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[Archive](#)

## FEDERAL GOVERNMENT TO ACT ON CREEPING ACQUISITIONS

The Federal Government has [announced](#) a proposed change to the *Trade Practices Act* to clarify the law in relation to 'creeping acquisitions' (i.e. the accumulated effect of a number of small individual acquisitions which, considered in isolation, would have only a limited impact on competition but, considered over a longer period, may have the effect of substantially lessening competition in a market.) The Government says its action is necessary to overcome legal doubt that the Australian Competition and Consumer Commission has the power to consider the effects on competition in a local market, as distinct from 'regional' and 'national' markets. The Government has also given notice that it is prepared to legislate if there is any legal challenge to the ACCC's power to examine the acquisition of 'greenfield' sites.

In a separate matter the Shopping Centre Council has lodged a [submission](#) to the Senate Economics Committee opposing a private Senator's Bill - the [Trade Practices Amendment \(Material Lessening of Competition – Richmond Amendment\) Bill 2009](#). This Bill seeks to lower the threshold which the ACCC must adopt when considering mergers and creeping acquisitions. Our submission points out that there is no evidence of a market failure or regulatory failure which would justify changing the merger provisions of section 50 or any need to make changes to specifically address creeping acquisitions. A full list of submissions to the Committee is available [here](#).

## SUBMISSION TO UNCONSCIONABLE CONDUCT EXPERT PANEL

In November 2009 the Federal Government announced the establishment of an expert panel to consider whether a list of examples of unconscionable conduct, or a statement of principles of what constitutes unconscionable conduct, should be incorporated into the *Trade Practices Act* ([Shop Talk 13/11/09](#)). This was in response to recommendations made by the Senate Economics Committee in a report in December 2008 ([Shop Talk 12/12/08](#)).

The Shopping Centre Council has lodged a [submission](#) to the expert panel, arguing that there is no evidence that the unconscionable conduct provisions in Part IVA of the *Trade Practices Act* are confusing to the courts or to relevant tribunals or to the body given primary responsibility for enforcing these provisions, the ACCC. We have also pointed out that, paradoxically, both the insertion of a list of examples or a statement of principles could have the effect of actually narrowing, rather than widening, the application of these provisions by limiting the existing discretion given to the courts in interpreting the provisions. A full list of the submissions to the expert panel is available [here](#).

## QUEENSLAND IRC GRANTS SUNDAY TRADING FOR ROCKHAMPTON

Sunday trading, from 9am to 6pm, began in Rockhampton last Sunday after the Queensland Industrial Relations Commission (QIRC), on 17 December 2009, granted an application by the National Retail Association, on behalf of SCCA, Coles and Woolworths. This is good news for Stockland Rockhampton (Stockland), City Centre Plaza (Mirvac) and Allentown Plaza (Macquarie CountryWide Trust.) The QIRC has also permitted trading, from 8.30am to 5.30pm, on all public holidays except Christmas Day, Good Friday, Anzac Day and Labour Day.

The QIRC has now completed its hearings of the NRA's applications for Sunday trading for Mackay and Toowoomba ([Shop Talk 11/9/09](#) & [30/1/09](#)). Decisions on these applications are expected in late February or in March.