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Your ref: 62637
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Mr Darrell Channing
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Australian Competition and Consumer Commissioner
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Dear Mr Channing

**Draft Determination: Shopping Centre Council of Australia Ltd applications for re-
authorisation of the Casual Mall Licensing Code of Practice (A91591 & A91592)**

Thank you for the opportunity to make a further submission to the Australian Competition and Consumer Commission (ACCC) in response to the Draft Determination of the Shopping Centre Council of Australia's (SCCA) application for reauthorisation of the Casual Mall Licensing Code of Practice (the Code).

The OSBC supports the re-authorisation of the Code subject to the ACCC's recommendations in the Draft Determination. The amendments address our key concerns in relation to the administration of the Code, composition of the Code Administration Committee (CAC), and availability of effective dispute resolution mechanisms.

Increased retailer representation

The OSBC strongly supports the ACCC's recommendation that the SCCA and National Retail Association (NRA) invite the Australian Retailers Association, Franchise Council of Australia, Pharmacy Guild of Australia and the National Online Retailers Association to become parties to the Code and appoint representatives to the CAC.

This amendment addresses OSBC's concern that there should be greater retailer representation on the CAC.

Independent Chair

The OSBC strongly supports the ACCC's recommendation for the appointment of an independent Chair to the CAC. The SCCA's proposal to increase representation to five (5) each from the retailer and shopping centre landlord sectors¹ may result in voting deadlocks which are likely to impact on the effectiveness of the CAC.

Prior to the appointment of an independent mediator in 2017 to chair meetings of the *Motor Insurance and Repair Industry Code of Conduct* CAC, previous composition and voting quorum resulted frequent deadlocks that prevented any progress with the industry-led amendment of the Code following external reviews and a Senate inquiry into the industry.

The CAC of the *Code of Conduct for Film Distribution and Exhibition* had similar issues until an independent mediator was appointed to the CAC. Both Codes have now had success with the appointment of an independent Chair who can play a conciliation/mediation role where the interests of representatives are deadlocked.

¹ SCCA Response to 'Interested Party' Submissions: Application for Reauthorisation of the Casual Mall Licensing Code of Practice, 1.

In terms of increasing transparency in the operation of the CAC, the OSBC reiterates its previous recommendations for improvements in the mechanisms for administration and appointment of CAC members, voting quorums and the publication of meeting minutes.

Dispute resolution

The OSBC supports the ACCC's recommendation that the dispute resolution provisions should be enhanced and reiterates our suggestion for the Code to require a quick response for shopping centre management to complaints (given that the average length of a casual mall licence is 12 days).

A schedule (annexed to the Code) of external independent dispute resolution providers would also assist with the identification of the relevant state Small Business Commissioners and the Small Business and Family Enterprise Ombudsman as appropriate independent dispute resolution providers.

A process for how formal disputes will be handled, and the publication of a list of shopping centres that apply the Code, would help to strengthen the Code's dispute resolution mechanisms.

Re-authorisation period

OSBC supports the ACCC's recommendation that the Code is re-authorised for a three year term rather than the five year period sought by the SCCA and NRA.

Thank you for giving me the opportunity to comment on the Draft Determination. If you wish any additional information or wish to discuss further please contact Nicola Gorton at nicola.gorton@smallbusiness.nsw.gov.au or by phone on (02) 8222 4882.

Yours sincerely



Robyn Hobbs OAM
NSW Small Business Commissioner
23 November 2017