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## AACS SUBMISSION TO THE COMPETITION POLICY REVIEW

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The Treasury  
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Re: response to the Draft Report on Competition Policy Review

To whom it may concern,

On behalf of members of the Australasian Association of Convenience Stores (AACCS), the peak body for the convenience industry in Australia, we make the following submission to the Draft Report on Competition Policy Review.

As an Association, we are primarily interested in the aspects contained in the Draft Report that refer to small business and the challenges small businesses face in competing with a supermarket duopoly enjoying an unprecedented market share.

The Draft Report includes encouraging proposals that, implemented effectively and on the basis of extensive consultation with industry, have the potential increase competition in the marketplace.

The AACCS acknowledges the positive work done by those involved in the Review to date.

Our members recently read with interest in Fairfax Media, upon release of the Draft Report for submissions, that the Chair of the Review Professor Ian Harper suggested that restrictions on operation of pharmacies, for instance, could potentially be lifted to enable dispensaries to be located in supermarkets.

In effect, promoting deregulation in retail to open up new avenues for competition.

From our perspective, and on behalf of small businesses in general, what we are saying is “don’t forget about us”.

The convenience industry employs over 40,000 Australians nationally, often in small family run businesses. The AACCS has always argued that less – not more – regulation is needed to enable small business to compete on more level ground with the major chains.

While our members may operate under some major brands, many are technically small businesses trading as owner operators, perhaps under franchisee or licensee agreements.

For too long the majors have enjoyed and capitalised on the legislated advantages available to them. In the packaged alcohol market, for instance, the two main supermarkets have a stronghold on the market share. Likewise the fuel market.

Consumer behaviour when it comes to the purchase of packaged alcohol products aligns closely with the convenience store model. It makes no sense for our industry to be restricted from participating in this category.

Deregulation as an ideal must apply to both big business and small. We take a closer look at this in our submission.

One of the key questions posed by the Review is does (Australia's competition policy) encourage innovation, entrepreneurship and the entry of new players?

Right now, the answer to this question is regrettably no.

Appropriately, the Draft Report recognises that competition reform has the capacity to drive innovation. Innovation is one of the pillars of the convenience industry and our operators are making significant inroads to respond and evolve to changing consumer behaviours.

A level playing field in terms of competition is necessary for this innovation to flourish and for entrepreneurship and to be promoted.

Our members are doing their part. We just need the Government and legislative support to enable convenience stores to continue to provide consumers with a strong value proposition and, crucially, choice. We are hopeful that certain proposals contained in the Draft Report are developed further to achieve this.

The AACS wishes to thank the Competition Policy Review for its consideration of our submission.

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# 1. Introduction

The Australasian Association of Convenience Stores (AACS) is the peak body for the convenience industry in Australia.

Nationally, our industry employs over 40,000 people in over 6,000 stores. The majority of these stores operate as family run businesses, often under licence or franchise agreement, or independent ownership. They regularly employ family members and people from the local communities in which they operate.

The AACS represents the interests of these small businesses; their owners, staff, suppliers and customers.

The convenience industry in Australia was valued at almost \$16.3 billion in 2013 [over \$6 billion in merchandise sales and over \$10 billion in fuel sales] according to companies contributing to the *AACS Annual State of the Industry Report*. This report contains the most comprehensive information available on the convenience industry in Australia and we would be happy to provide a copy.

As an Association we enjoy strong ties with our international counterparts including the convenience stores associations in the US, Canada, the UK and New Zealand. We also visit similar stores in South East Asia to keep abreast of changing or emerging trends.

Additionally, we are a member of the Council of Small Businesses of Australia.

# 2. Executive summary

The AACS made a submission when the review into competition policy reform was first announced.

This subsequent submission on the Draft Report specifically echoes some of our original points while focusing on certain areas in greater detail.

In this submission we respond to various specific areas outlined in the Draft Report. With a natural focus on areas related to retail, we take a closer look at how the proposed reforms to liquor licensing, pharmacy ownership and locations, and the removal of retail trading restrictions.

We also address proposed reforms to competition institutions and competition policy and how these might support the many owners and employees in the convenience industry.

Finally, we reinforce how excise increases on products like fuel and tobacco negatively impact small businesses much more significantly than the larger chains, and how these increases can often benefit the larger chains.

### 3. Convenience industry snapshot

- Convenience stores are in the main small businesses that employ many people nationally and represent a significant proportion of the national economy. They are part of the fabric of Australian society and are pillars in the local communities in which they operate.
- The convenience store industry employs over 40,000 people in over 6,000 stores nationally. The majority of stores operate as small, family run businesses.
- The convenience industry represents an important sector of the Australian economy, contributing over \$16.3 billion in sales to the national economy in 2013 according to the *AACS Annual State of the Industry* report. The industry is also a major collector of tax for the Government through its sale of tobacco and fuel.
- Convenience stores continue to place a high priority on innovation, updating their service offering to better meet changes in consumer behaviours and needs.
- The industry faces significant challenges at present. Convenience stores require Government and policy support more than ever to overcome these challenges, so they may continue to provide the convenient, valuable service offering they have provided to Australians for generations.
- Higher overheads associated with increased labour and training costs, penalty rates, tighter margins, increased administrative costs resulting from tobacco plain packaging and the discussion on measures such as a 'sugar tax' - just to highlight a few areas - all have an impact on the profitability of stores now and potentially in the future.
- This is occurring against the backdrop of an environment of difficult trading conditions for retailers generally.
- Stores are also experiencing worrying levels of channel shift across many product categories as major grocery chains use their unmatched buying power to strengthen their market share through heavily discounted product offers. Short term this may be positive for consumers, but as smaller stores are forced out of business consumers could pay a high price in the longer term.
- The convenience store industry continues to bear the brunt of legislative changes, supply chain inefficiencies, higher utility and labour costs.

### 4. Response to the Draft Report

The AACS wishes to specifically address several references in the Draft Report with the potential to impact the convenience industry.

#### Reforms to competition institutions

The AACS supports any reform to competition institutions that would ensure the ACCC, or any other relevant body proposed, has the power to act promptly and effectively to investigate and take appropriate action if and when breaches of the Competition and Consumer Act, or any other proposed legislation, are seen or reported.

With the major chains foreshadowing a move into smaller convenience type CBD locations, we would encourage the ACCC and proposed Australian Council for Competition Policy keep a close watch on this move, be prepared to act and have the power to act should anti-competitive behaviour emerge.

The AACS has in the past acknowledged the work of the ACCC in monitoring areas of anti-competitive behaviour by some major competitors. The ACCC action taken with respect to discount dockets for fuel issued by the major supermarkets is an example of a measure that assists in levelling the playing field.

## Proposed removal of retail trading restrictions and penalty rates

The AACS has previously raised the issue of penalty rates, outlining that these reflect an outdated view of modern workplaces.

We encourage any further development of the proposal to remove the remaining restrictions on retail trading hours to consider the removal of legislated penalty rates as well.

People no longer work a 9-to-5, Monday to Friday working week by default. In many cases people desire night work or weekend work to fit in with their other family, study or recreational pursuits.

Forcing small businesses to pay penalty rates places a huge cost burden on these businesses as well as stress on owners who themselves are forced to work ever longer hours as employing staff becomes unaffordable.

Penalty rates are unsustainable and may cause some businesses to choose not to trade at particular times, harming their own bottom line but also creating obvious problems for their employees, many of whom prefer to work at night or on weekends anyway.

Small business owners often take on additional shifts because they believe that to serve their customers they need to be open long hours, but cannot afford the very high penalty rates. This places their health and family life under severe pressure.

The major chains can easily cover these additional labour costs, often contracting managers on different awards to work at times when penalty rates would otherwise apply.

Easing the burden of penalty rates for smaller businesses who trade over extended hours would also serve as an inducement to employ more staff.

## Proposed reforms to competition policy

The AACS wishes to address the areas in the Draft Report relating to reforms to competition policy in retail. Specifically, our members encourage the Review to further investigate the removal of pharmacy ownership and location rules as well as liquor licence reform.

**AACS focus: Tapping into healthy living trends with a convenience pharmacy offering**

The AACS understands the importance of regulation and strict compliance when it comes to the sale of medicines and pharmaceutical products. We also recognise the pharmacy is a specialised field requiring specific expertise.

At the same time, a typical pharmacy will sell a range of cosmetics, food, beverages and other products to broaden their offering.

As Australians place a greater emphasis on health and wellbeing, the market for over the counter pharmaceutical products to respond to this trend has experienced substantial growth.

The convenience store model aligns closely with this trend. The increase in range and availability of over the counter pharmacy products represents not only a significant opportunity for convenience stores, but also suppliers and manufacturers.

In the spirit of innovation, reforms to competition policy in this area would enable the convenience industry to investigate the potential for loyalty programs, online ordering and pick-up and other services customers desire and could benefit from.



Pharmacy partnerships could be an important new revenue stream for Australian convenience stores too

As an aside, the potential opportunities and benefits associated with partnerships between pharmacies and convenience stores was the subject of a presentation recently delivered by Queensland University of Technology students as part of their presentation to the AACS for the Innovation Challenge our association administers each year.

As shown in the photo above, convenience chains in Japan now have pharmacies, with pharmacists, in their stores.

There is clearly a market for this type of collaboration and deregulation in this area could potentially deliver significant economic benefits to small businesses.

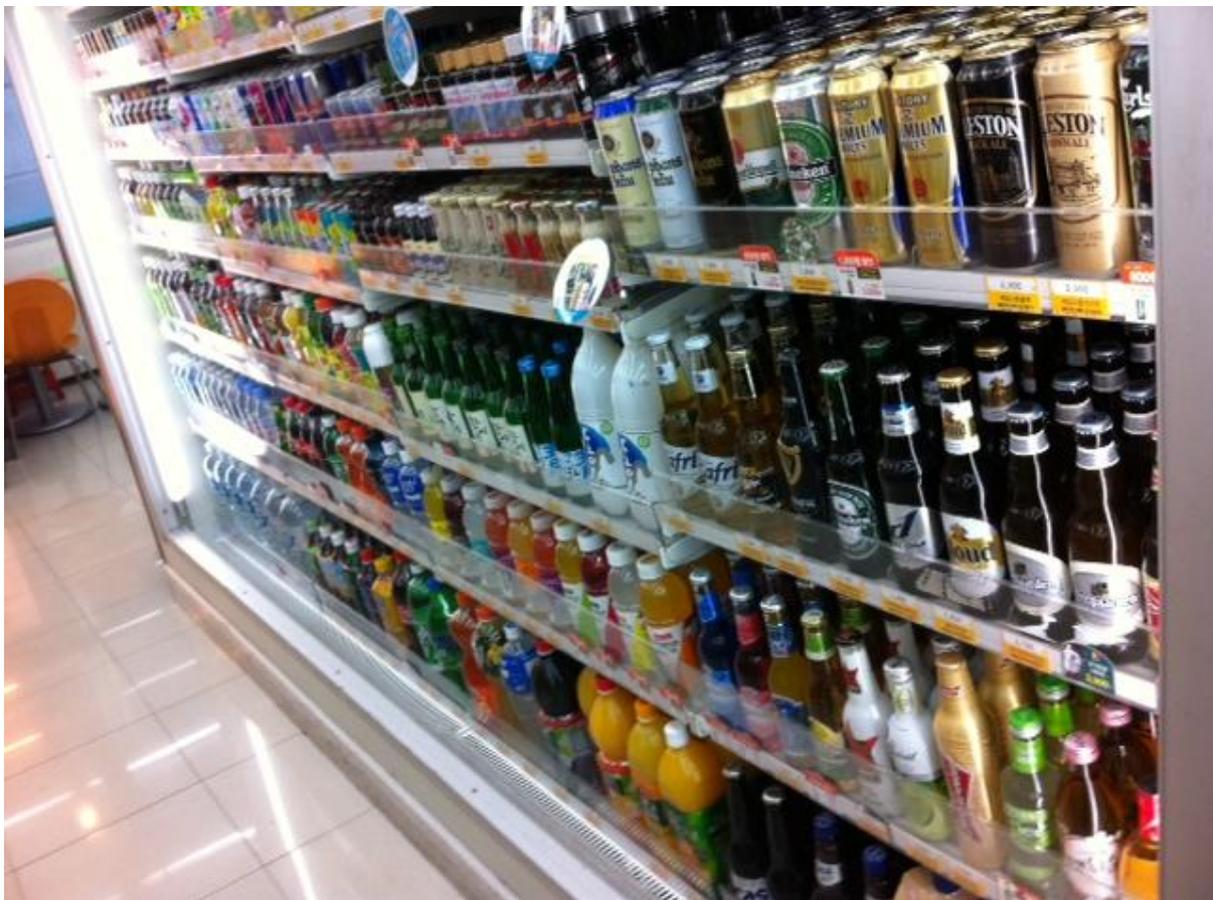
AACS focus: Securing the right for convenience stores to sell packaged alcohol if they choose

The AACS previously submitted the business case for the sale of packaged alcohol through convenience stores to the Council of Australian Governments. No response has been received.

This business case is summarised below for the Review's reference.

Permitting convenience stores to sell packaged alcohol products has the potential to address the imbalance in the national retail landscape and improve the capacity for small businesses to compete with the major chains.

There is no credible reason why convenience stores should not be permitted to sell alcohol products. Likely objections typically come from an emotional – not business – perspective.



Packaged alcohol on sale in a Korean convenience store

From a business perspective, there are numerous compelling reasons for Government to permit the convenience industry in Australia to sell packaged alcohol:

- The two main supermarket chains have successfully used the existing regulatory framework to dominate alcohol sales to a level that has become unsustainable.
- According to the IBISWorld Industry Report: *Liquor Retailing in Australia*: "The major supermarkets, Woolworths and Coles, dominate the industry, with a combined market share estimated at 57.5% of industry revenue in 2013-14. As such, the industry has a moderate level of

market share concentration. Overall industry concentration has increased in the past five years due to the entry and the growing power of Woolworths and Coles through acquisitions and strategic expansions.”

- The supermarkets use their dominant market share to negotiate favourable agreements with alcohol producers while exploiting their market position to promote the sale of their own, higher-margin private labelled products.
- IBISWorld expects revenue from liquor retailing to grow at an annualised 3.1% over the five years through to 2018-19. This growth will largely be fuelled by the two major chains as more independent bottle shops are forced out of the market.
- The convenience store model naturally aligns with consumers’ preferences when they make alcohol purchases.
- According to IBISWorld, consumers shopping for alcohol “have been found to be very much impulse buyers who can be influenced by store display, layout and specials as to what they purchase.” These specific behaviours directly align with the convenience industry’s few remaining competitive advantages and reinforce the revenue potential for small businesses.
- Internationally, convenience stores around the world are permitted to participate in this category. Packaged alcohol is an important category for small businesses in their endeavours to compete against larger grocery chains.
- An analysis of packaged alcohol sales in overseas convenience industries provides a glimpse of the potential revenue accessible for stores in Australia.
- If the US contribution of beer sales in convenience stores of 7.9% in 2013 was translated to the Australian convenience store market, this would represent around \$489 million of additional sales to our industry.
- In the UK convenience industry, sales of beers, wines and spirits represent 12.5% of total sales for the channel in 2013. This percentage translated to sales in Australian convenience stores would represent an additional \$775 million in sales on an annual basis.
- By restricting the convenience industry from selling alcohol, Government is preventing a significant proportion of the retail market from exposure to a potentially crucial revenue stream at a time when the dominance of the major chains has never been greater and retail trading conditions are tough.
- Convenience stores are able to sell age restricted products such as tobacco responsibly and would sell alcohol in line with agreed trading hours for these products as determined at the local level.
- Preventing convenience stores from selling alcohol is not slowing the growth of the industry. “Woolworths has grown its share of the packaged liquor market from 29 per cent to 48 per cent since 2007, while Coles’s share has grown from around 18 per cent to 20 per cent.” - Sue Mitchell, *The Australian Financial Review* March 11<sup>th</sup> 2014.

- The introduction of this category to convenience stores would open up job opportunities at both a corporate and individual store level, as well as provide suppliers with an alternative distribution channel.

A national approach to this issue is urgently required. The AACS welcomes further investigation this significant economic opportunity further.

## Other areas requiring specific attention

### Supermarket push into smaller format stores

Recent media reports suggest the major supermarkets are preparing to rollout smaller format stores in city locations to compete with traditional convenience stores.

This strategy raises a few interesting questions and while the AACS has long called for deregulation in the retail sector, we also renew calls for a level playing field in the retail sector.

It will be important for the ACCC and other regulatory bodies to ensure convenience stores and small businesses in general are not disadvantaged by such a strategy from the major chains.

The proposed reforms to competition institutions must be structured in a way that the appropriate body has a mandate to oversee and correct anti-competitive behaviour in this space.

Price will be one area to watch. For instance, it would be cause for concern if schemes similar to the previous excessive fuel discounting were to be introduced by the major chains.

The acquisition of existing convenience operators by the major supermarkets is another area in which we would urge vigilance.

### Excise increases

The impacts of frequent and excessive increases in excise on products including fuel and tobacco, the rumoured potential for increases in tax on other products such as soft drinks, hit small businesses the hardest.

Excise increases in key categories typically cause channel shift to the major supermarkets at the expense of small retailers.

The majors are more easily able to absorb the additional costs, offsetting these costs against their many other product categories, thereby strengthening their market share.

We urge the Review to consider a more appropriate and reasonable approach to excise on certain products so as to not disproportionately disadvantage small businesses.

Below we take a closer look at tobacco regulations and the way in which recent legislative reforms have negatively impacted small businesses.

## Tobacco regulations and the imposts on small business

The impacts of Government regulations on the sale of legal tobacco are typically felt most significantly at the small business level.

Regular tobacco excise increases and policies like plain packaging have a direct impact on the increase in trade of illegal black market tobacco, robbing honest retailers of legal tobacco sales, while also robbing the Government of tax revenue it would have otherwise collected.

This aside, it's the additional cost burden of tobacco regulations that create a serious impost on small businesses, in some cases putting the viability of these businesses at risk.

Tobacco excise increases drive consumers to bulk tobacco purchases from the major supermarket chains. This has been proven time and time again and the evidence on this score is clear. The major chains have the buying power and market share to offset higher excises against their many other product categories and small businesses suffer from a loss of trade as a result.

Regrettably, plain packaging has exacerbated the anti-competitive landscape. This policy has driven shifts in consumer behaviour to cheaper tobacco brands as brand loyalty has been eroded. This has resulted in potentially increased channel shift to supermarkets, with greater volumes of tobacco being sold at cheaper prices as brands lose their relevance.

While tobacco remains a product able to be sold legally, all levels of Government should allow retailers to be able to get on with their businesses without constant concerns about the next regulatory barrier a Local, Territory, State or Federal Government will place before them.

In addition calls by some in the health lobby to levy high licensing fees or place location restrictions on tobacco retailers must be opposed. Reducing supply does not cancel demand and all such moves will do will be to further grow the burgeoning illicit tobacco market, which is reported to have cost the Government around \$1.1 billion in lost revenue already.

The AACS believes a national set of tobacco retailing regulations would be very beneficial to all parties and would make compliance much simpler.

Such regulation should also include the growing segment of E-Cigarettes which is gaining interest globally as a potential 'healthier' alternative to tobacco, and which convenience retailers should be able to offer to their customers who choose to use them.

## 6. Conclusion

The AACS welcomes the review of competition policy in Australia and acknowledges the encouraging work of the Review in compiling the Draft Report. We also welcome the opportunity to play an ongoing role in the Review process.

The proposed reforms to competition institutions and policy has the potential to have a significant impact on small businesses in their efforts to compete with larger chains. Further, enabling these small businesses to innovate and encouraging entrepreneurship would be a positive step.

The AACS believes improving the consultation process between Government and small businesses when it comes to new regulations that impact this important sector of the economy is essential.

We thank the Review for its consideration of our submission and extend an invitation for it to contact the AACS directly for further information.

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