

## AA1000529 - Shopping Centre Council of Australia Limited – Application for re- authorisation

Oral submission by Phillip Chapman, Code Administration Committee Observer

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1. Prior to the ACCC's 2017 reauthorisation of the Casual Mall Leasing (**CML**) Code of Practice (the **Code**), a number of issues existed with the Code including a lack of retailer representation, poor dispute resolution, and failures to protect permanent lessees. These have improved since the 2017 re-authorisation, and retailer associations support a longer period for re-authorisation.
2. Where retailer members raise issues, these are now resolved very quickly - almost within a day. Previously, going through a nominated contact could take weeks. Where, for some SCCA members, it used to be convenient not to follow the Code, non-compliant SCCA members are now brought to task. This increased compliance is beneficial to both permanent and casual lessees.
3. Code Administration Committee (**CAC**) members take issues and problems raised on-board, and make changes quickly. As a result, the number of issues arising has reduced drastically. CAC meetings are robust and provide an opportunity for tenants and owners to raise and resolve issues.
4. The independent Chair is fair and very independent, and has been an advocate for awareness work regarding the Code. This includes through the preparation and distribution of the Code fact sheet.
5. The increased membership and formalisation of the CAC assists with communication between centre owners, retailers and associations, and with timely resolution of any issues. Senior SCCA staff are also available to streamline or intervene in this process.
6. Authorisation of the Code for 10 years is unlikely to result in any issues. However, a shorter 5-year authorisation might be a better outcome to provide accountability/transparency over the operation of the Code. States and territories normally review retail legislation on a 5 to 7 year cycle and having the Code authorised for 5 years fits within this review period.
7. Historically, without appropriate accountability, there was some abuse of the Code. Since the last re-authorisation, abuses have reduced, benefiting small-medium enterprise.
8. The only potential detriment from the Code is that some CML operators are not able to conduct business as they once did. However, these practices harmed sitting tenants. There have been occasions where a CML operator would set up outside a sitting tenant's shop and sell similar goods, often to the detriment of the sitting tenant. The ability to still trade, albeit out of sightlines, leads to CML operators having to become better retailers, which in turn often leads to longer casual tenancies of one to three months, rather than opportunistically swooping in. Any downside is offset by business evolution. Moreover, consumers benefit from increased competition arising from a longer casual tenancy.
9. CML has changed to more closely resemble more permanent arrangements, and to serve as a channel for traders to test retail opportunities offered by a particular centre. This contrasts to historical arrangements where CML lessees would try to piggyback off an existing store – for example selling perfume outside a chemist or calendars outside a newsagent.
10. If parties to the Code continue to work toward making CML more accountable, benefits will continue to increase. There is still greater opportunity for further and higher

awareness campaigning, including with CML operators and centre owners, to promote a more positive experience for all parties to CML arrangements.

11. Without the Code, there would be chaos, and significant detriment to permanent retail tenants. Prior to the Code's authorisation, disputes were bitter and long-running with CML operators often claiming they could do what they like, including imitating uniforms of businesses they set up in front of.