



**SUBMISSION TO:**

CREEPING ACQUISITIONS – THE WAY FORWARD

Competition and Consumer Policy Division

The Treasury

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- The Australian Retailers Association (AARA) is responding to the discussion paper “*Creeping Acquisitions – The Way Forward*” that seeks the views of interested parties regarding options for the implementation of a creeping acquisitions law. The paper was released in response to concerns raised by the Australian Competition and Consumer Commission (ACCC) that section 50 of the Trade Practices Act may not be able to deal with creeping acquisitions that, according to the ACCC, have the potential to cause competition concerns in certain concentrated industries.
- The creeping acquisition concerns relate to a potential loophole in section 50 which currently prohibits acquisitions that would, or would be likely to, lessen competition in a market.
- If this loophole is exploited, a series of small acquisitions that individually would not cause concern, collectively may substantially lessen competition in a market have that effect over time.
- This submission focuses on the substantial market within the shareholding of regional and sub-regional shopping market and its impact upon the specialty retail rental market.
- The ARA supports the introduction of a general creeping acquisition law with particular concern that section 50 of the Trade Practices Act 1974 (Cth) (the Act) provides a loophole in the legislation posing a significant risk that competition in various industries could be substantially damaged as a result of this loophole in the legislation.
- The ARA supports the introduction of a creeping acquisition law which recognizes the concept of **Substantial Market Power (SMP)**
- The ARA believes the SMP model would capture situations where a substantial competitor seeks to eliminate a smaller competitor / competitors through a series of acquisitions over time.
- If the SMP model was implemented, it would protect small businesses from strategic anti-competitive behaviour.
- The term creeping acquisitions can refer refers to a firm with existing substantial market power enhancing its market power through a series of acquisitions would not substantially lessen competition individually.
- The ARA has observed a number of industries where there is a risk of creeping acquisitions raising competitive concerns, including – but not limited to - liquor stores, optical dispensing, supermarkets and shopping centres.

- The ARA's view regarding potential lessening of competition in supermarkets is supported by the ACCC who noted the following:

*“... the supermarket industry was one where creeping acquisitions could over time become a concern, due to particular structural features of the market, including:*

- *the need to obtain good sites being a significant barrier to entry, particularly given the financial resources of the MSCs and the leverage they wield over lessors of suitable sites;*
- *the existence of broader barriers to entry and expansion created through the need to obtain economies of scale and efficient wholesaling operations;*
- *the existence of two major supermarket chains; and*
- *a situation where there are many small business units (that is, retail stores or potential retail sites) that could be acquired or leased one by one or in small groups.”*

**(ACCC Submission to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs regarding creeping acquisitions)**

- A common form of creeping acquisition observed by the ARA involves matters where a firm at one level of the supply chain makes one or more small acquisitions in a number of downstream markets.
- A clear example of this is evident in the shopping centre market where, in the past ten years, there have been certain significant changes in the shareholding of the owners, the effect of enhancing a corporation's substantial market power in the retail leasing market.
- The ARA has made a number of submissions to the ACCC over the years objecting to the acquisition of shareholdings in various shopping centres by various corporations but all have been rejected on the basis of the aggregation not having an impact upon the overall market. The overall market was deemed to be the total available retail space.
- However the impact of these acquisitions, given the leasing information that is shared between the various parties, assures one party acquires substantial market power within the retail leasing market.
- The knowledge of acquired of the rents being paid by national retailers and the smaller independent traders across multiple centres, combined with the declaration of the sales figures that are required under the shopping centre lease, a distorted a free market to the economic benefit of the shopping centre owner is created.
- The tables and summary in Appendix A outline the various shareholdings of a range of shopping centres throughout Australia. It shows the change of ownership over the last ten years, especially the acquisition of a part share in a centre. The lists concentrate on the regional shopping centre market, but have included a number of the lesser centres. The lists are compiled by the body that is managing the centre and in most instances this is a company associated with the property trust.

- Appendix A clearly shows how one party, namely Westfield over the ten year period, has increased its holdings in major centres in all the capital cities of Australia. There are cross holdings with other major property trusts such as AMP, GPT and APPFR that is managed by Lend Lease. Centro and Queensland Investment Corporation appear to be the only trusts that do not have any cross holdings.
- When the shopping centre ownership in Appendix A is considered, there is little doubt that the acquisition of these shareholdings by Westfield over a period of ten years has enhanced the corporation's substantial market power in the retail leasing market. It has placed them in a superior position when dealing with the specialty retailers, who need to be located within a regional shopping centre.
- Westfield has interest in 44 centres. However, only 17 are owned wholly by Westfield. The following are those property trusts which have interests in centres associated with Westfield:
  - AMP has interests in 11 centres;
  - GPT has interests in two centres;
  - APPFR in three centres;
  - Deutsche Asset Management in five centres;
  - Singapore Government Investment Corporation in two centres;
  - Perron Group in two centres
- Of the five centres managed by Lend Lease (on behalf on APPFR), GPT has an interest in four.
- While some may argue that this has been the result of organic growth – such growth was allowed on the basis that it did not lessen competition rather than on the basis of enhancing substantial market powers.
- The ARA would welcome the provisions relating to the enhancement of substantial market powers especially as it relates retail leasing market which is not highly competitive but controlled by a small number of participants. The amended version of the SMP model in the retail leasing market would be welcomed by many small retailers.
- We do not foresee any alternative regulatory or non regulatory options that might be an appropriate response to the creeping acquisitions that have already taken place by Real Estate Investment Trusts in the retail property market. These creeping acquisitions have given the REIT in the retail leasing market substantial market power through superior knowledge of the rental market and what the sales of the various tenants.
- The cost benefits would be a true open market for retail rents with retailers being able to negotiate an affordable rent, operate a viable business rather than suffer the imposition of a contrived market rent established through the superior knowledge of the REIT through cross pollination of information as a result of a shareholding in another REIT.

## Appendix A

### Summary of Tables

- In terms of substantial market power, if we take the North Shore of Sydney - Westfield controls Hornsby, Chatswood and has interests in Warringah and Macquarie with AMP. The only centre in that catchment not associated with Westfield is Colonial First State's Chatswood Chase. Westfield through its acquisition of shareholdings in both Macquarie and Warringah Mall has substantial market power in the retail leasing market.
- On south side of Sydney - Westfield controls Sydney Central Plaza, Centrepoint, Bondi Junction, Eastgardens, Hurstville, Miranda and Burwood. There is no other regional centre available for a specialist retailer wishing to open a store in that catchment.
- In the west of Sydney - Westfield controls Parramatta, Mt Druitt, Penrith and Liverpool. The only other regional centres in this catchment are Westpoint, Bankstown and Roselands - the last two owned by the same property trust.
- The position is repeated in Brisbane with Westfield controlling Carindale, Chermside, Mt Gravatt, Helensvale, North Lakes, Pacific Fair and Strathpine.
- In Melbourne - Westfield controls Doncaster, Southlands, Fountaingate and Knox City while Adelaide has Marion, Tea Tree Plaza and Westlakes. In Perth there is the dominance of Booragoon, Carousel, Innaloo, Karrinyup and Whitford City.

### AMP Managed Centres

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Booragoon	77,712	AMP- 75% Westfield – 25%	58,000	AMP Perpetual Trustee
Karrinyup	57,301	AMP – 42% Stockland – 25% Westfield – 33%	50,000	Perpetual Trustees
Knox City	142,674	AMP – 20% DBReef – 50% Westfield – 30%	66,928	Knox S/C Invest Perpetual Trustees SAS Trustees
Macquarie Centre	97,888	AMP – 45% Westfield – 55%	74,814	AMP Perpetual Trustees
Pacific Fair	107,006	AMP – 36% ACCP – 20% Westfield – 44%	92,000	AMP
Warringah Mall	126,016	AMP – 25% ACCP – 50% Westfield – 25%	97,008	AMP AMPSC

### Centro Managed Centres

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Arndale	40,238	Centro	35,511	Westfield CFM
Bankstown	82,206	Centro	66,500	GPT Vic Super Board
Collanades	60,115	Centro	39,335	Perpetual Trustees
Galleria	72,458	Centro	70,829	Westfield
Roselands	61,808	Centro	59,060	Roselands Investment Trust
The Glen	58,076	Centro	46,453	Centro BHP Shell
Toombul	46,597	Centro	46,453	Westfield
Tuggernong	75,475	Centro Leda	53,298	Leda

### GPT Managed Centres

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Carlingford	33,300	GPT	30,700	GPT
Casurina	52,759	GPT	40,500	GPT
Charlestown	46,900	GPT	47,500	GPT
Dandenong	63,300	GPT	60,200	GPT MLC
Highpoint	120,800	GPT – 50% HPG – 50%	55,000	Sussan Group
Melbourne Central	54,100	GPT	107,444	Kumagi
Rouse Hill		GPT		

### Colonial First State Managed Centres

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Frankston	84,456	CFSRT	53,780	Gandel RT
Broadmeadows	83,524	CFSRT		
Chadstone	137,469	CFSRT Gandel RT	90,015	Gandel RT Gandel Group
Chatswood	49,818	CFSRT	49,907	Victoria Nominees
Eastlands	33,954	CFSRT	27,760	Gandel RT
Elizabeth	76,497	CFSRT	68,274	Coles Myer Advanced PT
Forest Hills	66,036	CFSRT	65,000	Pacific Properties
Grand Plaza	52,627	CFSRT		
Indooroopilly	84,564	Aria PF PSS/CSS AP Trust	77,424	Westfield
Midland Gate	49,656	OFS – 50% DiversifiedPF- 50%		
Myer Brisbane	111,689	CFSRT	60,200	91 Queen St P/L

### Colonial First State Managed Centres continued

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Northland	76,884	CFSRT Gandel Group	70,234	Gandel RT
Rockingham	45,295	CFSRT	45,800	Prudential Assur. Westgate Prop.

### Lend Lease Managed Centres

Centre	Size 2008	Owners 2008	Size 1998	Owners 1998
Cairns	53,759	APPFR – 50% Westfield – 50%	53,500	Coles Myer
Erina	108,200	APPFR GPT	70,100	GPT
Greensborough	57,598	APPFR	54,800	APPFR MLC
Macarthur	90,541	APPFR GPT	58,400	APPFR MLC
Sunshine	58,877	APPFR GPT	55,500	APPFR GPT

### QIC Managed Centres

Centre	Size 2008	Owners 2008	Size 1998	Owners 1998
Canberra	84,692	QIC	51,555	QIC
Castle Towers	109,570	QIC	49,021	QIC
Eastland	78,693	QIC	53,575	QIC
Toowoomba	45,940	QIC		
Logan	81,727	QIC J C Longhurst	70,500	QIC J C Longhurst
Robina	85,132	QIC	83,255	Robina Land Corp
Westpoint	81,017	QIC	58,791	QIC

### Westfield Managed Centres

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Airport West	55,370	Westfield Perron Group	35,267	Westfield
Bay City	53,939	Westfield – 50% Perron Group	35,267	Perron Group
Belconnen	76,802	Westfield	74,111	Westfield
Bondi Junction	132,105	Westfield		AMP
Burwood	65,216	Westfield	30,791	Westfield
Carindale	116,884	Westfield – 50% APPF – 50%	55,201	Suncorp Perpetual Trust
Carousel	85,001	Westfield	47,237	Westfield
Chatswood	78,745	Westfield		
Chermside	145,912	Westfield	39,376	Westfield
Centrepoint	88,775*	Westfield		AMP
SCP	54,933	Westfield	54,106	Coles Myer
Doncaster	130,300	Westfield – 50% SGIC	59,492	Westfield
Eastgardens	83,673	Terrace Towers	63,605	Terrace Towers
Figtree	22,291	Westfield		Westfield

### Westfield Managed Centres continued

Centre	Size 2008 sm	Owners 2008	Size 1998 sm	Owners 1998
Fountaingate	138,719	Westfield	67,383	Westfield TAC
Hornsby	103,539	Westfield		
Helensvale	44,942	Westfield – 50%		
Hurstville	64,874	Westfield – 50% Deutsche Asset	63,585	Westfield – 50% SAS Trustee
Innaloo	46,170	Westfield		
Kotara	64,874	Westfield	43,066	Perpetual Trust
Liverpool	93,387	Westfield – 50% AMP – 50%	69,090	Westfield Redamco
Marion	130,708	Westfield – 50% APPF	124,191	Westfield – 50% CFM – 50%
Miranda	110,644	Westfield – 50% Deutsche AM 50%	111,245	Westfield – 50% NMLA – 50%
Mt Druitt	61,345	Westfield – 50% Deutsche AM 50%	68,165	Bankers Trust
Mt Gravatt	102,380	Westfield – 75% AMP – 25%	79,781	AMP – 50% Perpetual – 50%
North Lakes	61730	Westfield – 50%		
North Rocks	23,167	Westfield	23,190	Westfield
Parramatta	139388	Westfield – 50% SGIC – 50%	127,517	Westfield
Penrith	90,433	Westfield – 50% GPT – 50%	63,400	GPT ANZ
Southlands	133,187	Westfield – 50% AMP – 50%	69,516	Westfield AMP
Strathpine	46,223	Westfield	36,730	Westfield
Tea Tree	95,789	Westfield – 50% AMP – 50%	68,087	Westfield – 50% AMP – 50%
Tuggerah	85,775	Westfield	59,026	Westfield
West Lakes	62,000	Westfield – 50% Deutsche AM 50%	49,771	NMLA
Whitfords	76,466	Westfield – 50% Deutsche AM -50%	58,091	NMPT
Warrawong	56,051	Westfield	40,767	Westfield
Woden	72,253	Westfield -50% GPT - 50%		

<b>Non Managed Westfield Centres with Westfield shareholdings</b>				
Booragoon	77,712	AMP -75% Westfield - 25%	58,000	AMP Perpetual Trustee
Cairns	53,759	APPFR - 50% Westfield - 50%	53,500	Coles Myer
Karrinyup	57,301	AMP - 42% Stockland - 25% Westfield - 33%	50,000	Perpetual Trustees
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Warringah Mall	126,016	AMP - 25% ACCP - 50% Westfield - 25%	97,008	AMP AMPSC

#### **Stocklands Managed Centres**

<b>Centre</b>	<b>Size 2008</b>	<b>Owners 2008</b>	<b>Size 1998</b>	<b>Owners 1998</b>
Bateau Bay	29,296	Stocklands	22,509	Stocklands
Cairns	48,813	Stocklands	44,588	Stocklands
Foster		Stocklands	15,289	Private Investor
Glendale	55,223	Stocklands	55,238	Stocklands
Greenhills	32,315	Stocklands	32,369	Woolworths
Shellharbour	39,523	Stocklands	40,257	AMP
Townsville	33,840	Stocklands	34,500	Trust Co of Aust
Wetherill Park	51,062	Stocklands	55,172	Stocklands

## **Australian Retailers Association**

*Promoting and protecting retailers for over 100 years*

For over 104 years, the Australian Retailers Association (ARA) is the peak national retail association representing the interests of the largest employing industry in Australia. We provide leadership and solutions to improve the long-term viability and visibility of the retail industry by proactively dealing with government, media and other regulatory bodies on behalf of our members.

ARA members comprise a diversity of size and types of retailers reflecting the profile of the retail industry, ranging from large national chains to one-person operators throughout the nation.

The ARA provides a range of comprehensive services, advice and representation suited to both small and large retailers in the areas of employment relations, occupational health and safety, tenancy, consumer law and retail business solutions. This includes a range of retail specific training that supports best practice in retail.

If you have any questions related to this submission, please contact ARA Policy:

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