

11 September 2020

Mr Gavin Jones
Acting Executive Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: adjudication@accc.gov.au

Dear Mr Jones,

Reauthorisation of Casual Mall Licensing Code of Practice

Attached to this letter is an application to the Australian Competition and Consumer Commission (ACCC) from the Shopping Centre Council of Australia (SCCA) for the revocation of an authorisation and the substitution of a new reauthorisation of the *Casual Mall Licensing Code of Practice* (the Code), for a ten-year period (to 31 December 2030), under section 91C of the *Competition and Consumer Act 2010*.

As the ACCC is aware, casual mall licensing is the right to occupy retail space for a short-term (maximum 180 days), temporary period, and is often referred to as 'pop-up' retailing.

The voluntary Code has been authorised on three previous occasions by the ACCC: in 2007 (initial authorisation), 2013 and 2017. The current authorisation expires on 31 December 2020 (refer to ACCC Determination A91591 & A91592, dated 20 December 2017).

Formally, our application is for the revocation of authorisations A91591 & A91592 and the substitution of a replacement authorisation.

The Code applies in all jurisdictions except South Australia, whereby casual mall licensing is regulated separately.

In its entirety, the application includes this letter and the following accompanying documentation:

- Code Administration Committee letter (CAC) to ACCC, 13 December 2019.
- Code Fact Sheet (developed in 2019).
- A completed form – *Application for revocation of an authorisation for proposed conduct and substitution of a replacement*.
- A supporting document of Supplementary Information.
- A copy of the Code for which reauthorisation is sought, noting it is largely similar to the current Code but has been amended to reflect changes to the CAC.

In preparing this application, we have reviewed the ACCC's guidance titled *Application for revocation of an authorisation for proposed conduct and substitution of a replacement (March 2019)*, and *Guidelines for Authorisation of Conduct (non-merger) March 2019*. We have also discussed this application with the ACCC.

The proposed conduct remains the same as under the current authorisation, which is to regulate casual mall licensing in shopping centres, which refers to agreements under which a person grants another person a right to occupy part of the common area of a shopping centre for the purpose of the sale of goods or the supply of services to the public, where the total number of days the person is permitted to occupy the area does not exceed 180 days.

Since the ACCC's Determination of the current authorisation, the following material initiatives have taken place to improve the Code (in general order of events):

- *Increased retailer representation* on the CAC, which was a recommendation of the ACCC in 2017. In addition to the Australian Retailers Association (ARA) and National Retail Association (NRA), the Pharmacy Guild of Australia (PGA), National Online Retailers Association (NORA) and Franchise Council of Australia (FCA) were all invited to join the Committee in February 2018. The PGA and NORA remain CAC members. The FCA attended some CAC meetings however has withdrawn their participation on the CAC.

Cont:

- *Appointment of an independent Chair of the CAC*, which was a recommendation of the ACCC in 2017. Former Victorian and Australian Small Business Commissioner, Mark Brennan, was appointed as independent Chair in July 2018, following resolution by the CAC.
- As proposed by retailer groups on the CAC the development of a *Fact Sheet* on the Code to provide to prospective sitting shopping centre tenants and casual mall licensees with an overview of the Code, and its key provisions in relation to competitors, sightlines, outgoings, and dispute resolution. The Fact Sheet was sent to relevant Small Business Commissioners in November 2019 for their awareness. A copy of the Fact Sheet is on the SCCA's website. A copy of the Fact Sheet is attached and forms part of this application.
- At the CAC's 12 December 2019 meeting, the Committee resolved that *reauthorisation should be sought for a longer-term* (e.g. 10-years) in the next period. The CAC wrote formally to the ACCC on 13 December 2019. A copy of that letter is attached and forms part of this application.
- The Restaurant and Catering Industry Association of Australia (RCA) joined the CAC in June 2020, following a CAC resolution to invite the RCA to join at its December 2019 meeting.

Despite the SCCA's sincere efforts to lodge this application as recommended, at least six months prior to expiry of the Code, the current issues arising from the coronavirus pandemic have made this difficult, including our ongoing engagement on policy and regulatory decisions made by governments.

Shopping centres have remained opened, as essential activities, during the pandemic, which has required ongoing engagement with governments on operational and other issues such as food courts reopening, mobile testing in car-parks and the imposition / easing of trading and movement restrictions. In addition, we have been engaged on issues under the Retail Code of Conduct announced by the Prime Minister on 7 April and which was progressively regulated by States and Territories.

It is understood that the formal processes for evaluation by the ACCC of this application may not be concluded by the date of the current authorisation's expiry. In this regard, the SCCA respectfully requests that the ACCC grants an interim authorisation to ensure the Code can remain in force until the ACCC gives its decision on this application.

In requesting interim authorisation, we note that it would maintain the market status quo and would not cause harm to other parties.

I appreciate the ACCC's consideration of this application, and the time, advice and courtesy of ACCC officials in discussing this issue to date. As always, I would be pleased to discuss any issues with the ACCC.

Yours sincerely,



Angus Nardi
Executive Director

Attachments:

- Code Administration Committee letter to ACCC, 13 December 2019.
- Code Fact Sheet
- Completed form – *Application for revocation of an authorisation for proposed conduct and substitution of a replacement.*
- Supporting document of supplementary information.
- A copy of the Code for which reauthorisation is sought.



13 December 2019

Mr Mick Keogh
Deputy Chair
Australian Competition and Consumer Commission (ACCC)
GPO Box 3648
SYDNEY NSW 2001
By email: mick.keogh@acc.gov.au

Dear Mr Keogh

Casual Mall Licensing Code of Practice – reauthorisation

We write in relation to the current authorisation (A91591, A91592) of the *Casual Mall Licensing Code of Practice*, issued to the Shopping Centre Council of Australia (SCCA) for a three-year period.

The current authorisation expires on 31 December 2020, and we anticipate that the ACCC may soon write to the SCCA in relation to reauthorisation.

At a meeting of the Code Administration Committee (CAC) on 12 December 2019, it was resolved unanimously that the Committee intends to seek a longer-term reauthorisation post 31 December 2020 (e.g. 10 years), or an 'enduring' reauthorisation, but with the ability for parties to make representations to the ACCC if / as needed during the relevant period.

We wanted to proactively bring the CAC's resolution and intention to your early attention.

We note that Clause 18 of the Code provides that *'Within one year prior to the date of expiry of the Code according to Clause 17 the CAC will report to the parties to the Code on whether the period of operation of the Code should be extended and, if a period of extension is agreed, will seek further authorisation of the Code from the ACCC'*.

As you would know, the expansion of the CAC, and the appointment of an Independent Chair, was a suggestion of the ACCC as part of the current authorisation.

The CAC has proven to be a productive forum for parties to engage on relevant issues in relation to the Code and its administration.

At our meeting on 12 December 2019, the CAC also resolved to further expand its current membership to include the Restaurant and Catering Industry Association of Australia. The Independent Chair, Mark Brennan, will be issuing an invitation to them shortly.

Please don't hesitate to contact the Independent Chair, Mark Brennan, or any of the undersigned should you wish to discuss this issue.

We look forward to working with you and the ACCC in 2020.

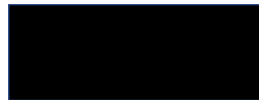
Yours sincerely



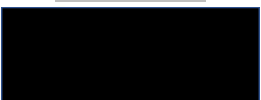
Mark Brennan
Independent Chair
**Casual Mall Leasing Code
Administration Committee**
Ph: [Redacted]



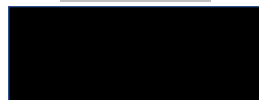
Russell Zimmerman
Executive Director
Australian Retailers Association
Ph: [Redacted]



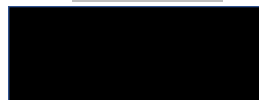
Dominique Lamb
CEO
National Retail Association
Ph: [Redacted]



Paul Greenberg
Founder
**National Online Retailers
Association**
Ph: [Redacted]



Scott Harris
On Behalf of Suzanne Greenwood
Executive Director
Pharmacy Guild of Australia
Ph: [Redacted]



Angus Nardi
Executive Director
Shopping Centre Council of Australia
Ph: [Redacted]



Australian Retailers Association



The Pharmacy Guild of Australia



FACT SHEET: CASUAL MALL LICENSING

This Fact Sheet provides an overview of ‘casual mall licensing’ under the [Casual Mall Licensing Code of Practice](#). Although this is provided for general information only, it reflects the importance of shopping centre lessees having an appropriate awareness and understanding of the Code. A copy of the six-page Code (see image below) can be accessed at www.scca.org.au.

The Code is, in effect, designed to provide a fair balance between: (1) protection for sitting lessees and (2) business efficacy for lessors. In a practice sense, the Code protects sitting lessees from the sightlines to their premises from being blocked and unreasonable competition from a casual mall licensee, while recognising fair business opportunities that may be available to lessors.

OVERVIEW OF CASUAL MALL LICENSING

The shopping centre that you are either considering operating a business in, or currently operate a business in, may operate several ‘casual mall’ sites. These may also be known as ‘pop-up’ or ‘promotional’ retail sites.

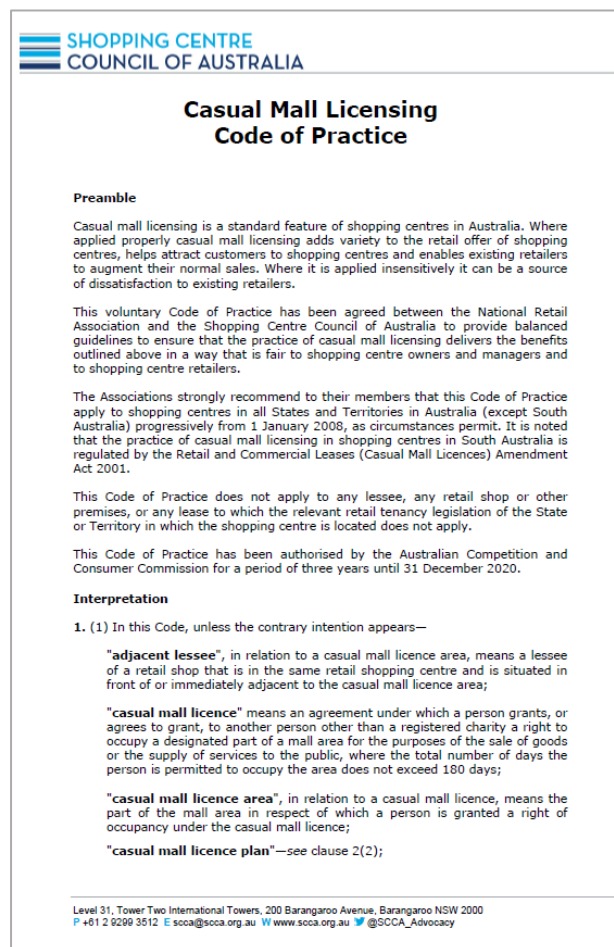
A casual mall site is an area in the public mall, or common area, of a shopping centre, where a person can operate a business under a ‘casual mall licence’ for a short term, and a maximum of 180 days.

A survey of shopping centres highlighted that the average term for a business operating at a casual mall site is 12 days.

Such businesses can be existing lessees in a shopping centre (e.g. to augment their existing sales), or a business that currently does not operate in a shopping centre (e.g. to add variety to a shopping centre’s offer to customers).

A casual mall licence will generally be issued in accordance with the *Casual Mall Licensing Code of Practice* (see following image) which is authorised by the Australian Competition and Consumer Commission (ACCC). The current Code was authorised to the Shopping Centre Council of Australia, supported by the National Retail Association and Australian Retailers Association.

The Code applies in all jurisdictions, except in South Australia where casual mall licensing is regulated separately. The Code is voluntary, and any shopping centre is welcome to apply the Code. The Code has however been agreed to by members of the Shopping Centre Council of Australia (a full list is available at www.scca.org.au) and all support the Code.



If you are a lessee in a shopping centre, you may want to check your Disclosure Statement and/or lease to confirm if your shopping centre owner or operator has agreed to apply the Code.

KEY PROVISIONS

The Code stipulates various requirements on shopping centre owners and operators in relation to the granting of a casual mall licence, including in relation to 'competitors', 'sightlines', 'outgoings' and 'dispute resolution'.

These requirements ensure that the practice of casual mall licensing delivers the benefits of casual mall licensing in a way that is fair to shopping centre owners and operators and to shopping centre retailers.

As an example, a shopping centre owner or operator must not grant a casual mall licence that results in the unreasonable introduction of an external competitor (a person who is not a lessee in the shopping centre) to an adjacent lessee (a lessee of a retail shop that is in the same shopping centre and is situated in front of or immediately adjacent to the casual mall licence area).

There are also provisions in relation to the introduction of an internal competitor (a person who is a lessee in the shopping centre).

Under the Code, in the case of the sale of goods, a competitor is a person who displays goods for sale and where more than 50% (on a floor area occupied by display basis) of the goods displayed are of the same general kind as more than 20% (on a floor area occupied by display basis) of the goods displayed for sale by another person. In the case of the supply of services, a competitor is a person who competes with the other person to a substantial extent.

A shopping centre also must generally ensure that a casual mall business does not substantially interfere with the sightlines to a lessee's shopfront.



Where there is casual mall licensing in a shopping centre, a particular benefit for sitting lessees is that they are entitled to a reduction in the total amount of non-specific outgoings that they would otherwise pay. The amount of the reduction is calculated having regard to total outgoings, lettable area and length of the casual mall licence.

CONCERNS?

If you are a lessee in a shopping centre and believe the shopping centre owner and/or a casual mall business has breached the Code, you should immediately notify the nominated representative of the shopping centre owner or operator in writing.

Under the Code, where a complaint is made, the shopping centre owner and lessee must attempt to resolve any complaint by negotiation between themselves.

If the complaint cannot be resolved by negotiation, the parties agree that it should be referred to mediation. Details of retail tenancy mediation bodies in each jurisdiction are listed below:

- **Commonwealth:** Australian Small Business and Family Enterprise Ombudsman (www.asbfeo.gov.au)
- **ACT:** Access Canberra (www.accesscanberra.act.gov.au)
- **NSW:** Office of the New South Wales Small Business Commissioner (www.smallbusiness.nsw.gov.au)
- **NT:** Northern Territory Consumer Affairs (www.consumeraffairs.nt.gov.au)
- **QLD:** Department of Employment, Small Business and Training (www.desbt.qld.gov.au)
- **TAS:** Business Tasmania (www.business.tas.gov.au)
- **VIC:** Small Business Commission (www.vsbic.vic.gov.au)
- **WA:** Small Business Development Corporation (www.smallbusiness.wa.gov.au)

CODE ADMINISTRATION COMMITTEE

The Code is overseen by a Code Administration Committee, which comprises a balance of representatives for shopping centre owners and retailers, including the Australian Retailers Association, Charter Hall, National Retail Association, National Online Retailers Association, Pharmacy Guild of Australia, Shopping Centre Council of Australia, Scentre Group and Vicinity Centres.

The role of the Committee is to promote and monitor the operation of the Code.

The Committee is chaired by an independent person, Mark Brennan, a lawyer and former Australian Small Business Commissioner, Victorian Small Business Commissioner and Chairman of the Victorian Commission for Gambling and Liquor Regulation.

Disclaimer: This Fact Sheet is provided as a guide only, should not be taken as constituting legal or other professional advice, and should not be relied upon as the sole basis for making decisions or entering into a commercial or other agreement. You should consider seeking independent legal and other professional advice.

INFORMATION

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission (ACCC):

Application is hereby made under subsection 91C (1) of the Competition and Consumer Act 2010 for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

Applicants

1. Provide details of the applicants for revocation and substitution, including:

1.1 name, address (registered office), telephone number and CAN

Shopping Centre Council of Australia Limited (SCCA)
Level 31, Tower Two International Towers
200 Barangaroo Avenue, Barangaroo NSW 2000
(02) 9299 3512
ACN 116 804 310

1.2 contact person's name, position, telephone number and email address

Angus Nardi, Executive Director
Shopping Centre Council of Australia

[REDACTED]

1.3 a description of business activities

National industry group representing Australia's major shopping centre owners, managers and developers.

1.4 email address for service of documents in Australia.

[REDACTED]

Authorisation to be revoked (the existing authorisation)

2. Provide details of the authorisation sought to be revoked including:

2.1 the registration number and date of the authorisation which is to be revoked

Authorisations A91591 & A91592 - Final Determination granted by the ACCC on 20 December 2017.

2.2 other persons and/or classes of persons who are a party to the authorisation which is to be revoked

Dominique Lamb, Chief Executive Officer
National Retail Association (NRA)
Level 3/67 St Pauls Terrace, Spring Hill QLD 4000
PO Box 1544, Coorparoo DC QLD 4151

National industry association and employer group representing the interests of retailers.

2.3 the basis for seeking revocation, for example because the conduct has changed or because the existing authorisation is due to expire.

Authorisations A91591 and A91592 will expire on 31 December 2020.

Revocation is sought to allow for substitution of new authorisations to ensure continuity of the authorisation of the Casual Mall Licensing Code of Practice (the Code) for parties to the Code under subsection 91C(1) of the Competition and Consumer Act 2010.

Authorisation to be substituted (the new authorisation)

3. If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf, authorisation is sought. Where relevant provide:

3.1 name, address (registered office), telephone number, and ACN

N/A

3.2 contact person's name, telephone number, and email address

N/A

3.3 a description of business activities.

N/A

The proposed conduct

4. Provide details of the proposed conduct, including:

4.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct

We seek reauthorisation for a ten-year period to 31 December 2030.

The Code regulates the practice of casual mall licensing in shopping centres.

Casual mall licensing refers to agreements under which a person grants another person a right to occupy part of the common area of a retail shopping centre for the purpose of the sale of goods or the supply of services to the public, where the total number of days the person is permitted to occupy the area does not exceed 180 days.

See attached supplementary information for further details.

The Code was first authorised by the Australian Competition and Consumer Commission (ACCC) in August 2007 (A91049 and A91050, with approval of a minor variation in 2008 with regard to the timeframe for expiration) and, subsequently, in 2013 (A91329 and A91330) for five years to 31 December 2017.

The current authorisation was granted on 20 December 2017 for 3 years to 31 December 2020 (A91591 and A91592).

4.2 an outline of any changes to the conduct between the existing authorisation and the new authorisation

There are no changes to the proposed conduct between the existing authorisation and the new authorisation.

There have been no material changes to the Code since the previous authorisation was granted in 2017.

Some operational changes have been made to reflect the current membership of the Code Administration Committee to reflect increased retailer participation, and the appointment of an independent Chair. These were both recommendations of the ACCC in the 2017 Determination.

See attached supplementary information for further details.

4.3 the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct

The proposed conduct under the Code might apply to relevant provisions under the Competition and Consumer Act 2010, including a lessening of competition or contracts, arrangements or understandings that restrict dealings or affect competition (section 45).

This includes the arrangements under the Code relating to 'competitors', 'external competitors', and 'internal competitors' (as defined), including at section 6 of the Code where it provides that 'a lessor must not grant a casual mall license that results in the unreasonable introduction of an external / internal competitor of an adjacent lessee'.

See attached supplementary information.

4.4 the rationale for the proposed conduct

The key rationale for the proposed conduct is that the conduct has now been in place and well established for over a decade under the three previous ACCC authorisations of the Code.

As outlined in the supplementary information, it is considered that the public benefits of the proposed conduct outweigh the detriment to the public constituted by any lessening of competition that would result or be likely to result from the conduct. These benefits include, but are not limited to, 1) the provision of certainty and transparency, 2) efficiency and harmonisation, 3) facilitation of retail competition, and 4) provision of a dispute resolution pathway.

As the ACCC provided in its 2007 Determination:

"Overall, the ACCC considers that in all the circumstances, the public benefits likely to result from the proposed arrangements are likely to outweigh the anti-competitive detriment" (page ii).

4.5 the term of authorisation sought and reasons for seeking this period.

The SCCA is seeking a longer-term authorisation for a period of ten years (31 December 2020 until 31 December 2030). This period reflects the three prior authorisation periods of the Code by the ACCC and has been agreed upon by the Code Administration Committee (CAC).

The key reasons for the CAC agreeing to seek longer-term authorisation include that the proposed conduct, and Code, has been in operation now for over a decade and is well established. Further, the improvements to the governance mechanism under the Code, being the CAC, now provides a productive forum to engage on and resolve relevant issues.

5. Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.

Dominique Lamb, Chief Executive Officer

National Retailers Association (NRA)

National industry association and employer group representing the interests of retailers who are sitting tenants within shopping tenants and potential casual mall licensees.

Paul Zahra, Chief Executive Officer

Australian Retailers Association (ARA)

National industry association and employer group representing the interests of retailers, who are sitting tenants within shopping tenants and potential casual mall licensees.

Wes Lambert, Chief Executive Officer

Restaurant and Catering Industry Association of Australia (RCA)

National industry association and employer group representing the interests of café and restaurant operators, who are sitting tenants within shopping tenants and potential casual mall licensees.

Suzanne Greenwood, Executive Director

Pharmacy Guild of Australia (PGA)

National industry association and employer group representing the interests of pharmacists and community pharmacies, who are sitting tenants within shopping tenants and potential casual mall licensees.

Paul Greenberg, Founder and Executive Director

National Online Retailers Association (NORA)

National industry association and employer group representing the interests of retailers, including online retailers, who are potential casual mall licensees.

Market information and concentration

- 6. Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).**

See attached supplementary information.

- 7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

See attached supplementary information.

- 8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

N/A

- 9. In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

9.1 existing competitors

9.2 likely entry by new competitors

9.3 any countervailing power of customers and/or suppliers

9.4 any other relevant factors.

See attached supplementary information.

Public benefit

- 10. Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

See attached supplementary information.

Public detriment including any competition effects

- 11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

See attached supplementary information.

Contact details of relevant market participants

12. Identify and/or provide names, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Dominique Lamb, Chief Executive Officer

National Retailers Association (NRA)
1800 738 245
[REDACTED]

Paul Zahra, Chief Executive Officer

Australian Retailers Association (ARA)
1300 368 041
[REDACTED]

Wes Lambert, Chief Executive Officer

Restaurant and Catering Industry Association of Australia (RCA)
1300 722 878
[REDACTED]

Suzanne Greenwood, Executive Director

Pharmacy Guild of Australia (PGA)
1300 484 53
[REDACTED]

Paul Greenberg, Founder and Executive Director

NORA Network
1300 752 946
[REDACTED]

Additional information

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.

See attached supplementary information.

Declaration by Applicants

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

Angus Nardi, Executive Director
Shopping Centre Council of Australia (SCCA)

11 September 2020

SUPPLEMENTARY INFORMATION: Application for revocation of a non-merger authorisation and substitution of a new authorisation
Authorisations A91591 & A91592: Casual Mall Licensing Code of Practice

BACKGROUND/SUMMARY

The Shopping Centre Council of Australia (SCCA), is seeking the revocation of the existing authorisations (Authorisations A91591 & A91592) and substitution of a new authorisation, of the Casual Mall Licensing Code of Practice (the Code). The voluntary Code, which was initially authorised by the Australia Competition and Consumer Commission (ACCC) in 2007, has evolved into an important industry initiative with multiple stakeholders.

The Code has been operational for thirteen years and a full timeline of ACCC's authorisations is as follows:

1. **2007:** On 15 May 2007, the SCCA lodged a submission to authorise the Casual Mall Licensing Code of Practice, which the ACCC granted in a Final Determination on 29 August 2007 (Authorisations A91049 & A91050) for a period of five years from that date.
2. **2012-13:** On 6 February 2013, the ACCC issued a Final Determination reauthorising the Code (Authorisations A91329 & A91330) for four years until 31 December 2017.
3. **2017:** On 20 December 2017, the ACCC issued a Final Determination reauthorising the Code (Authorisations A91591 & A91592) for three years until 31 December 2020.

The purpose of the Code is to provide balanced guidelines to ensure that the practice of casual mall licensing is conducted in a way that is fair to shopping centre owners and managers, shopping centre retailers who lease premises and casual mall licensees.

Casual mall licensing refers to agreements under which a person grants another person a right to occupy part of the common area of a retail shopping centre for the purpose of the sale of goods or the supply of services to the public, where the total number of days the person is permitted to occupy the area does not exceed 180 days.

Noting that casual mall licensing is for a short-term period, it can often be referred to as 'pop-up' retailing. Casual mall licensing remains a critical tool in the context of facilitating the evolution of both the retail and shopping centre sectors. It creates dynamism and a regular sense of change.

The Code provides flexibility in the marketplace, allowing retailers to utilise both (or either) bricks and mortar retail and casual mall sites.

While the Code is authorised by the ACCC to the SCCA, the Code's Administration Committee (CAC) has evolved to include multiple stakeholders including the National Retail Association (NRA), the National Online Retailers Association (NORA), the Australian Retailers Association (ARA), the Pharmacy Guild of Australia (PGA) and the Restaurant and Catering Industry Association of Australia (RCA), reflecting the collaborative approach across key retail industry stakeholders.

CODE UPDATES SINCE 2017 ACCC DETERMINATION

Since the ACCC's 2017 authorisation, some material updates under the operation of the Code are as follows:

- *Increased retailer representation* on the CAC to include the National Online Retailers Association (NORA), Pharmacy Guild of Australia, and Restaurant and Catering Industry Association of Australia (RCA), in line with the ACCC's recommendation.
- *Appointment of an independent Chair of the CAC*, as suggested by the ACCC in its 2017 Determination. The independent Chair is Mr Mark Brennan, a lawyer, former Australian Small Business Commissioner, Victorian Small Business Commissioner and Chairman of the Victorian Commission for Gambling and Liquor Regulation. Mr Brennan was appointed in July 2018.
- More regular meetings of the CAC, being held at least twice per year.
- As proposed by retailer groups on the CAC, the development and publication of a *Fact Sheet* that aims to provide an overview of 'casual mall licensing' under the Code to prospective and sitting tenants and licensees. The Fact Sheet was distributed to Small Business Commissioners nationally.

CODE ADMINISTRATION COMMITTEE

Noting the above changes to the CAC, the Code has been updated to reflect the new membership.

As detailed at clause 16 of the Code, the CAC membership now includes:

- One representative nominated by the NRA – currently Dominique Lamb, CEO
- One representative nominated by NORA – currently Paul Greenberg, Founder
- One representative nominated by the ARA – currently Paul Zahra, CEO
- One representative nominated by the PGA – currently Scott Harris, National Manager, Workplace Relations and Business Policy
- One representative nominated by the RCA – currently Wes Lambert, CEO; and
- Five representatives nominated by the SCCA – currently:
 - Sheridan Joel, General Manager, Legal Services, Scentre Group (SCCA member)
 - Greg Chubb, CEO, Retail, Charter Hall (SCCA member)
 - Michael Mackley, General Manager, Mall Space, Vicinity Centres (SCCA member), and
 - Angus Nardi, Executive Director, SCCA

Any changes to the composition of the CAC will be notified at www.scca.org.au/industry-information/casual-mall-licensing-code/

- The CAC will be chaired by an independent person.

In addition, the Committee has had an Observer participate in its meetings, which is currently Lease 1 (Director, Phil Chapman), a national retail leasing consulting business.

The increased retailer representation on the CAC, and the appointment of an independent Chair, were recommendations of the ACCC in the 2017 Determination.

The ACCC commented as follows:

"In the draft determination the ACCC strongly encourage the SCCA to increase retailer representation on the Code Administration Committee (CAC). The SCCA accepted this suggestion and has invited additional members to join the CAC including the Australian Retailers Association, the Franchise Council of Australia, the Pharmacy Guild of Australia and the National Online Retailers Association." (pg.1)

"The ACCC also considers that the effectiveness of the CAC would be improved by appointing an independent chair." (pg.14)

The CAC has proven to be a productive and balanced forum for parties to engage on relevant issues in relation to the Code and its administration. The addition of retailer groups has contributed to a number of positive joint industry initiatives including the creation and distribution of the Casual Mall Licensing Fact Sheet noted above.

The Fact Sheet provides an overview of the Code and its key provisions including concerning competitors, sightlines, outgoings and dispute resolution. It also contains specific information relating to potential concerns, and that if a complaint cannot be resolved by negotiation, the Code refers to the relevant State and Territory dispute resolution bodies.

The Fact Sheet was sent to all Small Business Commissioners, and in an SCCA Board Meeting in August 2019, it was agreed that the Fact Sheet would be provided to prospective and sitting retail tenants and licensees, including in general alignment with existing disclosure obligations under retail lease legislation and the Casual Mall Licensing Code. The CAC has also agreed to investigate the Fact Sheet being published in non-English languages.

The Fact Sheet is publicly available on the SCCA's website for access by all interested parties, including shopping centre owners and managers which are not members of the SCCA (<https://www.scca.org.au/industry-information/casual-mall-licensing-code/>).

THE PROPOSED CONDUCT (refer to Section 4 of the Application Form)

The Code is a voluntary code of practice between shopping centre owners/managers and retailers and regulates the practice of casual mall licensing in shopping centres.

The proposed conduct remains the same as under the current authorisation (and previous authorisations), which is to regulate casual mall licensing in shopping centres, which refers to agreements under which a person grants another person a right to occupy part of the common area of a shopping centre for the purpose of the sale of goods or the supply of services to the public, where the total number of days the person is permitted to occupy the area does not exceed 180 days.

The proposed conduct might apply to relevant provisions under the *Competition and Consumer Act 2010*, including a lessening of competition, or contracts, arrangements or understandings that restrict dealings or affect competition (section 45).

This includes the arrangements under the Code relating to 'competitors' (refer to section 6), where it provides that 'a lessor must not grant a casual mall license that results in the unreasonable introduction of an external / internal competitor (as defined) of an adjacent lessee'.

The Code applies in all jurisdictions except South Australia where casual mall licensing is regulated separately.

A substantially similar Code, the Casual Mall Licensing Code, was included as a schedule to South Australia's *Retail and Commercial Leases Act 1995* in 2002. The commencement of the South Australian Code was the catalyst for relevant parties to agree on an otherwise voluntary and industry-led approach to the practice of casual mall licensing to ensure that there was a consistent approach adopted across other jurisdictions.

Casual mall licensing is a standard feature of shopping centres in Australia. Where applied properly casual mall licensing adds variety to the retail offer of shopping centres, helps attract customers and enables retailer's flexibility to try new retail offerings/approaches.

Casual mall licensing is a common way for shopping centre landlords to appropriately utilise their common mall area to:

- increase total rental income;
- provide relatively low cost and short-term opportunities for prospective retailers to test products and models;
- create a dynamic and interesting environment for customers by offering a wider, and changing, variety of goods and services within the shopping centre; an
- foster healthy competition in the retail sector to drive improved consumer outcomes.

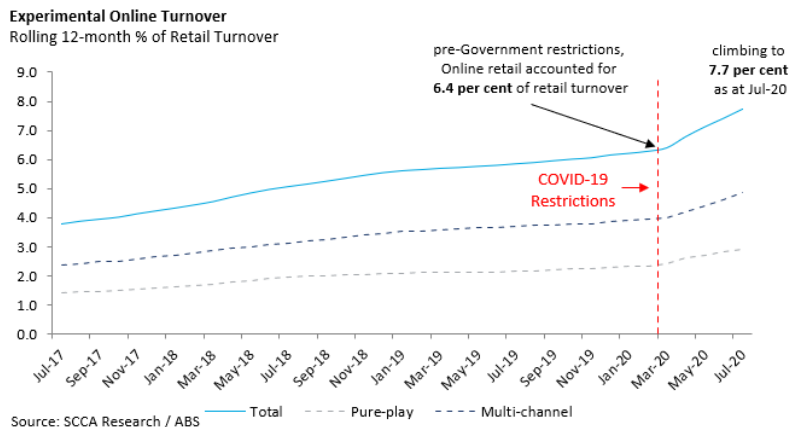
Casual mall licensing benefits retailers in several ways including:

- (1) providing a low-cost nursery for retailers and potential retailers to gain experience and train staff on how to operate a retail store;
- (2) providing a cheap and effective way of existing retailers to obtain space to clear excess stock and/or sell special lines or seasons stock and increase customer awareness of their offering; and
- (3) attracting consumers to the shopping centre by introducing seasonal bargains and by offering a wider variety of goods and services to consumers in response to market demands.

MARKET INFORMATION AND CONCENTRATION (refer to sections 6, 7 & 9 of the Application Form)

The relevant market under the Code is the supply of retail space by shopping centre owners and managers, and the supply of goods and services by retailers (and licensees) who are tenants within shopping centres to customers.

Since the last authorisation, there has been an increased penetration of online retailing, which highlights that retail space is also increasingly competing with the online market, however it's worth noting that this has also seen the role of retail space change and evolve, such as its role in the fulfilment of online orders (often referred to as 'click and collect'). The below provides a summary of the growth (in percentage terms) of online turnover since the last authorisation, including the recent impact due to COVID-19.



Shopping centre owners compete for retail tenants and casual mall licensees with other forms of retail space including free-standing or traditional 'strip' or 'high-street' shops, shops within office buildings and shops with or without parking areas for their customers.

SCCA members own and manage more than 13 million square metres of shopping centre floorspace across more than 450 shopping centres in Australia. This accounts for almost 70 per cent of all shopping centre floor space in Australia. These shopping centres encompass approximately 40,000 retail stores.

SCCA members own shopping centres across all markets including across all Australian jurisdictions, in CBD, metropolitan, regional and rural locations and across a range of shopping centre types including CBD, larger 'regional' (i.e. regional catchment) centres, sub-regional centre and neighbourhood (i.e. convenience) centres.

Based on a recent representative sample of our members in relation to casual mall licensing sites, we provide the following relevant market information in relation to 'casual mall sites':

- There is an average of 15 casual mall sites per shopping centre.
- The average length of the 'booking' (or license) was around 23 days, which highlights the temporary, short-term or 'pop-up' nature of casual mall licensing: and
- The current annual average is around 20 bookings per site, which highlights the productive usage of each site (including competitors in the supply of retail goods and services).

There is nothing in the proposed conduct that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. The proposed conduct facilitates existing competitors (e.g. existing tenants within a shopping centre), the entry of new competitors (e.g. businesses currently not in a shopping centre) which could include the introduction of new products and services, and also innovation through (for instance) providing 'pure play' online retailers with an opportunity to trial a physical presence for a temporary or short-term.

PUBLIC BENEFIT (refer to Section 10 of the Application Form)

The SCCA submits that the public benefits of the Code outweigh any potential public detriments and within the current authorisation period the Code has facilitated retail competition for the benefit of businesses and consumers, while guiding the consistent management of casual mall licensing within shopping centres.

The Code provides for a number of benefits including: clarifying the entitlements and expectation of relevant parties; ensuring lessees have access to increased information, which the CAC has actively pursued; promoting fair competition between permanent tenants and casual mall licensees, and; reducing complaints regarding inappropriate issuing of casual mall licences through an effective dispute resolution process.

All three of the ACCC's Determinations in relation to the authorisation of the Code have acknowledged its public benefits.

- In the **2007 Final Determination** the ACCC found:

"...the provisions in the Code are likely to provide a public benefit by balancing the reasonable and consistent treatment of permanent retail tenants with the introduction of casual mall licensees within a shopping centre. The Code provides certainty to lessees as to the circumstances, and terms on which, casual mall licenses could be granted to businesses in competition with them. This in turn allows them to make better informed business decisions and provides certainty over the life of leases entered into." (pg. ii)

- The **2012-13 Final Determination** the ACCC found:

"The ACCC considers that the Code is likely to continue to result in public benefit through providing certainty for permanent lessees as to the circumstances and terms on which casual mall licences would be granted to businesses that set up in competition with them. This in turn allows lessees to make better informed business decisions and provides certainty over the life of agreements entered into." (pg.6)

- The ACCC's **2017 Final Determination**:

"The ACCC considers that these public benefits are likely to outweigh the minimal public detriment resulting from the Code, as constituted by a possible lessening of competition for the supply of casual mall licences by the lessor the supply of goods and services by retailers who are shopping centre tenants." (pg.1)

The public benefits of the Code include the following:

Provision of certainty and transparency

During the current authorisation term, the Code has provided shopping centre lessees with the relevant information as to the circumstances under which, and the terms on which, a casual mall license may be granted within a shopping centre. In doing so, the Code minimises any uncertainty or risk to lessees and allows them to make informed business decisions.

The CAC has continued to work on ensuring that this transparency is accessible to shopping centre lessees through the development and distribution of the Fact Sheet previously mentioned. The Fact Sheet provides an overview of the Code and its key provisions including concerning competitors, sightlines, outgoings and dispute resolution. It also contains specific information relating to potential concerns, and that if a complaint cannot be resolved by negotiation, the Code provides that it can be referred to relevant State and Territory retail leasing dispute resolution bodies.

In its 2017 Final Determination the ACCC concluded that the Code provided *"greater certainty and transparency for lessees and licensees about terms by which casual mall licences may be granted"* (pg. 1).

This was also a conclusion reached by the ACCC in previous authorisations, as follows:

- **2007:** *"The Code provides certainty to lessees as to the circumstances, and terms on which, casual mall licenses could be granted to businesses in competition with them. This in turn allows them to make better informed business decisions and provides certainty over the life of leases entered into."* (pg. ii)
- **2012-13:** *"35. The ACCC notes that the Code's transparency requirements, where lessees are provided with a copy of the lessor's casual mall licensing policy before entering into a lease, are important to providing this commercial certainty for lessees. These disclosure requirements are broadly consistent with those that apply to landlords under state and territory retail tenancy legislation."* (Pg. 6)

Efficiency

During the term of the current authorisation, the Code has continued to deliver time and cost efficiencies for shopping centre landlords by providing for a consistent national approach (excluding South Australia) to the management of casual mall licensing.

The ACCC's assessment of public benefits in the 2017 Final Determination concluded, *"the Code is likely to deliver public benefits associated with...efficiency through the standardisation of terms between different shopping centres owned or managed by parties to the Code."* (pg. 10)

Competition

During the term of the current authorisation, the Code has facilitated retail competition for the benefit of businesses and consumers largely through the provision of casual mall sites as part of the supply of retail space available for retailers, and subsequently the supply of goods and services by retailers (and licensees).

As noted above, on a sample of SCCA members there is an average of 15 casual mall sites at each shopping centre with an average booking (or license) of around 23 days.

Dispute Resolution

During the term of the current authorisation, the Code has continued to provide for an effective dispute resolution pathway serving to reduce complaints regarding the inappropriate issuing of casual mall licences.

The ACCC has previously noted that the inclusion of the dispute resolution pathway *enhances the public benefits of the Code*" (2007, clause 6.63, page 20; and 2013, clause 37, pages 6 and 7).

The CAC, with its increased retailer participation and awareness, has also become a productive forum to identify and discuss relevant issues under the Code, including the development of the Fact Sheet to help raise awareness of the Code, casual mall licensing and key provisions under the Code.

PUBLIC DETRIMENT (refer to Section 11 of the Application Form)

As noted in the previous section, the SCCA submits that the public benefits of the Code outweigh any potential public detriments.

During the current authorisation period, there has been no evidence or incident provided to the SCCA or CAC to suggest that the Code has caused public detriment, such as imposing a barrier to entry or leading to a substantial lessening of competition.

The Code relates to the supply of retail space for a temporary, or short-term period.

The Code continues to facilitate access to retail space (as noted above, an average of 15 sites per centre) and this space is being taken up for an average of 23 days. In this respect, the Code helps lower the barrier to entry to access retail space. The only barrier is for a potential casual mall licensee who may wish to establish a site adjacent to a competitor, noting that the Code provides a consistent framework to manage such issues.

DISPUTES UNDER THE CODE (refer to Section 13 of the Application Form)

The final issue that the SCCA would like to separately address is that the Code (clauses 9 – 13) provides a process for dispute resolution, whereby a lessee can make a complaint to the landlord, and that this must be attempted to be resolved in good faith.

In the event that the landlord and lessee are unable to resolve complaint, the parties agree that the complaint can be referred to the relevant State or Territory (except South Australia) retail leasing dispute body, or official, whereby an independent mediator will be appointed at the cost of the parties in equal share.

To our knowledge, as per the intention of the dispute resolution clauses under the Code, any issues that have arisen over the past three years would seem to have been effectively dealt with between the parties.

While there is no formal record or list of issues which has been brought to the SCCA's or CAC's attention, the SCCA does not discount that resolution in the above manner may have occurred from time to time.

Casual Mall Licensing Code of Practice

Preamble

Casual mall licensing is a standard feature of shopping centres in Australia. Where applied properly casual mall licensing adds variety to the retail offer of shopping centres, helps attract customers to shopping centres and enables existing retailers to augment their normal sales. Where it is applied insensitively it can be a source of dissatisfaction to existing retailers.

This voluntary Code of Practice has been agreed between the Australian Retailers Association, National Retail Association, National Online Retail Association and the Shopping Centre Council of Australia to provide balanced guidelines to ensure that the practice of casual mall licensing delivers the benefits outlined above in a way that is fair to shopping centre owners and managers and to shopping centre retailers.

The Associations form the membership of the Code Administration Committee (refer to section 14 of this Code), along with the Restaurant Catering Industry Association of Australia.

The Associations strongly recommend to their members that this Code of Practice apply to shopping centres in all States and Territories in Australia (except South Australia) progressively from 1 January 2008, as circumstances permit. It is noted that the practice of casual mall licensing in shopping centres in South Australia is regulated by the *Retail and Commercial Leases (Casual Mall Licences) Amendment Act 2001*.

This Code of Practice does not apply to any lessee, any retail shop or other premises, or any lease to which the relevant retail tenancy legislation of the State or Territory in which the shopping centre is located does not apply.

This Code of Practice has been authorised by the Australian Competition and Consumer Commission for a period of three years until 31 December 2020.

Interpretation

1.(1) In this Code, unless the contrary intention appears—

"adjacent lessee", in relation to a casual mall licence area, means a lessee of a retail shop that is in the same retail shopping centre and is situated in front of or immediately adjacent to the casual mall licence area;

"casual mall licence" means an agreement under which a person grants, or agrees to grant, to another person other than a registered charity a right to occupy a designated part of a mall area for the purposes of the sale of goods or the supply of services to the public, where the total number of days the person is permitted to occupy the area does not exceed 180 days;

"**casual mall licence area**", in relation to a casual mall licence, means the part of the mall area in respect of which a person is granted a right of occupancy under the casual mall licence;

"**casual mall licence plan**"—see clause 2(2);

"**casual mall licence policy**"—see clause 2;

"**centre court**" means a part of a mall area designated as a centre court by the lessor in a casual mall licence policy in accordance with clause 2;

"**common area**" does not include parking areas, loading docks, plant rooms, customer service areas, stairways, escalators, travelators, lifts, lift wells, toilets, restrooms, seating areas, food courts, stage areas, entertainment areas, or lifestyle precincts;

"**competitor**"—see subclause (2);

"**external competitor**"—see subclause (3);

"**internal competitor**"—see subclause (4);

"**mall area**" means a part of the common area of a retail shopping centre accessible to the public that is bordered wholly or partly by the shopfronts of retail shops;

"**non-specific outgoings**" means outgoings not specifically referable to any particular shop in a retail shopping centre.

"**sales period**" means a period not exceeding four weeks fixed from time to time by the lessor as a period during which the lessor promotes a sales event in the retail shopping centre;

"**special event**" means a community, cultural, arts, entertainment, recreational, sporting, promotional or other similar event that is to be held in the retail shopping centre over a limited period of time.

(2) For the purposes of this Code—

(a) in the case of the sale of goods—a person is a **competitor** of another person if more than 50 per cent (on a floor area occupied by display basis) of the goods displayed for sale by the person are of the same general kind as more than 20 per cent (on a floor area occupied by display basis) of the goods displayed for sale by the other person;

(b) in the case of the supply of services—a person is a **competitor** of another person if the person competes with the other person to a substantial extent.

(3) For the purposes of this Code, a person granted a casual mall licence is an **external competitor** of a lessee of a retail shop if the person is, in the business conducted in the casual mall licence area, a competitor of the lessee but is not a lessee of another retail shop in the same retail shopping centre.

(4) For the purposes of this Code, a person granted a casual mall licence is an **internal competitor** of a lessee of a retail shop if the person is, in the business conducted in the casual mall licence area, a competitor of the lessee and is a lessee of another retail shop in the same retail shopping centre.

Casual mall licence policy

- 2.(1) A lessor must not grant a casual mall licence in respect of a retail shopping centre unless the lessor has prepared a document that sets out the lessor's policy in respect of the granting of casual mall licences for the shopping centre (a "**casual mall licence policy**").
- (2) The casual mall licence policy must include the following:
 - (a) a floor plan (a "**casual mall licence plan**") that clearly shows—
 - (i) the mall areas within the shopping centre in respect of which casual mall licences may be granted, and the size of those areas; and
 - (ii) the part of the mall area within the shopping centre designated as a centre court (if any), and the size of that area;
 - (b) the number of sales periods for the shopping centre in each accounting period;
 - (c) a statement whether the lessor reserves the right to grant casual mall licences otherwise than in accordance with clauses 4, 5 and 6 in respect of special events in the shopping centre.
- (3) The area designated as a centre court in a casual mall licence policy must not exceed 20 per cent of the total common area of the shopping centre.
- (4) If a lessor amends a casual mall licence policy, the lessor must—
 - (a) give written notice of the amendment to the lessees of the shopping centre and the place and times at which a copy of the amended policy may be inspected; and
 - (b) in the case of a lessee who may reasonably be considered to be affected by the amendment—provide a copy of the amended policy to the lessee; and
 - (c) otherwise provide a copy of the amended policy to a lessee on request.
- (5) An amendment to a casual mall licence policy does not take effect until 30 days after the lessees of the shopping centre have been notified in accordance with subclause (4)(a).

Provision of information

- 3.(1) A lessor must not grant a casual mall licence in respect of a retail shopping centre unless the lessor has given each person who is a lessee of a retail shop in the shopping centre the following information:
 - (a) a copy of the casual mall licence policy in force in respect of the shopping centre; and
 - (b) a copy of this Code; and
 - (c) the person nominated by the lessor to deal with complaints about casual mall licences (whether described by name or the title of the person's position) and the person's contact details.
- (2) The information required under subclause (1) must have been given to a person—

(a) in the case of a person who has entered into a retail shop lease after the commencement of this Code at the time the disclosure statement for the lease was provided to the person; or

(b) in any other case—not less than 14 days before the first granting of a casual mall licence in respect of the shopping centre after the commencement of this Code.

Obligations of lessor relating to casual mall licence policy

- 4.(1) A lessor must not grant a casual mall licence except in accordance with the casual mall licence policy as in force in respect of the retail shopping centre at the time the licence is granted.
- (2) A lessor must not grant a casual mall licence in respect of an area that is not included in a casual mall licence plan as in force in respect of the retail shopping centre at the time the licence is granted.
- (3) A lessor must not amend a casual mall licence policy except in accordance with this Code.

Sightlines to shopfront

- 5.(1) A lessor must ensure that the business conducted by the holder of a casual mall licence in respect of a retail shopping centre does not substantially interfere with the sightlines to a lessee's shopfront in the shopping centre.
- (2) Subclause (1) does not apply in relation to a lessee if the lessor, before the grant of the casual mall licence, and after informing the lessee of the proposal to grant a licence that might result in interference of a kind referred to in subclause (1), obtained the written consent of the lessee to the grant of the licence.

Competitors

- 6.(1) A lessor must not grant a casual mall licence that results in the unreasonable introduction of an external competitor of an adjacent lessee.
- (2) A lessor must not grant a casual mall licence that results in the unreasonable introduction of an internal competitor of an adjacent lessee unless—
 - (a) the internal competitor is a lessee of a retail shop situated in the same retail precinct as the casual mall licence area, or if the shopping centre is not divided into precincts, in the vicinity of the casual mall licence area; or
 - (b) the casual mall licence area is the area closest to the internal competitor's retail shop that is available for the casual mall licensing at the time the casual mall licence is granted; or
 - (c) the term for which the casual mall licence is granted falls within a sales period fixed by the lessor in respect of the shopping centre, there having been no more than five previous sales periods in the preceding period of twelve months; or
 - (d) the casual mall licence area is within the centre court of the shopping centre.

- (3) Subclause (2) does not apply in relation to an adjacent lessee if the lessor, before the grant of the casual mall licence, and after informing the lessee of the proposal to grant a licence that will result in the introduction of an internal competitor of the lessee, obtained the written consent of the lessee to the grant of the licence.
- (4) For the purposes of subclauses (1) and (2), the introduction of a competitor of an adjacent lessee is unreasonable if it has a significant adverse effect on the trading of the adjacent lessee in the adjacent lessee's retail shop.
- (5) Subclause (4) is not to be taken as limiting the circumstances in which the introduction of a competitor of an adjacent lessee might be regarded as being unreasonable.

Special events

7. Clauses 4, 5, and 6 do not apply to casual mall licences granted in respect of a special event provided that the lessor—
 - (a) reserved the right in the casual mall licence policy to grant casual mall licences otherwise than in accordance with those clauses; and
 - (b) gave the lessees of the retail shopping centre not less than 24 hours written notice containing details of the special event and its duration.

Adjustment of outgoings

8. The lessor must, before making an adjustment after the end of an accounting period in accordance with the provision of a retail shop lease, reduce the total amount of the non-specific outgoings to which lessees of retail shops in the retail shopping centre are liable to contribute in respect of the accounting period by an amount calculated in accordance with the following formula in relation to each casual mall licence granted by the lessor permitting trade in the casual mall licence area during the accounting period:

$$R = \frac{TO}{TLA \times TD} \times CMLD \times CMLA$$

where—

R=the amount of the reduction;

TO=the total amount of the non-specific outgoings to which lessees of retail shops in the shopping centre are liable to contribute in respect of the accounting period;

TLA=the total of the lettable areas of all the retail shops in the shopping centre in square metres;

TD=the total number of days in the accounting period;

CMLD=the number of days during which the person granted the casual mall licence was permitted to trade in the casual mall licence area during the accounting period;

CMLA=the casual mall licence area in square metres.

Dispute Resolution

- 9.** A lessee who considers a breach of this Code has occurred must upon becoming aware of the breach notify, in writing, the person nominated by the lessor to deal with complaints under subclause 3 (1) (c). This person must, as soon as practicable, respond to the complaint that has been lodged.
- 10.** The parties to this Code expect, where a complaint is made alleging a breach of this Code has occurred, that the lessor and lessee will, in good faith, attempt to resolve any complaint by negotiation between themselves.
- 11.** In the event that the lessor and lessee are unable to resolve a complaint, after exhausting all internal avenues for resolution, the parties agree that the complaint can be referred by either the lessor or lessee for mediation.
- 12.** The independent mediator will be appointed by the relevant retail tenancy official in each State or Territory (except South Australia).
- 13.** The lessor and lessee will pay for the cost of a mediation in equal shares.

Code Administration Committee

- 14.** The Code will be administered by a Code Administration Committee (CAC) whose members will be without remuneration, except for expenses.
- 15.** The role of the CAC will be to promote and publicise the Code throughout the industry; to monitor the operation of the Code; and to report regularly to the parties to the Code on the operation and effectiveness of the Code.
- 16.** The CAC will comprise ten representatives as follows, comprising five landlord and five retailer representatives:
 - One representative nominated by the National Retail Association;
 - One representative nominated by the National Online Retailers Association;
 - One representative nominated by the Australian Retailers Association;
 - One representative nominated by the National Retail Association;
 - One representative nominated by the Pharmacy Guild of Australia;
 - One representative nominated by the Restaurant Catering Industry Association of Australia;
 - Up to five representatives nominated by the Shopping Centre Council of Australia.

Any changes to the composition of the CAC will be notified at www.scca.org.au/industry-information/casual-mall-licensing-code/

 - The CAC will be chaired by an independent person.

Period of Operation of the Code of Practice

- 17.** This Code of Practice will remain in operation until 31 December 2020.
- 18.** Within one year prior to the date of expiry of the Code according to Clause 17 the CAC will report to the parties to the Code on whether the period of operation of the Code should be extended and, if a period of extension is agreed, will seek further authorisation of the Code from the ACCC.