

**ANRA SUBMISSION TO FEDERAL TREASURY ON
PRODUCTIVITY INQUIRY
RE: CONSUMER POLICY FRAMEWORK**

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Introduction

The Australian National Retailers Association (ANRA) is a membership-based organisation that was established in 2006 to represent the interests of large national retailers across Australia generating annual sales in excess of \$70billion and employing around 600,000 Australians. The founding Board members of the ANRA include Coles Group, Woolworths, Bunnings, David Jones and Best and Less. The retail sector;

- contributes 6% to Australia's economic output
- is twice the size of the agriculture, forestry and fishing industries and is larger than mining, transport and storage and communications
- is the largest employer in the country providing over 15% of all jobs

ANRA's members as national retailers with large numbers of stores in multiple formats across all states and territories of Australia, are committed to providing customers with safe, quality products that meet their needs. Given the diversity of our businesses and the products we sell, consumer product regulation impacts on the way in which we prepare, distribute, handle, weigh, display, label, package, promote, advertise and sell consumer products on a daily basis. National consumer policy is shared between the Australian, State and Territory Governments. Like all other shared regulatory and statutory arrangements in Australia there are significant levels of inconsistency across jurisdictions and this inconsistency gives rise to a significant burden that is then passed onto industry. The *Banks Review* of regulations in Australia brought a new level of focus to the areas requiring attention and consumer policy was a key target.

This document is ANRA's response to the Productivity Commission's call for submissions on consumer policy. ANRA understands that the scope of Inquiry is to report on any barriers and ways to improve the harmonisation and coordination of consumer policy and its development and administration across jurisdictions.

We also understand that the Commission as part of this Review, is to take into consideration the recent regulatory review activity relating to the Taskforce on Reducing the Regulatory Burden on Business, NCP reforms, the Australian consumer product safety system and any other relevant reviews under the auspices of the MCCA.

It is to be hoped that the outcome of the Commission's Review is a greater level of certainty and consistency for businesses and consumers in the operation of Australia's consumer protection laws.

What is the Current Situation?

We fully understand the main intent or rationale for government intervention on consumer policy issues is to ensure that consumers are not subjected to unfair trading practices and can be confident that products are as described, fit for consumption or use and produced, distributed stored and handled according to the highest standards of safety and hygiene.

Consumers drive demand in the retail sector and for decades the sector has gone to great lengths to ensure the consumer is able to make informed decisions about the purchase of safe, competitively priced, high quality products that meet their expectations and needs.

The current regulatory environment not only hinders the large retailer's ability to ensure that the consumer is able to make informed decisions but also discriminates against larger retailers while offering protection to small businesses – the very element of the sector that is highest risk of non compliant behavior.

Lack of consultation and harmonisation of national, State and Territory regulations, inadequate governance arrangements, inconsistent enforcement, and discriminatory factors within the current regime are all typical characteristics of the current environment. They place an unacceptable burden on the large retailers impacting on cost efficiency, productivity, profitability and the customer experience. The regulatory environment from the retailers' perspective is complex and full of inconsistencies. In this environment the compliance costs are high and the burden of implementation adds unnecessary cost to the price of products in Australia.

The National retailers have an untapped capacity to make a positive contribution to the development and implementation of consumer policy regulation. A productive consumer policy environment is possible and welcomes this opportunity to bring to the Commission's attention the areas that we believe require urgent attention.

The key areas of concern to ANRA include:

- Lack of **consultation** and **transparency** around the **governance** of consumer policy development leading to frequent changes, inadequate implementation lead times and significant implementation costs.
- The lack of **harmonisation** between conflicting regulations across jurisdictions leads to a need to develop a plethora of different implementation approaches across jurisdictions resulting in increased costs and the consumer interaction with our retailers being different from state to state.
- The need for more equality in the **enforcement** of regulations. Often the enforcement of regulations on small and large retailers is inconsistent and carried out in a manner that discriminates against large retailers.

How Well is the Current Framework Performing?

ANRA's discussion of the existing framework is divided into the key areas of concern detailed above and includes a range of specific examples of the impact of current legislation and practice on the retail sector.

1. Consultation, Transparency and Governance

The current framework is adequate, in that the objectives are clear and the focus seems to be directed at where there is a net benefit to the community from government intervention. However, there is considerable room for improvement.

Consumer policy in Australia badly needs an improved regulatory governance environment including significantly increased transparency and consultation to ensure that implementation and compliance are optimised. Currently governance practices vary from jurisdiction to jurisdiction and formal consultation processes are rarely used effectively and the rationale for government intervention is not always clear.

Whilst large retailers recognise that government intervention is necessary, for all of the retail industry, if they are to properly protect consumers, there are often hidden costs (e.g. IT costs, legal and compliance costs etc) imposed on retailers that are not fully assessed or understood at the time of the decision making about consumer policy laws.

It is ANRA's belief that all consumer product regulation should remain under constant review to ensure that it remains necessary, effective and the most efficient way of achieving consumer policy objectives. New consumer product regulation should only be introduced when an identified market failure has occurred or when the benefits of the proposed regulation are measurably shown to outweigh the costs of administration and compliance.

Current consumer policy arrangements generate a range of specific problems in this area including:

- the frequency of changes to consumer policy regulation – this makes it difficult for national retailers to continuously monitor and ensure compliance in each jurisdiction.
- inadequate lead time or phase in periods – often insufficient lead time is provided for commencement of new consumer policy legislation. This impacts on retailers and manufacturers, because they need adequate time to review contractual arrangements, product specifications, purchasing arrangements, production processes and labelling requirements in order to comply. In some cases, not enough time is provided for businesses to make permanent solutions or to undertake complex IT fixes to price ticketing, labelling etc.

2. Harmonisation

Harmonisation of regulations across all Australian jurisdictions is an essential element in the wider business environment to ensure the good performance of the Australian economy.

Unfortunately consumer policy development across Australia it is adhoc in nature and disconnected. This results in inconsistent administration across States and Territories and creates a significant 'compliance burden that makes the implementation, monitoring and enforcement of such regulations expensive, ineffective and inconsistent. Large retailers have to on a day to day basis navigate inconsistencies between State and Territory regulations and issues between national and international standards.

Duplication or conflicting regulations across jurisdictions is also a significant issue – there are often similar, but slightly different regulations, ban orders etc in each State and Territory. As consumers and consumer products do not largely differ between state boundaries, more effort is needed to coordinate these activities and for a national approach to be adopted. Inconsistency results in variable standards of food safety and hygiene across States and Territories.

There can also be conflict between Australian Standards, International Standards and other regulations. Hot Water Bottles are a good example of this. For example there is a currently Regulatory Impact Statement out for comment for the possible regulation of hot water bottles under the Trade Practices Act (TPA) 1974, yet there is also a British Standard in place and Victoria and New South Wales have developed their own requirements. If a new standard is gazetted through the TPA, we believe individual State and Territory legislation will need to be repealed and permanent bans lifted to ensure a consistent approach.

Another example is the limitation on purchase numbers in South Australia. Section 38 Fair Trading Act 1987 (SA) provides that a trader must not advertise or offer goods for sale by retail upon condition that no more than a specified or limited quantity or number of the goods may be purchased by any one purchaser. This provision exists only in SA and prevents retailers limiting purchases of advertised items to "reasonable retail quantities". Such limitations are often included in advertisements in other states and have only one rationale, that of protecting consumers by seeking to ensure that all customers can take advantage of a promotion. Placing a quantity limitation means single customers can be prevented from purchasing high volumes of stock leaving no stock for other customers to purchase.

The South Australian government has advised for years that they are reviewing this provision, but to date nothing has occurred. The result is that South Australian consumers are less protected, and national retailers are prevented from adopting nationally uniform conditions for retail offers.

The following specific examples give a picture of the size and complexity of the issues facing major retailers in this area.

Example	Products and Product Safety Standards
1	The biggest problem is the inconsistency between the jurisdictions (e.g. some States and Territories require knives and spray paint cans to be locked in cabinets or sold in a certain way, whereas, other States and Territories have no restrictions). Another example is that some states such as WA require licences to sell dirt bikes and others do not.
2	<p>Another example is the inconsistent approach to monkey bikes. Initial unilateral action on these bikes taken by the Victorian Government back in 2005 resulted in bikes that did not comply with the provisions of the banning order being banned from sale in Victoria.</p> <p>Bikes that had been banned in Victoria on the basis that they may "pose a risk of injury or death to children and adults due to mechanical faults" could therefore still be legally sold in other States and Territories. Some States and Territories have since adopted the Victorian position (e.g. Tasmania, SA and QLD in 2006), but the provisions have been implemented at different times and not on a national basis.</p>

There is a mix of regulatory and self-regulatory approaches in Australia, with State, Territory and the Australian Governments all having responsibility for policy development, administration and enforcement. This can result in conflict and confusion as to which standard or regulation takes precedence over another. Inconsistencies in applying product ban orders or restrictive regulations in one State or Territory but not another can cause confusion to the consumer and the business who then does not know whether a product is safe or not. To this end, large retailers would like to see more national consumer policy laws introduced where relevant and applied consistently across the whole retail industry.

Large retailers must be afforded the opportunity to investigate product safety issues and initiate action in due course before rash decisions are made by governments at a State or Territory level. More timely decisions on consumer policy laws at a national level may prevent this from happening.

ANRA were pleased to see the recent Council of Australian Governments' agreement to move to national, uniform trade measurement legislation and administration by 2010. This will significantly reduce the compliance burden on national retailers.

However the following examples are a snapshot of the difficulties in this area.

Example	Food & Trade Measurement
1	Each State and Territory currently charges a fee for service in relation to testing weighing instruments. This is unique in relation in the provision of a consumer protection service and appears to detract from the overall enforcement of trade measurement and packaging regulation (e.g. resources are focused on collecting testing fees instead of checking for short measure and testing packages).
2	There are also variations in the way in which different local government authorities currently meet their food statutory sampling obligations. There has been an increase in the number of local government authorities testing products for compliance with nutrition information (despite there being no legislation or guidelines in place that outline acceptable levels of variation) and ingredients labelling requirements.
3	There is also no national agreement on the definition of meat even though this has been under review by the Ministerial Council on Consumer Affairs for a significant period of time. This means that some States and Territories have to label and advertise certain meat products in a different way than other States and Territories.

In the area of tobacco regulation, the following list outlines some of the key inconsistencies that should be addressed as a matter of priority by the Ministerial Council on Drug Strategy:

Example	Tobacco Regulation
1	The different size restrictions for retail tobacco displays (e.g. VIC is 4sqm, QLD is 1sqm, SA 3sqm);
2	Different measurement requirements for tobacco retail display area (e.g. in QLD the 1sqm includes the whole of the area

	within the perimeter of the display, while in WA the 1sqm includes the total surface area of products or packages facing customers);
3	Different definitions of a tobacco product (i.e. SA/WA/TAS classify papers, filters etc as a tobacco product and other jurisdictions do not);
4	Different graphic and text health warning signage requirements (e.g. TAS requires graphic image, NT requires a text sign in A3 size, NSW requires a text health warning between 50-100 centimetres wide and have an area not less than 2,000 sq cm);
5	Different forms of acceptable proof of age documents (e.g. no mutual recognition of State and Territory proof of age cards);
6	Different maximum size for tobacco price tickets (e.g. NSW, WA, NT & ACT is 35 sqcm, QLD & SA is 32 sqcm) and for lettering on price tickets (e.g. Vic is 2.1cmX1cm, NSW is 2.0cmX1.5cm, SA is 15mm, WA is 8mm etc);

While some jurisdictions have introduced some similar tobacco regulations (such as Western Australia moving to a one square metre tobacco display restriction in accordance with existing Queensland provisions), further reform is needed to reduce the regulatory compliance burden on national retailers.

The problem with these inconsistencies is that they require national tobacco retailers to develop and implement specific processes, procedures and training material for each jurisdiction, which makes compliance unnecessarily more difficult, and costly.

It also means that national tobacco retailers have to frequently redesign or purchase new tobacco displays to accommodate the different display size restrictions in each state and territory. To this end, nationally consistent tobacco laws will significantly reduce the regulatory compliance burden on tobacco retailers in Australia.

3. Enforcement

Enforcement is a key issue for large retailers in Australia. Notwithstanding the lack of uniformity between regulations themselves, inconsistent interpretation and enforcement creates an environment where large retailers are often targeted disproportionately, with confusion about the meaning of regulations resulting in unlawful and unreasonable enforcement across different States and Territories.

Different interpretation of laws by States and Territory as well as Local Government enforcement officers – some enforcement officers think that the support material and guidelines are the law and try to enforce these requirements. It would be much simpler if there was one set of uniform laws established with clear guidelines to assist both industry and enforcement officers in monitoring compliance.

There is a lack of sufficiently trained enforcement officers. Officers should be there to help educate industry and not just enforce the laws. The main concern relates to the frequent experience of enforcement officers advocating for consumers and insisting on remedies that exceed a consumer's legal entitlement in order to resolve the issue.

Therefore, additional training may help prevent enforcement officers pressuring retailers to provide remedies that are not founded on a consumer's legal rights.

Large businesses are often targeted for enforcement action as they have strict processes and procedures in place. For example, the South Australian Health Department has recently introduced laws that prohibit larger retailers from displaying tobacco products, yet small retailers are permitted to do so, resulting in a commercial disadvantage and of doubtful social benefit.

A lack of enforcement of certain requirements can cause distortions and inequalities and put those businesses which have gone to great effort to comply with requirements at a commercial disadvantage. A good example of this is country of origin labeling of food. Large retailers have spent considerable money and time in developing IT systems and processes to ensure compliance, whilst many other retailers have not made any effort to comply and do not seem to be facing any enforcement action.

A further example of gaps in enforcement occurs in relation to the enforcement of liquor licensing laws in Victoria. In all States and Territories except Victoria, liquor licensing (which is often part of consumer affairs) employs compliance or enforcement officers who conduct inspections and work with industry. In Victoria enforcement is the domain of the Victorian Police. As a result there is no dedicated unit focusing on this area or working with industry on compliance.

Similarly there is variation between States and Territories for Responsible Service of Alcohol (RSA) Training, which is a mandatory requirement in some states and not in others. In Qld RSA Training is mandatory in some regions within the State and not in others. NSW and Tas do not recognize any other states training and Vic requires a refresher training to be completed. A fee is charged by those states where RSA Training is mandatory. It is essential that all states recognize and accept the National Training Code for Responsible Service of Alcohol.

Conclusion

Consumer legislation is a minefield but there have been some advances. For example moves toward a national register of business names across state boundaries is welcome. While a review of consumer policy in Australia is timely, ANRA urges the Commission to consider any such review in the context of other related reviews. The *Bethwaite Review* into food regulation is an example of related activity.

In summary the key issues for the retail community are:

- Every effort should be made by government to minimise consumer policy regulation that imposes an unnecessarily costly or excessive burden on retailers.
- Greater coordination and consistency in consumer policy laws is needed across all jurisdictions and levels of govt.
- Consumer product regulation should keep pace with technologies to ensure that it remains necessary, effective and the most efficient way of achieving consumer policy objectives.

We commend the Federal Government for commissioning the Productivity Commission to identify how Australia's consumer policy framework can be improved and believe the government's support for an effective consumer policy framework will help reduce the regulatory compliance burden on national retailers.