Australian Retailers Association

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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

Friday 8 September 2017

Introduction:

The Australian Retailers Association (ARA) is the retail industry's peak representative body representing Australia's $310 billion sector, which employs more than 1.2 million people. The ARA works to ensure retail success by informing, protecting, advocating, educating and saving money for its 7,500 independent and national retail members, which represent in excess of 50,000 shop fronts throughout Australia.

The ARA is by far Australia's largest retail organisation with coverage from the country's very largest retailers to small and medium retail businesses.

Background:

Australian retailers establish their businesses in a variety of locations and premises across the country. Perhaps the most widespread marketplace for retail trade is that of Shopping Centres, the existence of which has allowed for retailers to flourish. Shopping centres provide retailers with a range of services including secure and well-maintained premises, access to promotional activities, and a steady customer base. Despite the benefits, however, the increased proliferation of Casual Mall Licensing by shopping centres has threatened the stability of many retailers across Australia.

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The practice of Casual Mall Licensing has grown exponentially, especially through the spectre of 'pop-up shops', discount traders, and emerging designer markets. Retailers are already facing a tough trading environment through increased competition by physical stores and online, as well as with the introduction of international competition in recent years. The proliferation of Casual Mall traders has contributed to these difficulties.

In order to address concerns around Casual Mall trading, the *Casual Mall Licensing Code of Practice* (the Code) was introduced in 2007. This is a voluntary code, to be enforced for five years before review and reauthorisation by the ACCC. The peak industry body representing the interests of shopping centre owners, the Shopping Centre Council of Australia (SCCA), is currently responsible for administering the Code, along with the ARA and the National Retailers Association who has a smaller and less diverse membership association than ARA, together forming the Code Administration Committee (CAC).

Additionally, the ARA has no recollection of the CAC meeting in 2012 prior to the application to its re-authorisation and is unable to locate records of the code meeting. Furthermore, the ARA notes that the CAC has met only once during the current authorisation period of the Code, in early 2017. The ARA was unable to attend this meeting however, the re-authorisation of the Code was nevertheless approved without the involvement of the full committee.

Over time it has become clear that the Code is no longer working as intended; moreover, efforts to amend the Code have failed to improve its effectiveness. During the previous reauthorisation period for the Code in 2012 *(A91329 & A91330)*, a significant submission was made by the FCA in order to address a multitude of issues surrounding the Code[1]. These issues namely related to adjacency, competition and administration of the code. However, this submission was ignored and the Code was reauthorised, leading to further increases in discontent among permanent lessees in relation to Casual Mall Licensing.

Issues:

Application of the Code:

It is important to note that the Code is voluntary – thus, not all shopping centre landlords will adhere to the Code, leading to inconsistencies for retailers who operate across multiple locations. This is conducive to varied conditions for retailers, where some will face Casual Mall tenancies operating within the code, and some without.

[1] See Appendix 1

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Section 3 of the Code prescribes the practices to be undertaken by landlords regarding the provision of information around Casual Mall Licensing and its relationship to permanent lessees. This is described in the Code as follows:

- ***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.*

With respect to clause 3, subclause (1), even where landlords are signatories to the code, the practice of providing information is inconsistent. This is to the point where it is rare to receive a nomination, as prescribed in subclause (3)(1)(c), where the responsible individual to handle complaints in relation to Causal Mall Licensing issues is provided for. Inconsistencies in the provision of information create difficulties for permanent lessees, especially around certainty and transparency.

Shopping centre monopolisation:

Shopping centres in Australia operate in a closed-market situation, which is disadvantageous to the bulk of retailers seeking a viable and competitive environment. The marketplace for shopping centres should be regarded as closed, as centres operate in isolation from one-another, due to their oftentimes large physical format and reliance on consumer catchment areas.

Additionally, in most cases outside of Inner-Metropolitan areas, multiple centres are not located within close geographic proximity to one-another. Whilst this is understandable and the presence of shopping centres is advantageous to retailers seeking reliable premises from which to trade, it also has disadvantages. Such disadvantages stem directly from the monopolisation of the retail trading environment by shopping centres.

The *Competition and Consumer Act 2010* deals with monopolisation in Section 46 as follows:

- *(1) A corporation that has a substantial degree of power in a market shall not take advantage of that power in that or any other market*

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- *(3) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the court may have regard to the power the body corporate or bodies corporate has or have in that market that results from:*
    - ***(a) Any contracts, arrangements or understandings, or proposed contracts, arrangements or understandings, that the body corporate or bodies corporate has or have, or may have, with another party or other parties; and***
    - ***(b) Any covenants, or proposed covenants, that the body corporate or bodies corporate is or are, or would be, bound by or entitled to the benefit of.***

In relation to the Act, retailers can be seen as providers of goods and services within a market, and shopping centres can be seen as a corporation. The dominance of shopping centres within their respective local areas diminishes the consumer marketplaces within which they operate, allowing them to substantially control the market. Should a retailer wish to establish their business within a certain catchment, area, region or suburb, their access is severely limited due to the power of shopping centres within their locales, limiting the options for retailers to seek economically viable tenancies outside such centres.

Consequently, upon entering into a lease arrangement within a Centre, retailers are in effect subject to a sole arbitrator dictating the terms of their trade. This practice exists with little or no access to complaint or recourse on the part of permanent tenants of shopping centres. Thus, shopping centres use their monopolies to exercise power and control over the goods and services in the markets where they operate.

Application of the code in a monopolised environment:

As previously mentioned, the management of centres may or may not adhere to the Code. For those who do not adhere to the Code, retailers face little to no protection from the introduction of unfair, unregulated competition in the form of Casual Traders. However, even for those operating in centres which do adhere to the Code, protection remains limited and inadequate under its application.

Whether or not the code is in operation within a given centre, the aforementioned lack of competition for retailers seeking viable tenancy leads to a virtually closed marketplace. This is conducive to the creation of a marketplace within which the landlord of a centre is the sole arbitrator for decision-making regarding centre operations. Changes can be made unilaterally by landlords with no appropriate mechanism for complaint or recourse on the part of permanent tenants.

Consultation conducted by the ARA, FCA and PGA found that many retailers are bound to accept the terms of terms of the Code as a condition of their lease agreements.

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This is an example of unconscionable conduct in relation to the negotiation of lease agreement contracts. It is not acceptable for lessees to be coerced into signing a voluntary code as a condition of their lease agreement. It is important to note that while the Code is voluntary in application for shopping centre landlords, in almost all cases it is then purported to be a mandatory, non-negotiable condition of a retailer's lease agreement.

Members of the ARA, FCA and PGA have raised concerns regarding these practices. Some have stated that landlords have stipulated agreement to the Code as a term for signing their lease agreements. Subsequently, the Code is then used against tenants in a coercive manner, and is treated as compulsory by landlords when dealing with their tenants. This creates an aslant dichotomy whereby landlords may voluntarily adhere to the terms of the code, yet unilaterally apply the code in a binding manner to their tenants as they choose to do so.

Disclosure to permanent tenants:

Additionally, after consulting with retailers and franchisees, the ARA, FCA and PGA found that a majority of permanent tenants had not received, or did not possess, a copy of the Code. Consequentially, this suggests that many lessees are either not aware of the existence of the Code, either through non-disclosure by the respective landlord, or with the code hidden within the lease agreement. Given that, as previously mentioned, the Code is given compulsory status by shopping centres as a condition of lease agreements, this is concerning. **Consultation found that 76 per cent of respondents had not received a copy of the Code[2].**

This is particularly an issue where a complaint or issue exists which the lessee seeks to raise. Landlords especially rely upon the vague disclosure principles within the Code upon entering into lease agreements with permanent tenants. However, in practice, the day-to-day practices of landlords and centre management teams are inconsistent with clause 3 of the code in relation to the provision of information. Furthermore, disclosure is non-existent in relation to subclause (3)(c) of the Code, which provides for a nominated individual to deal with complaints around Casual Mall Licensing practices.

Furthermore, this raises significant questions around the complaints and dispute resolution mechanisms provided for in clauses 9-13 of the Code. The inconsistent disclosure practices coupled with the absence of an appropriate dispute resolution mechanism within the code is deliberately designed to frustrate lessees. This is intended to disenfranchise any lessee who wishes to raise a complaint or dispute with their landlord. Dispute resolution will be covered within this submission below.

[2] See Appendix 2, Table 3

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Competitive Mix:

The ARA notes that, under usual circumstances, contracts, including lease agreements, are entered into by both parties on a good-faith basis. From the perspective of the lessee of a retail shop, this good-faith extends to the maintenance of the competitive mix within the respective centre – competitive mix being a significant factor in the considerations of many lessees when entering into their lease agreements.

The inclusion of Casual Mall Leasing practices has been an ongoing threat to the maintenance of a stable competitive mix within shopping centres across Australia. The proliferation of Casual Mall Leasing, enabled by the Code, has allowed for the introduction of unfair competition, which places permanent tenants at a disadvantage. It is important to reiterate at this point that **permanent tenants enter into their lease agreements on a good-faith basis, with the understanding that the competitive mix remains largely unchanged.**

The introduction of a Casual Lessee into a shopping centre often poses a threat to stable competition by way of both direct and indirect competition. Casual mall licensing may provide for a direct competitor, already established within a given centre, to establish additional premises directly outside a competitor, and detract from their competitor's sales without any long-term commitment to additional leasing arrangements. Under these terms, the competitive mix remains largely the same. However, the threat of indirect competition, where a competitor may not retail similar products or services, yet competes for discretionary or impulse purchases by customers, can place a significant financial burden on permanent lessees.

The Code defines a competitor in Clause 6:

- *6. (1) A lessor must not grant a casual mall license that results in the unreasonable introduction of an external competitor of an adjacent lessee.*

  AND

- *(4) For the purposes of subclauses (1) and (2), the introduction of a competitor of an adjacent lessee in unreasonable if it has a significant adverse effect on the trading of the adjacent lessee in the adjacent lessee's retail shop.*

Consultation with retailers by the ARA, FCA and PGA has found that both direct and indirect competition resulting from the exponential increase in Casual Mall traders has occurred. Respondents cited issues

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such as product duplication, price undercutting, selling of superseded or discontinued ranges and reduced brand association.

Under the Code such conduct is deemed unreasonable through the introduction of external competitors to an adjacent lessee. As the evidence shows, the increase in granting of Casual Mall licenses has resulted in external competitors permitted to trade directly adjacent to a permanent lessee, and to sell identical or like products and services unreasonably. Consultation has found that of retailers who had faced issues with Casual traders, close to 67 per cent had been due to the introduction of an external competitor, with close to 33 per cent of the competitors introduced being internal[3].

Consultation has also found that when concerns are raised, landlords will in some cases produce the Code to defend the location and practices of Casual tenants. This is related to the aforementioned practice of mandating acceptance of the Code within lease agreements; thus, the Code is used in a coercive manner against permanent tenants when concerns are raised. This occurs where landlords will merely produce the Code in response to complaints and re-state its terms to the tenant with disregard to resolving issues and affecting a satisfactory resolution. Thus, the Code often takes the form of a mechanism of defence for the landlord's actions with regard to Casual Licensing.

Respondents to consultation have noted the significant adverse effects on brand association and sales, one respondent noting that the introduction of casual mall traders adjacent to their store had resulted in 'duplication resulting in diluted sales, (and) poor brand association.'

The Code has thus been ineffective in discouraging shopping centre landlords from engaging in unreasonable conduct in this regard

Obstructions to trade:

One of the primary concerns raised during consultation by the ARA, FCA and PGA in relation to Casual Mall Licensing practices is adjacency. The Code refers to adjacency in subclause 1(1) as follows:

- *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;*

[3] See Appendix 2, Table 2

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For the purposes of the Code's application in practice, the embodied definition of an 'adjacent lessee' is not prescriptive enough. Therefore, it is important that the definition of 'adjacent lessee' be expanded to include Casual tenants who are also captured under a reasonable line of sight to the permanent lessee. Pertinent to this, subclause (1)(1) should be amended to read as follows:

- *1(1) In this Code, unless the contrary intention appears –*
    - *"adjacent lessee" in relation to the 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, immediately adjacent to,* ***or within a reasonable line of sight to a permanent lessee*** *or the casual mall licence area;*

Under the current definition within the Code, adjacent lessees may exist either in front of or to the immediate side of a permanent tenant. An example of this is where a pharmacy exists as a permanent lessee of a retail shop, a Casual tenant which sells fragrances may establish immediately in front of or immediately left- or right-of the pharmacy. This is not reasonable, as it impacts directly on the line of sight of the permanent tenant.

It is important to note at this point that this issue is **not raised with the intent of placing limitations on, or stifling, competition**; it is merely important to establish a line of sight principle within the definition of adjacent lessee to **ensure that competition is fair.** Retailers lease shops within centres for a number of reasons, not least for the convenience provided by clear sightlines, and logical and easy to navigate layouts which encourage customer flow; in turn, this assists both the centre and the retailers to attract business. However, the proliferation of Casual Mall Licensing practices has caused great disruption to the consistency provided by these principles.

The Code provides for the maintenance of a consistent floorplan and sightlines within shopping centres in Clause 5:

- *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.*

Evidence drawn from consultation with retailers conducted by the ARA, FCA and PGA has shown that this provision within the code is inadequate. Respondents flagged the establishment of Casual traders

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directly adjacent to their store, which in most cases obscured the line of sight to their store, blocked customer access from their store, or even attempted to deter customers from entering the store in the first place. Those who partook in consultation who flagged these issues also noted that when concerns were raised with their respective landlords or centre management, they were either ignored, referred to the Code, or did not receive a resolution (additional comments around dispute resolution will be covered below).

Additionally, it is an accepted standard that lessees are entitled to enjoy quiet enjoyment of their lease, free from obstruction or unnecessary disturbance. The ongoing practice of Casual traders being permitted to operate in defiance to this provision, including through line of sight obstructions, adjacency issues, obstruction of entrances and pathways towards retail shops, contravenes this principle. Obstruction to retail leasing premises is addressed in various state Retail Leasing legislation. In New South Wales, the *Retail Leases Act 1994* articulates this principle in Section 34 as follows:

- *(1) A retail shop lease is taken to provide that if the lessor:*
    - ***(a) inhibits access of the lessee to the shop in any substantial manner, or***
    - ***(b) takes any action that would inhibit or alter, to a substantial extent, the flow of customers to the shop, or***
    - ***(c) unreasonably takes any action that causes significant disruption of, or has a significant adverse effect on, trading of the lessee in the shop***
    - *(d) fails to take all reasonable steps to prevent or put a stop to anything that causes significant disruption of, or which has a significant adverse effect on, trading of the lessee in the shop and that is attributable to causes within the lessor's control*

- *And the lessor* ***does not rectify the matter as soon as reasonably practicable after being requested in writing by the lessee to do so****, the lessor is liable to pay the lessee reasonable compensation for any loss or damage (other than nominal damage) suffered by the lessee as a consequence).*

Similar terms are also prescribed in legislation in Victoria and Queensland. The Code, however, does not adequately provide for the prevention of Casual traders inhibiting or altering the flow of customers to a shop, nor does the Code prevent landlords or centre management from unreasonably causing significant disruption to the trade of a lessee's shop.

The practices of shopping centre landlords and centre management, and the inability of the SCCA's code to regulate such practices are responsible for these issues.

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Competition:

Under the Code, the definition of a competitor is vague and confusing, creating interpretative difficulties on the part of lessors and lessees alike. The Code defines an internal and an external competitor in Subclause (1)(2), (1)(3), and (1)(4) as follows:

- *1. (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.***

- *(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.***

Vague definitions such as this can lead to unnecessary disputes where the identification of a competitor has not been properly defined. This definition results in confusion for lessors, but mostly lessees alike, and at some points, both. The review of the Code should seek to redefine the interpretation of a competitor for the purposes of the Code's application as well as for clarity.

Furthermore, the review of the Code should seek to stipulate that internal competitors should not be granted a Casual Mall Licence within a reasonable sight line of another competitor.

Redefining these definitions alone will allow the Code to become more effective in mitigating issues related to competitive fairness.

Further, there are perceived public benefit implications to the Casual Mall Licensing practices currently undertaken by landlords under the operation of the Code. When a tenant signs into their lease

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agreement, it is on a good faith basis that the competitive mix will remain relatively stable. Tenants thereby enter lease agreements aware of who their permanent competitors are.

However, in contrast, tenants cannot anticipate the establishment of a competitor directly adjacent to their premises at the time of entering into their contract. This can affect the public benefit as it causes a loss of discretionary and impulse spend, which drives down sales of permanent retailers. This in turn increases the difficulty for retailers attempting to run a sustainable business in a highly competitive environment. Eventually, this can lead to business closure – a negative implication for the public benefit, through a loss of permanent competition.

Pertinent to this, it is important to note that Casual traders are able to pick and choose the times in which they establish. This is most likely to occur during peak trading periods without any long-term commitment to a lease. This creates a fluctuation in competition which is against the good-faith principle of long-term lease arrangements.

Although we do not seek to reduce competition, it is important to establish a clearer and better-defined definition so that external and internal competitors are better understood. The competition issue is not related to the presence of a competitor as such, it is related to line of sight and adjacency issues. The location of a Casual trader can have a unique and negative effect on the sales performance of a permanent tenant, and is often detrimental to their long-term viability. Ultimately, this will reduce choice and competition for consumers, which is against the public interest.

Sightlines to shopfronts:

Upon consultation conducted by the ARA, FCA and PGA, the main point of contention raised in relation to Casual Mall Licensing is that of sightline obstruction. 68 per cent of respondents to consultation noted line of sight as a significant factor in raising issues with Casual tenants. Clause 5 of the Code identifies sightlines to shopfronts as follows:

- *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.*

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One specific example of sightline obstruction by casual mall traders is in relation to food kiosk operators, many of which operate under franchise agreements, within shopping centres. There has been an ongoing proliferation of shopping centres increasing the food retailing offering, and this has occurred with the introduction of Casual Licences being granted to 'pop up' food operators operating directly in between two permanent kiosks.

This gives rise to the need for a re-interpretation and a clearer definition of the impact on sightlines by adjacent lessees. The Code should be amended to include reasonable line of sight in Clause 5, as these practices have become prolific in the situation of permanent lessee kiosk operators, of which the majority would be franchisees. Any interference with sightlines to a permanent lessee should be at least avoided, if not prohibited, as it impacts unfairly on access, customer flow, and competition.

Dispute Resolution Mechanisms:

Given the prevalence of issues caused by Casual Mall Licensing practices employed by shopping centre landlords and centre management, effective dispute resolution mechanisms are necessary. Ideally, this would involve a process whereby lessees are able to resolve issues with their respective landlords or centre-management in-house.

However, consultation with retailers has shown that internal dispute resolution has been largely ineffective in resolving issues raised by tenants related to Casual Mall Licensing. Respondents to consultation noted that their issues were either ignored by landlords, failed to achieve a resolution, or were referred back to the Code. This is due to a number of issues in the prescription for dispute resolution in the Code.

Whilst internal dispute resolution is adequately provided for within the Code, the voluntary application of the Code and the absence of external mediation options has allowed for a power imbalance to exist between landlords and tenants. This is because the inadequacy of the Code in establishing appropriate mechanisms for recourse where internal resolution fails discourages parties to attempt to resolve disputes internally in the first place.

The Code covers dispute resolution in clauses 9-13 as follows:

- *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.*

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- *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) nominated in the schedule attached to this code. (Schedule still being finalised).***

Given the importance of settling disputes in a timely fashion, the phrase 'as soon as practicable' in Clause 9, should be amended to 'within 14 days'. Thus, Clause 9 would read as follows:

- *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,* ***within 14 days****, respond to the complaint that has been lodged.*

The inclusion of a prescribed period for responses to complaints is vital to ensure that complaints are not ignored, nor are they left to run until the end of a Casual lease in order for landlords to avoid remediating the issue. It is also important to ensure consistency in dispute resolution practices, especially for retailers who operate across multiple locations.

Clause 12 of the Code covers the appointment of an 'independent mediator… nominated in the schedule attached to this Code. (***Schedule still being finalised***).' Notably, the Code was first authorised by the ACCC in 2007. It is entirely regrettable that, a decade after the Code was first introduced, that the schedule of independent mediators is 'still being finalised.' This is entirely inadequate in protecting the interests of both lessees AND lessors, as it fails to provide for an important safeguard of external mediation where internal dispute resolution has failed.

The current dispute resolution process as outlined in the code have been deliberately written to frustrate disputes and issues raised by lessees in an attempt to thwart permanent tenants from coming forward with complaints. This leads permanent tenants to the assumption of disenfranchisement and causes significant stress related to the future of their existing lease, for fear of retaliation on the part of the landlord

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due to the absence of an external mediation process. The associated fear of ramifications ensures that lessees become discouraged from raising disputes.

Thus, it is important that the Code is amended as previously stated and brought into line with the dispute resolution processes of State and Territory Retail Leasing legislation. In particular, the introduction of administrative principles is important to ensure further reporting of complaints as to ensure transparency and fairness in resolving disputes related to Casual Mall Licensing.

Review and Administration:

Presently the code is not being administered and to claim that it has been is token at best. Thus, the Code in present form remains a self-serving carte blanche for shopping centre landlords only.
Thus, it is important that the Code be reviewed more regularly than presently done so. Clause 15 of the Code prescribes the review period as follows:

- *14. The role of the Code Administration Committee 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 of the code on the operation and effectiveness of the Code.*

Whilst the stipulation to report regularly is stated within the code, the terms are too vague. The Code should be amended to stipulate that reporting should occur at least annually. The Code should also be amended to introduce reporting practices on dispute resolution outcomes and the effectiveness of the Code's practicable application within shopping centres, also at least annually.

Furthermore, the CAC must be far more representative of the industry. Thus, it is important that the CAC be expanded to reflect the current representatives of the retail lease market in order to achieve cross-industry representation and ensure that the interests of all parties are taken into consideration.

Other Submissions:

The ARA notes that a submission regarding the reauthorisation of the Code was made on 7 August 2017 by the National Retailers Association (NRA). The submission notes no issue with the Code in its current form and supports its reauthorisation. Whilst the NRA is entitled to its view, there are a number of contentious claims within the submission which will be addressed as follows:

The NRA in its submission states that the implementation of 'The Code also meant that state governments were not committed to further legislative changes in their various retail lease legislation, so reducing additional red tape.'

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The ARA would like to note in this regard that avoiding regulation by government should not be the express aim in relation to this issue. The aim should be to create a viable market within which healthy competition is encouraged and maintained in a **fair manner**. Under the Code, retailers are not afforded fair conditions, which is impacting negatively on their businesses, and more importantly, on competition.

Given that the Code is voluntary in nature, this creates inconsistencies across the board both in its application and in its operation. Retailers who operate across multiple locations face varied conditions. Legislation gives certainty to these principles and ensures that every operator in the market practices under the same competitive and regulatory standards. While red tape reduction is an important principle in many areas, its relationship to these circumstances is dubious given the clear failings of the Code.

Secondly, the NRA asserts in its submission that 'Over the years when a dispute did arise, it was resolved quickly and efficiently without any cost to the permanent tenants…handled very efficiently by the centre manager or a senior executive of the landlord before any issue turned into a dispute.'

This is a fallacious assertion. Consultation conducted by the ARA, FCA and PGA has shown that retailers who have raised issues with their landlords regarding casual traders have been overwhelmingly dissatisfied with the outcomes. 90.5 per cent of respondents stated they had had issues with casual traders[4], and 76 per cent stated that there had been **no resolution** to their complaint. In cases where retailers had experienced issues, 71 per cent raised them with either their landlords or their centre management[5]. Only one person stated that they were satisfied with the actions taken by their landlord to resolve the complaints that they had made regarding casual tenants.

Pertinent to this, the NRA stated in its submission that there *'has definitely been no dispute that has been referred to for mediation during the term of the current Code'*. This can only be viewed as correct on the basis that the Code, as it stands, provides inadequate provisions for external mediation. This is due to the absence of a schedule of independent mediators as mentioned in the code. This has previously been referred to in this submission, however for the benefit of this point, the relevant clause in the Code reads as follows:

- ***12. The independent mediator will be appointed by the relevant retail tenancy official in each State or Territory (except South Australia) nominated in the schedule attached to this code. (Schedule still being finalised).***

Again, it is important to note that the Code has been in operation for a period of ten years and there is yet to be a schedule of independent mediators provided. This does not allow for impartiality and

[4] See Appendix 2, Table 1
[5] See Appendix 2, Table 4

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confidence in raising disputes, and may be one contributing factor as to why either disputes are not raised, or do not achieve satisfactory resolution on the part of permanent tenants. This is completely unacceptable. Finally, the ARA rejects the assertion made in the NRA's submission that *'Other parties who have never been a party to the code have sought to introduce other matters that are not relevant to the Code…'*

The ARA is the largest representative organisation in the retail industry and has been a party to the code for the past ten years. Furthermore, whilst the FCA and PGA are not formally listed within the Code, their representation extends across the $146 billion franchise industry and around 5,700 pharmacies, respectively, many of which operate in shopping centres. Thus, the FCA and PGA are parties to the Code by extension.

Furthermore, the NRA asserts in its submission that proposed amendments are not relevant. It would be beneficial, for the purposes of this application, if the NRA would have provided greater clarity on this matter by way of providing evidence in their submission. This has not been the case, however, and so this premise must be viewed as an opinion rather than a relevant statement of fact relating to this application.

Summation and Improvements:

The ARA notes the comprehensive range of issues associated with the Code in its present form.

Thus, 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 in order 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

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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.

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 to have a clearer, better defined and more prescriptive Code of Practice which is applicable industry wide in order 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.

At this stage, the Code in its current form is not reasonable and cannot achieve this. The ARA, FCA 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 ARA, on behalf of the FCA and PGA, would like to thank the ACCC for its consideration of this matter.

Please contact ARA Director of Policy, Government and Corporate Relations, Heath Michael, by email heath.michael@retail.org.au or by telephone (03) 8660 3315 if you have any further questions regarding this submission. Additionally, ARA Executive Director, Russell Zimmerman, is available by email at russell.zimmerman@retail.org.au or by telephone (02) 8097 0241.

Kind regards,

Russell Zimmerman
Executive Director

Heath Michael
Director of Policy, Government and Corporate Relations

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Australian Retailers Association

Appendices:

Appendix 1: Franchise Council of Australia 2012 Submission to ACCC:

Franchise Council of Australia

Submission in relation to the authorisation of the Casual Mall Licensing Code of Practice

October 19, 2012

Franchise Council of Australia
Level 1
307 Wattletree Road
Malvern East
Victoria 3145

Steve Wright
Executive Director
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Australian Retailers Association

Background

As the peak industry body representing franchisors, franchisees, service providers and suppliers involved in franchising the Franchise Council of Australia welcomes the opportunity to provide input to this Inquiry.

There are approximately 1,100 franchise systems and 70,000 franchised outlets in Australia. Around 30% of franchise systems are involved in retail, with many franchisors and franchisees occupying tenancies in major shopping centres. Indeed the FCA probably has a broader representation of retail tenants than most of the retail industry bodies.

The FCA is strongly supportive of the concept of a Casual Mall Licensing Code of Practice. We acknowledge that the current Casual Mall Leasing Code of Practice is better than having no such code, so to that extent the FCA supports the authorisation by the ACCC of such a code. However we consider that changes need to be made to the Casual Mall Leasing Code of Practice and ideally those changes should be made as part of the current authorisation process.

The FCA acknowledges the substantial contribution major shopping centres have made to Australian retail. Australian customers enjoy world class shopping environments featuring a diverse array of retail concepts. Similarly Australian shopping centres have benefitted from the presence of the many franchise and retail brands that draw customers to shopping centres. This relationship is synergistic, and largely the relationship between retailers and shopping centres is collaborative. However it has to be said that the economic returns enjoyed by shopping centres point to market imperfections that need to be addressed. The FCA is strongly of the view that shopping centres have become economic markets of their own, and that information imbalances and other inequalities in those markets see retailers consistently at an economic disadvantage. The FCA also has concerns about the conduct of shopping centres that have led the FCA to champion the development of a proposed Retail Leasing Code of Conduct.

Although these matters are not directly relevant to the Casual Mall Licensing Code of Practice, they do provide important context. The Casual Mall Leasing Code of Practice was originally developed to curb the practices of shopping centre owners, and protect the legitimate interests of the permanent tenants who had in good faith committed to long term leases. There are few if any genuine contractual protections

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for tenants in the shopping centre leases, notwithstanding that there are a number of promises implicit in the bargain struck between landlord and tenant at the time of setting the rental and signing the lease. One of the implicit promises is that the competitive mix will remain largely unchanged, and tenants will be entitled to reasonable quiet enjoyment of their tenancy.

In a normal market changes occur naturally. In a shopping centre most changes are made unilaterally by landlords. To some extent major shopping centres compete with other centres and with other retail locations, but the sheer size of these centres and the restrictions on competition resulting from zoning and town planning restrictions means that they are largely markets unto themselves. Measured on the basis of retail turnover, customer purchasing and staff employed the largest shopping centres would have a greater market size than most regional cities or metropolitan suburbs. They are in essence markets n themselves, and those markets are essentially controlled by the landlords.

The Casual Mall Leasing Code of Practice Preamble

The Casual Mall Leasing Code of Practice preamble notes that casual mall licensing is a feature of shopping centres in Australia, which is true. It is however a feature that was introduced unilaterally by landlords, and solely for the benefit of landlords. Put simply, these arrangements provide landlords with extra rental on top of the rental paid by permanent tenants. And in a broad sense, money spent by customers with these tenants is not spent with the permanent tenants.

The FCA is sceptical as to whether casual mall licensing actually adds much variety to the retail offer of shopping centres or helps attract customers to shopping centres. For the most part customers are attracted by the presence of the brands, the marketing and promotions undertaken by those brands and the general retail shopping environment. Most of the casual mall licensing arrangements do not feature existing tenants, but rather new casual tenants.

The FCA has no objections to casual mall licensing arrangements for existing tenants. The FCA agrees that it enables existing retailers to augment their normal sales, particularly when shopping centres are typically highly restrictive in terms of the retail activities tenants are able to undertake. For example most landlords will insist that retailers not undertake sampling or promotions outside the boundaries of their store.

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The FCA certainly agrees that where casual mall licensing is applied insensitively it can be a source of dissatisfaction to existing retailers. Indeed we would go much further. Casual mall licensing can be a direct and unfair competitive threat to a permanent tenant. This threat can be direct, in terms of casual mall licensing by a direct competitor, and indirect. Indirect competition can occur by the establishment of a business that may not be a direct competitor in terms of products or services, but competes for the discretionary dollar or impulse purchase from a customer. The financial impact on the permanent tenant is the same. The permanent tenant can also be prejudiced by disruption to traffic flow, impairment of store visibility and other indirect consequences.

The FCA is also sceptical about the extent to which the Code has in fact been developed as part of the consensus process required for these forms of industry codes. The original version of the voluntary Code of Practice may well have been agreed between the Australian Retailers Association, the Retail Traders Association of Western Australia, the National
Retail Association, the Shopping Centre Council of Australia and the Property Council of Australia. However these bodies are not totally representative of the retail sector, and the current review process needs to be broader. Further, the FCA, the Australian Retailers Association and others have endeavoured to engage the Shopping Centre Council of Australia and the Property Council of Australia in the development of a Retail Leasing Code of Conduct without success. This seems at least culturally at odds with a genuine desire to engage in proper consultation.

That said, the FCA strongly supports industry codes of practice developed through a genuine consultative process. The FCA also broadly supports the concept of the Casual Mall Leasing Code of Practice, and agrees that it will help 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. Indeed the FCA believes consideration should be given to the enactment of the Casual Mall Leasing Code of Practice as a mandatory industry code under section 51AE of the Competition and Consumer Act.

<u>Operative Provisions</u>

Our comments on the operative provisions appear below, with reference to the relevant provision of the Code.

1. Interpretation - Clause I(1)

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The current definition of “adjacent lessee” is central to the Casual Mall Leasing Code of Practice, and is set out below:-

> *"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;*

There are many situations where a party is significantly affected by a casual licensing arrangement notwithstanding it is not “in front of or immediately adjacent” to the proposed location of that casual licence. The relevant test should be whether the person is an “affected lessee”, not and “adjacent lessee”. A new definition of “affected lessee” should then be inserted as follows:-

> *"affected 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 or is able to establish that the lessee is likely to be substantially affected by the casual mall licence;*

The FCA considers such a definition is consistent with the intent of the Casual Mall Leasing Code of Practice, and indeed is consistent with the definition of “competitor” discussed below.

2. “Competitor” – Clause 1(2)

The FCA has less concern with the definition of an internal competitor, as that is essentially an extension of the current competitive environment within the market and reasonably addressed by the Casual Mall Leasing Code of Practice. However the current definition defines an external competitor as a competitor that is not a lessee of another shop in the same shopping centre. The definition of a ‘competitor” by reference to specific product competition is as follows:-

> (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;*

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The FCA considers that this definition is far too narrow. The intent of the Code should be to protect permanent tenants paying a fixed rent from unfair competition. In an economic sense a competitor is any business that competes for a particular aspect of the customer's expenditure. Many retailers rely on discretionary spending, or impulse purchases. That is often exactly the sort of business granted a casual mall licence. In this context it the FCA considers that the following definition of a "competitor" in clause 1(2)(b)relation to services is more appropriate:-

> (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.*

There is no reason why there should be a different definition for goods compared to services.

3. Casual mall licence policy

The FCA supports the concept of preparation and disclosure in relation to the casual mall licensing policy. However the current provisions contain no requirement for consultation in relation to the development of a casual mall licensing policy. This is left solely in the hands of the shopping centre owner. There should be some express obligation to consult with tenant representatives in the shopping centre in relation to the development of any such policy, and any variations.

The FCA also considers that the current provisions do not go far enough, and should require the lessor to provide an assessment of any anticipated impact on tenant of any specific casual mall licence. This need not be a complex process, and could be as simple as grading the impact as "nil / not substantial / substantial". However such a process would require the lessor to consider the impact on the tenants of a specific activity. There should also be an explicit obligation to consult with the tenant in relation to any casual licensing proposed, and to consider in good faith any objections raised by the tenant to any proposed arrangement.

4. Reduction of rent

Clause 8 of the Casual Mall Leasing Code of Practice provides that where there is casual mall licensing there must be a reduction of non-specific outgoings paid by fixed tenants by a formula that the FCA agrees is a fair means of allocating the

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outgoings across all tenants including casual mall licensees. The logic of such an adjustment is obvious, and to fail to adjust would see the landlord secure contributions from tenants that exceed the amount of the outgoings.

The same logic applies to rent. The landlord controls this market, and a certain number of customers with a certain amount of disposable income attend the shopping centre. In a global sense all tenants compete with each other for the customer's attention and expenditure. Rents are set by reference to the anticipated revenue to be generated by a tenant in ordinary circumstances. The requirement for tenants to provide turnover details to landlords, and the capacity to easily share information, means that landlords have full access to information.

Casual licensing enables landlords to obtain additional revenue, with no benefit to the tenants. The same logic should apply to rents as applies to outgoings. The formula may need to be different, as the beneficiaries of any adjustment should be the affected tenants. But the broad principle should be the same - if a casual mall licence is granted the extra rental should be split with the affected tenants.

5. Dispute Resolution

The FCA supports the current dispute resolution arrangements in the Casual Mall Leasing Code of Practice.

6. Code Administration Council

The FCA considers that there needs to be greater visibility as to the operation of the Code Administration Council, and consideration given to increasing the number and nature of representative organisations participating on the Code Administration Council.

In that respect, has the Code Administration Council reported to the parties to the Code? Is a copy of that Report available to the FCA and indeed other interested parties?

7. Period of Operation of the Code of Practice

Once approved, the FCA supports the Casual Mall Leasing Code of Practice remaining in operation until 31 December 2017.

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Australian Retailers Association

Franchise Council of Australia

Request for Comments – FCA Submission on Casual Mall Licensing Code of Practice

The Shopping Centre Council has applied to the Australian Competition and Consumer Commission for authorisation of the Casual Mall Leasing Code of Practice.

In essence this application is for the continuation of the existing authorisation, which expires December 31, 2012. The FCA has been invited to comment to the ACCC on whether the authorisation ought to be granted. Strictly speaking, the ACCC is seeking to understand whether the FCA considers that the public benefits of the Casual Mall Leasing Code of Practice outweigh any public detriment. However the process also enables the FCA to raise broader issues with the content of the Casual Mall Leasing Code of Practice, and the process for administration and oversight of the Casual Mall Leasing Code of Practice.

Essentially an authorisation is granted by the ACCC in circumstances where conduct might otherwise breach the Competition and Consumer Act. In the present case the Casual Mall Leasing Code of Practice could contain an exclusionary provision in breach of s4D of the Competition and Consumer Act or result in a substantial lessening of competition in the relevant markets in breach of s45 of the Act. The Casual Mall Leasing Code of Practice is a code of practice involving the owners of major shopping centres and retailers through their respective industry bodies. Some of these parties are likely to be considered competitors for the purposes of the Act. One of the consequences of the Casual Mall Leasing Code of Practice is that parties may be prevented from securing space at shopping centres via casual licensing arrangements.

Attached to this Briefing Paper are:-

1 The FCA's submission to the ACCC in relation to the authorisation; and

2 An Executive Summary of the Casual Mall Licensing Code of Practice

Your urgent comments are requested in relation to the Casual Mall Licensing Code of Practice, and the content of the FCA's submission.

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The FCA's position is that the public benefit of having a code of practice such as the Casual Mall Leasing Code of Practice outweighs any public detriment. So in that sense we are supportive of the Casual Mall Leasing Code of Practice, and of the application for authorisation. However more broadly the FCA considers that the Code of Practice could be substantially improved to give greater protection to fixed term tenants, and changes should be made to the process for administration of the Code of Practice. The FCA also believes that consideration should be given to making the current voluntary code a mandatory industry code for the purposes of s51AE of the Competition and Consumer Act, which is the section under which the Franchising Code of Conduct was introduced.

Comments are to be sent to Steve Wright at the Franchise Council of Australia, and are requested by Friday October 26, 2012.

Franchise Council of Australia
Level 1, 307 Wattletree Road
Malvern East, Victoria. 3145

Attention Mr Steve Wright
Executive Director
1300 669 030
steve.wright@franchise.org.au

Franchise Council of Australia Member Briefing Paper - Casual Mall Licensing Code of Practice

Background

The Casual Mall Leasing Code of Practice was created 5 years ago to address complaints by tenants of shop centres that they were unfairly impacted by casual licensing arrangements implemented by the owners of major shopping centres. Tenants felt such arrangements were unfair and unreasonable given they were committed to fixed term and fixed rental arrangements negotiated in good faith based on competitive circumstances at the time of signing their lease.

The Casual Mall Leasing Code of Practice is a voluntary code of practice between shopping centres and retailers introduced via their various representative industry bodies. The parties to the Casual Mall Leasing Code of Practice are:- • The Shopping Centre Council of Australia Ltd;

- The Property Council of Australia;
- The Australian Retailers Association;
- The National Retail Association; and
- The Retail Traders Association of WA

These associations strongly recommend to their members that they comply with the code of practice, but compliance is not mandatory.

ACCC authorisation is required, as the Casual Mall Leasing Code of Practice might otherwise breach the Competition and Consumer Act. The Casual Mall Leasing Code of Practice contains exclusionary provisions in breach of s4D of the Competition and Consumer Act, and provisions excluding or limiting entry to major shopping centres that could result in a substantial lessening of competition in the relevant markets in breach of s45 of the Act. The owners of major shopping centres and retailers that are parties to the Casual Mall Leasing Code of Practice through their respective industry bodies are likely to be considered competitors for the purposes of the Act.

Operative Provisions

A casual mall licensing arrangement refers to an arrangement where a party is granted the right to occupy part of the common area of a shop centre for a period of less than 180 days.

The essential provisions of the Code are as follows:-

- Clause 2, which requires a lessor to prepare and provide a casual mall licence policy that sets out the lessor's policy in respect of granting casual mall licences for the relevant centre, including a floor plan setting out the location and size of areas in the mall where casual mall licences may be granted;

- Clause 3, which requires a lessor to give certain information including the casual mall licence policy to all lessees before granting a casual mall licence to any person;

- Clause 4, which requires a lessor to comply with its casual mall licensing policy;

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- Clause 5, which requires lessors to ensure that the business conducted by any casual mall licensee does not substantially interfere with the sightlines o a lessee's shopfront in the shopping centre except with consent of the lessee;

- Clause 6(1), which provides that a lessor must not grant a casual mall licence that results in the unreasonable introduction of an external competitor of an adjacent lessee.

- Clause 6(2), which provides that a lessor must not grant a casual mall licence that results in the unreasonable introduction of an internal competitor of an adjacent lessee unless:- ○ the internal competitor is a lessee of a retail shop in the same retail precinct in the shopping centre;
  - ○ the casual mall licence area is the closest available to the internal competitor's retail shop;
  - ○ the casual mall licence term is within a designated sales period in respect of the shopping centre; or
  - ○ the casual mall licence is within the centre court of the shopping centre.

- Clause 6(4), which provides that the introduction of a competitor is unreasonable if it has a significant adverse effect on trading of the adjacent lessee. (Note: Clause 6(5) provides that the wording of clause 6(4) does not limit the circumstances where introduction of a competitor could be unreasonable, so it is in theory possible to show it is unreasonable even if there is no significant effect on trading.)

- Clause 7, which excludes special events from clauses 4, 5 and 6.

- Clause 8, which provides for a reduction in the non-specific outgoings to be paid by all tenants to factor in contributions from casual leasing based on lettable area occupied by casual mall licensees and the applicable time periods of their occupation.

- Clauses 9-13, which provide for mediation based dispute resolution;

- Clauses 14 – 18, which set out the process for administration and operation of the Casual Mall Leasing Code of Practice.

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Key definitions

In the context of the operative provisions, the following definitions are important:-

> *"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;*

The key words are underlined. In other words there is a requirement for very close proximity between the 2 premises.

In relation to competition:-

> (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 supply of services – a person is a competitor of another person if the person competes with the other person to a substantial extent.*

This is quite a limited definition, and it relies on floor area.

A “special event” is defined to be:-

> *“a community, cultural, arts, entertainment, sporting, promotional or other similar event that is to be held on the retail shopping centre over a limited period of time.”*

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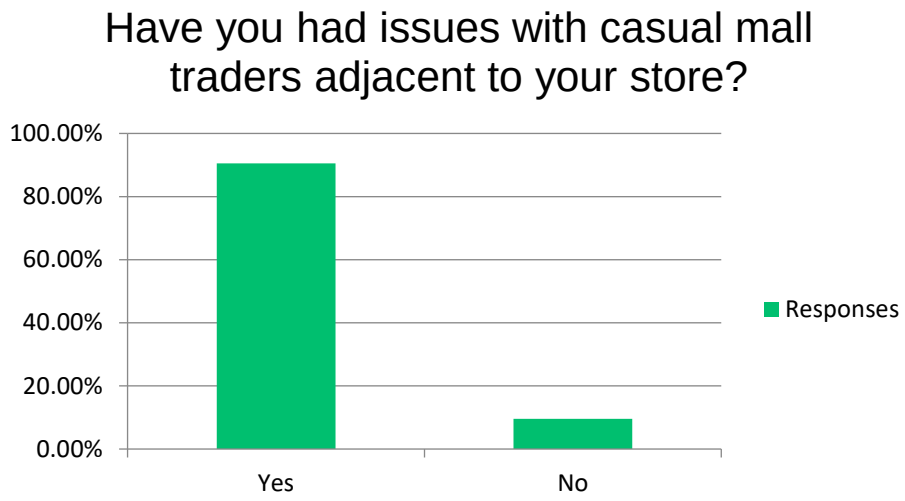
Appendix 2: Results of Consultation - *Casual Mall Licensing Survey*:

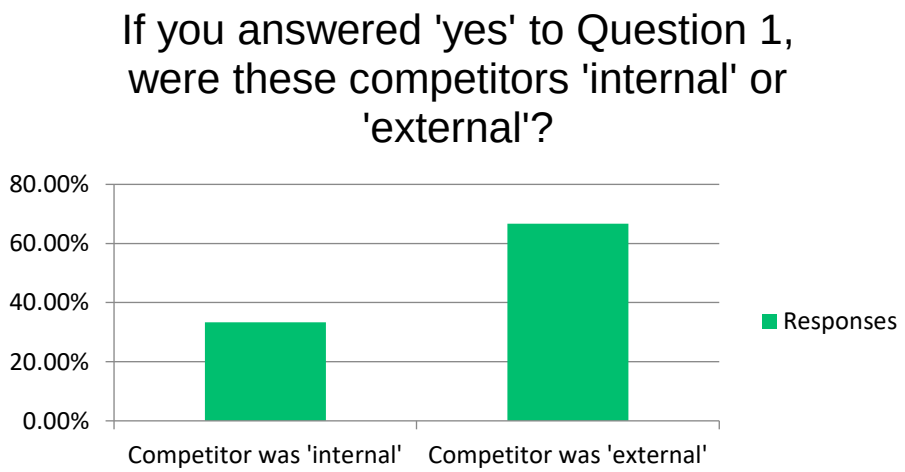
Survey conducted between 17/8/2017 and 4/9/2017:

Table 1: Prevalence of issues related to Casual traders



- 90.48 per cent of respondents stated that they had faced issues related to Casual Mall Licensing.

Table 2: Nature of competition



- 66.67 per cent of respondents who had faced issues with Casual Mall Licensing believed their competitor to be 'external'

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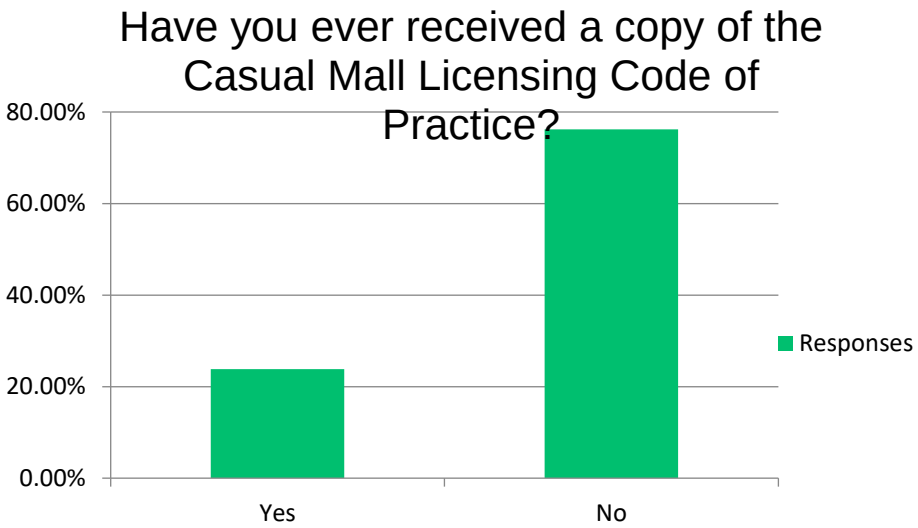
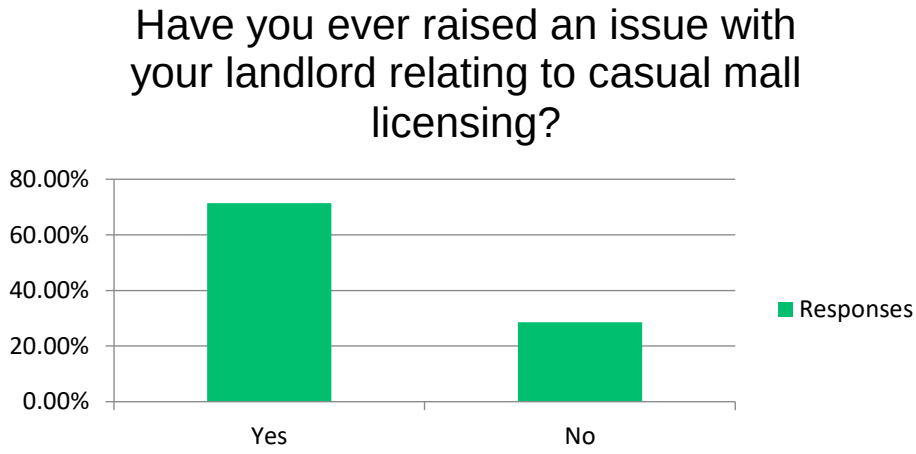
Table 3: Instances of possession of the Code



- 76.19 per cent of respondents stated that they had not received a copy of the Code

Table 4: Instances of complaints to landlord regarding Casual Mall Licensing:



- 71.43 per cent of respondents stated that they had raised an issue with their landlord regarding Casual Mall Licensing.

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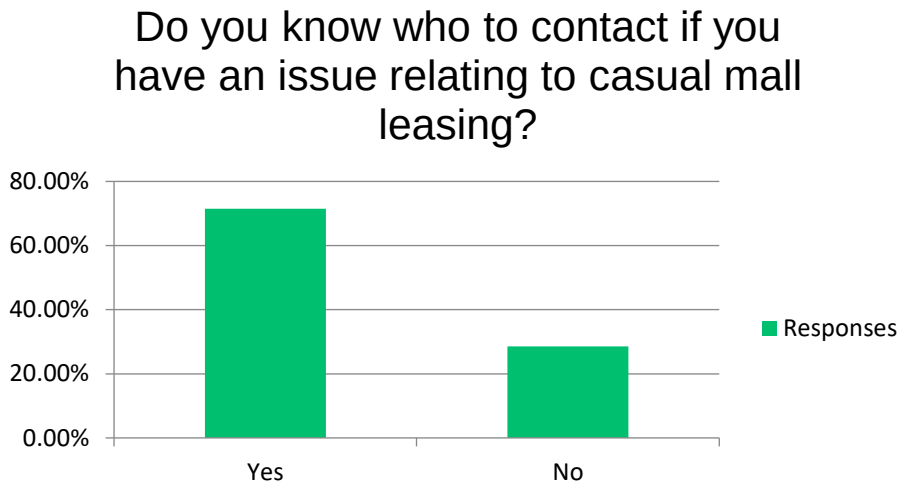
Table 5: Knowledge of contact for complaints regarding Casual Mall Licensing



- 28.57 per cent of respondents were not aware of the appropriate contact to register a complaint regarding Casual Mall Licensing issues.

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