

THE REPORTING OF SALES AND OCCUPANCY COSTS

Retail Industry Code of Practice

1 January 2019

SIGNATORIES

Australian Retailers Association

National Retail Association

Pharmacy Guild of Australia

Shopping Centre Council of Australia



THE REPORTING OF SALES AND OCCUPANCY COSTS

The purpose of this voluntary Code of Practice (the Code) is to establish how landlords and retailers communicate sales data between themselves. The Code establishes a mutual obligation which requires that a landlord who collects sales information is to provide this information in an appropriate form to retailers who request it.

The practice of reporting sales results by retailers to landlords (mostly in shopping centres) has been considered the norm for some decades now.

Over time the way sales are collated and reported (including reported back to retailers) has created some long-running issues of contention for retailers.

This Code has been formulated by industry stakeholders to further the transparency and integrity of the commercial relationship between the parties to a retail lease where they have negotiated a contractual obligation to report sales data.

Landlords need sales information for a number of management reasons. This includes determining the overall financial performance of the shopping centre and evaluating the strengths and weaknesses of the centre's retail offer. Sales information is also necessary to make decisions about redevelopments of shopping centres; to guide decisions on tenancy mix; and to effectively target shopping centre marketing and promotional expenditures. Retailers also have an interest in ensuring optimum targeting of marketing and promotional expenditure.

Comprehensive and accurate sales information is also important to retailers to enable them to benchmark their performance against competitors and to highlight the need for corrective action.

Sales information is also vital to third parties, including retail tenancy advisers, industry researchers and industry publications, to enable an assessment of the comparative performance of shopping centres and to inform location decisions by retailers.

This Code is not intended to supersede any relevant state or territory legislation which may exist from time to time.

This Code does not cover the reporting of online sales. It is accepted, as a general principle, that if the store is used in any way for the sale (such as for fulfilment of the order or for collection) then this should generally be considered a sale from that particular store. However, it is accepted that these issues are likely to remain matters for negotiation between individual landlords and retailers.

This Code comes into effect in New South Wales from 1 January 2019, with relevant parties provided six (6) months from this date to implement the changes caused by the Code (TBC).

It is intended that, over time, the Code will be adopted by industry stakeholders in other Australian jurisdictions.

1. MUTUAL OBLIGATIONS

Sales information needs to be comprehensive and accurate in order to be a useful management tool for landlords and retailers.

Landlords accept that where shopping centres collect sales information they have an obligation to provide that information to retailers who request this information. This information should be in a form which enables retailers to benchmark their performance against other retailers in the same sales group within the particular shopping centre and, where applicable, within the owner's portfolio of shopping centres. The form in which the information is supplied should be a matter for discussion and agreement between landlords and retailers. Landlords who currently provide this benchmarking information to retailers in a comprehensive form are not obliged to alter the form in which they now do so.

Landlords and retailers must, however, ensure that in the provision of benchmarking information the sales performance of individual retailers is not disclosed. It is recognised, for example, that where there are only two retailers in a particular sales group in an individual centre it is not possible to provide benchmarking information within the particular sales group, although it may still be possible to provide relevant information from within the broad category or from within the portfolio.

Benchmarking information provided by landlords to retailers should generally disclose on what basis sales have been collected, collated and benchmarked, including how the GST on sales has been treated. If applied, the benchmarking information should disclose the GST uplift factors (or the average uplift factor) that have been applied.

Members of the Shopping Centre Council of Australia (a signatory of this Code) will collect, collate and benchmark data, and adjust sales for GST, as per the separate *Shopping Centre Council of Australia Sales Reporting Guidelines December 2010*. These Guidelines are available on at www.scca.org.au.

An industry stakeholder does not have to be a member of the Shopping Centre Council of Australia to use or reference these Guidelines, although this should be disclosed in line with the requirements noted above.

These Guidelines can be amended from time to time by the Shopping Centre Council of Australia. The Shopping Centre Council of Australia will consult with relevant industry stakeholder when considering any changes to the Guidelines. Changes will be brought to the attention of the signatories of this Code.

Sales information should be only one aspect of the provision of information within shopping centres. Where possible and available, other information collected by landlords (such as consumer spend, demographic analysis and traffic trends) could be made available to retailers in order to assist retail performance.

While accepting that this Code cannot bind the actions of governments, it is acknowledged that the reporting of sales is a contractual matter between the parties. It is recognised, however, that retail tenancy legislation currently regulates what can be included and excluded in turnover information for the calculation of turnover rent.

2. CODE ADMINISTRATION COMMITTEE

Retailers and landlords acknowledge the importance of this Code in furthering the transparency and integrity of their commercial relationship.

It is in the interest of all industry stakeholders that the Code functions as it is intended. The Code will be self-administered.

The Code will be monitored by a Code Administration Committee (CAC) whose members will be without remuneration and will comprise four representatives as follows:

- Two (2) retailer representatives;
- Two (2) landlord representatives.

The retailer associations which are signatories to this Code will meet periodically to determine the two (2) retailer representatives on the CAC.

The Shopping Centre Council of Australia will nominate the two (2) landlord representatives on the CAC.

Other stakeholders can be invited, upon agreement of all CAC members, to assist the CAC in exercising its role.

The CAC will seek to ensure that retailers and landlords act to ensure the purpose of the Code (as outlined in the Preamble) is achieved.

The role of the CAC will be to:

- Help promote and publicise the Code to raise awareness and understanding among retailers, landlords and other relevant stakeholders.
- Monitor the operation of the Code.
- Regularly review the Code.
- Regularly report to the signatories of the Code on its operation and effectiveness; and
- Consider requests from organisations which seek to become a signatory to the Code.

Where a complaint is made alleging a breach of this Code has occurred the landlord and the retailer will, in good faith, attempt to resolve any complaint by negotiation between themselves.

The CAC will meet at least annually to exercise its role.

3. CODE SIGNATORIES

The following signatories to this Code will work to ensure that the Code functions as intended.

In alphabetical order:



Russell Zimmerman
Executive Director
Australian Retailers Association
www.retail.org.au



Dominique Lamb
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David Quilty
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Angus Nardi
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