

APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to give effect to a provision of a contract, arrangement or understanding that is, or might risk being, a cartel provision within the meaning of Division 1 of Part IV of that Act.
- to negotiate or make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act.

This Application is brought by **Co-Operative Supermarkets Australia Limited**: "CSA"

1. APPLICANT

(a) Applicant Details:

Co-Operative Supermarkets Australia Limited ARBN:

Registered Office:

1 Rosserdale Crescent, Mount Eliza VIC 3930

Telephone Number: [REDACTED]

Contact: Mark Love

Email: [REDACTED]

Address in Australia for service of documents on the applicant:

Mr Mark Love

Secretary

C/-Bradley Allen Love, Lawyers

Level 9

40 Marcus Clarke Street

Canberra City ACT 2601

Email: [REDACTED]

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2. DESCRIPTION OF BUSINESS CARRIED ON BY APPLICANT AND RELEVANT CONDUCT:

CSA is an incorporated "Co-operative" registered in Victoria, whose members comprise the managers of the Independent Retail Grocery Stores located within Australia¹, each operating supermarkets and convenience stores. The membership structure recognises the role, participation and benefit delivered to the store owner, defined in the Rules of CSA² as the Associated Controller; formal membership by the individual and the position of their Associated Controller should be seen as synonymous.

It is those CSA members³ and the Associated Controllers who will coalesce in the "collective" under the co-operative structure of CSA. CSA will, for the benefit of its members and the Associated Controllers:

1. Discuss, negotiate, enter into or give effect to:
 - a. contracts, arrangements or understandings relating to or that have the effect of (or providing for);
 - b. the fixing, controlling or maintaining of the price⁴ for, or a discount, allowance, rebate, benefit or credit to be given;

in respect to the supply, acquisition or re-supply of goods and/or services, as between a supplier in the Australian grocery industry supply chain and the Associated Controllers (as defined in the Rules of CSA as the owner or controller of the member's retail store) of CSA's members.

2. Research and disseminate information concerning the retail and wholesale grocery industry in Australia for the benefit of its members. Such information will not only be researched from third party sources, but also from CSA members, including, without limit, sharing information concerning price and conditions of supply offered to or existing with CSA members by suppliers.⁵
3. Represent its members in negotiation with stakeholders of all kinds including, without limit, Governments and their agencies and suppliers of goods or services to member businesses, so as to address costs and benefits affecting the retail and wholesale grocery industry in Australia.

¹ Each member is a manager, nominated for membership by the Store Owner.

² Attached as Annexure 2 Part 2.

³ And their associated Store Owners (Associated Controllers).

⁴ The "price" refers to the "price to the member", rather than the "price for retail resale" by the member. Members will continue to engage in retail promotions organised with suppliers, including through CSA. It is expected that the resulting terms of retail offering will continue to be regulated in the ordinary way, in the ordinary manner of retail grocery store operation. It is the collective conduct of CSA in engaging with the suppliers for promotions organised through CSA to which this Application is addressed, not authorisation for any resulting terms of any resulting retail offering by members.

⁵ CSA members are expected to abide by obligations of confidence, so far as they exist at law.

4. Organise and co-ordinate the supply of goods and services of all kinds to its member associated businesses.

The relevant conduct for this Application is the conduct of both CSA and that of its members, which includes:

1. the negotiation and entry into terms to secure the supply of goods and service to Associated Controllers (as defined in the Constitutional Rules of CSA) of CSA's members, where those goods or services are either consumed in the member businesses or offered for sale through the member businesses.
2. The imposition and enforcement of the "active member test" enshrined in the Rules of CSA which requires active trading in the goods and services offered through CSA's system during each rolling two month period⁶.

The means of delivery of member benefits shall be through CSA establishing an ordering interface between suppliers (with whom it has successfully negotiated terms) and its members' Associated Controllers, operating a centralised system through which orders can be placed by CSA Associated Controllers, according to published standing terms of offer agreed by CSA with suppliers; that is the core operation of CSA.

Such contracts, arrangements or understandings could include any aspect of the terms of supply, such as terms of price, volumes and promotional conditions, rebates and benefits earned from a supplier, terms of credit, delivery, picking and packing fees, logistic charges, insurance, rights to refund or credit from spoilage, ullage and so on, without limit.

Such offers are to be available only to CSA members⁷.

More detail is supplied in Annexure 1 Part 1.

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3. **CONTRACT, ARRANGEMENT OR UNDERSTANDING**

(a) **Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

The contracts, arrangements or understandings for which authorisation is sought, are proposed and include:

1. The "active member test" in the Rules of CSA which require the Associated Controllers of CSA's members to actively trade through CSA during each rolling two month period. That provision is found at Rule 4.2 of the Rules of CSA at Annexure 2 Part 2; and the discussion at Annexure 1 Part 2; and
2. Collective bargaining of contracts, arrangements or understandings between suppliers of all kinds in the Australian grocery industry supply chain for the benefit of:

- a. The Associated Controllers of CSA's members, with a view to:

⁶ See Rule 4.2 of the Rules of CSA, Annexure 2 Part 2 and Annexure 1 Part 3

⁷ More specifically, their Associated Controllers.

- i. posting standing offers to CSA member, posted through CSA's systems;
or
 - ii. determining terms of supply to CSA members;
- b. CSA, for goods and services for resupply to the Associated Controllers of CSA's members, with a view to making such goods or services available to CSA members through standing offers posted through CSA's systems.

These could include contracts, arrangements or understandings which relate to or that have the effect of (or providing for) fixing, controlling or maintaining of the price⁸ for, or a discount, allowance, rebate, benefit or credit to be given in respect of the supply, acquisition or re-supply of goods and/or services, but ultimately for the goods or services to be offered to the Associated Controllers of CSA's members. The process will likely include the sharing of market intelligence across CSA members. Hence, the conduct and arrangements concerned risk being perceived as a cartel provision within the meaning of Division 1 of Part IV of that Act.

The goods and services to which such contracts, arrangements or understandings (including the "active member test") are goods or services of all kinds, where those such goods or services are to be offered through the business of CSA and are either:

1. consumed in CSA member businesses (or that of their Associated Controller); or
2. offered for sale through CSA member businesses.

Such contracts, arrangements or understandings could include not only terms of price, volumes and promotional conditions, but rebates and benefits earned, terms of credit, delivery, picking and packing fees, logistic charges, insurance, rights to refund or credit from spoilage, ullage and so on, without limit.

In that stated context, CSA seeks authorisation for such provisions which are negotiated, discussed or agreed by CSA with the suppliers of goods or services of all kinds, where those goods or services are to be offered through the business of CSA where either:

1. the collective representation of CSA of its members by which the provision concerned was negotiated; or
2. the terms of the provision itself;

might be or might risk being, or relate to or that have the effect of (or providing for) fixing, controlling or maintaining of the price for, or a discount, allowance, rebate, benefit or credit to be given in respect of the supply to the CSA member of such goods or services.

These provisions will be the terms by which the Associated Controllers of CSA's members:

1. can acquire such goods and services for use or sale in their businesses, where that acquisition occurs either through the agency or operations of CSA or from CSA by resale to the CSA member⁹; or

⁸ See footnote 1.

⁹ Or it's Associated Controller.

2. can become eligible for a discount, allowance, rebate, benefit or credit to be given by or on behalf of the supplier in respect of or associated with either:
 - a. the supply of goods or services to the Associated Controllers of CSA's members;
or
 - b. the placement, display or promotion of the goods or services, once the goods or services are supplied to the Associated Controllers of CSA's members.

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(b) **Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

The Application (and the provisions and conduct to which this Application is addressed) extends to goods or services of all kinds, where those goods or services are offered through the business of CSA and are either:

1. consumed in Applicant member businesses (or that of their Associated Controller); or
2. offered for sale through the Applicant member businesses.

These goods and services will be all manner of things offered through and consumed by a supermarket, for which a list is limited on by the 'degree of resolution of categories', but as a non-binding guide:

1. beverages including: tea, coffee, soda, juice, powdered drink mix, hot chocolate, water, etc.;
2. bread, bakery and pastry items;
3. breakfast & cereal;
4. canned goods & soups;
5. cleaning supplies – laundry detergent, dishwashing soap, etc.;
6. condiments, spices, sauces & baking needs;
7. cookies, snacks & candy;
8. dairy, eggs & cheese;
9. deli & signature café;
10. dry grocery items;
11. flowers;

12. freight, logistics and the like;
13. frozen foods;
14. grains, pasta & sides;
15. health & beauty, personal care & pharmacy – pharmacy items, shampoo, toothpaste;
16. international cuisine items;
17. meat & seafood;
18. miscellaneous – gift cards/wrap, stationary, batteries, etc.;
19. paper products – toilet paper, paper towels, tissues, paper plates/cups, etc.;
20. pet care;
21. pharmacy;
22. produce: fruits & vegetables; and
23. tobacco.

The Application (and the provisions and conduct to which this Application is addressed) extends the representation of CSA Members and their Associated Controller in the assessment and negotiation of terms between CSA members and those offering goods and services in the Australian grocery industry supply chain, such as in respect of:

1. insurances (of the member business);
2. electricity and other negotiable utilities;
3. packaging;
4. advertising;
5. business, administrative and display systems;
6. data collection and use;
7. electricity and other negotiable utilities;
8. financial accommodation and services;

9. logistics and freight;
10. insurances;
11. ranging and merchandise services;
12. retail promotion, display and placement of goods or services; and
13. wholesale supply;

where such supplies relate to, are a cost to or are a benefit the businesses of CSA members.

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4. THE TERM FOR WHICH AUTHORISATION IS SOUGHT:

Five years. The reason for this period is that the forces which have already shaped the Retail Grocery supply chain and those new forces from foreign competition will continue to exist throughout this period. There are no short term measures that will reverse the imbalances that prevail and, without balancing measures, those forces will continue to grow throughout the period.

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5. PARTIES TO THE PROPOSED ARRANGEMENT

Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The parties to the proposed arrangements will include:

1. CSA:
2. Suppliers of goods or services of all kinds, where those goods or services are:
 - a. consumed in the Applicant member businesses (or that of their Associated Controller); or
 - b. offered for sale through Applicant member businesses; or
 - c. relate to, are a cost to, or benefit the businesses of CSA members.

where the resulting agreed provisions become standing terms of offer or agreed terms of supply to CSA members published by CSA to its members and their Associated Controllers, though CSA's system.

See Annexure 3: Suppliers and Personnel Affected for a list of the persons which CSA assesses as likely to be affected by the authorisation, in addition to those persons which CSA has assessed as persons with whom CSA is likely to have relevant dealings.

See Annexure 2 Part 1: Membership of CSA for a list of the current membership of CSA and for CSA itself.

Each Person listed in the current membership of CSA is engaged in the retail operation of an Australian Independent Grocery Store, offering products for retail sale across the range of goods ordinarily sold in supermarkets in Australia. A typical set of categories of goods sold can be found within paragraph 3 above.

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6. RATIONAL FOR THE APPLICATION AND PROPOSED CONDUCT AND PUBLIC BENEFIT

The Basis for the Application is set out in Annexure 1, Rationale and Public Benefit.

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7. MARKET DEFINITION

See Annexure 1 Part 2.

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8. PUBLIC DETRIMENTS

See Annexure 1 Part 1, Potential Public Detriment.

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9. FURTHER INFORMATION

10. LIST OF ANNEXURES

(a) Annexure 1:

- (i) Part 1- Rationale and Public Benefit
- (ii) Part 2 - Market Information and Concentration
- (iii) Part 3 - Background Information

(b) Annexure 2:

- (i) Annexure 2 Part 1: Membership of CSA
- (ii) Annexure 2 Part 2: Constituent Documents

(c) Annexure 3: Suppliers and Personnel Affected

(d) Annexure 4: Market Participants

(e) Annexure 5: Interim Application

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Solicitor who is signing on behalf of the applicant

Office held

Mark Love

Name of authorised person

This 5th day of November 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

1 Rationale and Public Benefit

1.1 Core benefits from the Proposed Conduct

The supply chain for retail supermarket offering has fundamentally changed, requiring intelligence and sophistication in dealing.

In order to compete, Independent Retail Supermarket Stores must fund their own independent research and establish a capacity for negotiation, where the sole intent remains the benefit to the Retailer. Specific to this Application, Independent Retailers must be able to take consolidated positions in their supply chain negotiations, to match their retail competitors who already hold those advantaged positions, each other major competitor¹ with integrated “supply and retail operations²”.

The primary public good in granting this Application lies in avoiding the counterfactual: if nothing is done to address the supply and operational costs of Independent Retail Supermarket Stores, then that sector is at serious risk of failure: What is at risk is:

- a. the diversity of retail offering delivered by the current Independent Retail Supermarket Store sector in a form that offers competition to the dominant retailers and new foreign entrants to the market; and
- b. the diversity of wholesale offering, as the Independent Retail Supermarket Store sector continues to diminish as a market to which suppliers can supply.

The secondary public good is the opening of an additional pathway for suppliers to place their products with a broad retail offering, namely what we hope should become a more sustainable Independent Retail Supermarket Store sector. Granting this Application opens communication through Co-operative Supermarkets Australia Limited (“CSA”) for those suppliers, sharing the “direct to store” suppliers amongst retailers, allowing those suppliers with whom CSA resolves terms to efficiently access a new and diversified customer base.

The third facet of public good derives from the natural consequence of sustaining and indeed growing the Independent Retail Supermarket Sector. Where the Independent Retail Supermarket Store sector continues to be viable then the existing independent wholesale grocery sector continues to be viable. As the Independent Retail Supermarket Sector becomes vibrant, then the independent wholesale grocery sector is enhanced.

1.2 A Sector in Decline

CSA is formed out of the concern which a core group of the larger Independent Supermarket store operators³ have for the viability of their businesses; they say (through their work with Stone Advisory Pty Limited, a representative body for the IGA Retailers, discussed below) that there is urgent action needed to address the long term decline of the Independent Retail Supermarket Store sector. The critical issue is the rising costs, relative to sales revenue, over a period of some twelve years.

To demonstrate sensitivity of profit to sales volume, if you take a hypothetical, sample store with sales of \$230,000 per week (approx. \$12m annual), and assume a sales decline 1% per annum, where gross margins remain stable and the cost of doing business rises at a rate of 2.7% per annum, then over 4 years, you face a picture as follows:

¹ Coles, Woolworths, Aldi, Costco and Kaufland

² In this respect we include Coles, Woolworths, Aldi and Kaufland.

³ The “Promoters” described below.

'000	Yr 1	Yr 2	Yr 3	Yr 4	% Change
Sales	12,000	11,880	11,761	11,644	-3%
Gross profit	2,760	2,732	2,705	2,678	-3%
Costs	2,520	2,588	2,658,	2,730	8.3%
EBIT	240	144	47	(52)	-121.5%

On the assumptions, this demonstrates that profit falls below a reasonable living income very quickly, and does so at some point between years two and three. Such a return must be considered in the face of the considerable capital deployed in inventory and operating infrastructure⁴, which even a modest supermarket requires.

The sensitivity of gross profit to “sales” small negative movement, starting from a reasonable and sustainable profit, falls to a structural loss after three years on the rising cost base. In this, the assumed costs growth, which must account for all wages, rent, power, insurance and freight, is merely 2.7%, which we say is optimistic. Nevertheless, the important consideration is the relative movement of sales to costs. To sustain absolute profit, the sales need to grow at a rate which parallels the rise in costs, but the clear evidence shows an industry sector in decline.

The next two charts show that whilst there is a predicted climb in retail spending, suggesting perhaps as much as 4% growth for food retail growth⁵, the decline in the Independent Grocery Store sector's share of those retail sales in overall sales for Independent Retail Supermarket Stores is unlikely to match the rise in costs. This suggests to CSA that our hypothetical example above is realistic, more so as the rate of inflation and a new round of price competition arising from foreign entrants to the market, and changing consumer habits erodes real profit. When a more realistic sales growth figures are used, you should be able to assess for yourself the urgency of the issue.

Retail spending outlook (nominal terms)

Year	FY15	FY16	FY17	FY18	FY19e	FY20e	FY21e
Total retail growth	5.0%	4.4%	2.9%	2.5%	3.1%	3.8%	3.5%
Food retail growth	4.9%	3.2%	3.4%	3.1%	4.0%	4.2%	4.0%
Non-food retail growth	5.2%	5.7%	2.3%	1.8%	2.0%	3.3%	2.9%
Non-retail expenditure growth	3.3%	4.0%	3.7%	5.0%	4.4%	4.3%	4.3%

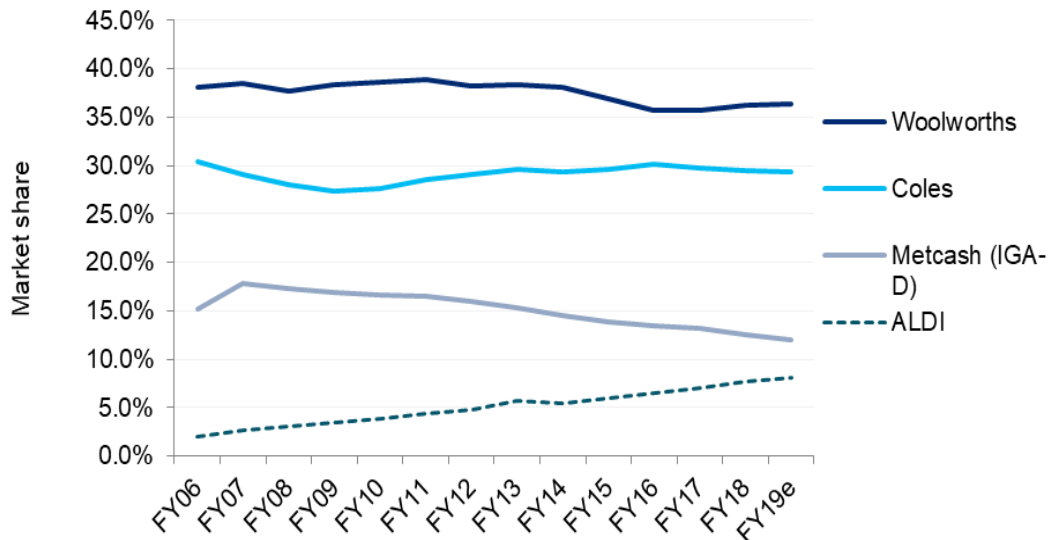
Source: ABS, Citi Research estimates

Whilst the table above shows food retail growth growing in the order of 4.0%, the Independent “share” of that market has been in a steady state of decline for the last decade and more⁶. The decline is unambiguous.

⁴ Consider the fitout, inventory of stock, refrigeration, air conditioning, loading dock equipment, shelving, storage and waste.

⁵ We believe, but do not know, that this includes restaurant and fast food expenditure, perhaps convenience delivery such as Marley Spoon etc.

⁶ Source: ABS, Company reports, Citi Research



It is the Applicant's submission that the declining "Independent Retail Supermarket Store" share is worse than the graph above shows. Yet even then, the Citi Research material shows the IGA-D market share nearing 18% in around 2007, falling to something in the order of 12% in 2019. But in this is understood that the Metcash IGA-D line represents all of the Metcash IGA-D sales, rather than sales solely to customers who are necessarily Independent Retail Supermarket Stores.

The more narrowly industry focussed IBISWorld "Supermarkets and grocery stores in Australia" Report of October 2018, whilst generally agreeing with the Citi Research figures for Coles and Woolworths market share at more than 29% and 36%, respectively, places the aggregated revenues of IGA, Supa IGA, IGA X-press, IGA Fresh and Foodland at merely 7.3% of market share⁷; it should be noted that "Foodworks⁸" is specifically omitted from that share.

Whatever analysis is preferred, what is clear to the promoters of CSA⁹ and both Citi Research and IBIS World, there has been a long term decline in the Independents' market share in the Retail Grocery Sector. Noting that Metcash is the dominant wholesale supplier to this sector, at least in Eastern Australia, the IBIS World Report puts it like this:

Metcash's supermarket brands have lost market share over the past five years due to intensifying industry competition¹⁰.

And in its Executive Summary:

The rise of ALDI has forced the two established industry giants, Woolworths and Coles, to cut prices and expand their private-label product ranges in response. Smaller supermarket chains, such as FoodWorks, have struggled to compete in an increasingly price-intense industry....

... Industry competition is anticipated to remain fierce over the next five years.

⁷ IBISWorld "Supermarkets and grocery stores in Australia" October 2018, p. 26, down from 7.4% in their February 2018 Report (see page 23 of that report). One explanation of the difference in assessed market share could be from the apparent separate treatment of "Foodworks" as part of Metcash IGAD in the Citi Research, where IBIS World appears to treat them separately.

⁸ Australian United Retailers Pty Ltd, an independent an independent retail supermarket group, whose website states it has over 400 supermarkets, food and convenience stores spanning seven states and territories nationally with over 370 of these operating under the FoodWorks brand.

⁹ The founding directors, as identified in Founding Directors

¹⁰ IBISWorld "Supermarkets and grocery stores in Australia", p. 26

Importantly, the IBIS World Report does not place revenue growth for this sector at anything like 4%, as the Citi Research suggests. Rather, the IBIS World Report predicts: *“industry revenue is forecast to rise at an annualised 2.0% over the five years through 2023-24, to \$114.4 billion”* with that rise far more in keeping with the performance over the 5 years through to 2018 and 2019, recorded at 2.1% per annum. The Applicant is not aware of forces that would see a 2% jump in revenues over past years’ trends. The relative 1% decline in sales to costs in our hypothetical example becomes more than just a notional risk.

The IBIS World Report, in keeping with the belief of the CSA, observes the following effect from continuing price competition:

Grocery price deflation is forecast to have the most significant effect on smaller operators, due to their limited buying power. This is likely to contribute to more independent supermarkets joining chains such as IGA to capitalise on brand-owner Metcash’s buying power.

This is an aspect of the pressure to which CSA is responding and one which avoids further and undesirable consolidation of the supply chain. It should be noted that the awarded “IGA Stores” in all recent years source not less than 40% of their offering through “direct to store” goods, hence the salvation of Metcash buying power has limited influence in that sphere, without increasing the power of that organisation within the Independent’s sector.

Whichever report you prefer to adopt, the Promoters of CSA believe, through their personal experience, that the Independent Retail Supermarket Store sector is in its 12th year of decline (tracking the Metcash IGA-D Citi Research line above) and that decline is at least expected to continue or worsen.

The key trends that are dictating revenue and market share in the food and grocery retail sector market include:

- The strategies on price as identified in the IBIS World report adopted by the dominant and new entrant players;
- The increased presence of mid-sized international retailers such as Costco and Amazon;
- The imminent arrival of international discount food and grocery retailers such as Kaufland and Amazon Fresh;
- The increased consumer demand for convenience and quality products encouraging new entrants and modes of grocery consumption into the market, including home delivered meals and meal preparation kit offerings such as Uber Eats, Deliveroo, Hello Fresh and Marley Spoon; and
- Increased price competition between Coles and Woolworths to substantially reduce prices and promote everyday low prices (such as Coles’ ‘Down Down’ or Woolworths’ ‘Prices Dropped’) outside “own brand” offering, again largely in response to the continued growth of Aldi and the threat of new market entrants.

All of these place significant pressure on Independent Retail Supermarket Stores and will continue to do so.

What should also be obvious is that the continuing shrinkage of the Independent Wholesaler supplied Independent Retail Supermarket Store sector means that Metcash, as the dominant wholesale source of supplies to the Independent Grocery sector in eastern Australia, is equally under pressure; it must seek more from less, or else encroach on alternative aspects of the supply chain to its customers, as it endeavours to maintain its gross profit and dividend offering. Again this reveals a trite consequence of pressure on “price to retailer”, as the relative costs of goods supplied to the Independent Retail Supermarket Store sector must rise, when compared to the cost of goods supplied to the dominant national and international retailers.

What CSA seeks to do is to stop and in fact reverse the trend, supporting both the Independent Retail Supermarket Sector and the Independent Wholesale sector, both of which are critical to sustain a diverse retail supermarket offering.

1.3 The CSA Niche

To understand the existential threat to the Independent Retail Supermarket Store sector, you have to understand the high degree of concentration in the Australian Grocery supply chain. The ACCC has made its own observations on this and repeating that is not needed; it is known.

Whilst products to be offered for retail sale by Independent Retail Supermarket Stores are sourced from a broad range of suppliers, whether wholesalers, buying agents or direct supply from producers, manufacturers or importers, the majority of stock by value is held by a typical supermarket is sourced through a single warehouse supplier, typically “brand aligned”. Yet that base supply does not typically differentiate the Independent Retail Supermarket Store offering.

Goods offered through Independent Retail Supermarket Stores broadly fall into the following “Categories”:

1. “Direct/directs” purchases, typically outside the core consumer product lines. These are lines of supply developed directly by a Retailer, independently of their primary wholesaler(s), delivered “direct” to the store and paid for outside the primary wholesaler system. These tend to characterise a given store’s consumer appeal; these create a point of distinction for the store. Included in this aspect are categories of health and lifestyle products, niche market items, fresh produce, bakery goods, meats, delicatessen items and the like. Even for award winning IGA stores, these (with the “direct delivery-charge through” stock described below might be as much as 60% of stock carried;
2. “Direct delivery, charge through” goods, where the product lines are typically developed by the Retailer, yet they become invoiced through the retailer’s primary warehouse supplier, notwithstanding that the goods are delivered directly from the supplier. The warehouse takes a margin on the goods ordered and delivered; and
3. Warehouse sourced stock, ordered through the warehouse, invoiced and delivered by a warehouse. This stock typically represents the majority of stock carried by a retail outlet.

Stone Advisory has surveyed IGA membership and has determined that:

1. The “direct/direct” and the “charge through” relationships (Categories 1 and 2 above) were developed by the Retailers for their benefit;
2. Individual retailers tend to keep their “direct/direct” sources to themselves, and hence do not realise the opportunities which may be available to improve their own circumstances or those of the supplier through collective action.

In large part, this “direct supply” area is a key aspect of the niche afforded by the grant of Authorisation which CSA seeks from ACCC. These are suppliers who occupy space outside the “genuine wholesale supply” chain in which the Independent wholesalers sit. The model proposed by CSA stands to foster and develop a more diverse pathway for these suppliers to a wider range of customers; namely the network of CSA membership.

It is the Applicant’s submission that:

1. the threat to the Independent Retail Supermarket Store Sector comes from an inability to secure goods and services at prices which allow it to compete effectively with the dominant retail competitors; and
2. the capacity to share information across the membership of CSA and to promote a collective position in negotiation with suppliers assist it sustain margins that have eroded over the last dozen years and help an Industry help itself to compete on a more level plain.

1.4 Breadth of Opportunity

Base costs of retail operation are driven by the same influences as any retail store, such as rent, electricity, insurances, labour and freight, not just “cost of goods for resale”.

Stone Advisory’s research amongst IGA Retailers category table above shows reveals to it:

- The average gross margin for warehouse lines is 21 per cent.
- The average gross margin for direct/direct lines is 34 per cent.

In practical terms, absolute gross profit for the typical Independent Grocery Store derives less from its “warehouse supplied” goods and more from those goods sourced in the “direct” and “direct charge through” categories.

It is trite that the Australian grocery retail industry is dominated by Coles and Woolworths. These businesses integrate their wholesale supply side with their retail offering. It is also trite that higher volume of purchases, consistency in ordering, certainty in product placement translates directly into negotiation power and that in turn translates to beneficial “cost and conditions of supply”. But there are other costs savings that flow through consolidation, such as delivering a system designed for the retailer that will be designed to give the retailer¹¹:

- More transparency to price changes on “charge through” purchases; and
- More transparency on the actual “cost” of goods, which can become obscured by “team score” or post purchase rebates through the current wholesale system;

And hence simpler more transparent “cost” gives the retailer better information to determine its pricing strategy and more importantly, with that information available at the time the product is displayed on the shelf.

That scale advantage from consolidation held by the Independent’s competitors applies supply cost pressure on all manner of inputs, including:

- labour;
- base costs and utilities;
- cost of goods; and
- freight.

It is that integration amongst the members through membership of CSA to which the Authorisation in this Application is addressed.

CSA submits that if the counterfactual prevails, then as the Independent Retail Supermarket Store sector shrinks, profit of the major chains can then be driven through reducing lines of products offered and a narrowing of consumer choice, challenged only by the new overseas entrants to the Australian market. So much is observed through the IBIS World Report with the focus implied by the dominant retailers in their push towards “own brand” offering to compete with Aldi; the dominant players must drive their cost of inventory down to find new savings.

CSA’s operational niche is to address those supplies that are outside genuine wholesale supply in the brackets of “direct to store¹²” suppliers, being goods and services not acquired for resale from a wholesaler. CSA does not intend to operate a warehouse.

¹¹ This will form part of the deliberate design of the CSA System.

¹² Direct/directs and charge through.

CSA, if called on, can produce an array of examples that show considerable supply price differential of the same or similar goods, drawn from across CSA members and IGA participants collated by Stone Advisory. The examples, not surprisingly, show that “larger and more predictable volumes dictate price and condition advantages”.

The current multilateral engagement between direct suppliers with the Independent Retail Supermarket Stores has the opposite consequence to the integrated approach, with lower volume of purchases, risk to the supplier of consistency in ordering, risk to the supplier certainty in product placement. In turn that translates directly into poor negotiation power for the Independent Retailer and less beneficial “cost and conditions of supply”. Thus, this exacerbates the cost per item comparison for delivery to the Independents, when compared to dominant national and international retailers.

Without the Authorisation being sought, Independent Retail Supermarket Stores have very limited power to negotiate supply prices and share information. To survive, this sector needs that power and needs to share that information.

We repeat, price competition from dominant national and international retailers drives the steady decline of Australia’s Independent Retail Supermarket Stores and hence by extension independent wholesalers. Those independent wholesalers have faced a steady decline in their turnover over the past dozen years.¹³ That places the Retailer in a “squeeze” between wholesalers attempting to maintain gross profit from falling volumes and falling margins, as retail customers follow price to the doors of Coles, Woolworths, Aldi, Costco and soon Kaufland.

With the Authorisation being sought, Independent Retail Supermarket Stores have capacity to address the cost of goods and services to them by:

- using the combined purchase capacity through centralised ordering, emulating volume of purchases, reducing risk to the supplier of inconsistency in order volumes;
- having a centralised point for the supplier to address compliance with promotional arrangements, reducing risk to the supplier of uncertainty in product placement;
- Reducing time and resources devoted to negotiation on price terms and conditions;
- Having control of and transparency of price fluctuations, with the ability to directly alert the CSA members to changes in price and conditions, if not to avoid unilateral price and condition shifts; and
- Sharing skills and experience.

Further, the centralised invoicing systems are to be designed (by the CSA Retailers) to lower internal operating costs of both the Retailer and the Supplier, through focussing multilateral ordering, giving rise to:

- simplicity in assessing availability and range of products over many suppliers, delivering substantial savings in management time;
- simplicity in order confirmation over many suppliers;
- greater certainty in supply volumes for the suppliers and more certainty in inventory; and
- lower transaction costs for both sides of the transaction.

This is one attraction of the “charge through” model for suppliers.

¹³ Report, page 11.

CSA is an attempt to level aspects of the “supply to store” playing field; to address the structural deficiencies that exist from the diversity and independence of the Independent Retail Supermarket Stores.

The co-operative structure lends to this overarching purpose of CSA; the focus of CSA is delivering profit to its Members through cheaper access to goods and services, rather than delivering financial profit in the traditional company/shareholder structure.

Authorisation is only sort for the collective behaviour of the Members of CSA through the operations of CSA.

1.5 Potential Public Detriment

CSA recognises that Independent Retailer Grocery Store owners “technically compete with each other”, both in their retail offering, but more relevantly for “supply terms” and particularly so in the “direct to store” space.

Fundamental to the “public benefit case” is the ACCC’s acceptance that larger groups and greater volumes get better terms than separately negotiated deals forged by smaller and single store operators. Yet even here groups of the size of Ritchies¹⁴ having 77 stores, who hold by themselves power to derive favourable conditions, still regard themselves essentially as “price takers” in the retail grocery store supply chain and stand to benefit from the coalition forged by CSA membership.

CSA submits that the reduction in competition between CSA members for supply terms will not have a material adverse impact on the supply chain. It is true that CSA’s role can directly affect that part of a wholesaler business where they occupy the “charge through” space in that chain for a particular line.¹⁵, yet CSA submits that the Authorisation brings back into balance aspects on which the ACCC has made observations as to concentration in the supply side sector, as highlighted in Part 2 of this Annexure.

The Authorisation sought would permit the sharing of information amongst CSA members concerning range, costs, terms and conditions achieved across the CSA membership, predominantly by the larger CSA members for the benefit of all members. Those larger CSA Members, by their very membership of CSA, perceive the benefit of the additional negotiating power through CSA’s representation; they join CSA in the belief that the additional benefits from sharing of costs, information and negotiating power will improve their terms further, and allow exploration of savings through logistics, utilities and diversity of supply lines.

Whilst “competition between retailers for supply terms” is reduced (yet only as between CSA Members) through CSA’s consolidation, it does so to the extent that CSA might cease to operate as separate buyers and negotiators.

- That is not harming any aspect that is genuinely “pro-consumer”.
- Authorisation does more than offer that retail store owner access to a more diverse range of suppliers. Consolidation importantly offers existing suppliers to a given CSA Member:
 - the potential for operational savings described above (integrated logistics with other suppliers and administrative systems savings); and
 - a relatively large range of new customers.

That CSA offers an enhancement to the supply chain is demonstrated simply:

¹⁴ A group of approximately 80 stores in three States, a member of CSA, who authorises their association with this Application.

¹⁵ It is assumed that if a supplier business benefitted from such a model, then it would already be using that model. Yet it must be conceded that a new player in that field may encourage more direct to retailer supply, yet CSA submits that such a matter is not a strong basis for rejecting this application, if it is a basis at all.

1. Suppliers whose business is best done by multilateral negotiations will continue to operate their businesses in that way. Nothing in this precludes the supplier from seeking any alternate path to the retailer's shelves or remaining with their existing way of doing business, if that is their preferred path; and
2. A CSA Member retailer who believes that their supply conditions will be enhanced by working outside CSA will continue to acquire their goods on their own negotiated terms.

The critical difference here is that a CSA Member who chooses to operate outside the CSA systems will be expected to disclose its "better terms" to CSA, to assist CSA understand those things which are needed in order to improve the terms to be made generally available to all CSA Members; through that information, in the appropriate case CSA would become entitled (with the grant of Authorisation) to use the potential volume offered through CSA membership and the greater certainty of supply, to encourage that supplier to make its terms available through the CSA system for all Members; naturally, such matters are limited by the character of the goods, availability of supply volumes and logistics.

So far as goods supplied for retail sale, CSA seeks to compete in that space of the Category 1 (direct/directs) and Category 2 (direct/charge through), as well as to negotiate for CSA Members with suppliers who contribute to overhead costs. CSA does not intend to operate in the space of Category 3 ("genuine wholesale supply").

Those wholesalers in the Category 2 space, who presently hold the benefit of "charge through" arrangements, will face competition from CSA for the margins imposed for booking orders for such "direct from supplier" deliveries. Yet these are the wholesalers who already dominate the supply of goods to the Independent Retail Supermarket Sector. The counterfactual to granting Authorisation allows those already dominant wholesalers to:

1. Increase their already powerful supply influence over the Retailers; and
2. Move to extract the savings we describe for the suppliers for themselves, charging a margin to the retailer.

But ultimately, those wholesalers to the Independent Retail Supermarket Store sector must benefit in the longer term, if ultimately CSA proves successful in reversing the trend that has resulted in declining sales share. If granted Authorisation CSA says the Independent Retail Supermarket Store sector will sustain (or at least arrest their decline) not only itself, but also the existing independent wholesalers, who CSA submits ultimately face the same fate that CSA now seeks to avoid.

Whilst on one level, the ACCC might apprehend that the integrated supply chain of the dominant pair of retailers in this space, which places a lower price for their particular "basket" of core products, is "pro-competitive" and "pro-consumer", we can see from the IBIS World observations that this will ultimately lead to a narrowing of choice for products within the basket; we do not have to write more on that aspect. Simply, if the two dominant chains were left to compete with Aldi and Costco, whose savings are based on lower inventory costs flowing from a narrower range of goods offered, price competition will lead to reductions in lines offered. In short, competition from diversity will be eliminated.

And so it follows that if the costs savings for the dominant retailers were to be delivered through a narrowing of the diversity of products offered to consumers, then suppliers will find less and less avenues to find their way to consumers' homes. Consequently, suppliers who have the grace of the dominant retailers have little or no incentive to treat with the reduced range of surviving alternate retailers, facing a door to door, multiple negotiation approach.

Whilst supply side competition between CSA members is reduced, preserving that "competition" ends with the result of the current and unambiguous trend: it is a "lose / lose / lose / lose" scenario for independently owned retail grocers, independent wholesalers, suppliers seeking a new pathway and for consumers through the realisation of an inherently unfavourable cost per item comparison with the dominant market players. The counterfactual will result in a reduction of diversity in the supply chain and finally a reduction in diversity of retail offering.

If nothing is done, the Independent Retail Supermarket Store owner will face increased costs as their wholesaler struggles to make profit from decreasing volume, occupies more and more of the direct space through “charge through” and leaving the store owner with reduced consumer appeal. That must negatively impact the retailers’ capacity to maintain presentation of their store, compounding the trend.

CSA, as discussed below, expects to enter its first year trading with at least 250 members’ stores, perhaps reaching 300. As listed in Annexure 2 Part 1, over 120 of those stores are confirmed as Members, with more than 100 more having signed documents pledging commitment, noting that this Application was lodged within days of that incorporation being granted and that CSA is now processing applications that will see its membership shortly at least 225 stores, before widespread canvassing of membership interest has occurred.

Of the current (Promoter) members (of which there are 122 stores), the stores represent larger store owners from within the IGA Group, being perhaps 10% of the IGA Network by number of stores, representing more like 15% of Metcash’s IGA sale volumes for NSW, Vic and Qld. CSA has not formally commenced a membership drive, but believes that it will grow within 5 years to have in the order of 20% (300 stores) of the Independent Retail Supermarket Store sector in Eastern Australia without engaging the members of brand groups such as “Foodworks”.

CSA submits that the reduction in competition between Retailers for supply and the introduction of competition in the “charge through space” represents a very small cost, if any cost at all when considered by itself, and a negligible consequence in the face of the risk the Industry now faces, which will eliminate such competition in a far more adverse way.

1.6 The Counterfactual Summary

The most likely counterfactual scenario includes the following:

- As the Independent sector continues to shrink, following the steady 12 year decline, the Independent Supermarket Retailer’s fortunes become joined to the fortunes of its wholesaler who faces the same shrinking market share. CSA Submits that it is axiomatic that declining volumes for the wholesaler creates increased pressure on the wholesalers’ capacity to sustain profits. This has, CSA submits three results for the Retailer:
 - If the wholesaler is selling “less” (as the dominant retailers take market share) then on the core range of wholesaler supplied goods, the wholesaler’s capacity to reduce prices to its customers (the retailers) falls, the Retailers become less and less able to price match on those core consumer lines;
 - the wholesale diversifies into servicing the direct to retailer supply chain, further concentrating the supply chain.
 - The wholesale diversities into integrated retail trading, directly competing with the Retailer, namely, the wholesaler’s own customer base.
- Each Independent Supermarket Retailer is left to negotiate with suppliers independently. Independent Supermarket Retailers cannot match volume or purchasing power of either the dominant and integrated retailers, or the dominant wholesalers, nor will they have the resources and bargaining power of these supply side competitors (in particular, major supermarket chains).
- Suppliers who benefit from consolidated ordering, logistics and invoicing will be driven to the doors of the existing dominant Independent wholesalers, increasing consolidation and power for the wholesalers in that space. Yet that can only ever be a temporary gain for the wholesalers, as the available savings to the Retailer will not be passed on, at least by the sum of the margin charged by the wholesaler, who faces less and less competition;

Faced with competitive constraints in regard to their competitors (in particular, major supermarket chains) the position of the Independent Retail Supermarket Stores will continue to erode. Continuing higher transaction costs for goods and services and relative costs of goods and services, which must be passed on the customers through higher prices for the goods provided by the Independent Retail Supermarket Stores if margins are to be maintained will see this sector fail.

1.7 Conclusion on Public benefit

This application is about Industry saving itself; it is about the owners of Independent Retail Supermarket Grocery stores coming together to sustain a privately owned Australian industry which is under threat.

CSA also brings together some of the best independent supermarket retailers in the country and the Authorisation permits the sharing of “best practice” between them; that aspect should not be discounted.

Stone Advisory, with the Promoters of CSA, has been on a fact finding trip to Europe and has been hosted by some of the world’s leading retail co-operatives who have generously provided their time and input to assist CSA formulate its plans. Central to the success of the European model is the educative benefits of “shared work” through the co-operative system, which the Rules of CSA provide for.

The goals for CSA are to arrest the loss of market share and in the short term deliver savings that at least match the ever rising costs; as the hypothetical example above highlights, the margins are small and small difference can have substantial impacts.

As described above, the reduction of costs in the supply chain will mean that consumers may benefit from:

- An increased chance of there being a continuing and viable Australian Independent Retail Supermarket Store sector, leading to consumer choice in location and presentation of stores, in turn offering retail diversity;
- An increased chance of diversity in the suppliers’ market as an alternative pathway for suppliers to consumers is opened up;
- An increased chance of greater diversity in retail lines offered generally, as independent stores offer alternative lines, not only to each other (to diversify and compete between themselves, exploring niche opportunities from new supply lines), but more importantly diversity to the two dominant retailers and the international chains and dominant wholesale sources.

But overwhelmingly, this is about the survival of Australian Independent Retail Supermarket and the preservation of the competition and diversity it offers. The Applicant submits that the proposed conduct is likely to result in minimal (if any) public detriment for the following reasons:

- participation, or to become a Member of CSA, is entirely voluntary for all parties and no collective boycott is proposed;
- increased access for suppliers to customers;
- appropriate governance measures and information sharing protocols of CSA; and
- the longer term reversal of trend, protecting both the Independent Retail Supermarket Sector, but also the independent wholesale sector.

Membership of CSA and engaging in the proposed conduct is entirely voluntary. Any member Independent Retail Supermarket Store remains free to engage with third party suppliers directly to negotiate terms and conditions relating to supply without CSA. Likewise, suppliers are not bound to negotiate with CSA.

CSA submits that Independent Retail Supermarket Stores do not shy from competition, but there is a recognition that the intelligence and sophistication in dealing in the supply chain for retail offering has fundamentally changed.

This is the Independent sector’s attempt to address its structural weakness. CSA is intent on driving the gains to be made directly back to its members, who are Independent Retail Supermarket Stores.

The outcome is to deliver the benefits through cheaper access to goods and services, focussed on the “direct to retailer” supply chain. Sustaining the Independent Retail Supermarket sustains the (highly concentrated, but vitally important) wholesale supply network and challenges that part of the supply chain to sustain and improve its efficiencies in the “genuine wholesale” space, as well as its desires to operate in that the “direct to retailer” supply chain.

Undoubtedly, this provides a significant benefit for the consumer in the form of greater retail choice in the context of a more fairly distributed cost per item comparison. The countervailing limit here is that CSA does not seek authorisation for those things that are actually anticompetitive.

2 Market Information and Concentration

2.1 Products and Services

The market in which the CSA members operate is the Retail Supermarket industry, but the relevant conduct relates to the “supply chain” to the retailers in that industry.

In the 2017-2018 financial year, the food and grocery retail market sector recorded a total revenue of approximately \$102.3 billion.¹⁶ Relevantly, the four largest businesses, Woolworths, Coles, Aldi and Metcash Trading Limited (“**MTL**” or “**Metcash**”) make up over 80 per cent of industry revenue.¹⁷

The market share for the financial year ended 2018 was as follows:¹⁸

- Woolworths – 37.2%;
- Coles – 30.3%;
- Metcash – 7.4%;
- Aldi – 9.2%; and
- Other (including Costco, Foodworks and other independents) – 15.8%.

In 1992 there were nine, predominantly state-based, wholesalers operating in Australia. Currently there remains one national wholesaler, MTL. Through its subsidiaries, MTL is the dominant wholesale supplier of grocery goods to over 1600 Independent Retail Supermarket Stores and convenience stores in Australia (the mechanics of the Independent Retail Supermarket Stores supply chain is and will remain dependent on MTL).

The ACCC has previously commented on the position of MTL as the dominant wholesale supplier in Australia and these issues noted above. In its report, the ACCC stated:¹⁹

The ACCC considers that Metcash is extracting some ‘monopoly’ profits because of the lack of alternate wholesaling arrangements available to most independent retailers.

There is some evidence that Metcash is acting to protect its position as the only national grocery wholesaler supplying independent retailers. Metcash is implementing strategies that appear to unnecessarily impede Independent Retail Grocery Stores from dealing directly with suppliers or leaving Metcash to set up their own wholesaling operations.

The ACCC also noted that the lack of wholesalers enables MTL to act without a strong direct competitive restraint. The report noted that as the only national wholesaler, MTL can take advantage of significant economies of scale. The ACCC concluded that:²⁰

On the balance, the ACCC considers that the ‘monopoly’ profit that Metcash achieves by being the only significant wholesaler to the independent sector outweighs any economies of scale benefits which Metcash might be passing on to the independent supermarkets.

The current membership of CSA is drawn from the retailers supplied by MTL; the future membership is not restricted to that pool. It is the strongly held view of CSA that a strong independent supermarket sector can only benefit MTL, yet the business focus of CSA:

1. intends to emulate the scale of the dominant market players, lending balance to the Independent’s capacity to negotiate terms; and

¹⁶ Ibid, p. 23.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ ACCC Report, page 131.

²⁰ ACCC Report, page 128.

2. compete with wholesalers who are moving from “genuine wholesale supply” into the “charge through warehouse, direct supply to retailer” niche.

But that facet is but a small aspect of the issues facing the Independents. The Independents need to coalesce to address factors and influences from new market entrants. In 2018 an independent review into the Food and Grocery Industry Code of Conduct was commissioned by the Federal Government.²¹ In the final report released in September 2018, it was concluded that:

It is expected that competition will remain strong, with the major supermarkets fighting to maintain market share in the face of new market entrants. These businesses have the potential to significantly disrupt the market and will force the existing Australian supply, wholesaler and retail businesses to rethink how they compete to satisfy consumers going forward.

Increased competition in grocery retailing and wholesaling may benefit suppliers by opening new channels to get their products to the market. However, it is also likely that major retailers and wholesalers will respond to new competitors by placing greater pressure on their suppliers in order to defend market share.

As the industry heads towards a future of heightened competition and potential for greater commercial tension between trading parties, it is important to maintain an effective Grocery Code to support healthy commercial relationships and guard against abuses of bargaining power.

To date, we understand that ALDI, Coles and Woolworths have signed up to the Code.

It is claimed that any costs associated with additional red tape imposed on the wholesaler may be passed on to independent retailers, further reducing their ability to compete with the major retailers.²² Hence we believe that the competitive pressures on the Independents and the market within which they operate are well known to the ACCC, the suppliers in the relevant supply chain and the wholesalers concerned.

This Application is in direct response to the very forces at work that CSA assesses pose a direct threat to the sustainability of the Independent Retail Supermarket Store sector and hence the wholesalers who support it and the consumer diversity it offers.

The Authorisation sought is not about undermining the genuine wholesale supply structure of any participant in the Supermarket supply chain. Indeed, the Applicant’s members will continue to depend on a viable wholesale supply chain. Yet what CSA aims to achieve is balance in the bargaining position both between member Independent Retail Supermarket Stores and suppliers of all kinds, with its initial focus on “direct to retailer suppliers”, utilities and services common across the operational needs of Independent Retail Supermarket Stores.

More importantly the Authorisation sought about the exploration and establishment of ways by which the independent supermarket owners can derive some strength in negotiation that approaches the advantages of their larger, integrated competitors, to sustain the Independent Supermarket retail subsector and the diversity, local engagement and deployment of earnings which diversity of ownership offers.

Annexure 3 are the persons identified as the likely suppliers with whom CSA intends to bargain and also lists known competitors of those suppliers, also with whom bargains may be negotiated.

Those kinds of goods and services which CSA intends to focus on are identified in Annexure 4. The suppliers identified are corporations typically with substantial capitalisation, who are unlikely to suffer

²¹ See report, <https://static.treasury.gov.au/uploads/sites/1/2018/10/Independent-review-of-the-Food-and-Grocery-Code-of-Conduct-Final-Report.pdf>.

²² Ibid, p. 20.

from the grant of authority. Yet many smaller suppliers will be introduced to new retailers, through the sharing of member information, opening up diversity in the supply chain and retail offering.

CSA members as separate operators are unambiguously “price takers” and even their very largest members fall to that description. Information sharing of supplier price, terms and conditions by CSA members will only relate to the proposed conduct and the normal commercial terms of confidentiality will apply. Critical information flow from members will be focused through CSA. This allows CSA to extract the value from the information imparted and negotiate with relevant third party suppliers, to extract savings and efficiencies afforded through the proposed “collective practices”.

It is anticipated that products and services will be affected nationally. It is expected that membership of CSA will initially be focussed on the main metropolitan and larger rural population centres of South East Australia, which the Applicant regards as extending from Queensland, NSW, to Victoria and Tasmania.

2.2 Relevant Markets

CSA proposes to occupy a “middleman role” in the delivery of options and opportunities for Independent Retail Supermarket Stores, specifically in respect of their engagements with:

- base costs²³;
- cost of goods; and
- freight.

The bullet points above, plus labour, broadly define the cost centres for the retailer seller of grocery products, which all contribute to the ability of a retailer to competitively offer goods for sale.

CSA membership presently resides in:

1. Victoria;
2. New South Wales;
3. Queensland;
4. Tasmania; and
5. Australian Capital Territory.

Membership is not restricted, nor is it restricted to metropolitan areas, with stores represented in rural centres, as the table of membership shows. CSA aims to become the representative for between 20% and 25% of the Independent Retail Supermarket Stores in Australia, focussed in the six jurisdictions referred to above.

Membership is not restricted geographically, though there are no present plans to operate within South Australia or Western Australia, except in so far as engagement is outside WA suppliers.

CSA is presently “registered” in Victoria and will be recognised under the *Corporations Act 2001*. For the time being the core IT and administration office will be in Victoria, yet CSA expects to operate on a de-centralised basis with region based centres of Membership.

Negotiation activities will be defined according to the characteristics of product and market; for instance, dry goods suppliers, importers and utilities tend to have administration focussed in State capitals, whilst “fresh” suppliers can either be “market” based in State capitals or large regional centres or can be “on farm” or rural town located.

²³ CSA does not expect to be drawn into negotiations with Landlords or rent conditions.

CSA expects to span the range of suppliers through East Coast Australia.

3 Background Information

3.1 The Origins

National Retail Council

Co-Operative Supermarkets Australia Limited (“**CSA**”) originally derives from a corporate vehicle (namely, Stone Advisory Pty Ltd, “Stone Advisory”), formed as an independent source of advice for the “retailer members” of the National Retail Council (“**NRC**”) of Metcash.

To understand the foundation of CSA, one must understand the representation the Retailers have within the Metcash machinery. Those grocery retailers who form part of the broad network of branded and Metcash-related stores are organised on a State-by-State basis (the ACT forming part of NSW). There are “State Boards” through which issues affecting the Retailers can be raised and discussed.

Those State Boards are made up of people elected annually by the Retailers, plus (including for each State Board) Metcash representation. This allows for State-based dialogue on the issues which arise between Metcash and the Retailers of a given State and Nationally. This occurs not on a store-by-store basis, but rather each state body addresses general matters which arise across the Metcash supplied State networks, as well as cross delivery of information affecting the grocery sector. They are best understood as “intramural bodies” of Metcash, but having no formal separate existence²⁴.

In turn, each State Board appoints ‘representatives’ to the NRC which addresses such matters on a national basis. It is in that context that this issue arises.

The NRC, a more formal body within a “Network Company owned by Metcash, exists to further the interests of “those retail supermarket owners associated in the IGA Brands²⁵. The IGA Brand²⁶ is owned and controlled by Metcash, yet the overwhelming majority of the stores operating under the IGA Brand are owned separately from Metcash²⁷.

It is relevant to understand the purpose and focus of the NRC in order to best understand the need identified for the existence of Stone Advisory, which was mandated to establish CSA. The NRC has been the peak forum through which the dialogue on the issues which arise between Metcash and the IGA Retailers on a national basis can be addressed²⁸. This dialogue does not address issues on a “store-by-store” basis, but rather addresses matters on the general basis as the issues impact across the retailer network; it also serves as a forum for the cross delivery of information affecting the grocery sector between the IGA Retailers and their dominant supplier. Much of the business of the NRC is devoted to “brand promotion” of “IGA”, as the constitution on which the NRC depends, demands.

The NRC is, by design, driven towards the advancement of the IGA Brand. Those matters which address the advancement of the IGA Retailer businesses generally are not really within the constitutional purview of the NRC, except in so far as that is co-incidental with the IGA Brand.

Stone Advisory was not intended to replace the NRC, but rather it was created by the Retailer members of the NRC to address matters independently of Metcash, originally with respect to the

²⁴ At least so far as we are aware.

²⁵ “Foodland” in South Australia also forms part of the represented ‘group’.

²⁶ And Foodland Brand.

²⁷ There are an estimated 1500 stores in in the Foodland or IGA group, of which it is believed some stores are directly owned by Metcash, and noting that Metcash owns an approximate 26% stake in the Ritchies Group.....

²⁸ State specific issues are dealt with by a similar State based board – this operates on a similar basis to State and territory based “National Representative” bodies such as the National Framers Federation and the REIA.

Retailer's dealings with Metcash, but also to look to non-IGA related matters. That has had the direct result in the establishment of CSA.

3.2 CSA as a representative for all Independent Retail Supermarket Stores

CSA will never be the representative for all Independent Retail Supermarket Stores, yet it expects to represent up to 20% to 25% of Independent Retail Supermarket Stores in Eastern Australia in the near term.

CSA intends to open its membership to Independent Retail Supermarket Stores generally. The structure of the CSA co-operative model, including details of its membership is described in greater detail in Section 3.3. The key objects of CSA include:²⁹

- the exploration and negotiation of opportunities to address the costs of operation of Australian Independent Retail Supermarket Stores;
- the representation of Members and negotiation with stakeholders of all kinds including, without limit, Governments and their agencies to address costs and benefits affecting the retail and wholesale grocery industry in Australia;
- research and the accumulation of information concerning the retail and wholesale grocery industry in Australia and the delivery and use of such information for the benefit of Members; and
- organisation and co-ordination of supply of labour, goods and services of all kinds to Associated Member Businesses.

Rather than operate through a traditional corporate structure (which generally drives accumulation and profit for their members when the interests of the corporate structure is served to do so), CSA was constituted to operate and derive benefit for its members through the "active participation" of its members. It was resolved that a co-operative structure best assisted with this for the following reasons:

- the governance directive of a co-operative is to drive the delivery of benefits to members and to do so directly through their "active participation"; it pushes the "profit" into the hands of the membership through lower supply costs, rebates and benefits. In contrast, the members of a company are not necessarily related to the industry of which the company is in and further, each member has an expectation of the company to maximise their profits (without participating in the profit generation);
- co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions;
- members contribute equitably to, and democratically control, the capital of their co-operative. Members allocate surpluses for any or all of the following purposes:
 - developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible;
 - benefiting members in proportion to their transactions with the co-operative;
 - supporting other activities approved by the membership; and
 - active disclosure obligations.
- co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy;

²⁹ These objects are noted in section [4.1] of the Rules of CSA, see Annexure 2.

- co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures; and
- require maintenance of a “disclosure statement” for new members where they are “distributing co-operatives, such as CSA.

3.3 Structure of CSA

CSA is incorporated as a “distributing co-operative” under the *Co-Operatives (Adoption of National Law) Act 2012 (NSW)* which applies the Co-Operatives National Law. The “constituent” documents of CSA are:

- Rules of CSA (**Rules**), provided for in Annexure 2, Part 2.,³⁰ and
- The Formation Disclosure Statement.

The key structure of CSA is summarised below.

Qualifications for Membership and Voting

CSA’s intention is to be a representative body for Independent Retail Supermarket Stores. Given the wide scope of entities within this group, the key “qualifications to be a member” are as follows:³¹

- (i) *the person is the senior manager of an Australian Independent Retail Grocery Store which is not the Associated Member Business of any other Member; and*
- (ii) *the Australian Independent Retail Grocery Store of which the person is a manager is not owned, operated or controlled by an entity which:*
 - A. *is a Wholesaler;*
 - B. *shares a material interest with an entity owned by a Wholesaler;*
 - C. *is a national retailer or international retail operator, such as Coles, Woolworths, Costco, Kaufland or similar.*

Members of a co-operative must be an individual. Co-operatives are also bound to a structure that restricts “one vote per member”. An issue that arose is that a number of Independent Retail Supermarket Stores are owned and operated by the same corporate entity. Having a corporate entity register as a member would therefore have the consequence that despite a corporate entity owning 25 stores, the corporate entity would only be entitled to one vote on matters relating to the co-operative.

Active Member Test

Members of a co-operative must satisfy the active membership requirements in the co-operative’s rules in order to retain their membership and be entitled to vote. CSA’s Active Member Test is:³²

To establish and maintain active membership of the co-operative a Member must:

- (i) *be involved in the management of an Australian Independent Retail Grocery Store which has acquired goods or services under the Co-operative Terms and Conditions at least once in each rolling 2 month period;*

³⁰ These documents may be subject to change in the manner permitted under the National Law, the Constitution and the Rules.

³¹ See clause 5 of the Rules (Annexure 2) for a full-definition.

³² See Rule 4.2 of the Rules.

- (ii) *represent the Australian Independent Retail Grocery Store nominated as their Associated Member Business in the Application Form by which the person became a Member;*
- (iii) *the Associated Member Business is actively trading, which phrase shall be deemed to include any period:*
 - A. *that the Associated Member Business is being stocked to commence trade; and*
 - B. *that the Associated Business is temporarily closed, say for, for vacation, renovation, order by an Authority, relocation, emergency or industrial action.*
- (iv) *Be a Financial Member for the time being.*

CSA's Active Member Test directly correlates to a key object of CSA, relevantly, to organise and co-ordinate the supply of goods and services of all kinds to Associated Member Businesses.

ANNEXURE 2

Annexure 2 Part 1: Membership of CSA

	Name of Store	Store Address	Registered Owner	ABN
1.	ORANGE	210 Peisley Street, Orange NSW 2800	Ashcroft's Supa IGA Orange Pty Ltd	56071915494
2.	ORANGE SUMMER CENTRE	82 Summer Street, Orange NSW 2800	Ashcroft's Supa IGA Orange Pty Ltd	56071915494
3.	MOSS VALE	11-13 Clarence Street, Moss Vale NSW 2577	Ashcroft's Supa IGA Orange Pty Ltd	56071915494
4.	ERSKINE PARK	Shop 12, Swallow Drive, Erskine Park NSW 2759	Ashcroft's Supa IGA Orange Pty Ltd	56071915494
5.	DUBBO	95 Tamworth Street, Dubbo NSW 2830	Ashcroft's Supa IGA Orange Pty Ltd	56071915494
6.	NORTHWAY	Cnr Norman & Doveton Streets, Ballarat North VIC 3350	Northway Super Pty Ltd	49128148087
7.	PLEASANT PARK	Cnr Sturt & Pleasant Streets, Ballarat VIC 3350	Pleasant Park Supermarket P/L	56006113864
8.	BEAUFORT	39 Neill Street, Beaufort VIC 3373	Beaufort Super P/L	51128190152
9.	MIDVALE	1168-1172 Geelong Road, MT Clear VIC 3350	Laurinso P/L	84007011832
10.	KYNETON	62-66 Mollison Street, Kyneton VIC 3444	Kybenas P/L	61127267234
11.	TORQUAY	9-17 Gilbert Street, Torquay VIC 3228	Torquay Supermarket P/L	43006401798
12.	CREMORNE	287-305 Military Road, Cremorne NSW 2090	Karellas Investments Pty Ltd	45793629495

13.	PENNANT HILLS	Pennant Hills Market Place, Cnr Ramsay & Hillcrest Rds, Pennant Hills NSW 2120	Karellas Investments Pty Ltd	45793629495
14.	TRAMSHEDS	1 Dalgal Way, Forest Lodge NSW 2037	Karellas Investments Pty Ltd	45793629495
15.	PYRMONT	63 Miller Street, Pyrmont NSW 2009	Karellas Investments Pty Ltd	45793629495
16.	BLAXLAND	150-152 Great Western Highway, Blaxland NSW 2774	Karellas Investments Pty Ltd	45793629495
17.	ROSE BAY	1-5 Dover Road, Rose Bay NSW 2029	Andmar Retail Pty Ltd	28155460772
18.	LINDFIELD	27 Lindfield Avenue, Lindfield NSW 2037	Andmar Retail Pty Ltd	28155460772
19.	MILTON	Shop 23/12 Baroona Street, MILTON QLD 4064	Lunar Investments Pty Ltd	21082951102
20.	NEW FARM	572 Brunswick Street, New Farm QLD 4005	Lunar Investments Pty Ltd	21082951102
21.	GREENSLOPES	3 Chatsworth Road, Greenslopes QLD 4120	Nocturnal Investments Pty ATF The Daylight Trust	50567871496
22.	EAST BRISBANE	33 Lytton Road, East Brisbane QLD 4169	Nocturnal Investments Pty ATF The Daylight Trust	50567871496
23.	WISES ROAD	32 Wises Road, Maroochydore QLD 4558	HOFE Supermarkets Pty Ltd	46162394005
24.	ST LUCIA	240 Hawken Drive, St Lucia QLD 4067	Orbit Holdings Pty Ltd	78153820825
25.	CLEVELAND	Shop 5, 42 Shore Street, Cleveland QLD 4163	QWA Investments Pty Ltd	15125356621
26.	MAROOCHYDORE	Shop 1, 69 Maud Street, Maroochydore QLD 4558	Hook Supermarkets Pty Ltd	48623057214
27.	ASBURTON	219 High Street, Ashburton VIC 3147	Bayview Pty Ltd	26906934570
28.	SOUTHBANK	89-91 City Road, Southbank VIC 3006	Bayview Pty Ltd	26906934570
29.	KOROIT	150 Commercial Road, Koroit VIC 3282	Kevmille Pty Ltd	57089590536

30.	PORTLAND	22-24 Percy Street, Portland VIC 3305	Kevmille Pty Ltd	57089590536
31.	KEYWOOD	60-64 Edgar Street, Heywood VIC 3282	Kevmille Pty Ltd	57089590536
32.	NICHOLLS	88 Kellewa Avenue, Nicholls ACT 2913	Karkazis Bros Pty Ltd	26125820859
33.	DRAKEFORD	Unit 10-13, 9 Jenke Circuit, Kambah ACT 2902	Karkazis Bros Pty Ltd	26125820859
34.	DEAKIN	25-27 Hopetoun Circuit, Deakin ACT 2600	Deakin Grocer Pty Ltd	71613159112
35.	WEST HOBART	70 Arthur St, West Hobart TAS 7000	M&D Nikitaras Pty Ltd	71090743196
36.	BRIGHTON	178 Brighton Road, Brighton TAS 7030	M&D Nikitaras Pty Ltd	71090743196
37.	DODGES FERRY	60 Carlton Beach Road, Dodges Ferry TAS 7173	M&D Nikitaras Pty Ltd	71090743196
38.	DEVONPORT	48-54 Oldaker Street, Devonport TAS 7310	Hill Street North Pty Ltd	68604544818
39.	LARROBE	108-114 Gilbert Street, Latrobe TAS 7307	Hill Street North Pty Ltd	68604544818
40.	LONGFORD	7a Wellington St, Longford TAS 7301	Browns Store Pty Ltd	86609702990
41.	LAUDERDALE	528 South Arm Road, Lauderdale TAS 7021	Hill Street (West Hobart) No 4 Pty Ltd	44114600734
42.	SOUTH HOBART	362 Macquarie Street, South Hobart TAS 7004	Hill Street (West Hobart) No 5 Pty Ltd	90144742736
43.	NEWTOWN	2 Augusta Road, Newtown TAS 7008	Hill Street (West Hobart) No 6 Pty Ltd	17145085427
44.	BLACKMANS BAY	5 Opal Drive, Blackmans Bay TAS 7052	Hill Street (West Hobart) No 7 Pty Ltd	31600205838
45.	WOONONA SUPERMARKET PTY LIMITED	50 Nepean Avenue, Penrith NSW 2750	Woonona Supermarket Pty Limited	35773582005
46.	AMBERLEY PARK	245 Ormond Road, Narre Warren Sth VIC 3805	Ritchies Stores Pty Ltd	61005041814
47.	ARARAT	58 - 66 Vincent St, Ararat VIC 3377	Ritchies Stores Pty Ltd	61005041814

48.	ASPENDALE GARDENS	Shop 1, 11 Narelle Dve, Aspendale Gardens VIC 3195	Ritchies Stores Pty Ltd	61005041814
49.	BAIRNSDALE	30 Howitt Avenue, Eastwood VIC 3875	Ritchies Stores Pty Ltd	61005041814
50.	BALNARRING	1 Russell Street, Balnarring VIC 3926	Ritchies Stores Pty Ltd	61005041814
51.	BEACH ST	207 - 211 Beach Street, Frankston VIC 3199	Ritchies Stores Pty Ltd	61005041814
52.	BEECHWORTH	24 Loch Street, Beechworth VIC 3747	Ritchies Stores Pty Ltd	61005041814
53.	BRIGHT	16 Ireland Street, Bright VIC 3741	Ritchies Stores Pty Ltd	61005041814
54.	CAMPERDOWN	139 Manifold Street, Camperdown VIC 3260	Ritchies Stores Pty Ltd	61005041814
55.	CARRUM DOWNS	Shop 9, 1095 Frankston Dandenong Road, Carru Downs VIC 3201	Ritchies Stores Pty Ltd	61005041814
56.	CHURCHILL	Hazelwood Shopg Cntr 5-8 Georgina Way, Churchill VIC 3842	Ritchies Stores Pty Ltd	61005041814
57.	COBDEN	24 Curdie Street, Cobden VIC 3266	Ritchies Stores Pty Ltd	61005041814
58.	COBRAM	47 Bank Street, Cobram VIC 3644	Ritchies Stores Pty Ltd	61005041814
59.	CRANBOURNE	23 High Street, Cranbourne VIC 3977	Ritchies Stores Pty Ltd	61005041814
60.	DIAMOND CREEK	64 Main Hurstbridge Road, Diamond Creek VIC 3089	Ritchies Stores Pty Ltd	61005041814
61.	DROMANA	Cnr O'Donohue St & Point Nepean Rd, Dromana VIC 3936	Ritchies Stores Pty Ltd	61005041814
62.	EAST BENTLEIGH	10-16 Heather Street, East Bentleigh VIC 3165	Ritchies Stores Pty Ltd	61005041814
63.	EMERALD	342 Belgrave-Gembrook Rd, Emerald VIC 3782	Ritchies Stores Pty Ltd	61005041814
64.	GRIFFITH	Shop 1, 10-12 Yambil Street, Griffith NSW 2680	Ritchies Stores Pty Ltd	61005041814

65.	HAMILTON	72 Lonsdale St, Hamilton VIC 3300	Ritchies Stores Pty Ltd	61005041814
66.	HASTINGS	Cnr High & Salmon Sts, Hastings VIC 3915	Ritchies Stores Pty Ltd	61005041814
67.	IRYMPLE	2109-2111 Fifteenth St, Irymple VIC 3498	Ritchies Stores Pty Ltd	61005041814
68.	KYABRAM	24 Albion Street, Kyabram VIC 3620	Ritchies Stores Pty Ltd	61005041814
69.	MAFFRA	102 Johnson Street, Maffra VIC 3860	Ritchies Stores Pty Ltd	61005041814
70.	MERBEIN	100-106 Commercial St, Merbein VIC 3505	Ritchies Stores Pty Ltd	61005041814
71.	MILDURA	103-123 Deakin Avenue, Mildura VIC 3500	Ritchies Stores Pty Ltd	61005041814
72.	MINERS REST	181-183 Howe St, Miners Rest VIC 3352	Ritchies Stores Pty Ltd	61005041814
73.	MT ELIZA	89 Mt Eliza Way, Mt Eliza VIC 3930	Ritchies Stores Pty Ltd	61005041814
74.	MT WAVERLEY	283 Stephensons Road, Mt Waverley VIC 3149	Ritchies Stores Pty Ltd	61005041814
75.	NARRE WARREN	14 Webb Street, Narre Warren VIC 3805	Ritchies Stores Pty Ltd	61005041814
76.	PAYNESVILLE	3-5 Wellington Street, Paynesville VIC 3880	Ritchies Stores Pty Ltd	61005041814
77.	RED CLIFFS	1-13 Ilex St, Red Cliffs VIC 3496	Ritchies Stores Pty Ltd	61005041814
78.	RINGWOOD NTH	204 Warrandyte Road, Ringwood Nth VIC 3134	Ritchies Stores Pty Ltd	61005041814
79.	ROBINVALE	1-12 Latje Rd, Robinvale VIC 3549	Ritchies Stores Pty Ltd	61005041814
80.	ROWVILLE	Shop 18, 1100 Wellington Road, Rowville VIC 3178	Ritchies Stores Pty Ltd	61005041814
81.	SALE	177-197 York Street, Sale VIC 3850	Ritchies Stores Pty Ltd	61005041814
82.	SEAFORD	280 Seaford Road, Seaford VIC 3198	Ritchies Stores Pty Ltd	61005041814
83.	SOMERVILLE	2 Eramosa Road East, Somerville VIC 3912	Ritchies Stores Pty Ltd	61005041814

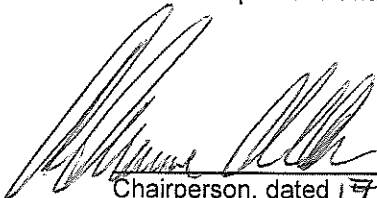
84.	SORRENTO	108 Ocean Beach Road, Sorrento Vic 3943	Ritchies Stores Pty Ltd	61005041814
85.	STAWELL	126-130 Main St, Stawell Vic 3380	Ritchies Stores Pty Ltd	61005041814
86.	TATURA	2-4 Walshe St, Tatura VIC 3616	Ritchies Stores Pty Ltd	61005041814
87.	TIMBOON	27 Main Street, Timboon VIC 3268	Ritchies Stores Pty Ltd	61005041814
88.	TOWERHILL	Cnr. Golf Links/Hastings Rds, Frankston VIC 3199	Ritchies Stores Pty Ltd	61005041814
89.	WANTIRNA	29 The Mall Shopping Cntr, Mountain Hwy, Wantirna VIC 3152	Ritchies Stores Pty Ltd	61005041814
90.	WARRACKNABEAL	141 Scott St, Warracknabeal VIC 3393	Ritchies Stores Pty Ltd	61005041814
91.	WENTWORTH	11-13 Sandwych Street, Wentworth NSW 2648	Ritchies Stores Pty Ltd	61005041814
92.	WONTHAGGI	160 Graham Street, Wonthaggi VIC 3995	Ritchies Stores Pty Ltd	61005041814
93.	YARRA GLEN	Shop 1 38 Bell Street, Yarra Glen VIC 3775	Ritchies Stores Pty Ltd	61005041814
94.	YARRAWONGA	2-10 Belmore Street, Yarrawonga VIC 3730	Ritchies Stores Pty Ltd	61005041814
95.	BALLINA	44 Pacific Hwy, Ballina NSW 2478	Ritchies Stores Pty Ltd	61005041814
96.	BOONAH	58 High Street, Boonah QLD 4310	Ritchies Stores Pty Ltd	61005041814
97.	DAISY HILL	Shop M1 3-5 Cupania Street, Daisy Hill QLD 4127	Ritchies Stores Pty Ltd	61005041814
98.	EVANS HEAD	39-41 Woodburn Street, Evans Head NSW 2473	Ritchies Stores Pty Ltd	61005041814
99.	INVERELL	99-119 Byron Street, Inverell NSW 2360	Ritchies Stores Pty Ltd	61005041814
100.	KYOGLE	Shop 5, 17-31 Summerland Way, Kyogle NSW 2474	Ritchies Stores Pty Ltd	61005041814
101.	LOGAN DISCOUNT WAREHOUSE	Logan City Shop Centre/Cnr Wembley&Kingston Rd, Logan QLD 4114	Ritchies Stores Pty Ltd	61005041814

102.	BOAMBEE	Cnr Lynden and Bruce King Drive, East Boambee NSW 2452	Ritchies Stores Pty Ltd	61005041814
103.	COFFS HARBOUR	Park Beach Plaza 5/253 Pacific Hwy, Coffs Harbour NSW 2450	Ritchies Stores Pty Ltd	61005041814
104.	HARRINGTON WATERS	Harbour Blvd, Harrington Waters Estate, Harrington NSW 2427	Ritchies Stores Pty Ltd	61005041814
105.	NAMBUCCA HEADS	Shop 25, 2191 Giinagay Way, Nambucca Heads NSW 2448	Ritchies Stores Pty Ltd	61005041814
106.	PORT MACQUARIE	Shop M2 40 Horten Street, Port Macquarie NSW 2444	Ritchies Stores Pty Ltd	61005041814
107.	TAREE	24-32 Manning Street, Taree NSW 2430	Ritchies Stores Pty Ltd	61005041814
108.	BATEAU BAY	Shop 2 / 161-173 Cresthaven Ave, Bateau Bay NSW 2261	Ritchies Stores Pty Ltd	61005041814
109.	BROADMEADOW	12 Alisa Road, Broadmeadow NSW 2292	Ritchies Stores Pty Ltd	61005041814
110.	CESSNOCK	2A / 195-200 Woolombi Road, Cessnock NSW 2325	Ritchies Stores Pty Ltd	61005041814
111.	ELERMORE VALE	Shop 1 / 137 Croudace Road, Elemore Vale NSW 2287	Ritchies Stores Pty Ltd	61005041814
112.	ERINA	Shop 3 216 - 218 The Entrance Road, Erina NSW 2250	Ritchies Stores Pty Ltd	61005041814
113.	ERINA HEIGHTS	375 The Entrance Rd, Erina Heights NSW 2260	Ritchies Stores Pty Ltd	61005041814
114.	KURRI KURRI	178 Lang Street, Kurri Kurri NSW 2327	Ritchies Stores Pty Ltd	61005041814
115.	NEW LAMBTON	73 Regent Street, New Lambton NSW 2305	Ritchies Stores Pty Ltd	61005041814
116.	NORTH RYDE	Shop 16 / 203-211 Cox's Road, North Ryde NSW 2113	Ritchies Stores Pty Ltd	61005041814

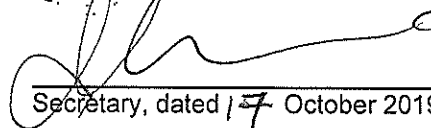
117.	SINGLETON PLAZA	U11 Singleton Plaza cnr John & Gowrie St, Singleton NSW 2330	Ritchies Stores Pty Ltd	61005041814
118.	SPIT JUNCTION	Bridge Point Shopping Centre, Brady St, Spit Junction NSW 2088	Ritchies Stores Pty Ltd	61005041814
119.	TAREN POINT	123 Parraweena Rd, Taren Point NSW 2229	Ritchies Stores Pty Ltd	61005041814
120.	MALENY	26 Maple St, Maleny QLD 4552	Maleny Fresh Foods Pty Ltd ATF Maleny Fresh Foods Trust	35070450029
121.	MUNDUBBERA	48-50 Lyons St, Mundubbera QLD 4626	Mundubbera Fresh Foods Pty Ltd ATF Mundubbera Fresh Foods Trust	31101411429

Co-Operative Supermarkets Australia Limited
RULES
2019

This and the following 39 pages is a true copy of the original approved by the Board of the Co-operative and its Members:



Chairperson, dated 17 October 2019



Secretary, dated 17 October 2019

BAL
LAWYERS

9th Floor, Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601
GPO Box 240 Canberra ACT 2601 | DX 5633 Canberra | www.ballawyers.com.au
T: 02 6274 0999 | F: 02 6274 0888
Our Ref: 181535

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CO-OPERATIVE SUPERMARKETS AUSTRALIA LIMITED

RULES

DATE: _____ 2019

PART 1 PRELIMINARY

1. APPLICATION OF THESE RULES

These Rules are the Rules of the **Co-Operative Supermarkets Australia Limited**.

2. DEFINITIONS

2.1 Definitions

In these Rules:

- (a) **Annual Membership Fee** means the fee if any determined pursuant to Rule 6.2.
- (b) **Application Form** means an application form for the purpose of membership, meeting the requirement under Rule 7.1.
- (c) **Associated Trading Accounts** means the trading accounts with the Co-operative servicing a given Member's Associated Member Business.
- (d) **Associated Controller** means the person who is the proprietor, owner or controller of the Associated Member Business of which the Member or applicant (as the case may be) is the senior manager.
- (e) **Associated Member Business** means the Australian Independent Retail Grocery Store which is stated in the Application for Membership of a given Member.
- (f) **Associated Shareholder** means the registered holder of Shares who is eligible to hold Shares by reason of that person's association with the Member's Associated Member Business.
- (g) **Australian Independent Retail Grocery Store** means a retail grocery store operated within Australia, offering supermarket lines and which is not:
 - (i) majority owned or controlled by an entity which is a Wholesaler; and
 - (ii) owned or controlled by an entity that is part of a major National Retail or international retail operator, such as Coles, Woolworths, Costco, Kaufland and such other organisations as the Board may proscribe in the By-laws; and
 - (iii) for clarity, can be a store which is part of group or network of stores and can be a store that offers product lines other than supermarket lines.
- (h) **Authority** includes any governmental, semi-governmental, municipal or statutory authority, instrumentality, organisation, body or delegate (including without limitation any town planning or development authority, public utility, environmental,

building, health, safety or other body or authority) having jurisdiction, authority or power over or in respect of an Associated Member Business.

- (i) **Board** means the Board of the Co-operative.
- (j) **By-laws** mean the By-laws of the Co-operative made and amended by the Board from time to time;
- (k) **CNL** is a reference to the Co-operatives National Law as applying in this jurisdiction.
- (l) **Co-operative** means the co-operative formed under these Rules.
- (m) **Co-operative Terms and Conditions** means the terms, as determined by the Board from time to time, attaching to the trading account by which the Co-operative supplies, or facilitates the supply of goods and/or services to the Member's Associated Member Business and/ or its Associated Controller, and for clarity, could be recorded in more than one document, including the By-laws.
- (n) **CSA Charter** means the charter of membership commitment published and amended by the Board from time to time.
- (o) **Director** means a Director of this Co-operative.
- (p) **Director Selection Committee** means the committee of the Board formed for the purpose of Rule 33.3(b).
- (q) **DSC Share** means a share issued in the capital of the Co-operative which:
 - (i) carries the entitlement to vote in the DSC Shareholder Foundation Director selection, under the process according to Rule 33.3(b)(iv);
 - (ii) carries no right to a dividend;
 - (iii) carries no right to a return of capital other than a return of its issue price;
 - (iv) may only be held by a person who is for the time being a Foundation Director; and
 - (v) carries no other right except as the CNL requires.And a **DSC Shareholder** shall mean a person registered as holding a DSC Share.
- (r) **Financial Member** means a person:
 - (i) who has been accepted as a Member of this Co-operative for the time being and continues, for the time being, to be qualified as a Member under Rule 5.1;
 - (ii) has not been the subject of a determination by the Board that either:
 - A. their fees due under these Rules are in arrears; or
 - B. the Associated Trading Accounts of the Member are in arrears;
 - C. the person has ceased to qualify as a Member under Rule 5.1.

- (s) **Foundation CCU** means a co-operative capital unit issued by the Co-operative and registered in the books and records of the Co-operative under the name and style of a "Foundation CCU" according to the terms of issue determined by the Board, from time to time.
- (t) **Foundation Director** means:
- (i) those people listed in Part Three of the Schedule;
 - (ii) those people named as Foundation Directors by a two thirds majority of the Director Selection Committee;
- in each case, for so long as they remain eligible to be a Director of the Co-operative.
- (u) **Founding Member** means a person listed in Part One of the Schedule for so long as they are otherwise eligible to remain as a Member of this Co-operative.
- (v) **Group** means a collection of Associated Member Businesses who have a common Associated Controller or which are legally or beneficially controlled by a common owner or simpler decision making body.
- (w) **Initial Board** means the board of Directors appointed pursuant to Rule 33.1, being the persons listed as the "Initial Directors" in Part Two of the Schedule .
- (x) **Insolvency Event** means, in relation to a person, anything which reasonably indicates that there is a significant risk that such person is or will become unable to pay its debts as and when they fall due, including each of the following:
- (i) a meeting of the person's creditors being called or held;
 - (ii) a step being taken to make the person bankrupt;
 - (iii) an application being presented or an order made for the sequestration of the person's estate;
 - (iv) a step being taken to wind the person up, dissolve or reorganise the person or other administration involving one or more of the person's creditors;
 - (v) a step being taken to have a receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator, trustee or similar official appointed to the person or any of its assets or any such appointment taking place;
 - (vi) the person entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors;
 - (vii) a notice under sections 601 AA or 601 AB of the *Corporations Act 2001* (Cth) being received;
 - (viii) failure to comply with a statutory demand as a result of sub-section 459F(1) of the *Corporations Act 2001* (Cth); or
 - (ix) the person ceases or threatens to cease to carry on its main business or suspends payment of their debts.

- (y) **Member** means a member of the Co-operative for the time being, noting that each member is admitted in its capacity as a representative of an Associated Member Business.
- (z) **Member Director** and **Non-member Director**—see section 174 of the CNL and Rule 32.
- (aa) **National Regulations** means the Co-operatives National Regulations as applying in this jurisdiction.
- (bb) **Proxy Representative** means the person named in the Members Register as the Proxy Representative of the Member for the time being.
- (cc) **Qualifying CCU** means a fully paid Co-operative Capital Unit:
 - (i) with a face value to be determined by the Board from time to time;
 - (ii) to be repayable, subject to the conditions attached, after a period to be determined by the Board from time to time;
 - (iii) with such conditions attached as the Board sees fit; and
 - (iv) to be security for sums due by the Member to the Co-operative;
 and noting that a Foundation CCU shall be a Qualifying CCU.
- (dd) **Rules** mean these rules of the Co-operative as amended from time to time.
- (ee) **Standard Postal Times** means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post.
- (ff) **Wholesaler** means a substantial wholesale supplier to retail grocery industries in metropolitan Australia as the Board may determine.

2.2 Interpretation

Except so far as the contrary intention appears in these Rules, words and expressions used in these Rules have the same meanings as they have, from time to time, in the CNL or relevant provisions of the CNL and:

- (a) **“grocery”** shall be deemed to include perishable and non-perishable items and foods whether packaged in bottles, boxes or cans or not, that are reasonably suitable for sale through a supermarket, and includes without limit bakery, delicatessen, fresh produce and health and lifestyle products and like and associated items, tools and utensils.
- (b) For the purpose of the definition of **“Financial Member”**, grounds before the Board for the Board to conclude the person has ceased to qualify as a Member under Rule 5.1 will exclude circumstances where the Co-operative has before it:
 - (i) a notice of a change to the person who is the senior manager of the Associated Member Business, for the time being; or
 - (ii) a withdrawal of the nomination submitted for the purpose of Rule 5.1(c)(i) executed by the Associated Controller of the Associated Member Business with an undertaking to propose a new nominee within 21 days.

- (c) A determination of the Board that “the Associated Trading Accounts of the Member are in arrears” shall require:
- (i) The Associated Trading Account to be, for the time being, in arrears according to the Co-operative Terms and Conditions, for the time being;
 - (ii) the Co-operative (including through its officers) having made a written demand, served on the person who holds the Associated Trading Account, for a sum then due to the Co-operative or to a supplier for whom the Co-operative is contracted to collect;
 - (iii) the demand referred to under part (ii) of this subclause not having been met for a period of 14 days or more; and
 - (iv) a resolution of the Board confirming that the Associated Trading Account of the Member is in arrears”, passed after the expiry of the period referred to in part (iii) of this subclause.
- (d) For the purpose of the “Associated Member Business” being considered to be “**actively trading**”, that phrase shall be deemed to include any period:
- (i) that the Associated Member Business is being stocked to commence trade; and
 - (ii) that the Associated Member Business is temporarily closed, say for, for vacation, renovation, order by an Authority, relocation, emergency or industrial action.
- (e) For the purpose of determining whether a person is “the senior manager of an Australian Independent Retail Grocery Store”, that person need only be nominated as such by their Associated Controller, provided that the person so nominated is a senior executive of the Associated Controller and has managerial influence over the store which is their Associated Member Business, noting that no other Member may be nominated in respect of that store.

3. **NAME OF THE CO-OPERATIVE (CNL SS220-222 & 224)**

The name of the Co-operative is **Co-Operative Supermarkets Australia Limited**.

PART 2 MEMBERSHIP

DIVISION 1 MEMBERSHIP GENERALLY

4. **ACTIVE MEMBERSHIP PROVISIONS (CNL SS112(2), 144, 148 & 156–166)**

4.1 **Primary Activity**

For the purposes of Part 2.6 of the CNL, the primary activities of the Co-operative are:

- (a) the exploration and negotiation of opportunities to address the costs of operation and long term sustainability of Australian Independent Retail Grocery Stores;
- (b) the representation of Members and negotiation with stakeholders of all kinds including, without limit, Governments and their agencies to address costs and benefits affecting the retail and wholesale grocery industry in Australia;

- (c) research and the accumulation of information concerning the retail and wholesale grocery industry in Australia and delivery and use of such information for the benefit of Members;
- (d) organisation and co-ordination of supply of labour, goods and services of all kinds to Associated Member Businesses; and
- (e) the entry into such alliances and arrangements as advance the interests of the Members and the primary activities.

4.2 Active Membership Requirements

Each "Member" is admitted to membership in its capacity as a representative of an Associated Member Business. To establish and maintain active membership of the Co-operative a Member must:

- (a) be involved in the management of an Australian Independent Retail Grocery Store:
 - (i) whose Associated Controller has nominated the Member for the purpose of Rule 5.1;
 - (ii) which has acquired goods or services under the Associated Trading Account attached to the Membership at least:
 - A. once in each rolling two (2) month period; and
 - B. to the minimum value or volume, if any, set by the Board from time to time over that rolling period;
- (b) continue to represent the Associated Member Business, as nominated by their Associated Controller stated in the Application Form by which the person became a Member;
- (c) be a Financial Member for the time being; and
- (d) devote such time as the By-laws require to working in the Co-operative's business, not exceeding the amount of time determined by the Members by a two thirds majority.

5. QUALIFICATIONS FOR MEMBERSHIP (CNL S112)

5.1 The Applicant

A person qualifies for membership of the Co-operative if:

- (a) the person is the senior manager of an Australian Independent Retail Grocery Store which is not the Associated Member Business of any other Member;
- (b) the Australian Independent Retail Grocery Store of which the person is a manager is not owned, operated or controlled by an entity which:
 - (i) is a Wholesaler;
 - (ii) shares a material interest with an entity owned by a Wholesaler; or
 - (iii) is a national retailer or international retail operator, such as Coles, Woolworths, Costco, Kaufland or similar.

- (c) the Associated Controller of the Australian Independent Retail Grocery Store of which the person is a manager has executed and delivered to the Co-operative:
 - (i) a nomination of the person as the senior manager of the named Associated Member Business;
 - (ii) an assurance in favour of the Co-operative that the Associated Controller will be liable for any failure of the Member to fulfil its obligations to the Co-operative under the Rules and under the By-laws; and
 - (iii) the contracts requested by the Co-operative to use and maintain an Associated Trading Account for the Associated Member Business; and
- (d) the person has not resigned as a Member or had their Membership cancelled in accordance with these Rules; and
- (e) the person has delivered to the Co-operative a duly executed application for a Qualifying CCU and the sum due on application for that unit; and
- (f) such information as the Co-operative requests in its Application Form in order to support the application, to the satisfaction of the Board, in its absolute discretion.

5.2 The Associated Trading Account

- (a) In the course of making an application for membership, the applicant must deliver to the Co-operative:
 - (i) the contracts requested by the Co-operative to use and maintain an Associated Trading Account for the Associated Member Business, which must be:
 - A. duly executed by the applicant's Associated Controller; and
 - B. in the form approved by the Board for the time being,
 unless the Associated Controller has then current terms with the Co-operative which extend to cover goods and services supplied to the Associated Member Business; and
 - (ii) such information as the Co-operative requests in order to support the application, the extension of credit which may be extended to the Associated Controller.

5.3 Membership of Group

If a Member's Associated Member Business is part of a Group, then it is a condition of Membership, unless the Board resolves otherwise, that the Member's Associated Controller shall cause each Australian Independent Retail Grocery Store which is part of that Group to become part of the Co-operative by having an associated member, with the consequence that a default under this Rule shall be a default under Rule 5.1 and may lead to cancellation of membership (see Rule 10).

6. ENTRY FEES AND REGULAR SUBSCRIPTIONS (CNL S124)

6.1 Entry and Membership Fee

- (a) The fee on application for a Qualifying CCU must be tendered at a time prior to or with the Application for Membership.
- (b) The Board may determine that there is a fee for an application for membership from time to time and if it is set at a sum which is greater than "zero", then it must be tendered at a time prior to or with the Application for Membership.

6.2 Annual Membership Fee

The Board may in its discretion require the Members to pay an Annual Membership Fee, which, if set, shall be such sum as is determined by the Board from time to time. The rules for accrual and payment shall be set out in the By-laws of the Co-operative.

6.3 Publication of Fees

If the Board has, for the time being, determined that the Members should pay a fee under this Rule 6, then such fees shall be published on the website of the Co-operative, or as the CNL otherwise requires, along with the rules of accrual and payment.

7. MEMBERSHIP APPLICATIONS

7.1 Application Lodgement

Applications for Membership must be lodged at the registered office in the application form approved by the Board, and should be accompanied by:

- (a) payment of any applicable fees (including in respect of Qualifying CCUs) and all supporting documents;
- (b) an Application of a Qualifying CCU by the Member's Associated Controller; and
- (c) such documents as the Board requires, including without limitation:
 - (i) documents by which either the Associated Controller becomes or is bound to an Associated Trading Account, to which the applicant's Membership Fees may be charged; and
 - (ii) any documents recording any Security Interest in favour of the Co-operative in respect of the liabilities under the Associated Trading Account.

7.2 Board Consideration

- (a) Every Application for Membership must be tabled for consideration by the Board.
- (b) Every Membership must:
 - (i) be attached to an Associated Trading Account and an Associated Member Business; and
 - (ii) have an Associated Controller, which can be, in appropriate circumstances of ownership and control, the Member.

- (c) If the Board approves of the application, then:
- (i) the applicant's name;
 - (ii) the street address and name of the Associated Member Business;
 - (iii) the Associated Controller;
 - (iv) the Proxy Representative of the Member (who must in turn be a Member), if any;
 - (v) details of the person with who holds the Member's Associated Business Account; and
 - (vi) such other information required under the Application Form and by the CNL,
- must be entered in the register of Members within 28 days of the Board's approval and the applicant must be notified, in writing, of the entry in the register whereby the applicant is then entitled to the privileges attaching to membership.
- (d) The Board:
- (i) need not assign reasons for the refusal and is entitled to inform itself and make its own inquiry in to the applicant and circumstances of the application as it sees fit, without being obligated to do so; and
 - (ii) may impose such conditions as it sees fit for the grant of credit terms to the Associated Controller of an Applicant, including without limit, the requirement for Security Interests, bonds or guarantees.
- (e) On refusal, any amounts accompanying the application for membership must be refunded within 28 days without interest.

7.3 Membership Substitution

- (a) An Associated Controller may at any time notify the Co-operative that a member associated with them has ceased to be the manager of an Associated Member Business.
- (b) A Member who ceases to be the manager of their Associated Member Business (the "Subject Associated Member Business") ceases to be eligible to be a Member, unless they are, within the time permitted by the Board, nominated by their Associated Controller to be the Member with respect to a different Associated Member Business. In such cases the person shall continue as a Member and their Associated Member Business shall be updated.
- (c) If an Associated Controller has notified the Co-operative that a Member has ceased to be the manager of an Associated Member Business (the "Departing Member"), the Associated Controller may, within the time permitted by the Board, nominate a new person to be the manager of that Associated Member Business and in such cases:
 - (i) the new person must apply to become a Member;
 - (ii) the Qualifying CCU and Trading Accounts associated with the Departing Member shall be deemed delivered with the person's Application Form;

- (iii) the Associated Trading Account for the Associated Member Business of the Associated Controller shall attach to the application; and
 - (iv) any security and rights of set-off held by the Co-operative in respect of the Departing Member, including in respect of the Departing Member's membership Fees shall attach to the liabilities of the new person on admission of that person to Membership.
- (d) A transfer of an Associated Member Business between persons who are, at the time of the completion of the transfer, both Associated Controllers shall not, of itself, result in a change of membership.
 - (e) If an Associated Controller ceases to be the proprietor, owner or controller of an Associated Member Business, then the Member who is the manager of that business ceases to be eligible to be a Member. That Member must reapply for membership as nominee manager of the new proprietor, owner or controller of that business.
 - (f) An Associated Controller is deemed to have ceased to be the proprietor, owner or controller of an Associated Member Business if more than 50% of its ownership or control changes beneficially within a 12 month period.

7.4 Details

It is a duty of each Member to keep the Co-operative informed of changes to:

- (a) their eligibility to be a Member;
- (b) the details of their Associated Controller, including of its ownership or control changes;
- (c) the details of their Proxy Representative, if any;
- (d) the details of their Associated Members Business;
- (e) the details of the person who holds the Member's Associated Business Account.

8. CESSATION OF MEMBERSHIP (CNL S117 AND 118)

A person ceases to be a Member in any of the following circumstances:

- (a) if the membership ceases in any circumstances specified in:
 - (i) Rule 7.3;
 - (ii) Section 117 of the CNL; or
 - (iii) Section 118 of the CNL, where the term:
 - A. "member" in ss.118(a)-(e) is deemed to include the Associated Shareholder and the Associated Controller of the Member;
 - B. "shareholding" and "shares" is deemed to include the "shareholding" and "shares" of the Associated Shareholder and the Associated Controller of the Member;

- (b) the Member is the subject of a resolution by the Board that the Member's name be removed from the Members' Register for reason that the person has:
 - (i) ceased to be a Financial Member; or
 - (ii) in the view of the Board, as evidenced by resolution, ceases to qualify as a Member under Rule 5.1;
- (c) on expiry of not less than three months written notice.

9. EXPULSION OF MEMBERS (CNL S117)

9.1 Expulsion

A Member may be expelled from the Co-operative by Board resolution to the effect:

- (a) that the Member, its Associated Controller or its Associated Member Business has seriously or repetitively failed to discharge the Member's obligations:
 - (i) to the Co-operative under these Rules (including but not limited to the Associated Trading Account, the Co-operative Terms and Conditions and Security Interests); or
 - (ii) under a contract or contracts entered into with the Co-operative under section 125 of the CNL; or
 - (iii) under a contract or contracts entered into through the agency or arrangements facilitated by the Co-operative; or
- (b) that the Member, its Associated Controller or its Associated Member Business has acted (including by omission to act) in a way that has:
 - (i) prevented or hindered the Co-operative in carrying out one or more of its primary activities;
 - (ii) acted towards the Co-operative or another Member (or their Associated Controller, as the case may be) in a manner not consistent with the CSA Charter;
 - (iii) failed to comply with the obligations under a By-law where that By-law specifies that expulsion is a penalty that may be imposed; or
 - (iv) brought or risks bringing the Co-operative into disrepute; or
 - (v) been contrary to one or more of the Co-operative principles as described in section 10 of the CNL and has caused the Co-operative harm.
- (c) In the view of the Board as evidenced by resolution, the Member, its Associated Controller or its Associated Member Business does or is materially involved in an act, matter or thing which is detrimental to the interests of the Co-operative.

9.2 Notice of Expulsion

Written notice of the proposed Board resolution must be given to the Members and its Associated Controller at least 28 days before the date of the meeting at which the resolution is to be moved, which states:

- (a) the allegations against the Member or proposed grounds on which the Board proposes to rely;
- (b) the proposed resolution for the member's expulsion; and
- (c) that the Member has an opportunity at the meeting to address the allegations or basis for the proposed resolution either orally or in writing.

9.3 Board Resolution

At the Board meeting when the resolution for expulsion is proposed the following procedures apply:

- (a) at the meeting:
 - (i) the Member must be afforded an opportunity to be heard and is entitled to table evidence;
 - (ii) If the Member's Associated Controller is, in the opinion of the Board:
 - A. up to date with the sums its owes the Co-operative; and
 - B. not in breach of any obligation owed to the Co-operative; then

a representative of the Member's Associated Controller may, with the consent of the Member given in writing exercise the right to be heard afforded under Rule 9.3(a)(i) instead of the Member.
- (b) if the Member (or an eligible representative of the Member's Associated Controller) fails to attend at the time and place mentioned, without reasonable excuse, the resolution and information before the Board must be considered and the Co-operative may decide on the evidence before it, despite the absence of the member;
- (c) the Board may be both an investigator which makes its own enquiries and the decision maker. It may delay its decision and pursue investigation, should it resolve to do so;
- (d) once the alleged conduct and material before the Board is considered, the Board may decide to:
 - (i) expel the Member concerned; or
 - (ii) impose conditions on the continuation of the Member as a Member;
 - (iii) impose conditions on the continuation of each Member who is associated with the Member's Associated Controller;
 - (iv) suspend the supply of goods and services to the Member's Associated Controller;
 - (v) request the Associated Controller to replace the Member;

as the Board sees fit.

9.4 Other Matters Relating to Expulsion

- (a) For the purposes of Rule 9.1:
 - (i) a Member's obligations under:
 - A. a contract or contracts entered into with the Co-operative under section 125 of the CNL;
 - B. a contract or contracts entered into through the agency or arrangements facilitated by the Co-operative;are deemed to include the obligations of the Member's Associated Member Business and of its Associated Controller;
 - (ii) a Member's conduct alleged for the purpose of Rule 9.1(b) is deemed to include the acts and omissions of the Member's Associated Member Business and of its Associated Controller.
- (b) Expulsion of one joint Member means expulsion of all members holding membership jointly with the expelled Member.
- (c) An expelled Member must not be re-admitted as a Member unless the re-admission is approved by the Board, who may approve that re-admission subject to conditions.

9.5 Monetary Consequences of Expulsion or Resignation (CNL s128)

If a Member is expelled or resigns from the Co-operative then, unless the Member's Associated Controller continues to be eligible to remain as an Associated Controller:

- (a) all amounts owing to the Co-operative by the former Member and its Associated Controller shall become immediately payable in full (including such amounts as are reasonably assessed by the Board as being payable by way of losses or damages resulting from the grounds for expulsion); and
- (b) all benefits allocated to the Member and any capital to be returned from any shareholding may be set-off by the Co-operative in reduction of any sum owing by the Member or its Associated Controller;
- (c) all rights to unallocated benefits to that Member or its Associated Controller shall cease from earliest of:
 - (i) the date of resignation;
 - (ii) the notice issued under Rule 9.2, if such a notice was issued prior to the expulsion or resignation.
- (d) The Shares and CCUs (if any) of an expelled or resigning Member's Associated Controller must be cancelled as at the day of expulsion or resignation, and the cancellation must be noted in the registers of the Co-operative;
- (e) Subject to section 128 of the CNL, if the Member's Associated Controller is a shareholder, the Co-operative must pay to the expelled or resigning Member the amount of capital paid up on the former Member's Shares at the time of expulsion or resignation, but less any amount owing by:

- (i) the former Member; or
- (ii) the Member's Associated Controller;

to the Co-operative, including such amounts as are reasonably assessed by the Board as being payable by way of:

- (iii) losses or damages resulting from the grounds for expulsion;
 - (iv) sums due under the Associated Trading Accounts of the Member and each other Associated Trading Accounts of the member's Associated Controller, including amounts payable but not yet "due".
- (f) For clarity, no rebate or distribution of income or benefit accrues or is earned by a Member or its Associated Controller until and unless it is both declared and paid, unless in a specific instance the Board has resolved expressly to the contrary.

9.6 Continuity of the Associated Controller

For the purpose of Rule 9.5, an Associated Controller continues to be eligible to remain as an Associated Controller if:

- (a) that person continues to be the Associated Controller of a Financial Member who is not subject to cessation or expulsion action; or
- (b) within such time as may be permitted by the Board, that person is nominated as an Associated Controller of a new application to become a Member.

10. FORFEITURE AND CANCELLATIONS—INACTIVE MEMBERS (CNL SS156–163)

The Board must declare the membership of a Member cancelled if:

- (a) the whereabouts of the Member are not presently known to the Co-operative and have not been known to the Co-operative for a continuous period of at least three (3) years; or
- (b) the Member is not presently active and has not been active within the meaning of Rule 4.2 in the past three (3) years.

11. RIGHTS AND LIABILITIES OF MEMBERS UNDER BANKRUPTCY OR MENTAL INCAPACITY (CNL SS95, 96 & 117)

- (a) A person's membership ceases upon an Insolvency Event and that person's shares (or those of their associate) may be, subject to the satisfaction of the charge under Rule 14(i), transferred to the Official Trustee or External Administrator, as the case may be under the provisions of section 95 of the CNL.
- (b) A person appointed under a law of a State or Territory to administer the estate of a Member who, through mental or physical infirmity, is incapable of managing his or her affairs, may be registered as the holder of the Member's shares and the rights and liabilities of membership vest in that person during the period of the appointment.
- (c) The liabilities attaching to the shares of a person under bankruptcy or mental incapacity continue in accordance with section 96 of the CNL.

- (d) Upon application by a person appointed to manage the affairs of a Member referred to in subrule 11(b), the Board may decide to suspend some or all active membership obligations if there are grounds to believe that the member's physical or mental infirmity is temporary.

DIVISION 2 DISPUTE RESOLUTION

12. DISPUTES AND MEDIATION (CNL S129)

- (a) The grievance procedure set out in this Rule applies to disputes under and owing to the application of these Rules between:
 - (i) a Member and another Member; or
 - (ii) a Member (including a former member) and the Co-operative.
- (b) If a dispute arises to which this Rule applies, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this Rule, except where a person seeks urgent interlocutory relief.
- (c) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:
 - (i) the dispute coming to the attention of each party; or
 - (ii) a party giving notice, to each of the other parties involved, of the dispute or grievance.
- (d) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator appointed by the Board, who must be suitably qualified (in the opinion of the Board) and independent of the Co-operative and the parties concerned.
- (e) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (f) The mediator, in conducting the mediation, must:
 - (i) give the parties to the mediation process every opportunity to be heard and is entitled to call witnesses and table evidence; and
 - (ii) allow due consideration by all parties of any written statement and material submitted by any party.
- (g) The mediator cannot determine the dispute.
- (h) The mediation must be confidential and without prejudice.
- (i) In the absence of an agreement to the contrary, the costs of the mediation are to be shared equally between the parties and the parties must pay the mediator in advance of any mediation meeting.
- (j) Nothing in this Rule applies to any dispute as to:
 - (i) the construction or effect of any mortgage or contract contained in any document other than these Rules,

- (ii) any dispute involving the expulsion or suspension of a Member or the imposition of a fine.
- (k) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the CNL or otherwise at law.
- (l) The application of this grievance procedure shall only delay the holding of a meeting of the Board to be held for the purpose of passing a resolution of which notice has been given under Rule 9.2.
- (m) Section 130 of the CNL applies if mediation does not resolve the dispute.

DIVISION 3 MEMBERS' LIABILITY

13. LIABILITY OF MEMBERS TO CO-OPERATIVES (CNL SS117(2) & 121)

13.1 Liability Arising from Membership

- (a) A Member is liable to the Co-operative for the amount, if any, unpaid on the Shares held by the Member or the Member's Associate, together with any charges, including entry fees and regular subscriptions, payable by the Member to the Co-operative under these Rules.
- (b) Joint members are jointly and severally liable for any amount unpaid on shares and to any such charge mentioned in subrule 13.1(a).
- (c) A Member is liable to the Co-operative to the amount owing to the Member on redemption of its Qualifying CCU, which is forfeited to the Co-operative on expulsion or if an Associated Member Business ceases to have a relevant Financial Member prior to the expiry of five calendar years from its issue.

13.2 Liability Under Co-operative Terms and Conditions

The expulsion or termination of a Member's membership shall not affect the rights and interests of the parties to the contracts comprising the Associated Trading Accounts related to that Member, which shall remain enforceable according to their terms, except as these Rules expressly provide.

DIVISION 4 SHARES

14. CAPITAL AND SHARES (CNL SS76–82)

- (a) Shares may only be owned by a Member's Associated Controller.
- (b) Except as otherwise stated in these Rules, the Board shall determine the rights and interests attached to Shares and shall record those terms in a separate By-law.
- (c) No person may own more than one DSC Share and DSC Shares may only be owned by Foundation Directors.
- (d) No Share other than DSC Shares may be issued without a two third majority of the Board approving the issue.
- (e) DSC Shares are not transferrable except as these Rules permit, noting that it is permitted that an outgoing Foundation Director must assign its DCS Share to the person formally filling their seat as Foundation Director.

- (f) No Share may receive a dividend, nor receive a distribution of capital other than a return of the issue price of the Share.
- (g) No Share is to be allotted unless it has been fully paid.
- (h) A Share in the Co-operative does not carry a vote, except in the context as these Rules expressly permit, noting that the right to vote in a meeting of Members is attached to membership and governed by section 228 of the CNL.
- (i) Each Share is charged in favour of the Co-operative to secure the repayment to the Co-operative the sums which fall due under the Associated Trading Accounts related to the Member's Associated Controller.

15. REPURCHASE OF MEMBERS' SHARES (CNL SS99, 107, 109 & 118)

Members' shares may be repurchased by the Co-operative in accordance with the CNL and must be redeemed on an Associated Controller ceasing to be the proprietor, owner or controller of an Associated Member Business, with repayment of capital subject to Rule 14(i).

DIVISION 5 MEMBER CANCELLATIONS

16. ISSUE OF CO-OPERATIVE CAPITAL UNITS (CNL SS345-354)

16.1 Power to Issue

The Board may:

- (a) confer an interest in the capital of the Co-operative by issuing Qualifying CCUs in accordance with the CNL and it shall not be a requirement that a CCU holder be a Member or Shareholder, but must otherwise be an Associated controller of a Member; and
- (b) issue any form of security or debenture as the CNL and the Laws of Australia permit.

16.2 Rights in the CCU

Each registered holder of a Qualifying CCU:

- (a) is entitled to one (1) vote only at a meeting of the holders of CCUs;
- (b) in their capacity as a registered holder of a CCU, has none of the rights or entitlements of a Member;
- (c) the holder of a Qualifying CCU is entitled to receive notice of all meetings of the Co-operative; and
- (d) charges the benefit of the Qualifying CCU in favour of the Co-operative for the payment of the Annual Membership Fees which become due by the Member (and by any Member replacing that Member in respect of the Associated Member Business) in respect of whose application the Qualifying CCU was issued.

PART 3 GENERAL MEETINGS, RESOLUTIONS AND VOTING

17. ANNUAL GENERAL MEETING (CNL S252)

An annual general meeting ("AGM") must be held each year, at a place and on a date and a time decided by the Board, within five (5) months after the close of the financial year of the Co-operative or within the further time allowed by the Registrar.

18. MEMBERS' POWER TO REQUISITION A GENERAL MEETING (CNL S257)

- (a) The Board may, whenever it considers appropriate, call a special general meeting of the Co-operative.
- (b) The Board must call a general meeting of the Co-operative on the requisition in writing by members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the Co-operative.
- (c) The provisions of section 257 of the CNL apply to a meeting requisitioned by members.

Note. The Board is not required to call a general meeting of members to consider matters that are not matters for decision by the members in general meeting.

19. NOTICE OF GENERAL MEETINGS (CNL SS239, 254 & 611)

- (a) At least 14 days' notice of a general meeting (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given.
- (b) Any other persons who are, under these Rules or the CNL, entitled to receive notices from the Co-operative.
- (c) The notice must state the place, day and hour of the meeting and include ordinary business as specified in Rule 20 and, for special business, the general nature of any special business.
- (d) The notice must also include any business members who have notified their intention to move at the meeting under subrule 19(g) (but only if the members' notification has been made under these Rules and within time).
- (e) The notice must be served in the manner provided in the CNL or including without limitation as Rule 47 permits.
- (f) Non-receipt of the notice by a Member or group of Members does not invalidate the proceedings at the general meeting, except where a material injustice is done or the CNL or Australian law expressly invalidates the proceedings.
- (g) Members who together are able to cast at least 20% of the total number of votes that are able to be cast at a meeting of the Co-operative and who have a resolution to submit to a general meeting must give written notice of it to the Co-operative at least 45 days before the day of the meeting.
- (h) A resolution including a Special Resolution signed by 100% of the Members shall be deemed passed at a duly convened meeting of Members.

20. BUSINESS OF GENERAL MEETINGS

The ordinary business of the AGM of the Co-operative must be:

- (a) to confirm minutes of the last preceding general meeting (whether annual or special); and
- (b) to receive from the Board, auditors or officers of the Co-operative:
 - (i) the financial reports of the Co-operative for the financial year;
 - (ii) a report on the state of affairs of the Co-operative; and
- (c) to approve any payments of fees to Directors.

21. QUORUM AT GENERAL MEETINGS

- (a) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item.
- (b) The members present in person or by Proxy, each being entitled to exercise a vote, constitute a quorum.
- (c) If a quorum is not present within half an hour after the appointed time for a meeting to commence, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- (d) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

22. CHAIRPERSON AT GENERAL MEETINGS

- (a) The chairperson, if any, of the Board may preside as chairperson at every general meeting of the Co-operative.
- (b) If there is no chairperson, or if at a meeting the chairperson is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present must choose someone from their number to be chairperson (until the chairperson attends and is willing to act).
- (c) The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

23. ATTENDANCE AND VOTING AT GENERAL MEETINGS (CNL SS228 & 256)

- (a) The right to vote attaches to membership and not shareholding as stated in Rule 14(h).
- (b) Joint members have only one (1) vote between them.

- (c) Every joint member is entitled to attend and be heard at a general meeting.
- (d) In the event of a dispute between joint members as to which Member will vote (subject to the grant of any proxy or power of attorney), the joint member whose name appears first in the register of members is entitled to vote.
- (e) A resolution, other than a special resolution, must be decided by simple majority.
- (f) Subject to subrules 23(g) and 23(h), a question for decision at any general meeting must be decided on a show of hands of members present (including by Proxy) at the meeting.
- (g) A poll may be demanded on any question for decision.
- (h) If before a vote is taken or before or immediately after the declaration of the result on a show of hands:
 - (i) the chairperson directs that the question is to be determined by a poll; or
 - (ii) at least five (5) members present in person or represented by Proxy demand a poll, the question for decision must be determined by a poll.
- (i) The poll must be taken when and in the manner that the chairperson directs.
- (j) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- (k) Once the votes on a show of hands or on a poll have been counted then, subject to subrule 23(h), a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- (l) The result of the vote must be entered in the minute book.

24. VOTING ON A SHOW OF HANDS (CNL SS234 & 256)

On a show of hands at a general meeting, each member:

- (a) present; or
- (b) represented by a non-member acting under a power of attorney; or
- (c) represented by a non-member appointed under the provisions of the CNL; or
- (d) represented by a proxy;

may exercise only one (1) vote and a person may hold multiple proxies and exercise a vote for each proxy held.

25. VOTING ON A POLL

On a poll called at a general meeting, each member:

- (a) present; or
- (b) represented by a person acting under a power of attorney; or
- (c) represented by a person appointed under the provisions of the CNL; or

- (d) represented by a duly appointed proxy under these Rules;
- (e) has one (1) vote.

26. DETERMINING THE OUTCOME WHERE EQUALITY OF VOTES (S228)

- (a) This Rule applies where the votes in favour and against a resolution are equal.
- (b) If the chairperson of the meeting is a Member of the Co-operative, he or she may exercise a second or casting vote.
- (c) If the chairperson is not a Member of the Co-operative, or decides not to exercise a second or casting vote, the outcome of an equality of votes is taken to have been decided in the negative.

27. PROXY VOTES (S229)

- (a) A Member who has a Proxy Representative registered in respect of their membership appoints that Proxy Representative to act in their stead in all dealings with the Co-operative under these Rules.
- (b) A Proxy Representative of a Member may only be changed with the written direction of the Member's Associated Controller.
- (c) So long as Section 229 of the CNL requires a proxy to be an active Member of the Co-operative then each Proxy must be a Member.
- (d) A member or a Proxy Representative may vote by proxy at a general meeting, by postal ballot or by written resolution.
- (e) The instrument appointing a Proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (f) An instrument appointing a Proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.
- (g) A person may be appointed as a Proxy by more than one Member or Proxy Representative and shall carry the accumulated sum of the votes of their appointors on a poll.
- (h) An instrument appointing a proxy may be the form the Board approves.
- (i) An instrument appointing a proxy is not valid until the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of the power or authority, are deposited, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the Co-operative or at another place specified for the purpose in the notice calling the meeting.
- (j) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Co-operative at the registered office

before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

28. POSTAL BALLOTS (OTHER THAN SPECIAL POSTAL BALLOTS) (CNL SS247 & 250)

- (a) Where the CNL requires a matter to be decided by a postal ballot, the following rules in this Rule 28 will apply.
- (b) A postal ballot must be held in respect of a special resolution where members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the Co-operative may requisition the Board to conduct the special resolution by postal ballot. Provided that the Board shall be entitled to cause the requisitioning members to be liable for the cost of a postal ballot if the special resolution is not passed.
- (c) If a postal ballot is requisitioned by members under subrule 28(b), the requisition should specify whether the postal ballot is to be a secret ballot.
- (d) A postal ballot requisitioned under subrule 28(b) is to be conducted in accordance with the National Regulations and in the form and manner determined by Board.
- (e) The Board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable electronically.
- (f) If the Board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each Member has voted.
- (g) The Board must appoint a returning officer to conduct the postal ballot. In default of such an appointment, the Secretary is the returning officer.
- (h) Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting members giving:
 - (i) particulars of the business in relation to which the postal ballot is being conducted; and
 - (ii) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
 - (iii) notice of the closing date and closing time of the postal ballot;and must be sent to members so that they arrive (assuming Standard Postal Times) at least 21 days before the closing date of the postal ballot.
- (i) This Rule does not apply in relation to special postal ballots.

29. SPECIAL POSTAL BALLOTS (CNL SS248 & 249)

- (a) Where either the CNL or the Board requires a matter to be decided by a special postal ballot, the following rules in this Rule 29 will apply
- (b) The majority required to pass a special postal ballot is 75%. A special postal ballot is governed by the provisions of the CNL and the National Regulations as well as these Rules.

- (c) Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting members so that they arrive (assuming Standard Postal Times) at least 28 days before the closing date of the special postal ballot.
- (d) The Board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (e) If the Board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each Member has voted.

30. SPECIAL RESOLUTIONS (CNL SS238–241)

30.1 Passing Special Resolution

A special resolution is a resolution that is passed:

- (a) by a two-thirds majority at a general meeting; or
- (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
- (c) by a three-quarters majority in a special postal ballot of members.

30.2 Notice

A notice of special resolution is required to be given to members at least 21 days before the vote or ballot time (or 28 days' notice in the case of a special postal ballot).

30.3 Information in Notice

The notice of special resolution must state:

- (a) the intention to propose the special resolution; and
- (b) the reasons for proposing the special resolution; and
- (c) the effect of the special resolution being passed.

PART 4 BOARD OF DIRECTORS

31. BOARD (CNL S172)

- (a) The business of the Co-operative is to be managed by or under the direction of the Board of Directors, and for that purpose the Board has and may exercise all the powers of the Co-operative that are not required to be exercised by the Co-operative in general meeting.
- (b) Subject to Rule 31(c), the Board shall have up to fourteen Directors drawn from the following processes:
 - (i) seven Directors from the Member Election, under the process according to Rule 33.3(a);
 - (ii) up to six Foundation Directors from the DSC Shareholder selection, under the process according to Rule 33.3(b)(iv); and

- (iii) a Chairperson, appointed as Rule 40(a) provides.
- (c) The Board may, by a majority of two thirds resolve to increase or reduce the number of Directors, provided that:
 - (i) a majority of Directors must be Members;
 - (ii) except for casual vacancies filled from time to time, a majority of seats on the Board must be filled from the Member Election.

32. QUALIFICATIONS OF DIRECTORS (CNL S174)

- (a) A person is not qualified to be a Director of the Co-operative unless the person is an individual over the age of 18 years and is either:
 - (i) At the time of election or appointment:
 - A. an active Member of the Co-operative or a representative of a corporation that is an Associated Controller with an active Member of the Co-operative;
 - B. such Member has been an active Member of the Co-operative for a period of not less than five (5) years; or
 - (ii) not an active Member, but who possesses special skills in management or other technical areas of benefit to the Co-operative appointed by the Director Selection Committee or elected by the DSC Shareholders;
 - (iii) a contracted person occupying the role of Chair; or
 - (iv) a Founding Member.
- (b) A person is not qualified to be a Founding Director of the Co-operative unless the person is both a Member and an individual over the age of 18 years and is either:
 - (i) has served as a Director in the recent past (assessed in the reasonable opinion of the Board) and that service was for not less than a period of two consecutive years; or
 - (ii) in the period within the first two years of incorporation, is a Founding Member.
- (c) A person qualified to be a director under subrule 32(a)(i) or subrule 32(a)(iv) is known as a "**Member Director**". A person qualified under subrule 32(a)(ii) or subrule 32(a)(iii) is known as a "**Non-member Director**".
- (d) The Board of Directors must have a majority of Member Directors.

33. FIRST DIRECTORS AND ELECTION OF DIRECTORS (CNL SS173 & 179)

33.1 First Directors

- (a) The first Directors are elected by poll at the formation meeting of the Co-operative (except as provided by section 173(2)(b) of the CNL) for the application for incorporation shall be conclusive.

- (b) The term of office of the first Directors comprising the Initial Board is, subject to the rights of the Members under the CNL or otherwise concluded earlier under these Rules, the CNL or by resignation, to be:
 - (i) in respect of the Foundation Directors eight (8) years (approximately) ending on the day of the eighth AGM after the formation meeting; and
 - (ii) in respect of each other Director five (5) years (approximately) ending on the day of the fifth AGM after the formation meeting.

33.2 Term of Office

The term of office of Directors elected or appointed under these Rules other than under Rules 33 or 36, is to commence from the AGM at which they are elected and ends on the day of the third AGM after their appointment or election, unless concluded earlier under these Rules, the CNL or by resignation.

33.3 Election and Appointment Structure

The Board shall establish and maintain:

- (a) Member Election By-laws which:
 - (i) shall provide for the nomination and seconding of Members for election as Directors by the vote of the Membership;
 - (ii) shall provide for a process of election, with the results to be announced at the Annual General Meeting of the Co-operativeand may, but need not, provide for the process of election and ballot;
- (b) A Director Selection Committee, which:
 - (i) shall comprise at least three and not more than six (6) persons, who:
 - A. need not be Members; and
 - B. are selected by the DSC Shareholders.
 - (ii) shall determine, from time to time, candidates for appointment office as Foundation Directors to be voted on or otherwise appointed by a clear majority of such the DSC Shareholders who are, at the time, Directors who have not under notice of resignation or removal;
 - (iii) must in good faith, determine such candidates who the committee believes will:
 - A. supplement the Board (having regard to continuing and elected directors) to advance the good governance and business of the Co-operative;
 - B. result, so far as is practicable, in the Board being a balanced, skills based board, possessing experience, acumen and expertise for the good governance, member representation and commercial conduct of the Co-operative;

- C. will faithfully guide the Co-operative according to the principles of the CNL and the CSA Charter;
- (iv) will appoint such persons to fill the vacancies in the office of Foundation Director to be announced at an AGM.

33.4 Election and Appointment of Directors

The members of the Board other than the Initial Board are to be filled as follows:

- (a) a majority of seats must be filled by persons who are Members;
- (b) subject to Rule 33.3, the term of appointment and of election shall be three (3) years, provided that any appointee of the Director Selection Committee may have their appointment terminated by a two thirds majority of the Director Selection Committee on not less than one (1) months' notice;
- (c) other than persons filling casual vacancies, new Directors shall serve from the close of the AGM at which their election or appointment, as the case may be, is announced.

33.5 Election Requirements

The minimum requirements for elections of Directors by Members shall be:

- (a) at least six (6) weeks before an AGM, the Board must:
 - (i) notify all members of the number of Directors retiring at the forthcoming AGM; and
 - (ii) advise the members of:
 - A. their eligibility to nominate as a Director; and
 - B. the duties and responsibilities of a Director; and
 - C. the anticipated remuneration (if any); and
 - D. the nomination and election procedures.
- (b) A notice must also be displayed at the place of business of the Co-operative inviting nominations of nominees to serve as Directors.
- (c) A nomination must:
 - (i) be signed by two (2) or more members; and
 - (ii) provide details of the qualifications and experience of the person nominated; and
 - (iii) be accompanied by a notice in writing signed by the nominee consenting to their nomination.
- (d) The nomination and the notice of consent must be lodged with the secretary of the Co-operative at least 30 days before the AGM.

- (e) The secretary, or an officer nominated by the Board, must give details of each person who has been nominated to members with the notice of the AGM. Details to be provided to members must include:
 - (i) the nominee's name; and
 - (ii) the nominee's qualifications and experience; and
 - (iii) the nominee's length of any previous service as a Director of the Co-operative or with any other Co-operative.
- (f) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the AGM.
- (g) If there are insufficient nominees to fill all vacancies, the nominees to be declared elected at the AGM and nominations for people to fill the remaining vacancies are to be called from the floor and a ballot held if required.
- (h) If the number of nominees exceeds the number of vacancies, the election of Directors must be conducted at the meeting by ballot as follows:
 - (i) a returning officer is elected at the meeting. The Directors, the secretary and anyone who has an interest in the election are not eligible to be the returning officer;
 - (ii) all nominees are to be listed on the ballot form in alphabetical order;
 - (iii) the returning officer is responsible for determining the validity of, and counting of the votes;
 - (iv) if there is an equality of votes, the outcome must be determined by lot; and
 - (v) the returning officer is to declare the election results.
- (i) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with Rule 36.

34. REMOVAL FROM OFFICE OF DIRECTOR (CNL S180)

The members may, by resolution under section 180 of the CNL, with special notice as required by that section, remove a Director before the end of the Director's period of office and their seat shall become a casual vacancy.

35. VACATION OF OFFICE OF DIRECTOR (CNL S179)

In addition to the circumstances set out in the CNL, a Director vacates office if:

- (a) the Director dies; or
- (b) a 75% majority of the Board resolve that the Director has not met the performance criteria for the Board consistent with CSA Charter, where the Director is given written notice at least seven (7) days before the date of the meeting at which the resolution is to be moved, which states:
 - (i) the proposed resolution for the removal of the Director;

- (ii) the allegations against the Director or proposed grounds on which the Board proposes to rely; and
- (iii) that the Director has an opportunity at the meeting to address the allegations or basis for the proposed resolution either orally or in writing;

and the Director is afforded an opportunity to be heard and is entitled to table evidence.

- (c) The Director is absent from three consecutive scheduled Directors meetings (for clarity, excluding urgently called meetings).

36. CASUAL VACANCIES AND ALTERNATE DIRECTORS (CNL SS173 & 177)

The Director Selection Committee may appoint a qualified person to fill a casual vacancy in the office of Director until the next AGM, who shall fill such vacancy within three calendar months of the seat falling vacant.

37. REMUNERATION OF DIRECTORS (CNL S203)

Directors' remuneration must comply with the provisions of the CNL.

38. PROCEEDINGS OF THE BOARD (CNL SS175 & 176)

- (a) Meetings of the Board (including meetings conducted outside Board meetings pursuant to section 176 of the CNL) are to be held as often as may be necessary for properly conducting the business of the Co-operative and must be held at least every three (3) months.
- (b) A meeting may be held with one or more of the Directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the Directors taking part in the meeting.
- (c) Questions arising at a meeting of the Board must be decided by a majority of votes.
- (d) If votes are equal, the chairperson has a second or casting vote.
- (e) Other than in special circumstances decided by the chairperson, at least 48 hours' notice must be given to the Directors of all meetings of the Board, without which the meeting cannot be held.

39. QUORUM FOR BOARD MEETINGS (CNL S175)

- (a) The quorum for a meeting of the Board is 50% of the number of Directors (or if that percentage of the number of Directors is not a whole number, the whole number next higher than one half).
- (b) For a quorum, the number of Member Directors must outnumber the Non-member Directors by at least one (1).

40. CHAIRPERSON OF BOARD

- (a) The chairperson of the Board is to be appointed by the Board.
- (b) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed for holding the meeting or is unwilling to act as chairperson of

the meeting, the Directors present may choose one of their number to be chairperson of that meeting until the chairperson attends and is willing to act as chairperson.

- (c) The chairperson may be removed, and a new chairperson elected, by ordinary resolution of the Board.

41. DELEGATION AND BOARD COMMITTEES (CNL S178)

- (a) The Board may by resolution delegate to:

- (i) a Director; or
- (ii) a committee of two (2) or more Directors; or
- (iii) a committee of members of the Co-operative; or
- (iv) a committee of members of the Co-operative and other persons if members form the majority of persons on the committee; or
- (v) a committee of Directors and other persons;

the exercise of the Board's powers (other than this power of delegation) specified in the resolution. The Co-operative or the Board may by resolution revoke all or part of the delegation.

- (b) A power delegated under this Rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (c) A delegation under this Rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (d) Despite any delegation under this Rule, the Board may continue to exercise the power delegated.
- (e) If a power is exercised by a Director (alone or with another Director) and the exercise of the power is evidenced in writing, signed by the Director in the name of the Board or in his or her own name on behalf of the Board, the power is taken to have been exercised by the Board. This is so whether or not a resolution delegating the exercise of the power to the Director was in force when the power was exercised, and whether or not any conditions mentioned in subrule 41(c) were observed by the Director exercising the powers.
- (f) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (g) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal, the chairperson has a second or casting vote.

42. OTHER COMMITTEES

- (a) The Board may by resolution appoint committees of members or other persons or both, to act in an advisory role to the Board and to committees of Directors.

- (b) Rules 41(f) and 41(g) apply to committees appointed under this Rule, with the changes approved by the Board.
- (c) The quorum for a meeting of the committee is half the number of committee members (or if half is not a whole number the whole number next higher than one half).

43. MINUTES

- (a) The Board must keep minutes of meetings and, in particular, of:
 - (i) all appointments of officers and employees made by the Directors; and
 - (ii) the names of the directors present at each meeting of the Board and of a committee of the Board; and
 - (iii) all resolutions and proceedings at all meetings of the Co-operative and of Directors and of committees of Directors.
- (b) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- (c) The minutes are to be signed within a reasonable time after the meeting to which they relate by either the chairperson of that meeting or the chairperson of the next meeting.

44. CHIEF EXECUTIVE OFFICER (CNL SS172 & 178)

- (a) The Board shall appoint a person to be responsible for the day to day management of the Co-operative. The person shall be a professional executive manager.
- (b) The appointed person is the chief executive officer of the Co-operative, and may be called the chief executive officer or may be called an executive chairperson, as the case may be.
- (c) The conditions and the period of appointment including termination must be decided by the Board.
- (d) Unless appointed as executive chairperson, a chief executive officer is not a Director, and in all cases such a person is not entitled to be present or to vote at a meeting of Directors on a motion concerning the conditions of his or her own appointment, conditions of service, or termination of service.
- (e) The person appointed under this Rule is not required to be an active Member of the Co-operative.
- (f) In the event of any conflict between the terms of the appointment of a person under this Rule and that person's obligations or privileges under the CNL, the terms of the CNL prevail over the terms of appointment.

PART 5 RULES AND BY-LAWS

45. AMENDMENTS, CHARTER AND BY-LAWS

45.1 Amendments and Copies of Rules (CNL ss57 & 60–63)

- (a) Any amendment of the Rules must be approved by special resolution.
- (b) A proposal to amend the Rules of the Co-operative must be made in a form approved by the Board which clearly shows the existing Rule or Rules concerned and any proposed amendment to the Rules.
- (c) A Member is entitled to a copy of the Rules upon payment of the amount of \$5 to the Co-operative.

45.2 By-Laws

- (a) The Board shall have the power to make such By-laws concerning:
 - (i) the rights and obligations of the Members as members of the Co-operative as it sees fit;
 - (ii) behaviours of Members, their Associated Controller and any Proxy Representative, so far as those matters relate to the affairs of the Co-operative, in the Board's reasonable opinion;
 - (iii) the application and implementation of matters relevant to the CSA Charter.
- (b) Where a By-law states that amendment of that By-law requires a majority greater than an ordinary majority to amend that By-law, then the Board shall not amend that By-law except by a resolution passed with at least that stated majority.

45.3 CSA Charter

The CSA Charter shall require a special resolution of Members to be amended.

45.4 Binding Nature of the Charter and the Rules

The CSA Charter and each By-law established by the Board shall be binding on the Members as if they were part of these Rules and set out here in full, in each case.

PART 6 ADMINISTRATIVE MATTERS

46. INSPECTION OF RECORDS AND REGISTERS (CNL SS214 & 215)

- (a) Members of the Co-operative have free access to the formal Member's records (which term does not include Board Minutes, Board working papers, Board committee minutes or working papers) and registers referred to in section 214(1) of the CNL and they may make a copy of any entry in the registers free of charge, subject to reasonable notice.
- (b) Members do not have access to the minutes of Board or committee meetings.

47. NOTICES TO MEMBERS (CNL S611)

- (a) This Rule applies in addition to section 611 of the CNL regarding how a notice or other document may be given to a Member of the Co-operative.
- (b) A notice or other document required to be given to a member of the Co-operative may be given by the Co-operative to any Member by any form of technology (for example, by fax or email), where the Member has given consent and notified the Co-operative of the relevant contact details.
- (c) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and prepaid letter would be delivered in the ordinary course of post. In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (d) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (e) A notice may be given by the Co-operative to joint members by giving the notice to the joint Member named first in the register of members.
- (f) A notice may be given by the Co-operative to the person entitled to a share in consequence of the death, incapacity or bankruptcy of a Member by sending it through the post in a prepaid letter addressed to that person by name. Alternatively, it can be addressed to the person by the title of representative of the deceased or incapacitated person, or trustee of the bankrupt, or by any like description, and:
 - (i) the address should be that supplied for the purpose by the person claiming to be entitled; or
 - (ii) if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.

PART 7 ACCOUNTING AND FINANCIAL MATTERS

48. FINANCIAL YEAR

The financial year of the Co-operative ends on 30 June of each year.

49. ACCOUNTS

- (a) The Board must have at least one financial institution account, electronic or otherwise, in the name of the Co-operative, into which all amounts received by the Co-operative must be paid as soon as possible after receipt.
- (b) All cheques drawn on the accounts, and all drafts, bills of exchange, promissory notes and other negotiable instruments, of the Co-operative must be signed by two (2) authorised persons.
- (c) The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by two (2) authorised persons.
- (d) For the purposes of this Rule, an *authorised person* is:

35

- (i) a Director; or
- (ii) a person approved by the Board.

50. DISPOSAL OF SURPLUS FUNDS DURING A FINANCIAL YEAR (CNL SS355–358)

The Co-operative may dispose of any surplus arising in a financial year arising from the business of the Co-operative in the manner authorised under the CNL as determined by the Board.

51. PROVISION FOR LOSS

The Board must make appropriate provision for losses in the Co-operative's accounts and when reporting to members is to indicate whether the loss is expected to continue and whether there is any real prejudice to the Co-operative's solvency.

52. FINANCIAL REPORTS TO MEMBERS (CNL PART 3.3)

The Co-operative must prepare financial reports and statements in accordance with the CNL, the National Regulations and these Rules.

PART 8 WINDING UP

53. SALE OF THE UNDERTAKING

The Board must not permit the Co-operative to enter into any contract to sell either the whole or a substantial part of the undertaking of Co-operative without first seeking the approval of the material terms of the contract of sale given by a majority of 75% of the Members at a duly convened general meeting of Members.

54. WINDING UP (CNL PART 4.5)

- (a) The winding up of the Co-operative must be in accordance with Part 4.5 of the CNL.
- (b) If on the winding up or dissolution there remains any property after the satisfaction of all the Co-operative's debts and liabilities (including the refund of the amounts paid up on the shares), this must be paid to, or distributed among:
 - (i) the registered holders of the Qualifying CCU's, but only to the extent of the issue price of the CUU in each case, in priority to:
 - (ii) the Registered holders of Shares but only to the extent of the issue price of the Share in each case, in priority to:
 - (iii) the Members of the Co-operative, in proportion to their respective relative face value of purchases conducted through the Co-operative's books (whether facilitated by or from the Co-operative over period of two (2) calendar years prior to the date of appointment of the external administrator of the Co-operative, in respect of which the records of the Co-operative shall be conclusive.
- (c) If on the winding up or dissolution there is a deficiency, members are liable to contribute towards the deficiency to the extent of any amount unpaid on the Shares held by the Member and any charges payable by the Member to the Co-operative as required by these Rules.

The Schedule

Part One

The Founding Members

Name	Associated Controller
Vasilli Karellas	Karellas Investments Pty Ltd
Ian Ashcroft	Ashcrofts Supa IGA Pty Ltd
Terry Karkazis	Karkazis Bros Pty Ltd
Warren Mason	Woonona Supermarket Pty Ltd
Fred Harrison	Ritchies Stores Pty Ltd
Jeff Harper	Bayview Pty Ltd
Mick Daly	MA Daly No.2 Pty Ltd atf Michael Daly Family Trust No. 2 and PC Daly No.2 Pty Ltd atf Peter Daly Family Trust No.2
Nick Nikitaras	Hill Street Grocer
Brad Hopper	HG Retail Pty Ltd
Ben Ryan	Ryans IGA Supermarkets
Rob Outridge	Maleny IGA

Part Two

The Initial Directors

Name	Office	Associated Controller
Vasilli Karellas	Director	Karellas Investments Pty Ltd
Ian Ashcroft	Director	Ashcrofts Supa IGA Pty Ltd
Terry Karkazis	Director	Karkazis Bros Pty Ltd
Warren Mason	Director	Woonona Supermarket Pty Ltd
Fred Harrison	Director	Ritchies Stores Pty Ltd
Jeff Harper	Director	Bayview Pty Ltd
Mick Daly	Director	MA Daly No.2 Pty Ltd atf Michael Daly Family Trust No. 2 and PC Daly No.2 Pty Ltd atf Peter Daly

		Family Trust No.2
Nick Nikitaras	Director	Hill Street Grocer
Brad Hopper	Director	HG Retail Pty Ltd
Ben Ryan	Director	Ryans IGA Supermarkets
Robert Outridge	Director	Maleny IGA
Warwick White	Executive Chair	None

Part Three

The Foundation Directors

Name	Associated Controller
Vasilli Karellas	Karellas Investments Pty Ltd
Ian Ashcroft	Ashcrofts Supa IGA Pty Ltd
Fred Harrison	Ritchies Stores Pty Ltd
Mick Daly	MA Daly No.2 Pty Ltd atf Michael Daly Family Trust No. 2 and PC Daly No.2 Pty Ltd atf Peter Daly Family Trust No.2
Brad Hopper	HG Retail Pty Ltd
Ben Ryan	Ryans IGA Supermarkets

ANNEXURE 3

SUPPLIERS ACCORDING TO “GOODS OR SERVICES OF A KIND OR CLASS”

SUPPLY TYPE – GROCERY DIRECT			
Name	Address	Email	Contact
Acclaimed Packaging	1-3/140 Winton Rd, Joondalup WA 6027		
AFS Distributors	19-21 Westpool Dr, Hallam VIC 3803		
Alors Holdings PT/A Simone Logue	1/18-22 Lilian Fowler Pl, Marrickville NSW 2204		
Australia On A Plate	24A Ralph St, Alexandria NSW 2015 P.O. Box 88, Horsley Park NSW 2175		
Baiada Poultry	P.O. Box 21, Pendle Hill NSW 2145		
Baked Provisions	Lot 108 Lyn Pde, Prestons NSW 2170 1/9 Production Dr, Campbellfield VIC 3061		
Barter			
Beak and Johnston	43 Wentworth St, Greenacre NSW 2190		
Bertocchi Smallgoods Pty Ltd	97-113 Trawalla Ave, Thomastown VIC 3074		
Beta Spuds	386 Mandogalup Rd, Mandogalup WA 6167 P.O. Box 1028, Bibra Lake DC, Bibra Lake WA 6965		
Bodhi's Bakehouse	11 Ellen St, Fremantle WA 6160 P.O. Box 8051, Fremantle, WA 6160		
Botany Group	Suite 1.02, 2 Burbank Pl, Norwest NSW 2153 1/48 Denninup Way, Malaga WA 6090		
Bulla (via Monde Nissin)	15 Swann Dr, Derrimut VIC 3030 P.O. Box 318, Sunshine MDC, VIC 3020		
Cantarella Bros Pty Ltd	118 Wetherill St, Silverwater NSW 2128 P.O. Box 6565, Silverwater NSW 1811		
Cheese Culture	25 Wright Street, Adelaide SA 5000		
Chobani Australia (via Monde Nissin)	453-455 Hammond Rd, VIC 3164		
Cleaver's Organic Meat	Arcadian Organic & Natural Meat Co, 7/161 James St, Toowoomba QLD 4350		
Complete Health Products	1/115 Darlington Dr, Yatala QLD 4207		
Conga Foods	150 Newlands Rd, North Coburg VIC 3058		
Cranky Health Pty Ltd	P.O. Box 12, Merewether, NSW 2291		
Crown Valley WA	5/1397 Wanneroo Rd, Wanneroo WA 6065		

Dardanup Butchering Company	100 Wimbridge Rd, Picton WA 6229 P.O. Box 277, Bunbury WA 6231
Ella Foods	
F Mayer Imports Pty Ltd	B1, 2-8 McPherson St, Banksmeadow NSW 2019 P.O. Box 196 Matraville NSW 2036
Free Range Egg Farms	P.O. Box 32, Austral NSW 2179
Freedom Foods Group Ltd	80 Box Road, Taren Point NSW 2229
G&K	120 Abbott Rd, Hallam VIC 3803
Golden Cockerel	1483 Mt Cotton Rd, Mt Cotton QLD 4165
Goodman Fielder	Level 5, 40 Mount St, North Sydney NSW 2060 Lock Bag 2222, North Ryde NSW 2113
Green Clover Pty Ltd	2/1 Coggins Pl, Mascot NSW 2020
Hillside Meat Processors	28 Charles St, South Perth WA 6151
Honest To Goodness	Unit D1 & E9, 46-62 Maddox St, Alexandria NSW 2015 P.O. Box 4182, Castlecrag NSW 2068
Inghams Enterprises Pty Limited	Level 4, 1 Julius Avenue, North Ryde NSW 2113 Locked Bag 2039, North Ryde NSW 1670
JMark Pty Ltd	54 Prestige Pde, Wangara WA 6065
J.C.'s Quality Foods	Lot 1, 1490 Ferntree Gully Road, Knoxfield VIC 3180
Kadac Pty Ltd	P.O. Box 139, Moorabbin VIC 3189
Kipri Holdings Pty Ltd	30 Perry St, Campsie NSW 2194 P.O. Box 426, Campsie NSW 2194
Licensed Socks and Apparel Australia	16 Agosta Dr, Laverton North VIC 3026
Lion Dairy & Drinks	737 Bourke Street, Docklands VIC 3008 P.O. Box 23084, Docklands VIC 8012
Manassen Foods Australia	P.O. Box 88, Horsley Park NSW 2175
Master Butchers	203-215 Hanson Rd, Athol Park, Adelaide SA 5012
Membrillo	Warehouse E7, Units 6 & 7, Market City, 280 Bannister R Canning Vale WA 6155
Millers	
Monde Nissin	Level 3, 6 Nexus Court, Mulgrave VIC 3170 P.O. 1384, Clayton South VIC 3169
Mr Donut	3000 Lower Dandenong Rd, Mordialloc VIC 3195
Mt. Barker Chicken	2 Alumina Rd, East Rockingham WA 6168 P.O. Box 785, Rockingham 6968
N & E Pacchini & Sons Pty Ltd	22-24 Bentley St, Wetherill Park NSW 2164
Nerang Park Poultry	45 Gilston Rd, Nerang QLD 4211
News Finance Shared Services	2 Holt St, Surry Hills NSW 2010
Norco Milk	107 Wilson St, South Lismore NSW 2480
Organic Trader Pty Ltd	13/809-821 Botany Rd, Rosebery NSW 2018
Pace Farm Pty Ltd	1 Kippist Ave, Minchinbury NSW 2770

	Locked Bag 800, Rooty Hill NSW 2766
Parmalat Australia (now Lactalis Australia)	Level 5, 35 Boundary St, South Brisbane QLD 4101
Peppercorn Food Company Pty Ltd	5 Tucks Rd, Seven Hills NSW 2147
Perth Pork Centre	Level 1, 6 Short St, Fremantle WA 6160 P.O. Box 462, Fremantle WA 6959
PFD Food Services Pty Ltd	6 Henderson Rd, Knoxfield VIC 3180 P.O. Box 208, Ferntree Gully VIC 3156
PM Fresh	75 Northcorp Boulevard, Broadmeadows VIC 3047
Quality Bakers	Level 5, 40 Mount St, North Sydney NSW 2060 Lock Bag 2222, North Ryde NSW 2113
Quality Food World Pty Ltd	260 Lower Dandenong Rd, Mordialloc VIC 3195
Ready Chef Go	70 Grey St, Bassendean WA 6054
Remedy (Kombucha)	41 Colemans Rd, Carrum Downs VIC 3201
Royal Foods Aust Pty Ltd	248 Fleming Rd, Hemmant QLD 4174 P.O. Box 43, Tingalpa QLD 4173
S & B Gourmet Foods Pty Ltd	1/1 Short St, Chatswood NSW 2067
Somerville Egg Farm	220 Eramosa Rd West, Moorooduc VIC 3933
Sonoma Baking Company Pty Ltd	32-44 Birmingham St, Alexandria NSW 2015
Soulfresh Group Pty Ltd	4/28-50 Cyanamid St, Laverton North VIC 3026
Stella Bella T/A Foodies	6/2 Bronti St, Mascot NSW 2020
Super Marketing	6/29 Business Park Drive, Notting Hill VIC 3168
Tailored Packaging (Markets) Pty Ltd	13 Gibbon Rd, Winston Hills NSW 2153 P.O. Box 8317, Baulkham Hills BC NSW 2153
The Market Grocer Pty Ltd	Warehouse F2, 350 Parramatta Rd, Homebush NSW 2140
Tip Top Bakery (George Weston Foods Limited)	Building A, Level 2, Talavera Rd, North Ryde NSW 2113 P.O. Box 555, Enfield NSW 2136
Unique Health Foods	15 Rawlins Cct, Kunda Park, Sunshine Coast QLD 4556
Western Meat Packers Group	37 King Edward Rd, Osborne Park WA 6017 P.O. Box 29, Innaloo WA 6918
Yakult	Locked Bag 1403, Dandenong South VIC 3164
Yummy Snack	108-112 Frederick St, Welland SA 5007
Zammit Ham & Bacon Curers Pty Ltd	131-133 Ballandella Rd, Pendle Hill NSW 2145

SUPPLY TYPE – GROCERY WAREHOUSE

Name	Address	Email	Contact
Asaleo	Ailsa St, Box Hill VIC 3128 P.O. Box 117, Box Hill VIC 3128		
BATA			
Bega	23-45 Ridge St, North Bega NSW 2550 P.O. Box 123, Bega NSW 2550		
Campbell Arnotts	24 George St, North Strathfield NSW 2137 Locked Bag 55, Silverwater NSW 2128		
Coca-Cola Amatil	Level 13, 40 Mount St, North Sydney NSW 2060		
Colgate Palmolive	GPO Box 3964, Sydney NSW 2001		
Don	Level 3, 187 Todd Rd, Port Melbourne VIC 3207 P.O. Box 555, Enfield NSW 2136		
Ferrero	Level 36, 100 Miller St, North Sydney NSW 2060		
Fonterra	Level 2, 40 River Boulevard, Richmond VIC 3121		
Henkel	135-141 Canterbury Rd, Kilsyth VIC 3137		
Imperial	Level 4, 4-8 Inglewood Place, Norwest NSW 2153		
KCA	52 Alfred Street, Milsons Point NSW 2061		
Korbond	37 Memorial Ave, Ingleburn NSW 2565		
Lion	Level 7, 68 York St, Sydney NSW 2000		
Mars Australia	Suite C, Level 16, 15 Talavery Road, North Ryde NSW 2113		
Mars – Wrigley	48 Michigan Avenue, Asquith NSW 2077		
Mars Food Australia	4 Corella Close, Berkeley Vale, Wyong NSW 2261		
Mars Petcare Australia	1 Petcare Place, Wodonga VIC 3690		
Mars Chocolate Australia	116 Ring Road, Wendouree, Ballarat VIC 3355		
McCain	PO Box 105, Wendouree VIC 3355		
Mondelez	75 Dorcas St, South Melbourne VIC 3205		
Nestle	Building D, 1 Homebush Bay Drive, Rhodes NSW 2138		
Lactalis (previously Parmalat)	Level 5, 35 Boundary Street, South Brisbane QLD 4101		
Patties	Chifley Business Park Level 2, Dingley Village VIC 3172		
Peters Ice Cream	254-294 Wellington Road, Mulgrave VIC 3170		
Philip Morris	Level 6, 30 Convention Centre Place, South Wharf VIC 3006		
Primo	18 Hume Highway, Chullora NSW 2190		
Reckitt Benckiser	Level 47, 680 George Street, Sydney NSW 2000		
San Remo	4 Boden Court, Windsor Gardens SA 5087		
Saputo	5331 Great Ocean Road, Allansford VIC 3277		
Schweppes	2 Beverage Drive, Tullamarine VIC 3043		

Simplot	2 Chifley Drive, Mentone VIC 3194
Smiths (Fritolay)	Level 8, 799 Pacific Highway, Chatswood NSW 2067
Unilever	Level 17, 2 Park Street, Sydney NSW 2000

SUPPLY TYPE – GROCERY DIRECT AND GROCERY WAREHOUSE

Name	Address	Email	Contact
Arla Foods/F Mayer Imports	28 Salta Drive, Altona North VIC 3025		
Baiada Poultry	PO Box 21, Pendle Hill NSW 2145		
Balfours			
Barossa Fine Foods	7 Ridgeway Road, Edinburgh North SA 5113		
Botany International Foods	Suite 1.02, 2 Burbank Pl, Norwest NSW 2153		
Enzos at Home/Famante	302 Port Rd, Hindmarsh SA 5007		
Festival City Wines	982-984 Port Rd, Albert Park SA 5014		
Fruitalicious	336-338 South Rd, Croydon Park SA 5008		
G&K Fine Foods	120 Abbott Rd, Hallam VIC 3803		
Genobile Saba	48A Radford Rd, Reservoir VIC 3073		
Global Foods	83 Lawrence Drive, Nerang Qld 4211		
Gourmet Poultry	14 Newcastle Cres, Cavan SA 5094		
Holco	20 Gilbertson Rd, Laverton North VIC 3026		
Inghams Enterprises	Level 4, 1 Julius Ave, North Ryde NSW 2113		
JC Quality Foods	1/1490 Ferntree Gully Rd, Knoxfield VIC 3180		
La Casa Del Pane	2/375 Magill Rd, St Morris SA 5068		
Manassen	10 Park West Drive, Park West Industrial Estate, Derrimut VIC 3026		
Monde Nissin	Level 3, 6 Nexus Ct, Mulgrave VIC 3170		
Nocelle Foods	2-16 Market Ln, Pooraka SA 5095		
One Foods	7b Belfree Dr, Green Fields SA 5107		
PFD Food Services	6 Henderson Road, Knoxfield VIC 3180		
Riveria Bakery	96 Hayward Ave, Torrensville SA 5031		
Royal Foods	48 Fleming Rd, Hemmant QLD 4174		
Siena Foods	11/13 Opala St, Regency Park SA 5010		
Slape and Sons	7 Antonio Ct, Newton SA 5074		
Sunfresh Salads	7-8 Sharp Ct, Mawson Lakes SA 5095		
Unique Health Products	15 Rawlins Circuit, Kunda Park QLD 4556		
Vili's Bakery	2-14 Manchester Street, Mile End South SA 5031		
Vittoria Food and Beverage	118 Wetherill St N, Silverwater NSW 2128		
Yummy Snack Foods	108-112 Frederick St, Welland SA 5007		

SUPPLY TYPE – EQUIPMENT

Name	Address	Email	Contact
Ausmart	Level 5, 2 Ross Place, South Melbourne VIC 3205		
Avem Quirks	9 Business Park Dr, Lynbrook VIC 3975		
Bakers			
Brice	11 Holloway Drive, Bayswater VIC 3153		
Hussmann	66 Glendenning Rd, Glendenning NSW 2761		
Lanes			
Master Butchers	203-215 Hanson Rd, Athol Park, Adelaide SA 5012		
Quality Shop Fitting	Unit 115/193 South Pine Road, Brendale QLD 4500		
Shopfitting Industries	12 Regent St, Melrose Park SA 5039		
Wedderburn	124 Sir Donald Bradman Drive, Hilton SA 5033		

SUPPLY TYPE – REFRIGERATION

Name	Address	Email	Contact
Adelaide Commercial Refrigeration	56 Harvey St, Collinswood SA 5081		
Alkar	1/29 McCottor Street, Acacia Ridge QLD 4110		
Alliance Refrigeration	59 Hartley Rd, Smeaton Grange NSW 2567		
Baker's Refrigeration	6 Parkland Road, Osborne Park WA 6017		
Hilltop	13 Scenic Rd, Young NSW 2594 Australia		
Hussmann	66 Glendenning Rd, Glendenning NSW 2761		
Nu-tech	Baulkham Hills NSW 2153, Australia		

SUPPLY TYPE – PACKAGING/WRAPPING

Name	Address	Email	Contact
Bunzl	1/52 Fox Drive, Dandenong South VIC 3175		
Castaway			
Huhtamaki (TP)	Level 1, 75 Raglan Street, Preston VIC 3072		
Independent Supermarket Supplies	3/1570 Centre Rd, Springvale VIC 3171		
Maxpak	1355 North Rd, Huntingdale VIC 3166		
MPM	15-17 Viola Place, Brisbane Airport QLD 4008		
Plastic Man	48B Alexander Ave, Taren Point NSW 2229		

Pluspak	48 Koornang Rd, Scoresby VIC 3179
Pronto Packaging	1/75 Araluen St, Kedron QLD 4031
Seaside	10/11, 32 Milgate Dr, Morningson VIC 3931
Tailor Packaging	13 Gibbon Road, Winston Hills NSW 2153
TPM Packaging Solutions	23 Jarrah Dr, Braeside VIC 3195



SUPPLY TYPE – WASTE

Name	Address	Email	Contact
Aust Waste Management	56 Paraweena Dr, Truganina VIC 3029		
Cleanaway	Level 4, 441 St Kilda Road, Melbourne VIC 3004		
JJ Richards	3 Grant Street Cleveland QLD 4163		
JR Richards	92-94 Manning Street, Tuncurry NSW 2428		
KS Environmental	544 Boundary Rd, Dingley VIC 3172		
Premier Waste	10-12 Graham Daff Boulevard, Braeside VIC 3195		
Remondis Waste	Level 4, 163 O’Riordan St, Mascot NSW 2020		
SOLO	86-88 Chinderah Bay Drive, Chinderah NSW 2487		
Speedie Waste	1505 Hume Hwy, Campbellfield VIC 3061		
Veolia	Level 4, 65 Pirrama Rd, Pyrmont NSW 2009		



SUPPLY TYPE – INSURANCE

Name	Address	Email	Contact
BHI Insurance	Cnr Bultje and Brisbane Sts, Dubbo NSW 2830		
FIA Insurance	Level 2, 208 Greenhill Road, Eastwood SA 5063		



SUPPLY TYPE – LABOUR

Name	Address	Email	Contact
Burps			
Time Target	Level 10, 52 Alfred St, Milsons Point NSW 2061		



SUPPLY TYPE – POINT OF SALE

Name	Address	Email	Contact
ABS (SA retailers mainly)	Unit 3, 142 Richmond Rd, [off Bakers Rd], Marleston SA 5033		
Futurenet Convenience	Unit 19, 37-47 Borec Road, Penrith NSW 2750		
Gap	26 Woodlands Terrace, Edwardstown, SA 5039		
GPK (ex Merlin , ex Wraps)	2/94 Abbott Road, Hallam VIC 3803		
Independent Solutions			
LS Retail (Cornetts)			
Retech			
Surefire	Level 1, 468 St, Kilda Road, Melbourne VIC 3004		
Worldsmart Retail	Level 2, 50 Greenhill Rd, Wayville SA 5034		

SUPPLY TYPE – ELECTRICITY

Name	Address	Email	Contact
AGL	Level 24, 200 George Street, Sydney NSW 2000		
Alinta	Grosvenor Place, Level 13, 225 George Street, Sydney NSW 2000		
Blue NRG	Level 1, 731 Whitehorse Rd, Mont Albert, VIC 3127		
Dod	Level 14, 600 St Kilda Road Melbourne, VIC 3004		
Energy Australia	Level 33, 385 Bourke Street, Melbourne VIC 3000		
ERM	Level 52, 111 Eagle Street, Brisbane QLD 4000		
Lumo	Level 3, 565 Bourke Street, Melbourne VIC 3000		
Momentum	Level 12, 628 Bourke Street, Melbourne VIC 3001		
Next	PO Box 550 Flinders Lane VIC 8009		
Origin Energy	Level 45, 264-278 George Street, Sydney NSW 2000		
Powerdirect	Level 3, 699 Bourke Street, Docklands VIC 3008		
Red	PO Box 4136, East Richmond VIC 3121		
Simply	L 14 644 Chapel St, South Yarra VIC 3141		

SUPPLY TYPE – EFTPOS

Name	Address	Email	Contact
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Commonwealth Bank of Australia	Tower 1, 201 Sussex St, Sydney NSW 2000
National Australia Bank	500 Bourke St, Melbourne VIC 3000
Westpac	275 Kent Street, Sydney NSW 2000

SUPPLY TYPE – TELECOMMUNICATIONS

Name	Address	Email	Contact
Optus	1 Lyonpark Rd, Macquarie Park NSW 2113		
Primus	Level 10, 452 Flinders Street, Melbourne VIC 3000		
Telstra	Level 41, 242 Exhibition Street, Melbourne Victoria 3000		
Vodafone	Level 14, 177 Pacific Highway, North Sydney NSW 2060		

SUPPLY TYPE – LOGISTICS

Name	Address	Email	Contact
DKR Transport	111 Magnesium Dr, Crestmead QLD 4132		
Linfox	55 English Street, Essendon Fields VIC 3041		
Toll			

ANNEXURE 4

MARKET PARTICIPANTS

ACTUAL OR POTENTIAL COMPETITORS			
Name	Address	Email	Contact
Woolworths Limited	1 Woolworths Way, Bella Vista NSW 2153		
Coles Group Limited	800 Toorak Road, Hawthorn East VIC 3123		
Metcash Limited	1 Thomas Holt Drive, Macquarie Park NSW 2113		
Aldi Stores Limited	Locked Bag 56, St Marys Delivery Centre NSW 2760		
Kaufland			
Costco	17-21 Parramatta Rd, Lidcombe NSW 2141		
Amazon	Level 37, 2 Park Street, Sydney NSW 2000		
The Distributors	394 Lane Cove Road, Macquarie Park NSW 2113		

TRADE OR INDUSTRY ASSOCIATIONS			
Name	Address	Email	Contact
Australian Food and Grocery Council	Unit 5G, 65 Canberra Avenue, Griffith ACT 2603		
Australian Retailers Association	Level 1, 112 Wellington Parade, East Melbourne VIC 3002		
Master Growers Association	Suite 5/1 Milton Parade, Malvern VIC 3144		
National Association of Retail Grocers of Australia	Suite 9, Level 2, 33 MacMahon Str, Hurstville NSW 2200		

1 Interim Application for s.88 Authorisation

1.1 Character of Interim Authorisation

CSA is seeking Authorisation pursuant to s.88 by way of an Application of which this Interim Application forms “Annexure 5” (the “Principal Application”)

CSA also seeks interim s.88 Authorisation from the ACCC pursuant to s.91(2) of the Act during the period:

1. while due consideration is given to the Principal Application; and
2. in which interested parties may apply to the Tribunal for a review of an ACCC determination (including a draft determination), concerning the Principal Application, once made.

The conduct for which Interim Authorisation is sought is that conduct sought in the Principal Application, but falling short of the actual entry into contracts or understandings with suppliers by which members of CSA can place orders with that supplier. In other words, CSA wishes to undertake the preliminary works prior to entry into contracts, arrangements or understandings that would be proscribed without Authorisation.

CSA seeks to be able to:

- a) Discuss and negotiate terms for standing offers to be made to the Members and the Associated Controllers (as defined in the Rules of CSA as the owner or controller of the member’s retail store), including:
 - a. arrangements or understandings relating to or that have or might risk having the effect of (or providing for);
 - b. the fixing, controlling or maintaining of the price for, or a discount, allowance, rebate, benefit or credit to be given;
 - c. in respect to the supply, acquisition or re-supply of goods and/or services, as between a supplier in the Australian grocery industry supply chain;
- b) Research amongst the CSA Members and disseminate amongst the CSA Members such information concerning the retail and wholesale grocery industry in Australia for the benefit of its members. Such information could include, without limit, sharing information concerning price and conditions of supply offered to or existing with CSA members by suppliers to those members.

1.2 Public benefit of Interim Authorisation

The Principal Application should demonstrate that an important sector of retail diversity is in long term decline; that, by itself is important. The submissions made in the Principal Application are adopted for the purposes of this Interim Application.

CSA holds the view that the sector is rapidly approaching a critical point and needs to act immediately.

The evidence is that the Independent Retail Supermarket sector as currently structured cannot hold its market share, and with that, the Independent wholesale grocery sector faces the same risk. That risk exists in the face of the previously prevailing economic and competitive conditions. Those conditions are worsening for the Independents.

We have set a simple example in the Application to show the sensitivity of a hypothetical retail grocery store to the narrowing margin between cost increases and sales revenue. We say market share decline is set to accelerate and that core profit centres for the Independent Retail Supermarket stores are under immediate threat from new market entrants and from changes in consumer spending patterns; to turn this “ship”, immediate action to implement change is required.

These threats from new market entrants and from changes in consumer spending patterns are over and above rising core costs. Rising core costs are a considerable risk in their own right, including costs of electricity and EFT charges, noting that EFT now accounts for some 90% of all transactions and charges born by the retailer, directly clipping top-line earnings. Competition for revenue from new market entrants and from changes in consumer spending patterns exacerbates the effect.

The potential is that Independent Retail Supermarket stores will face the “perfect storm” this summer. The critical risks in forthcoming months are:

- a) The declining world economy; this of itself has only an incidental effect on the Independent Retail Supermarket sector and that is delivered through lowering consumer confidence and hence lower consumer spending. Yet this has a direct and actually very current impact, as the foreign competitors eye the more reliable returns for their investment from expanding into the relatively more prospectus Australian market. It is no accident that Kaufland has already announced its intention to open 20 stores across Australia, with News Corporation reporting on 2 September 2019 that these are “*half billion dollar plans to flip Aussie supermarkets on their head*”; whilst Kaufland’s model is likely to target Aldi customers, that will have a direct consequence for each of Aldi, Coles and Woolworths, with the Independent Retail Supermarket store left in their wake as “the majors” fight over price and supply;
- b) The declining Australian Dollar, now retreating to 10 year lows, increases the cost of all imported goods. The consequence of this is direct and obvious, but in a positive sense, what this means is that CSA Members wish to seek, as soon as they can, the opportunity to develop Australian alternatives in concert; yet without volume the Industry’s capacity, on both the supply side and retail side, to do that is retarded;
- c) Climatic Disruption; whilst this might be perceived as playing a populist card, pundits are projecting the “hottest summer on record”. That spells considerable risk for a core profit centre for the Independent Retail Supermarket store for fresh produce. As such climatic conditions, including fire, drought, storm and flood disrupt the primary production supply chain. This is at its worst for the Independent Retail Supermarket store, as the supply arrangements able to be secured by the dominant market players will take up the available supply, causing volumes and quality to decline for the Independents and thus causing prices to rise exponentially, and quality of produce to fall; eliminating a critical point of distinction and a critical profit centre for the Independent Retail Supermarket store;
- d) General economic conditions, with general economic commentators suggesting the likely trend for employment is falling at best. We submit that it is more likely that there are to be rises in unemployment. It is trite that the Independent Retail Supermarket sector is sensitive to the weekly wage packet, as it is that pressure that drives the consumer to choose “price” over “convenience”; it places negative pressure on the attraction of specialty items that draw consumers to the Independent offering.

Independent Retail Supermarket stores urgently need to work together to now begin to work towards addressing supply side issues to be able to respond to these matters.

These issues are matters of immediate concern and the lead time to implement matters is effectively months; these are actual current pressures; they are the things which the Independent Retail Supermarket stores now face.

What CSA seeks is a dispensation to gather this information from amongst its members to strategically plan the best avenues to identify and address cost savings. What tends to risk breaching the regulations is that sharing, combined with the approach of CSA to a supplier seeking the same or better benefits for the collective; negotiation force derives from pledging the support of the membership in taking up those terms. As a hypothetical, soliciting a standing offer from a supplier to a “subscriber” database made up of, say, CSA members is not something which we believe crosses the boundaries, even where we put before that supplier the potential purchase volumes etc. But that hypothetical example does not have the negotiating force of CSA putting a position of a capacity to “speak for” the CSA Members in those negotiations; it is that path that leads to the risk of infringement, in our view.

And it is that path, the path which could lead to infringement by implementing terms, which CSA does not seek interim authorisation for. Rather, CSA would accept that it cannot enter undertakings, arrangements or contracts which commit, morally or legally, its members to behave according to

terms explored during the interim authorisation period. Rather the period would be used to work towards arrangements, but on the understanding that CSA does not have that capacity to commit its membership until and unless Authorisation under the Principal Application is granted.

Such a condition ought not prevent CSA from allowing standing offers to be passed through CSA, so long as they do not involve an understanding of some collective commitment between the CSA members. Nor should it prevent the conclusion of terms dependent on Authorisation under the Principal Application being granted

Independent Retail Supermarket store needs to put itself in a position to respond to the current environment at the earliest opportunity.

The interim approval being sought should have no detrimental impact on the market or on competition. To assess this, we must work on the basis that the Principal Application is declined. If that were so, the regulations remain in place to cause CSA to avoid transactions and understandings that would be "cartel provisions"; In recognising that, CSA recognises that it would not be able to assure to a supplier the CSA would, for instance, commit its members to an arrangement.

End.