



Highlights from the PFA/Yardi Webinar “Negotiating the Commonwealth Lease Code in the States and Territories”

Property funds face several challenges in how the states and territories apply the **Commonwealth Lease Code** – this informative webinar covered **key valuation issues** in applying the Code across different states, **some emerging legal issues** in landlord/tenant negotiations, and some **practical insights facing fund managers**.

Greg Preston, Managing Director of Preston Rowe Paterson, said each state and territory applied and legislated the Code slightly differently, creating valuation challenges for properties owned across different jurisdictions, and for both landlords and tenants who may lease space across different jurisdictions.

There is additional uncertainty around the terminology for “pandemic period”, and “reasonable recovery period” and what it might mean in practice; the terminology remains uncertain for managers when dealing with tenants, especially around rental waiver and deferral periods.

Mr Preston identified some key questions in applying the Code:

- Does the Code need to be applied prescriptively, or can the landlord/tenant negotiate outside the Code?
- JobKeeper eligibility as an ongoing issue, given the Code is linked to JobKeeper
- Do tenants need to extend leases to cover the pandemic and a “reasonable recovery period”?

Carrie Rogers, Partner, Clayton Utz, said confusion and uncertainty is common, placing more importance on relationships – good relationships help with state differences and uncertainty around JobKeeper. Landlords and tenants benefit from open communication, and by accepting ongoing negotiation.

On renegotiating agreements, the trend is for side letters to agreements, rather than formal lease amendments or new leases. Potential issues include third parties: for example, landlords and tenants may need to consider franchise agreements.

Some other notable challenges:

- The term “reasonable recovery period” means different things to different tenants.





- Uncertainties around lease extensions put the onus back on negotiations.
- Legal issues such as force majeure clauses (which have not been tested in the courts yet) may introduce more complexity and uncertainty
- Negotiating the transition back may require mediation if parties cannot come to an agreement

Steven Bennett, Direct CEO, Charter Hall, addressed some practical issues confronting commercial property landlords. The Code is complex, and emotions are running high as businesses feel the pressure.

Managers need to empathise with tenants and seek to resolve any conflict. They must consider whether a request is reasonable under the circumstances, while also considering how it will affect investors – remembering that helping tenants to survive is generally in the investor’s best long term interests.

Managers need appropriate evidence for rent relief, and face challenges around requests which do not comply with the Code. The best course is to try and empathise with all stakeholders and aim for win-win solutions where possible.

It often comes down to relationships. Landlords may consider up-front rent relief but request a lease extension as part of the negotiation – some concluded rent relief negotiations to date have worked out to be valuation neutral, and some even valuation accretive.

In considering the valuation impacts, Mr Bennett encourages a long-term perspective; investors will still be attracted to income yield from commercial property, particularly while funding costs are low via lower interest rates.

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