Competition Review 2014

THE AUSTRALIAN RETAILERS ASSOCIATION

SUBMISSION

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Australian Retailers Association

- Voice of the Retail Industry

For over 110 years, the Australian Retailers Association (ARA) has been the peak industry body in Australia's $265 billion retail sector which employs over 1.2 million people. As an incorporated employer body under the Fair Work (Registered Organisations) Act 2009 and with a range of member services including employment relations, policy development, advocacy and education, the ARA promotes and protects over 5500 independent and national retailers throughout Australia.

The ARA provides leadership and solutions to improve the long-term viability, productivity 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 sizes and types of retailers reflecting the profile of the retail industry, ranging from large national chain retailers to one-person operators throughout the nation.

OVERVIEW

Retailers in Australia in particular the Small & Medium (SME) sector are facing a difficult operating environment. In the last ten years, the structure of the retail sector has shifted and evolved as a result of globalisation, advances in the digital economy and changes to business practice policies (such as employment costs and market power shift of the major retailers and landlords). In addition, the retail sector has experienced various economic environments with the Global Financial Crisis and fluctuating Australian dollar having a significant effect on the performance of the industry. The ARA offers support, information, and representation to around 5,500 retailers across the nation, and works closely with Government and other industry participants to ensure the long-term viability and position of the retail sector as a leading contributor to Australia's economy.

The ARA and its members have a strong vision for the retail industry – based on well regulated markets and growth, fair competition, productive and innovative businesses, responsible collective initiative supported by Government where appropriate but removing regulatory burden where possible and appropriate.

We are committed to promoting retail as a viable and exciting career choice for young people, and to retaining and developing the highest standards of practice within individuals and groups at all levels of our industry through advocating and assisting members to deal with new technologies and a changing trading environment.

We are focused on providing members with the information, knowledge and skills necessary to operate more effectively in Employment Relations, skills growth and Australian Consumer Law in an increasingly competitive retail environment exposed to international competition.

Our members range from small sole operator enterprises to medium, large, independent, chain and franchise stores of all types and sizes. Over 80 percent of our membership consists of businesses ranging from one to five stores with majority of that figure employing less than 200 staff.

ARA membership and retailers in general, have experienced significant cost pressures through international competition, reduced margins, falling growth, competitive issues within the industry and wage costs well above our international competitors.

EXECUTIVE SUMMARY

ARA POSITION

The ARA strongly supports a competitive retail industry; however, there are factors that currently are inhibiting the growth of retail in Australia related to competition. In relation to our response, the ARA has focussed on matters that are of greatest relevance to the retail industry. We understand that there are many areas that effect competition, however the ARA has centred its response around those areas that we believe cause the greatest issue in relation to competition.

- Retail rents
- Retail trading hours
- Low Value Import Threshold
- Flexibility, Productivity & Participation needs of a modern workforce
- Planning laws
- Payment Systems & Reform
- Access to finance
- Market Power

FURTHER TO THE SUBMISSION:

RETAIL RENTS:

The ARA strongly believes that it is not possible nor should governments legislate against retailers who sign leases without seeking proper information both in relation to the cost of the lease and or the terms and conditions of the lease. However, there would appear to be an information imbalance in relation to the landlord and the retail tenant. It is generally accepted that landlords have lots of knowledge regarding a tenant. Knowledge is power, however the tenant in most cases is unable to obtain information from a landlord, that a major retailer or retail chain would most often have access to given their size.

Before a tenant signs a lease, the landlord has ensured that the tenant has given him a guarantee of ability to pay the rent, by way of taking a bank guarantee from the tenant, as well as other forms of guarantees.

No prospective tenant would enter a lease knowingly with the intention of not being in a position of paying the rent and outgoings to a landlord. Landlords rarely give little to no information in writing, however at a minimum to ensure that the retailer is renting a premises that he will be able to compete with the major tenants, the land lord should advise them of the following in writing:

- The dollar per square metre of the shopping centre on a Moving Annual Turnover (MAT) basis
- The dollar per square metre of the category that tenant is leasing on an MAT basis
- If the centre is expected to be extended and a tenant is taking space in either the new or existing part of the centre, the amount of extra lettable floor space is to be made available in the centre
- The amount of extra lettable floor space that will be made available in the category that the tenant is seeking to lease
- An estimate of the dollars per square meter that the land lord expects to achieve once the centre is fully operational and extended, both as a total dollar per square meter for the full centre as well as the expected dollar per square metre of the category that the tenant is leasing.

Although information and figures from a shopping centre to a tenant may not be able to be 100% accurate (in particular during a new centre opening or extension), often tenants are advised these figures verbally and then once the centre has been extended or a new centre has been opened, the figures that have been quoted, particularly to an SME operator are widely disputed. Therefore, if the figures are given to a prospective tenant in writing within an expected range, with an obligation on the landlord to ensure reasonable accuracy in their information, the retailer's business plan is based on the information that is given by the landlord. From a competitive viewpoint, a SME retailer will be in a position to compete with the major retail chains and the major retailers, given that most SME retailers are unable to compete as they generally do not have the resources to research and ensure the information supplied is accurate. It should be noted that when a retailer is developing a business plan, in order to access finance, the finance provider will assess the capacity to pay back the loan based on the figures that the retailer will expect to take via the store they are opening.

Once a tenant has commenced trading in a shopping centre, most major landlords will request that the tenant supply the landlord with turnover figures each month. These figures generally are requested so that the landlord has an overview of the performance of the shopping centre, particularly by category, so that the landlord understands the ongoing tenancy requirement of the centre. (*It should be noted at this point that many other countries do not require tenants to give turnover information to a landlord, and from research, it would seem that Australia is one of the few countries where turnover figures are required as part of the lease by the landlord*).

It should also be noted that this practice (the collection of turnover figures), is not as a general rule required by an individual landlord in a 'strip shopping area' and when negotiating a lease in a 'strip shopping centre', often if there is more than one premises available for a tenant to rent, where retailers will be most likely dealing with different landlords, and the ability for a retailer to negotiate a lease under these circumstances, is the ability to play one landlord off against another, taking into account the position of the premises and often the quality of the premises on offer.

Within a shopping centre where a major landlord is the landlord for all premises, landlords will advise that the figures collected by the shopping centre are not used to set the rent, however they state that they are used to understand the needs of the various categories within a shopping centre. All landlords are charged with ensuring that all turnover figures are kept private and confidential, however quite often when a retailer is negotiating a new lease, a landlord will state to them, "but you can afford the rent we are charging" (many retailers will attest to this statement) proving that they use the figures to set the rents.

The ARA understands the need for a shopping centre to have information about the turnover of a shopping centre, however if landlords require that information from a tenant, then the landlords should have a independent third party collect the information on their behalf and return the figures to the landlord as categorised figures, similar to the ABS categories. This would remove the unfair competitive advantage that a landlord has when setting the rent of a retailer, allowing the market to determine the value of a tenancy rather than the landlord setting the rent by understanding the retailer's turnover and what he may be able to afford.

Many leases are tied to a percentage of turnovers, and a clause similar to the clause below is included in the lease:

Method or Formula for Calculating Rent:

1. *Commencing on the (date inserted)*
2. *A minimum rent of $..... per annum plus GST (Currently $..... per annum) and in addition to the minimum rent an amount equal to ten per cent (10.00%) of gross sales per annum made from the premises to the extent that such amount exceeds the minimum rent (plus GST)*

The clause used above is inserted to allow the landlord to request the tenant to obtain turnover figures, although on surveying our membership, it would appear that less than 5 percent of our retailers ever reach the equivalent of 10 percent of the rent in turnover. If landlords seek to keep the above clause in their leases so that in the unlikely event that a retailer actually reaches the 10 percent turnover clause, the information regarding the turnover figure would need to be supplied to the third party, so that they are able to inform the landlord if the turnover has reached the figure as per the lease.

If retailers were to forward their turnover figures to a third party, then the ability for any landlord to set the rent by turnover is removed and competitive forces of market rent would then be realistic, and there could be no argument by retailers that rents are anti competitive.

RETAIL TRADING HOURS:

National Competition Policy (NCP) is based on an explicit recognition that competitive markets will generally serve the interests of consumers and the wider community by providing strong incentives for participants (retailers in this case) to operate efficiently and be price competitive and innovative. A key element of the NCP is that laws that detract from competition should only be retained if they can be shown to be in the public interest.

The trading hour's regime differs greatly across the States and Territories. From being almost completely deregulated in the ACT and to a slightly lesser extent in NSW, Tasmania and Victoria, to being restricted on week nights or weekends for some or all retailers in various retail sectors in Queensland, SA and WA. It should be noted that the call for deregulation of trading hours in Queensland, SA and WA is primarily made by the two major grocery chains.

In regional WA, further deregulation of trading hours is at first instant a matter to be pursued by the local Council in consultation with the community.

In recent years, the communities in Geraldton, Esperance, Kalgoorlie and Albany have not supported further deregulation of trading hours that would have allowed the major grocery chain to open at the same time as smaller retailers currently do. The local communities in WA have clearly shown that they see their interests being best served by maintaining a strong independent retail sector, by restricting the trading hours of the major grocery chains.

In the States and Territories with the greatest deregulated trading hours, the major grocery chains have the greatest level of market share. The major chains have 85 percent and over 80 percent market share in the ACT and NSW respectively. The ACT and NSW have the greatest level of trading hour deregulation. In WA where trading hours restrictions on the major grocery chains was the greatest until 18 months ago, the major grocery chains have only 70 percent market share. A similar situation occurs in SA where trading hours are regulated.

The public interest is best served by the continuation of trading hour restrictions particularly where those restrictions encourage smaller retailers to remain sustainable. The call for further deregulation of trading hours by the major grocery chains is not in the in the public interest because it leads to greater dominance of the grocery sector by the major grocery chains, which will inevitably lead to less competition.

It would appear that in the States where trading hours have been regulated, that the competition in the SME sector, particularly in the grocery sector, would seem to be stronger and remains competitive to the major two retail chains. Before any further decisions are made on the deregulation of trading hours and to ensure that the SME retail sector remains competitive, further investigations should be carried out to determine if deregulation of all trading hours is in the best interest of the consumer. If retailing has only two major players and no independent retailers, then we will in the long term lose any proper competition.

LOW VALUE IMPORT THRESHOLD (LVIT) ON GST

The ARA welcomed government plans outlining the undertaking of a business case to lower the LVIT which would enable collection of GST on parcels below $1000, as well as from overseas suppliers. The unlevel playing field that is created by overseas retailers not having to charge or remit GST makes an unfair advantage for overseas retailers. Overseas retailers therefore, enjoy cost advantages over an Australian (traditional or online) retailer by avoiding the following:

- GST of 10 percent on the customs value of the goods plus freight costs and duties
- Customs duties of between 0 percent and 10 percent depending upon the type of product and the country of origin
- Various custom process and associated fees.

FROM A GLOBAL COMPARISON

Australia has one of the most generous low value thresholds for value added tax and duty exemptions. Examples of countries with lower thresholds include:

- Canada's threshold is set at Can $20
- UK's Threshold is set at 15 UK pounds for VAT and 135 UK pounds for custom duty
- USA's Threshold is set at US $200
- South Korea's threshold is set at W 150,000 (~A130)
- New Zealand's threshold is variable depending on the product type. It can range between NZ $220 and NZ $400.

Lowering the GST threshold on imported goods, needs to happen swiftly if Australian retailers are to be put on a level playing field with their online overseas counterparts, who currently have the distinct advantage of escaping GST when sending their goods to Australia.

International online retailers would easily be able to adjust to the new requirements, given they would be on par with Australian based retailers and with all overseas jurisdictions either operating a very low threshold or moving to a zero threshold Australia stands to be a tax free haven for international online retailers if this change is not made.

The LVIT actually operates as a 'reverse tariff' by raising the prices of local goods and lowering the prices of imported goods, and this makes no economic sense – this does not allow Australian retailers to be competitive to their overseas competitors, in fact it ensures that Australian retailers are unable to compete with overseas retailers.

If urgent action is not taken, a further 33,000 jobs will be lost by 2015 in the discretionary retail sector, and this will only ensure that Australia will become further uncompetitive within the sector. Most of these jobs will be lost in the SME sector ensuring that only the major retail chains survive and this will limit the competition in the retail sector.

FLEXIBILITY, PRODUCTIVITY & PARTICIPATION NEEDS OF THE MODERN WORKPLACE

Australia has one of the highest labour costs in the developed world, and if as a country we are able to compete with overseas countries, then the cost for business must also be able to compete with our overseas retailers. To ensure that Australia is able to compete with our overseas retailers, the system within Australia must be fair to both the employer and employee. To achieve a reasonable outcome, the ARA would make the following points:

- A workplace relations system which is fair to both employers and employees, recognises that they share substantial common interests and seek to operate with a framework of fair and economically responsible standards and behaviours
- Make targeted investment in training and skills development a high a priority including effective employment pathways
- Change the Fair Work Act where problems arise, as they become apparent and as the system evolves.

The Fair Work Commission (FWC) needs to be empowered to effect change within the current Award structure. FWC must consider whether modern awards:

- Achieve the modern awards objective

- Are operating effectively, without anomalies or technical problems arising from the award modernisation process
- Allow greater flexibility in workplace arrangements
- Are taking into account cost pressures and flexibility needs for Australian retailers operating in a globally competitive environment.

Objectives
FWC must be obliged to review all modern awards on a regular basis:

- A review will be a vitally important issue for the retail industry to improve both productivity and sustainability for the Australian retail industry. The effective management of labour costs has become more important than ever before for the industry in an environment where sales are stagnant and the consumer has developed an expectation of globally competitive pricing.
- The recognition of the difficulties faced by retailers working under an award structure that imposes higher labour costs at times when consumers want to shop is causing major distortions in the ability for retailers to trade competitively. This is becoming increasingly problematic as weekends, after 6pm and public holiday rates continue to establish themselves as important trading times with many retailers not finding it economically viable to trade at these times. With penalty rates of 100 percent (Double time) on Sundays, 50 percent or 1.5 times on a Saturday, Public Holidays at 150 percent or 2.5 times and 25 percent or 1.25 times after 6pm trading during the week, rates for retailers in Australia make trading uncompetitive to overseas retailers for Australian retailers. Slowly, we are pricing retailing in Australia out of competition with overseas retailers.
- ARA will be pushing for amendments to the Fair Work legislation and changes to FWC that will allow retailers to more effectively manage their labour costs and provide greater flexibility via FWC.
- ARA will, over the course of this Government, be actively seeking the views of members and engaging with the broader retail industry to identify key common concerns and develop a strategy for ensuring FWC conducts a comprehensive review of these concerns.
- As Australia's peak employer association for the retail industry, the ARA will be taking a lead role in the process to achieve a positive outcome for retailers.

Fair, Productive & Creative Workplaces

Australia's 140,000 retailers employ over 1.2 million Australians and are Australia's largest private employer.

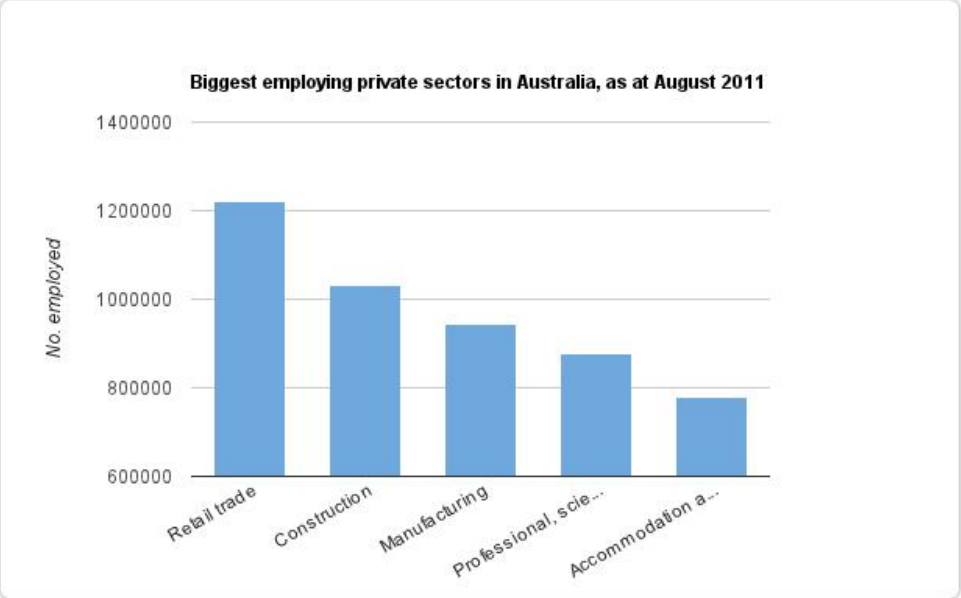
Modern 21st century workplaces increasingly reflect the joint enterprise and common goals of business and the workforce, employers and employees.

The ARA believes in a safety net of standards of behaviour and norms that underpin rights and responsibilities in the workplace, but which also do not detract from individual or enterprise flexibility in workplace agreements.

Above all, the ARA supports enterprises large and small and their employees and contractors to tailor remuneration and working arrangements in a way that provides the best chance for the business and its employees to fully develop and prosper.

Retail is responsible for directly employing 1.2 million people from a diverse range of careers including customer service, butchers, bakers, pharmacists, hairdressers, mechanics, finance, information technology, communications, human resources and management.

Over 1 million Australians work in retail



Source: ABS Australian Industry, 2009-10, 8155.0

PLANNING LAWS

Issues in relation to planning laws:

The ARA would generally support broadening business zoning restrictions and removing red tape to allow a significantly broader range of retail business in existing business zones. This will ensure a far more competitive retail leasing environment, and the ARA believes that this would assist in reducing the high cost of retail rents in centres throughout Australia.
Retailers advise the ARA that the inflexible restrictions placed on retailers in relation to land use restrictions and costly approval procedures are causing significant barriers to business entry and expansion. This often results in anti competitive issues. The changes to the Victorian legislation are a move toward the removal of restrictions, and by doing so, will assist in ensuring that planning will become more efficient, competitive and ultimately more productive. Unfortunately, as planning is a state issue the various states have different planning laws, Victoria implemented changes to the Planning Provisions by reforming the States Planning Zones. These changes have created very flexible planning system for retail developments, and should be looked towards as model regulation for all states and territories in Australia.

Larger retail chains operate across most states and territories and land use definitions vary between each state and territory, sometimes varying between various local councils, these variations often have different definitions of large Format or Bulky Goods Retailing. As these retail chains operate as national retailers throughout Australia, the inconsistencies, across the different boundaries create inconsistencies, causing uncertainty, major costs, loss of time, compliance issues, legal costs that could be avoided if there was consistency and standardization in relation to planning regulations and land use across all states and

territories. The ARA would strongly support any move to standardise planning regulations and land use across Australia to ensure that the retail industry has a reduced cost and reduced time in dealing with these major inconsistencies, therefore ensuring that the cost to consumers would untimely benefit.

PAYMENTS SYSTEMS AND REFORM

The ARA along with the Australian Merchant Payments Forum (AMPF) represents the interests of merchants within the important payments sector of the economy. It is critical that the perspective of merchants is considered in addition to those of schemes, issuers, acquirers and cardholders. Merchants make significant investments in payments infrastructure and are essential components of the payments system. The Reserve Bank of Australia (RBA) has been a global leader in reform of payments systems, particularly card payments systems, but Australia is now beginning to fall behind other jurisdictions and we are becoming non competitive and around the world, both in scope of reforms and in the quantum of some reforms.

The RBA has traditionally been a reluctant regulator, and this has seen some areas of payments now causing merchants costs that have been thrust on them due to an unforseen shift of costs that, in the merchant's opinion, they should not have had to bear. It is therefore, the view of the ARA and the merchants that it represents, that although the current government is removing unwanted red tape, there are areas within payments and card processing that will require the existing regulation to be broadened and enhanced to ensure that future processing costs will not have unintended consequences of putting higher and more processing costs onto the merchant.

Merchants, however, believe that innovation in cards and payments is essential and should be properly supported by appropriate governance and regulatory structure. Innovation should not be mandated on to merchants without prior consultation. Mandated innovations are of particular concern to merchants as these are generally compulsory, and frequently have been forced on merchants either without merchant involvement in the process at all or without sufficient consultation.

ARA POSITION

- Retail changes are required in relation to co-branded or companion cards issued by financial institutions
- All schemes need to be brought under regulation, not just the four party schemes that are currently regulated
- Merchants should have the choice of routing for all payment transactions including, but not limited to, AMEX, Scheme Debit and contactless transactions
- As internet transactions increase (currently at 6 percent of total retail – expected to grow to 12 percent of retail sales by 2020), and technology changes rapidly from cards to mobile devices to new POS equipment, merchants will need to invest heavily in new technology (both hardware and software). Therefore, any costs to merchants need to be controlled, otherwise the merchant will continue to pay for the technology as well as face increased costs from both new payment schemes and new innovations by existing schemes
- As bricks and mortar retailers move to PIN on credit (August 2014 onward), there will be necessity for increased security in the online area as fraud will shift from bricks and mortar retailing to the online retail space
- Retail trading conditions are currently improving but unfortunately these increases are not being seen across all sectors of the retail industry. Retailers are still struggling from the post GFC and are unable to accept costs of innovation and increases in Merchant Service Fees (MSF) that they have been experiencing from new entrants into the payment space.

REGULATION OF ALL SCHEMES

The Reserve Bank Act (1959) and the RBA's Payment System Board (PSB) must ensure that within its limitation of power, it must exercise its powers to ensure that in the opinion of the board, it will contribute to control risk within the financial system, promote competition in the market for payment systems and ensure consistency within the overall stability of the financial payment system.

In 2004, the RBA decided to regulate both Visa and MasterCard (regulation of four party schemes), however, as American Express and Diners Club were three party schemes, they did not fall under the same regulation. The regulation was in relation to interchange and pricing, and as such has caused a change in the payments landscape, bringing unintended consequences to the payments system in Australia with major changes to the card payment landscape.

As both Visa and MasterCard were regulated under the four party schemes, merchants were able to process transactions via their acquirer with a fair and reasonable Merchant Service Fee (MSF) and merchants essentially decided if they would/would not accept payments via American Express (AMEX) and Diners. Many merchants declined to accept AMEX and Diners as the MSF was often four to five times the rate of Visa and MasterCard. With increased issuing of co-branded or companion cards, it is difficult for retailers not to accept these cards as consumers expect retailers to accept most card payment types.

The ARA does not believe that at present, under the current regulation of the Australian Payment System, there is a level playing field. We strongly believe that not all payment providers are treated equally by the Australian regulatory system, which should encourage and promote an efficient competitive market for payment transactions.

Under the Payment System Regulation (Act) 1998, the RBA has power to designate payment systems and has the ability to set and enforce standards and access for designated payment systems.
As noted above, in 2004 the RBA designated/regulated the four party schemes, being both MasterCard and Visa, however, chose not to regulate the three party schemes of both AMEX and Diners Club which were left out of the regulatory environment.

The ARA has completed anecdotal research with its members, and the results have shown that depending upon the type of retailer involved, they will change the type of payment method used - from cash to tap and go to charge cards, however, the one consistent result was that there has been a far increased usage of three party scheme cards in all retailers where these cards are accepted.

In 2003, following on from the regulation of the four party schemes, AMEX entered into arrangements with the major commercial banks to issue co-branded or companion cards. These co-branded or companion cards are issued alongside existing Visa or MasterCard credit cards products. As these cards have a much higher MSF than both Visa and MasterCard, which AMEX charges and the retailer pays for, it provides the issuing bank an incentive to issues these cards alongside the co-branded or companion cards, therefore allowing these cards to provide greater reward points for spending particularly when compared to the Visa or MasterCard product.

In the view of the ARA, these co-branded or companion cards are now being issued as a four party scheme card and must be regulated and designated under the <50 basis cap as a four party scheme card - the same way as Visa and MasterCard are regulated and designated under a four party payment scheme.

When researching for this submission – the ARA spoke anecdotally with retailers and we have been advised that use of American Express cards has increased from approximately 13 percent to 18 percent over the last four years. The ARA is prepared to conduct a full survey of members to provide a more comprehensive view on card use. Please advise us if you would like the ARA to look into developing a thorough member survey.

Via AMEX global network services (GNS) the issuing banks in Australia are highly incentivised to issue these co-branded or companion cards and now act as an acquirer for these cards. The ARA understands that currently these companion or co-branded cards represent more than 35 percent of the AMEX market globally (refer to American Express Company 2011 Annual report). The companion or co-branded cards are extremely strong in Australia and may well represent more than the 35 percent of the Australian AMEX market.

The ARA believes that as new payments systems are developed, particularly as new entrants develop new technology in the digital technology and internet payment space, these cards will give undue pressure to merchants - unless they are regulated by the RBA. The regulation should encompass interchange fees/MSF that can be charged to merchants, and these new schemes must be regulated to ensure that there is a competitive market place consistent with the overall stability of the financial system, as well as ensure merchants do not suffer from unintended consequences in the payment transaction space. Many of the new entrants in the payments area are neither price regulated nor are there regulations restricting it from having a 'no surcharge' rule.

Due to the competitive nature of retail and due to the increased volume of co-branded or companion bank issued cards, merchants are unable to refuse acceptance of these cards, as the major merchants accept these cards. For the independent SME retailer as well as the major chains, any impediment or barrier to the consumer by trying to steer the consumer away from using these co-branded or companion cards will result in the consumer remembering the experience, and when next purchasing, they will look to a merchant that doesn't steer by surcharging and accepts their preferred method of payment.

The new entrants into the payment system are able to decide their own pricing model and they are able to choose if they wish to allow surcharging by the merchant, however, both of the schemes Visa and MasterCard are regulated to ensure that merchants rightfully are not charged more than a reasonable MSF. It is therefore, only right that all participants in the payments system must be treated fairly and equally. Regulations need to be broadened to include three party schemes (AMEX and Diners) and the existing regulated four party schemes (Visa and MasterCard), as well as new and developing entrants into the payment space.

Merchants should have the choice of routing co-branded or companion cards directly to the issuing bank instead of AMEX. For all practicable purposes, these companion cards are the same as the original Visa or MasterCard, and are linked to the same account and issued by the issuers on their own card platforms - they do not require any processing or routing via AMEX. Routing via AMAEX only adds costs and generates an additional revenue stream for card issuers and AMEX and additional points to the cardholder, without any value add to the payment functionally or process. If AMEX wants to have information on the purchasing of the co-branded or companion cards, then the issuers should send a file with the detail to AMEX at AMEX's own cost.

FUNDING OF INNOVATION IN PAYMENTS

Merchants are concerned about the costs associated with innovation. An example of innovation costs being when eftpos introduced the new interchange fees - retailers understand in the case of eftpos that the changes were necessary to ensure that eftpos remained as a true low cost scheme to compete with the

existing card schemes. According to eftpos, the increased scheme fees were introduced to allow issuers to invest in new innovations, such as contactless cards, and although this change is laudable it should also be noted that moves to contactless cards requires investment by merchants in both new equipment at POS and that new interchange fees mean that merchants, unlike the issuing bank, have less money to invest in a process which will now cost them more.

As technology changes rapidly from cards to mobile devices to new POS equipment, merchants will need to invest heavily in new technology, both hardware and software. Therefore, any costs to merchants need to be controlled. The ARA believes this is why structural changes need to be made to prevent the mandating of higher costs on merchants without reasonable consultation with the wider merchant community.

TRANSACTION ROUTING

Merchants have for many years accepted many types of cards that are introduced into the payments market place, invariably the cost of acceptance is one that is 'thrust upon' them rather than consultation with the merchant to establish if they are prepared or willing to accept these costs. An example where costs to merchants have been 'forced' upon them include merchant service fees on scheme debit cards which could be routed either via the eftpos network (pressing savings) or via the Visa and MasterCard scheme network by pressing the credit button. Some merchants, particularly in the high discretionary spend, would prefer that the consumer pressed the saving button where the transaction MSF would be in the area of 7c to 14c per transaction. Equally for a merchant with low value and a high number of large volume transactions, the merchant may prefer to have the credit button pressed, as the MSF may well be at a more acceptable level.

Following on from the lead of Woolworths, who via owning their own switch simply turned off the ability for a customer to use the credit button when a scheme debit card was presented, a number of merchants have informed the ARA that they had been advised by their merchant acquirer that the acquirer is unable or unwilling to program the terminal to turn off the credit button so that the transaction is routed via the eftpos network.

As an example: A merchant sells goods on an average ticket price of $85 who has an eftpos fee of 14c per transaction including GST using the savings button. If the same merchant processes a sale via the Visa or MasterCard scheme, and the MSF for the scheme fee is 0.79 inc GST, the MSF for the transaction is .67c (this is the rate that the ARA has negotiated for its members). Obviously this merchant would prefer to have all Visa and MasterCard transactions routed via the eftpos network.

Consider as another example, a merchant who has low value average transactions of $10.25 per transaction - if the same MSF applied as above then this merchant would pay.14c per transaction using the eftpos network, however if that transaction was routed via the Visa or MasterCard scheme (pressing the credit button) that transaction would cost the merchant 0.08c per transaction.

The ARA believes that all acquiring banks should allow all merchants to decide if they wish to route transactions via a particular scheme route. In fact, the ARA via the Australian Merchant Payments Forum in a submission to the RBA in May 2011 (5.1) made reference to unbundling of card schemes and branding from the network, process, clearing and settlement activities would increase competition and innovation by encouraging new entrants into the Australian payments market.

Merchants should have a choice of routing for all payment transactions, including but not limited to, the option of routing American Express (AMEX) companion cards issued by banks directly to the issuing bank instead of AMEX. For all practical purposes, these companion cards are the same as the original Visa or MasterCard and are linked to the same account and are issued by the issuers on their own card platforms and do not require any processing or routing via AMEX. Routing via AMEX only adds costs and generates

an additional revenue stream for card issuers and additional points to the cardholder without any value added to the payment functionally or process.

Overseas examples of merchant routing options occur in Europe (via SEPA for Cards and Payments Services Directive – PSD). Transaction routing choices guaranteed to the merchant under the Durbin amendment which prevents a scheme from mandating that a network is used for authorising, clearing or settling a debit card transaction.

Ownership of BINs is also an issue affecting routing. For contactless cards with multiple applications (e.g. eftpos and scheme debit applications on a single piece of plastic), the routing choice is determined by the BIN, which is typically 'owned' by the international card schemes (Visa and MasterCard). This potentially prevents merchants from choosing to route these transactions over the lowest cost network. It also prevents consumers from choosing whether they wish to process the transaction as an eftpos transaction or as a scheme debit transaction. Merchants should be able to route all transactions via the most efficient and cost competitive route available to them and should not be forced by the scheme to route the transaction via their mandated routing method.

ACCESS TO FINANCE

Access to finance remains a major issue for retailers throughout Australia.
According to Deloitte Access Economics[1], approximately 10 percent of Australian SMEs have difficulties accessing finance, with The Australian Bureau of Statistics (ABS) data stating access to finance is the biggest barrier to innovation in Australia. As retailing is moving at a very fast pace, access to finance for the purpose of innovation within retail is critical to its ongoing success. Retail has entered the digital age, and as many retailers are coming to grasp with moving into the online channel, finance will continue to be a major challenge. There are approximately 140,000 retail businesses in Australia with around 95 percent of those businesses being SME retailers.

As outlined in ACCI's "Getting on with Business" policy blueprint, the impact of the global financial crisis has resulted in reduced competition within the Australian banking system, with many foreign banks exiting the market. The major banks have increased their market share in business lending and now account for approximately 75 percent of loans to unincorporated businesses and around two thirds of total business credit[2].

The ARA supports the need for a strong banking sector, however, reduced competition, will have a harmful effect on business innovation, productivity and competition more broadly. Retail in Australia is under tremendous pressures, in all the three areas. As noted, innovation is required as we move to a omni channel retail environment, productivity in the retail sector is much lower than overseas due to the higher wages structure in Australia and competition in the retail landscape is coming both domestically from new retailers from overseas as well as from the overseas Online retailers who as noted above, are liable to pay GST or Duty if the sale is below a $1,000.

Major Banks lending has been influenced by risk adverse behaviour, resulting in an increase of risk margins for small business loans. Standards and terms for new loans through lower loan-to-value ratios and stricter collateral requirements have also effected loan approvals for small businesses. Furthermore, average lending rates and fees for small businesses increased based on the issue of assessed risk[3].

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Banks generally require a SME business to offer collateral to the bank prior to the bank giving any finance to a retailer, as a general rule the finance that a SME retailer will be approved on will have security held against 'real estate'.
At today's rate, if a retailer were to borrow on business finance from the CBA bank, the rate from the bank would be 6.4 percent given that the retailer would borrow the finance by securing the finance against their family home. If the same person went to the bank and purchased a home and borrowed the money from the CBA bank today, the interest rate would be 5.9 percent - a difference of .5 percent.

Given that the bank would not loan the retailer more than the bank valuation of his home, and that the same would apply for a person purchasing a home from the bank, the bank has a guarantee that in either case, the bank would sell the house to recoup the loan finance, yet the difference on a loan for a retailer of $500,000 loan over a twelve month period is $2,500, multiply that by a an average thirty years and the discrepancy is $75,000 dollars or $6.85 per day. The discrepancy between the home loan and the business rate tends to exacerbate as the interest rate goes upwards.

EDUCATION REFORM

We have seen market deregulation and increased competition within the Vocational Education and Training sector (VET), and there has been a significant increase in the number of private commercial and not for profit training providores entering the market. There are approximately 5,000 registered providores of vocational training as well as TAFEs. TAFEs retain a dominant share of publically funded training with around 60 percent of all students enrolled in TAFE. With the introduction of the Victorian Training Guarantee (VTG) as part of the COAG National Agreement for Skills and Workforce Development, we saw a greater demand via VET through uncapped student demand and full contestability between public and private providores for training places. Through the Victorian Training Guarantee (VTG) a 35 percent increase in overall VET enrolments occurred in Victoria. There has been some debate into the merits for both the employees and employers of the VTG. Some recent studies by National Centre for Vocational Educational Research (NCVER) shows that the initiative increased employment outcomes for students who were unemployed at the commencement of the study, and enabled transitions to more higher skilled positions for those people who were currently employed at the commencement of the training.

To ensure greater competition in the Education and training sector, there is a need to have more unbiased student information to assist with guiding potential students through the extensive range of courses offered by public training providores.

The rapid growth in demand for training and education under the VTG has also highlighted the need to make certain that the various regulatory bodies have the ability and capacity to cope with major growth in very short timeframes. When the VTC rolled out the changes to training, there was a number of providores who used high pressure marketing practices targeting potential students as well as offering training courses that were of questionable quality. Therefore, there is a need to ensure that state funding programs have a closer connection with the industry sectors and their workforce development needs, along with stronger controls around the demand driven system, to avoid opportunist training behaviour, creating major disconnects between training and industry needs.

Further, there should be one regulator that is adequately resourced to manage quality of training and manage opportunistic behaviours by private training behaviours. There is also a need to introduce national harmonisation of state funding programs to achieve consistency of subsidies and eligibility requirements for national employers.

MARKET POWER

The ARA believes that there is substantial market power between the two major grocery chains and this has been the case for many of years, there appears to be no lessening of this market power.
Although there has been calls for lessening of the market power by the two dominant chains, there appears to be no enforcement action, other that the decision by the ACCC, supported by the Minister for Small Business over the Fuel Dockets. Australia appears to be one of two countries in the world where market dominance in food retailing has occurred, the other is New Zealand and in Australia, the two major retailers account for 80 percent of grocery sales, in the United Kingdom the four largest chains account for 75 percent with Tesco and Sainsbury accounting for 48 percent. The ACCC in 1997, showed that both the two national chains had dominance in the retail grocery market, however the ACCC appeared reluctant about the position of dominance of the two major retail chains when producing the Grocery Report some 10 years later, (the market in that time has become even more concentrated).
The ARA's concern with the market dominance by the two retail grocery chains is that market dominance could also occur in other areas of retailing, and if a retail segment is dominated by one or two retailers, there is no opportunity for a competitive market place, over time the dominant retailers will be in a position to drive prices up rather that the consumer having a competitive market.
The ARA has reviewed the Retail Guild submission to the Competition Policy and is fully supportive of the comments on Market Power included in their submission.

CONCLUSION

The ARA realises that retail trade is changing very rapidly from Online retailing, as noted in our opening comments, retailers in Australia in particular the SME sector are facing very difficult trading conditions: Currently an in balance due to the 10 percent GST that is charged to local retailers both on line and bricks and mortar retailers, and the loop hole that currently exists for overseas retailers not to pay the GST, to trading hours that are forcing owner operator retailers to work longer hours because they are unable to afford the penalty rates that they are required under law to pay. The ARA believes that in many retail industries, retailers are paying employees 'under the counter' to avoid the penalty rates that they should be paying. This leads to a greater cash economy and therefore, the Government is missing out on PAYG tax, Superannuation is not being paid, along with workers being compromised due to improper Workers Compensation payments.

With retail rents being in the top five of the world, along with penalty rates, LVIT giving an unfair playing field advantage for overseas retailers, a dominance of major retailers in Australia, the SME market for retailers in Australia looks bleak.

Education and Training to ensure productivity gains within retail will assist, retailers need more information to make informed decisions, clarity for retailers within shopping centres, ensuring that they have the information about what are 'true market rents' rather than being charged retail rents that are determined by the turnover of their business. More flexibility in planning laws to allow a far more competitive retail tenancy landscape, penalty rates that are fair and equitable enabling them to compete with retailers from overseas, and the Government moving to the LVIT threshold to a reasonable figure of $20 to $30 Australian would assist retailers being able to compete both locally and internationally.

The ARA would be very happy to discuss this submission in greater detail with the committee:

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