shop Leases Act*, this provision was made following the 1993 review of the *Trading Hours Act 1990*, ensuring that shopping centres cannot force smaller retailers to open longer hours as a result of extended trading hours.
- Outside these hours (e.g. "extended hours" as defined under 36 of the *Trading (Allowable Hours) Act*, including where, for instance, Sunday trading has been granted by the QIRC, a shopping centre owner cannot 'force' retailers to trade.
- This issue is noted at page 19 of the Issues Paper.
- The issue of retailers being 'forced' to trade, or appearing on a landlord's 'blacklist', or being coerced or threatened, is nothing more than a general myth or a tactic to undermine the perception of legitimate legal protections.
- As we cited above, the average typical retailer participation in our members' centres is around 80% on days such as Sunday, which includes smaller retailers. If retailer could be 'forced' to trade, this participation rate would obviously be 100%.

- We note, however, that the Issues Papers' refers to the Productivity Commission's *Economic Structure and Performance of the Australian Retail Industry Inquiry Report* citing a figure of '90% retailer participation', and suggesting that trading hours have "little influence" over the level of market participation is misleading.
- The PC report (at page 309) clearly notes that this participation rate makes it clear that the "deregulation of trading hours does not appear to have had a deleterious effect on the viability of small retail businesses". This is particularly the case given that, in each state, retailers cannot be 'forced' to trade in extended hours periods.
- In addition, retailers can't be required to pay a portion of centre outgoings (e.g. cleaning, security, air-conditioning) when they are not open. This means, generally, that the less shops that open outside core trading hours, the higher their costs are relative to times during core trading hours whereby costs are distributed across all retailers.

Core trading hours cannot be changed automatically by a landlord

- It should also be noted that a shopping centre owner cannot automatically amend a centre's core trading hours.
- The *Retail Shop Leases Act* provides (at Part 7), the ability for a shopping centre owner to conduct a ballot to change trading hours outside the 'allowable hours' under the Trading Hours Act.
- This requires, for instance, a 50% of eligible shops to vote and a resolution to be supported by at least 75% of the eligible lessees.
- This process has been utilised by our members, and we recommend its retention in its current form.

RECOMMENDATIONS

Our recommendations are based on our experience, analysis and consultation with our members, and are submitted to enable the Reference Group to consider a range of issues. We have also sought to broadly reference and respond to the 12 consultation questions proposed in the *Issues Paper*.

We are pleased to provide the following recommendations for the Reference Group's consideration:

- It's stating the obvious, however the Reference Group should acknowledge that Queensland is not 'open for business' if businesses literally have legislative restrictions as to when they can and can't open – particularly where there is customer demand whether they be locals, farmers coming into town, itinerant rural workers, miners, daytime or overnight domestic tourists, or long-stay international tourists.
- The Reference Group should recommend that the Government embarks on substantial deregulation, through legislative amendment, of shop trading hours across the state, similar to other jurisdictions, with minimal regulation for non-exempt shops around critical and culturally significant public holidays (e.g. Anzac Day, Good Friday, Christmas Day).
- The Reference Group should not recommend any additional public holidays.
- If substantial de-regulation is not recommended by the Reference Group, the Group should recommend that the Government sets a path for ultimate, consumer-led, deregulation of trading hours, including through a possible combination of:
 - clear and immediate legislative reform (e.g. state-wide Sunday trading, pre-Christmas midnight, public holidays),
 - allowable hours state-wide of 7am-10pm for non-exempt shops, seven days a week (or an alternative of 7am-9pm Monday to Saturday, and 8am-6pm for Sundays and public holidays in regional areas),
 - maintaining restrictions on public holidays such as Anzac Day, Good Friday and Christmas Day,
 - state-wide midnight trading for non-exempt shops in the two weeks leading up to Christmas,
 - 6am-midnight trading, seven days a week, for declared tourist areas, key commercial districts and the greater city of Brisbane,
 - no differentiation between the types of non-exempt shops,
 - clear timeframes moving forward (e.g. phasing in of reforms, such as public holidays in regional areas, to enable a transition).
 - the broadening of criteria (e.g. section 26 – 'Matters relevant to s 21 order') to enable the QIRC to consider a broader range of criteria for applications including responding to emerging retail issues (e.g. Amazon, major events),
 - the utilisation of initiatives such as trials and pilots (e.g. NSW Boxing Day was approved subject to a 2-year sunset and review).
- Subject to legislated hours for non-exempt shops noted above, the QIRC should continue to consider applications and make determinations and orders for non-exempt shops. The QIRC should be able to make trading hours determinations as follows:
 - at regional level, rather than localities and parts of localities,
 - for periodic major or seasonal events (e.g. pre-Christmas, major festivals, special events),
 - for tourist areas, including the ability to declare tourist areas.
- We recommend the amendment of section 26 of the Act to vary the criteria used by the QIRC in deciding applications for extended trading hours for non-exempt shops. This should include (1) the impact on shopping centre owners, managers and developers, and (2) the impact of online and omni-channel retailing, and emerging retail trends.
- We recommend the removal of the "view of any local government" from the current section 26 criteria under the Act.

- To the extent that non-exempt shops are not granted any extended legislative hours, as noted above, we would not support the amalgamation of the 'exempt shop' and 'independent retail' categories. We do not believe this would facilitate fair competition.
- We believe that any change to the independent retail store definition needs to be balanced against whether this would further restrict competition with, for instance, full-line supermarkets. We believe that turnover would be an appropriate consideration for the Reference Group, as this aligns with other definitions (e.g. the ABS definition of small business having an annual turnover of up to \$2 million per annum).
- The Reference Group may also want to consider the NSW-WA style definition which includes the number of shops and a lower threshold of employees.
- We are generally hesitant to recommend prescriptive lists of shops legislation, as they can become outdated. We therefore do not have any suggested additions or deletions to the current list of exempt shops.
- The Reference Group may see merit in reviewing the current list of exempt shops against the retail categories in the *SCCA Sales Reporting Guidelines* (Attachment 2) which are the shop categories used by SCCA members, and other shopping centre companies, in their public and internal reporting and benchmarking.
- The Reference Group should not make any recommendations to amend 'core trading hours' under the Act, including the *Retail Shop Leases Act*.
- The Reference Group should recommend the retention of the current ability for shopping centre owners to conduct a ballot to change trading hours.
- The Reference Group should not make any recommendations that would impact a shopping centre owner's ability to manage their car parking.

ATTACHMENT 1:

BACKGROUND INFORMATION

The following breaks down the number and types of shopping centres across Queensland.

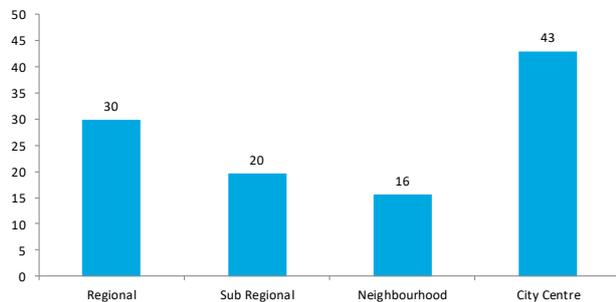
Breakdown of Queensland Centres by Type

Centre Type	No. of Centres	Avg. No. Retailers		Avg. GLAR (sq m)		Specialty per Major
		Major	Specialty	Major	Specialty	
Regional	32	5	161	6,236	133	30
Sub Regional	56	3	52	4,211	152	20
Neighbourhood	200	1	18	2,437	125	16
City Centre	17	1	42	5,088*	124	43*
Total	305	2	40	4,199	134	22

Source: SCCA Research

*excludes two centres due to sample biasing

Queensland Enclosed Shopping Centres
Ratio of Specialty Retailers per Major Retailer



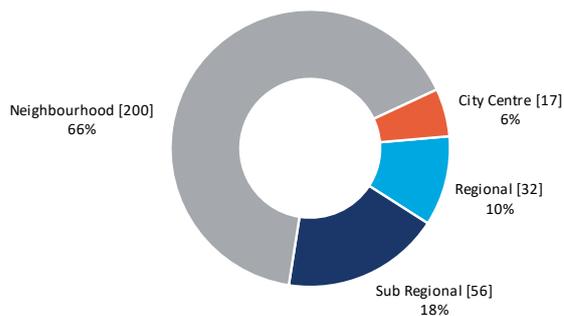
Source: SCCA Research

NOTE: City Centre excludes two centres due to sample biasing

Centre Breakdown

Small centres make-up two thirds (66 per cent) of shopping centres in Queensland, slightly higher than the national figure (63 per cent).

Queensland Enclosed Shopping Centres
Centres by Type - [number] & percentage



Source: SCCA Research

ATTACHMENT 2:**SCCA SALES REPORTING GUIDELINES (DECEMBER 2010)**

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

Shopping Centre Council of Australia Sales Reporting Guidelines December 2010

1. INTRODUCTION

In 2004 the Shopping Centre Council of Australia (SCCA) decided to seek uniformity, where possible, among its members in shopping centre sales and occupancy costs reporting.

This followed the Council's decision in 2002 to resolve the issue of whether retail sales in shopping centres should be reported on a GST-inclusive or GST-exclusive basis. The SCCA Council decided, as a preference, that members should report sales on a GST-inclusive basis.

In March 2004 the Council established a sub-committee on sales reporting, chaired by Darren Steinberg (CEO Shopping Centres, Stockland), to review the public reporting practices of the shopping centre industry in the area of retail sales, occupancy costs and associated statistics. The objective of the sub-committee was to establish standard industry practices, to be endorsed by the SCCA, which would be adopted by members in order to achieve greater uniformity of reporting for the shopping centre industry.

A number of SCCA members participated in this sub-committee. These were AMP Capital Investors, Centro Properties Group, Colonial First State Property, the GPT Group, Jones Lang LaSalle, Lend Lease Retail, Mirvac, QIC, Savills, Stockland and the Westfield Group. Consulting firms UrbisJHD and MapInfo Dimasi also participated in deliberations of the sub-committee because of their involvement in the preparation and use of industry averages and benchmarks.

The subcommittee's recommendations were approved by the SCCA Council in May 2005. The Council decided the changes would take effect from 1 July 2005 and relate to reporting for the financial year 2005-06. Council members recognised, however, that data for the financial year 2004-05 would need to be recalculated according to the new reporting practices to ensure comparative data is available for 2005-06.

At the request of the SCCA Council the sub-committee was further asked to reach agreement on sales group category reporting. This is addressed in sections 2.1 and 2.7. The subcommittee acknowledges the assistance of Mapinfo Dimasi in the preparation of these categories. This report, which updates the original report of May 2005, was endorsed by the SCCA Board of Directors on 16 February 2006.

Following discussion among members in June 2006 the sales group categories were slightly amended to nominate fine categories in the 'Food Retail' sales group. Further, following discussions in October 2010, Dan Murphy was removed from the Majors Category.

2. REPORTING GUIDELINES

The guidelines adopted by the Shopping Centre Council of Australia are as follows:

2.1 Collection and Definition Issues

In terms of broad categories, tenants should be classified into the following groups.

Broad Category	Inclusions
Majors	Named Major tenants to only include the following: Woolworths, Coles, Bi-Lo, Aldi, Action, Dewsons, Franklins, IGA, Farmer Jacks, Foodworks, Foodland, Spar Supermarket, Harris Scarfe (where more than 400 sqm), Food For Less, Safeway, Myer, Target, Kmart, Big W, David Jones, Bunnings, Harvey Norman, Toys R Us, Pick 'n Pay Hypermarket
Mini Major	All tenants greater than 400 sqm not defined as "Major", "Other Retail" or "Non Retail" (see below)
Specialties	All Sales Reporting Tenants under 400 sqm excluding Travel Agents, Auto Accessories, and Lotto
Other Retail	Other Sales Reporting Tenancies including Automotive Accessories, Travel Agents, Cinemas, Other Entertainment, Lotto
Non Retail	All other non sales reporting categories (Banks, Automatic Telling Machines, Financial Institutions, Health Insurance, Tab, Gaming Venues, Amusements, Professional Services And Suites, Offices) - must be expressly excluded from Sales, Productivity and Occupancy Cost

Data is to be collected exclusive of GST and adjustment for GST, at the store or tenant level, will be in accordance with the MapInfo Dimasi document '*Shopping Centre Sales Reporting GST Uplift Factors August 2005*'.

In reporting the turnover of pharmacies, lottery agents, travel agents and mobile phone shops the SCCA recognises that there are a range of practices and that lease reporting clauses can impede the achievement of uniformity in these areas. It is recommended, however, that managers endeavour to move to the following agreed practices:

- In reporting turnover of pharmacies, government rebates for prescription medicines (eg PBS) should be excluded.
- In reporting turnover of lotto agents, calculation of the centre MAT should include total sales ('cash through the till').
- In reporting turnover of travel agents, calculation of the centre MAT should include total sales ('cash through the till').
- In reporting turnover of mobile phone shops, turnover should reflect 'cash through the till' which includes agents' commissions for the sale of plans.

2.2 Gross Lettable Area

Gross Lettable Area (GLA) is to be measured according to the Property Council of Australia's *'Method of Measurement for Lettable Area'* and is to include the trading area of all tenants located at the centre, whether currently leased or not leased.

The GLA will not include separate storage areas and will exclude land lease areas. Tenants with occupancy by way of land lease, such as free-standing pad sites, will be included for GLA purposes using the building area as the basis of measurement.

Component reporting will be based at the category level: majors, mini majors, specialty and other.

Specialty GLA is to comprise all tenants that are not major tenants but excluding tenants that are defined as mini major (i.e. greater than 400 square metres in area).

2.3 Moving Annual Turnover

Moving Annual Turnover (MAT) is sales for a twelve-month period calculated on a monthly rolling basis. As a general rule the MAT of the shopping centre is to include trade from all tenants where the manager is provided with sales data.

Managers will not estimate trade except where audited figures are supplied on an annual basis.

Notwithstanding the supply of data, some specific uses will be excluded. These are: banks, automatic telling machines, financial institutions, health insurance, TAB, gaming venues, amusements, professional services and suites, offices, casual mall licences and storage areas leased to specific tenants.

Specialty MAT will include all sales reporting tenancies less than 400 square metres including: standard food specialties, standard non-food specialties, retail services specialties, auto accessories shops, hardware shops, fast food outlets, other retail shops and mobile phone shops. Travel agencies, and lotto and lotto-type games, are to be expressly excluded from speciality MAT.

2.4 Sales Productivity Measures

The sales productivity measures are to be based on actual retail sales data for each shop, calculated each month and aggregated for the year.

The underlying reporting objective is to provide accurate information on what has taken place in the centre over the period in question. To achieve this in the area of sales productivity the following rules will apply:

1. Use actual data without exception
2. There will be no inclusions or exclusions within the agreed category options. Total centre and specialty groupings are as defined under section 2.3 **Moving Annual Turnover**.

The proposed formula for calculating sales productivity is:

- Productivity measures = $\text{sum}[\text{monthly turnover} \div \text{shop area}]^n$

The subcommittee acknowledges that where a shop has recorded less than a full 12 months of trade, the productivity calculation will understate the potential productivity. Testing indicates this is not significant at the category or centre level.

Definitions

1. n = previous 12 month period
2. monthly turnover = reported or estimated sales inflated for GST³
3. 'Shopping Centre Sales Reporting GST Uplift Factors August 2005' MapInfo Dimasi.

2.5 Occupancy Cost Measures

The occupancy cost ratio calculations will use the actual occupancy cost charges (exclusive of GST) for the year, divided by actual retail sales data (inclusive of GST) for the year.

The underlying reporting objective is to provide accurate information on what has taken place in the centre over the period in question. To achieve this in the area of occupancy cost ratios the following rules will apply:

1. Use actual data without exception
2. There will be no inclusions or exclusions within the agreed category options. Total centre and specialty groupings are as defined under section 2.4 Sales Productivity Measures.

The proposed formula for calculating the occupancy cost ratio is:

- Occupancy cost ratio = [sum of monthly occupancy cost charges]ⁿ ÷ [sum of monthly turnover]ⁿ.

Definitions

1. n = previous 12 month period
2. monthly turnover = reported or estimated sales inflated for GST³
3. 'Shopping Centre Sales Reporting GST Uplift Factors August 2005' MapInfo Dimasi.
4. Occupancy cost charges include base rent, outgoings, turnover rent, and promotional contributions, and are net of GST. All other tenant related costs or benefits are excluded.

2.6 Comparable Growth Calculations

Comparable sales growth calculations will be based on the stable centre philosophy. The centre is regarded as stable where the current base format of major and broad specialty shop composition over the period of measurement has remained unchanged. Where a centre is deemed to be stable for the period of measurement in question, then growth variances will be calculated from the retail sales data, without exclusions or adjustment, except where there is change of use or periods of abnormal retail sales involving major shops.

A centre will be regarded as stable following redevelopment after 24 months.

Exclusion and adjustments to data will be permitted in the following instances:

1. Where a change of use to a major tenant takes place (e.g. where a department store is converted to specialties or a supermarket) the historical and future sales data are to be excluded from calculations until the component becomes stabilised as defined here.
2. Movement in trading area at the broad category level of more than +/- 5%.

2.7 Sales Group Category Reporting

The Committee recommends that the following categories of retail be adopted for sales reporting purposes:

Broad Category	Sales Group	Fine Categories	Notes
Majors	Majors	Named Major tenants as defined in section 2.1 of this report	
Mini Major	Mini Major	All tenants greater than 400 sqm not defined as "Major", "Other Retail" or "Non Retail" (see below)	
Specialties	Food Retail	Delicatessen Fruit and Vegetables Butcher Poultry Fresh Seafood Bakery/Cakes/Pastries Other Specialty Food	
		Liquor	Take-home Liquor
	Food Catering	Takeaway Food	Food Court tenancies, Donuts/Pancakes/Biscuits, Ice-cream, Fast Food
		Cafes and Restaurants	Coffee Lounge, Licensed Restaurants, Family Restaurants
	Apparel	Women's Apparel	
		Children's Apparel	
		Men's Apparel	
		Jeaneries & Unisex	General Clothing, Sporting Apparel, Jeanswear and Unisex Apparel
		Footwear	Sports footwear, General Footwear
		Fashion Accessories	Sunglasses, Hosiery and Accessories, Handbags, Costume Jewellery
	Jewellery	Jewellery	Fine Jewellery, Watches NB. Costume Jewellery now in Fashion Accessories
	Leisure	Sporting Goods	Sports Equipment, Outdoor Equipment
		Music / Video / Games	Music, Electronic Games, Video

		Books	
		Newsagents & Stationery	
		Film Processing / Photography	
	General Retail	Giftware	Gifts, Souvenirs, Arts and Crafts, Print and Frame shops
		Pharmacy & Cosmetics	
		Discount Variety	
		Florists / Pets / Toys / Miscellaneous	Florists, Pets, Toys, Board Games, Tobacconists, Disposals
	Homewares	Electrical / Sound / Computers	
		Furniture / Hardware	
		Homewares	
	Mobile Phones	Phone & Mobile Communications	
	Retail Services	Key Cutting / Shoe Repairs / Watch Repairs	
		Optometrist	
		Hairdressing / Beauty	
		Other Retail Services	
Other Retail	Other Retail	Travel Agents	
		Lotto	
		Automotive Accessories	
		Cinemas	
		Other Entertainment	Bowling, Ice Skating, Games Parlours
		Other Retail (incl Sales Reporting Pad Sites)	
Non Retail	Non Retail	Non Retail	Banks, Automatic Telling Machines, Financial Institutions, Health Insurance, Tab, Gaming Venues, Amusements, Professional Services And Suites, Post Office, Offices

ABOUT US

The SCCA represents Australia's major shopping centre owners, managers and developers. Our members are as follows:



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