

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, Pharmacy Guild of Australia, Australian Retailers Association, and National Online Retail 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 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.

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 ten years until 31 December 2030.

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;

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.

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 check if the shopping centre you operate in applies the Code. You should consider seeking independent legal and other professional advice.

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.vsbv.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, Restaurant and Catering Industry Association 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.