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A91591 & A91592 – Shopping Centre Council of Australia – submission

SUBMISSION FROM RETAILERS FOR THE SHOPPING CENTRE COUNCIL OF AUSTRALIA'S APPLICATION FOR AUTHORISATION OF THE CASUAL MALL LICENSING CODE OF PRACTICE

Background

The Franchise Council of Australia (FCA) believes that franchising drives economic and entrepreneurial success and it is our objective to promote, support and develop Australian franchising. Our membership incorporates franchising systems (franchisors and their franchisees) and service providers and suppliers who are involved in franchising.

The FCA welcomes the opportunity to provide a submission in relation to the re-authorisation of the Casual Mall Licencing Code of Practice.

There are approximately 1,100 franchise systems and 79,000 franchised outlets in Australia, with nearly 50 per cent of franchise systems involved in retail. Many of these franchise systems occupy tenancies in major shopping centres.

The FCA is strongly supportive of the concept of a Casual Mall Licensing Code of Practice, however we agree with the submission of the Australian Retail Association (ARA) that at this stage, the Code in its current form is not reasonable and cannot achieve its intent.

The FCA, ARA and Pharmacy Guild of Australia (PGA) are supportive of changes to the Code to ensure the rights and interests of permanent tenants are protected, fairness is improved, and competition is fair, reasonable, and in the public interest.

Recommendations for improvements to the Code

We feel it is important to re-state that the ARA, FCA and PGA do not support the reauthorisation of the Code in its present form.

A range of improvements need to be made to the Code to ensure its effective application, improve dispute resolution mechanisms, clearly define competition, and improve the representation and review of the Code as it is applied.

The improvements being sought to the Code are as follows:

- Improvements to the interpretation of adjacent lessee, to include the provision of reasonable line of sight so as to prevent a competitor from obstructing a permanent tenant's retail shop.
- Improvements on Clause 3 of the Code in relation to the provision of information. This section is not functioning at present, and has led to inconsistencies and confusion around disclosure and information.
- Expansion and definition of Clause 5 in relation to the sightlines to shopfronts. This is to ensure that line of sight issues are minimised, as this is one of the main sources of disruption for permanent lessees and raises a range of issues.
- Redefinition and expansion of the dispute resolution process prescribed in Clauses 9-13 of the Code. This includes the provision of a schedule of independent mediators to the parties to a dispute. This is vital in providing for an effective and transparent process which is amenable to all parties.
- Expansion of the representation on the CAC to include the ARA, FCA and PGA, along with respective landlord representatives. This is to ensure the entire industry is represented and involved in the administration of Casual Mall Licensing.

Conclusion

It is important to note that while critical of the Code in its current form and some of the practices of the SCCA and landlords, the ARA, FCA and PGA do not seek to reduce competition in relation to Casual Mall Licensing. We are seeking a clearer, better defined and more prescriptive Code of Practice which is applicable industry wide to ensure fair and reasonable competition is maintained, to the benefit of all parties.

Casual Mall Licensing has grown to become a significant revenue-raising activity for shopping centres to the point where many centres have now established dedicated resources for promotion and management of these activities. The Code in its current form has failed to prevent this from occurring, as the proliferation of Casual Mall Licensing has grown beyond the remit of fair competition, and is used purely as a profit-driving mechanism. Thus, the Code in its current form is ostensibly self-serving.

The FCA, ARA and PGA are broadly supportive of changes to the Code to ensure the rights and interests of permanent tenants are protected, fairness is improved, and competition is fair, reasonable, and in the public interest.

The FCA would like to thank the ACCC for its consideration of this matter.

Please feel free to contact me by email on damian.paull@franchise.org.au or by telephone (03) 9508 0888 if you have any further questions regarding this submission.

Yours sincerely,



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