



# Supermarket Leases: Restrictive Agreements and Trade Practices



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Original article written by Meritas affiliate member Madgwicks, Melbourne

*The ACCC has recently signalled increased focus on retail leasing and the behaviour of both landlords and tenants. It has been particularly concerned with contracts and commercial arrangements that restrict dealings, restrain competition between traders with similar goods or services, or promote anti-competitive behaviour in breach of the Trade Practices Act ("Act").*

During its Grocery Inquiry into supermarkets in 2008, the ACCC identified a practice where supermarket operators would include tenancy terms that effectively prevented shopping centre owners/managers leasing space to any competing supermarkets. Over 750 leases were identified as containing restrictive covenants that could breach the Act. The covenants had the potential to impose restrictions on the number of supermarket outlets in centres and consequently provide fewer options for consumers (ie lessen competition).

In September 2009, the **ACCC** reached agreement with **Coles Group Limited** and **Woolworths Limited** to phase out all restrictive provisions in supermarket leases. Both companies have provided a court enforceable undertaking that **they will not include restrictive provisions in any new supermarket leases**, and in the case of existing supermarket leases, they will not enforce restrictive provisions for five years after commencement of trading.

Whilst the federal government does not have direct control over state and local zoning laws, it is also using its influence to push for further changes through the Council of Australian Governments (COAG). Consumer Affairs Minister Craig Emerson wants to overhaul state planning laws which, he believes, may be restricting retail to certain areas and has the potential to be anti-competitive. The zoning and planning laws will go before the next month's COAG meeting where a report on the issue will also be presented. **The move to end anti-competitive practices is expected to make it easier for shopping centres to lease space to Aldi, Franklins, Foodworks, IGA and Costco stores.**

The consequences of breaching the Act are serious and may result in penalties of up to \$10 million for a corporate entity and up to \$500,000 for individuals. As well as monetary penalties, a Court may order injunctions to restrain anti-competitive conduct and award damages for loss or damage suffered by the competitor. Accordingly, clients are encouraged to be aware of the findings of the Grocery Inquiry with respect to their current leases and when negotiating new leases.

Should you require any further information or assistance please do not hesitate to contact us.

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