



**Small Business
Development Corporation**

Your ref: 62637
Our ref: D17/6175

Mr Darrell Channing
Director, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Channing

**DRAFT DETERMINATION – SHOPPING CENTRE COUNCIL OF
AUSTRALIA APPLICATIONS FOR RE-AUTHORISATION A91591 &
A91592 – CASUAL MALL LICENSING CODE OF PRACTICE**

Thank you for your email dated 31 October 2017 inviting comment on the ACCC's draft determination in respect of the applications from the Shopping Centre Council of Australia (SCCA) for re-authorisation of the Casual Mall Licensing Code of Practice ('the Code').

The Small Business Development Corporation (SBDC) provided its views on the initial applications for re-authorisation in August 2017 regarding the potential impacts of the Code on long-term shopping centre tenants and its ongoing concerns with specific provisions. It is noted that these concerns, which seek to improve fairness for existing retailers (and which were similarly raised by other small business government and industry representatives), have largely been rebuffed by the SCCA.

Despite this, the SBDC welcomes the ACCC's interim authorisation of the Code for a further (albeit shorter) period as it maintains minimum conditions in relation to casual mall licensing. As the ACCC notes, this abridged period will allow the SCCA and interested parties to engage productively to address the concerns raised by stakeholders and small business representatives during the application process.

Specifically, the SBDC supports the ACCC's strong encouragement that the SCCA implement its proposal to invite the Australian Retailers Association, Franchise Council of Australia, Pharmacy Guild of Australia and National Online Retailers Association to become parties to the Code and appoint representatives to the Code Administration Committee (CAC).

In this regard, the SBDC supports the ACCC's view that the effectiveness of the CAC could be improved by the appointment of an independent chair. The SBDC also agrees with the NSW Small Business Commissioner's earlier submission that the CAC should operate more transparently in relation to the appointment of members, voting procedures and quorum, and making meeting minutes more widely available.

The broadening of signatories to the Code and representation on the CAC will likely address some of the concerns regarding the effective operation of the Code, especially access to dispute resolution, previously raised with the SBDC by industry representatives. The SBDC notes that the ACCC shares this view, and it is hoped that the SCCA approaches engagement with the other representative parties in a spirit of cooperation and good faith.

In relation to resolving disputes, the SBDC strongly supports the inclusion of a schedule in the Code that details the timely, low-cost alternative dispute resolution (ADR) services available from Small Business Commissioners in WA, SA, NSW and Victoria. As previously argued, the SBDC believes early, effective ADR can have a positive effect on maintaining ongoing business relationships, which is particularly vital in a commercial tenancy sense given the long-term nature of retail shop leases.

Further awareness raising of the Code and ongoing engagement with shopping centre tenants will also go some way to minimising the impacts of casual mall licensees while providing consumers with retail variety and choice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Eaton', with a stylized flourish at the end.

David Eaton
SMALL BUSINESS COMMISSIONER

20 November 2017