



A U S T R A L I A N
R E T A I L E R S
A S S O C I A T I O N

SUBMISSION TO THE PRODUCTIVITY COMMISSION – Consumer Policy Review

MAY 2007

*Supporting
Retail Growth and
Sustainability*



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About the ARA

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

The retail industry contributes to more than 5 percent of Australia's Gross Domestic Product (GDP) and is the largest employer in Australia, providing 15% of all jobs.

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.

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

1. Executive Summary

Consumer policy is inherently important to the retail industry as the outcomes of consumer policy directly regulate the core function of retailers - selling to consumers. There were just over 216 000 retail businesses trading in Australia in June 2006, making the retail industry one of Australia's largest industries. Currently the retail industry operates under the tightest profit margins compared to any other industry with the average profit margin standing at 4%. Survival rates in the retail industry are also significantly low with only 62.5% of retail businesses operating in June 2003 still operating in June 2006. The industry is highly competitive and for this reason most retailers are consistently focused on ensuring the best service to ensure repeat custom.

As part of the ARA's advisory services we regularly consult with retailers on a range of consumer related issues and also regularly receive calls from consumers requiring information on consumer policy. We provide retailers with training, information briefings and signs that assist in complying with consumer regulation requirements and also provide a consumer information section on our website purely for consumers. In addition to this the ARA endeavors to consult with the ACCC and state Fair Trading agencies about consumer related issues on an ongoing basis. The ARA has also established and now administers the Supermarket Scanning Code of Practice.

The ARA welcomes the review being undertaken by the Productivity Commission in recognition that the current consumer policy framework requires assessment to ensure that the most efficient and achievable methods are adopted which ensure consumer and business protection. It is important to all retailers and consumers that they can sell and purchase throughout Australia using a single and simple set of rules.

2. Rationale for Government Intervention

The ARA recognizes that government intervention in consumer policy is warranted and required in many circumstances for a number of reasons. Government intervention not only plays a role in protecting consumers, but it is also important for retailers in assisting them understand limits or minimum standards. Government can play a role in positive guidance for industry. In addition, failure to effectively regulate in consumer markets could result in reduced consumer confidence and reduced sales (although this is less likely due to the high level of competitiveness in Australian markets).

However, government intervention needs to be carefully monitored and implemented. Consumers need to have the ability to act in their own interests, rather than relying solely on intervention by a third party. In particular instances, such as product safety, government intervention is both warranted and desirable to ensure all parties in the transaction are protected. However, in other areas the consumer plays an important role in setting standards of best practice. The retail market is competitive and business survival can be low. In this environment the consumer plays an integral role in determining the standards expected in consumer transactions. Where satisfaction is not met the retailer loses custom. Examples of markets driving consumer standards can be seen when reviewing the increase in 'change of mind' refund policies of a number of retailers - such policies extend above and beyond that required by law.

Policy makers need to consider the market environment when assessing the extent of regulation. Ideally regulation should only be utilised where systematic market failure results in poor outcomes for consumers or fails to provide minimum protection for consumers, for example in safety issues. It is therefore important to ensure effective and consistent reporting and research methodologies are utilized to track systematic issues, so that market failure can be assessed and the efficiency of regulation can be measured.

3. Cost of Government Regulation

Regulation of consumer transactions can result in numerous costs to government, consumers and businesses. Currently consumer regulation is extremely burdensome for retailers with myriads of enforcement agencies, multiple statutes, inconsistencies across states, and multiple licensing systems. Poorly designed regulation not only leads to excessive compliance costs, but in some cases may be the cause of non compliance.

Ensuring compliance with consumer regulation requires timely research and staff training by retailers. These costs can have a significant impact on retailers operating across state borders. Such retailers are not necessarily large. For

example, in the clothing sector a specialty clothing retailer may have a total of five stores, one in Sydney, Melbourne, Adelaide, Perth and Brisbane. The costs associated with compliance across all states for such few stores are excessive. Unfortunately regulatory systems such as these can result in non-compliance, as compliance is unachievable for a small - medium sized business.

Table 1 outlines the labour compliance costs of refund, lay-by and warranty requirements for 10 stores. It should be noted that these costs are only associated with basic fair trading compliance and do not cover compliance costs related to other more detailed or complex fair-trading and trade practices issues, for example under the Trade Measurement regulation. It should also be noted that these labour costs do not include on costs, or additional costs such as travel. The Table also does not take into account the need to periodically review regulations to ensure compliance over time and where applicable train new staff, or re-train existing staff.

Table 1: Refund, Lay-by and Warranty Compliance – Labour Costs

Activity	Cost per Hour (\$)	Total Hours	Total (\$)
Research State and Commonwealth Refund, Lay-by and Warranty Laws. Develop Appropriate Policies and Signage. (Sales Manager*)	24.16*	24	579.18
Develop Training Package (Trainer – Human Resources**)	30.36**	4	121.44
Deliver Training Across Stores (10 stores, 1 hour per training session)	30.36**	10	303.60
Staff Attendance at Training (5 employees per store)	135.00***	10	1350.00
Total			2,354.22

* Hays Salary Survey 2006 – Sales Manager

** Hays Salary Survey 2006 – Trainer Human Resources

*** Shop Assistant rate Shop Employees NAPSA NSW – overtime penalty 1.5

While these costs may not seem excessive, for a small to medium size business these activities take a considerable amount of time and effort; often involving the time of the owner or manager, and therefore resulting in significant opportunity costs. Small retailers also may not have the internal expertise to properly understand the regulation that is applicable.

Compliance costs increase exponentially when there are multiple regulations to comply with. For example, a food retailer needs to comply with a range of labelling, measurement, licensing and training requirements. For some retailers the regulation is excessive and extremely complex, making compliance too difficult. The inconsistencies across states, multiple enforcement and information agencies, and licensing systems provide a disincentive for smaller retailers to expand across state boundaries.

4. The Consumer Environment

4.1E-Retail

The increase of e-commerce has had a multitude of effects both negative and positive for traditional retailers. Increasingly retailers are embracing the 'online' culture, recognizing the benefits of reaching a wider range of consumers and reacting to their changing desires, the reduced costs, and the capacity to provide additional information on products that would not ordinarily be possible in a retail store. E-commerce has also had a significant negative impact on retailers. Consumers perceive increased threats to their privacy in online transactions, there are more complex issues associated with consumers physically seeing and touching a product prior to purchasing, and there are also considerable issues with international traders and others meeting Australian consumer protection regulations.

Last year a number of members of the ARA raised concerns about traders on sites such as eBay not meeting warranty and refund requirements under fair trading laws, thereby creating an uneven playing field for those who were compliant. These issues were raised with eBay who assured the ARA of their notification of fair trading laws to their online traders. While there are potentially a number of non-compliant e-commerce businesses, reporting of these occurrences can be encouraged through effective education of consumers on their rights and methods for reporting. The main challenge for the Australian consumer policy framework is dealing with international e-commerce traders and regulating their activities when selling to Australians.

The internet has substantial benefits for consumers and retailers alike. The internet allows greater product information and increased time for consumers to consider purchases. It provides consumers with the capacity to efficiently shop around, and generally has more competitive prices. It is also an effective tool for obtaining information on different sellers, products and manufacturers through peer review sites. As the youth grow older it is expected we will see much more empowered and informed consumers. Research in the United Kingdom indicates, however, that consumers are still concerned about security issues with online payments, but banks around the world are continually looking at new ways to improve payment security, such as the 3D Secure Visa and MasterCard authentication scheme. As consumer confidence grows it is expected online shopping will also expand considerably. With the expansion of online purchasing consumer policy may need to adjust to the amount of risk that can be associated with that form of purchasing. For example, if a consumer decides to purchase an item without seeing or touching it, should the retailer be liable if the consumer did not perceive it to be what it is?

Current consumer regulation effectively protects consumers in relation to their online purchasing. However, there are inconsistencies in relation to the costs associated with the return of goods. For the most part retailers required to replace or refund goods purchased incur the costs associated with returning or replacing the product. This is particularly the case for furniture retailers who will organize pick up of the item from the consumer's household. In relation to online transactions however, often the cost of returning the goods is borne by the consumer. Examination of the rules relating to the cost of returns needs to occur and the requirement for consistency between store and online purchased products needs to be determined.

4.2 Environmental Policy

Consumer policy may need to be reviewed in the context of broader environmental issues. We may see considerable changes in product purchasing related to changes in consumer packaging. The ARA does not support measures, such as those in some European countries, whereby consumers can return packaging at point of sale. However, if such measures were adopted in Australia we would need to review the impact of such policies on consumer policy, particularly in relation to product safety, warranties and returns.

Industry groups are also currently looking at ways to reduce the instance of incorrectly installed products through extended warranty penalties. Such measures are aimed at reducing the environmental impact of those incorrectly installed products. Policy makers may also need to review whether warranty repairs are preferable to replacements for certain products, to reduce the amount of waste and reduce overall impact on the environment.

5. Small Business

5.1 Warranties and Suppliers

Small retailers are often put in a difficult position by powerful suppliers, in that the retailers face the loss of important suppliers if they insist on agreed warranty and return agreements. Manufacturers of consumer products particularly in telecommunications, and suppliers to newsagents provide two examples.

Where consumers demand a replacement rather than repair, concerns have been raised where the manufacturer refuses to replace these goods. Unfortunately in many of these circumstances the retailer loses out by footing the cost or potentially losing the capacity to obtain supply from that manufacturer. In other areas retailers are bearing the costs of returning publications that are being distributed to them back to the distributor. In these instances, the retailer has little choice in the publications they receive or the

choice of supplier. In one instance a regional newsagent had to employ a casual employee purely for the purpose of administering the return of unwanted products.

5.2 Recommended Retail Pricing

Recently issues relating to recommended retail pricing have been raised with the ARA. In particular there is growing concern that these recommended retail prices, marked on the product, are inhibiting the capacity of retailers to supply products at prices they choose. Questions need to be asked in relation to who determines these recommended prices and how? Is it entirely appropriate for recommended retail prices to be marked on products and for what reason? While recommended retail pricing can be a useful guide for the retailer when supplied alongside the products, marking these prices on the product may be problematic. A review of recommended retail pricing needs to occur to determine its purpose and impacts.

5.3 Unconscionable Conduct

While unconscionable conduct provisions have been provided for, for example in the Trade practices Act, small business representatives have widely claimed that the boundaries of these provisions are very grey. Few small businesses pursue claims under these provisions, either because of the uncertainty of success, or because of the threat to an important supplier relationship. For example, small business tenants in large shopping centres frequently quote threats to the long term security of their businesses if they make complaints. For these small retailers the landlord is almost a monopoly supplier, as to move from the centre would come at a substantial cost to a small business.

The ARA believes that provisions for protection of small businesses against unconscionable conduct need further review if they are to be utilized more by small businesses.

5.4 Collective Bargaining

Recent provisions allowing for small business collective bargaining are yet to be utilized by small businesses. While these provisions are only new an examination needs to occur of why the provisions being made available are not being utilized and hence not meeting their policy objectives of assisting small business.

5.5 Small Business as Consumer

The ARA does not support the categorization of small business as a consumer, but would like to explore avenues for ensuring the protection of small business in their dealings with suppliers. In particular specialized resources need to be allocated to small business in the consumer agencies where advice, research and representation can occur. The Victorian Small Business Commissioner is a good example of the successful operation of a specialized agency to resolve small business disputes, particularly with landlords. National agencies should devise specific reporting services for small business that have issues relating to suppliers so that trends among suppliers in failing to meet their obligations can be tracked and where necessary investigated.

6. Vulnerable Consumers

Defining vulnerable or disadvantaged consumers can have negative impacts on certain sectors of society. Specific definitions may inhibit the capacity for certain consumers to obtain supply and may unduly discriminate against some people. Often the determination of whether a consumer is vulnerable or disadvantaged will need to be on a case by case basis, rather than in a prescriptive way. The determination will be impacted by the context in which a transaction occurs, and the capacity for the consumer to understand the consequences of a specific transaction.

Concepts of vulnerability and disadvantage also have wider consequences for reducing individual responsibility, and may result in long-term implications for consumers accepting responsibility for their actions and thinking for themselves. That being said there are particular circumstances where consumers may be in a vulnerable or disadvantaged situation where a reasonable person would not supply or enter into a contract with that person for that reason. Consumer policy should focus on principle-based notions of determining vulnerability and disadvantage and the concept of the parties having 'reasonable' regard to the others situation.

The Productivity Commission's Discussion Paper suggests that some consumers may not be equipped to act in their own interests when entering into contracts or purchasing. Ultimately the actions of a consumer are the direct responsibility of that consumer. Attempting to establish consumer regulation on the presumption that consumers cannot act in their own best interests is misguided and highly problematic. Consumers make choices and provided they have not been misguided, treated unconscionably or provided a product that does not meet certain required standards, then that choice and responsibility resides with the consumer. Government's role should be to educate consumers about how to make the right decision, not to take all responsibility away from the consumer through regulation which would further exacerbate the problem.

7. Regulatory Methods

7.1 Generic v Specific Regulation

The ARA supports generic regulation rather than specific regulation as it can reduce the complexity associated with regulation and the amount of regulation itself. Where possible consumer regulation should be applicable to a wide range of industries and situations, rather than being prescriptive and isolated to specific circumstances. In circumstances where specified industry related issues cannot be addressed with generic regulation then the use of specific regulation should be the last choice. Alternatives such as education and voluntary industry codes of practice should be examined first.

7.2 Regulatory Methods and Tools

The ARA recognizes the need for and supports the use of multiple tools for regulation, including statutes, codes of practice and standards. However the myriad of laws, including state fair trading acts, provide extremely complex requirements for businesses to follow.

The ARA is a supporter of voluntary industry codes of practice. Over the years the ARA has implemented a number of retail codes in the areas of supermarket scanning, ethical clothing, plastic bags and trolleys. More recently the ARA has been developing a draft RFID Privacy Code for consumers. We have also developed guidelines for bag checks with the New South Wales Office of Fair Trading. These guidelines are widely accepted and followed by the retail industry. Voluntary codes and guidelines have played an important role in meeting gaps in regulation and have ensured consumer interests are met under a set of rules established as agreed guidelines by industry participants. These codes are in a form that is easily accessible and understood by all parties and in addition the codes take the administrative burden away from government bodies, effectively reducing administrative costs for these fair trading agencies.

Voluntary codes of practice are ideal where a demonstrated problem exists that is not resolved by general regulation. It may be a specific industry or sector of that industry that is problematic and that industry or sector is willing to commit to a means for resolution. The Supermarket Scanning Code of Practice is an example of how issues can be effectively resolved through industry codes. This has been a long standing code that has effectively met the interests of consumers, regulators and retailers.

7.3 Regulatory Burden through Duplication, Inconsistency and Overlap

Currently there is a myriad of different laws, codes of practice, some overlapping, some duplicating and some conflicting. Also, the multiple state regulations, including the fair trading acts, add a further level of complexity, which adds to compliance costs and makes it very difficult for the average small retailer to be confident that they are compliant. Currently each state enforces its own fair trading legislation, with its own courts or tribunals, and most content is duplicated and in some cases inconsistent. In addition current regulation is often difficult to read and understand both for the retailer and the consumer.

Retailers should be able to sell to consumers using a single, simple set of rules. This is important in reducing the compliance burden of regulation and also consequently encouraging expansion across state borders and entry into the broader Australian market. By preference, the ARA supports national fair trading legislation that can be enforced through state agencies

Even where there is a commitment for states to harmonise their regulation, retailers are still faced with the additional compliance costs of reviewing the rules and regulations of each state, and dealing with multiple agencies. Unless there is a demonstrated need for state based regulation, all consumer policy objectives should be met through federal legislation that is easily accessible and easy to understand for consumers.

Failing federal legislation, states should be involved in reviewing and harmonizing all legislation, and mutual recognition of licensing should be introduced. A federal centralised information source should be established for consumers and businesses to use to ensure compliance. Increased simplification and removal of overlap, and increased access, will not only reduce compliance costs, but will also lead to higher levels of compliance.

8. Enforcement and Regulatory Bodies

8.1 Education

Regulatory bodies should be heavily engaged in education to ensure prevention of consumer disputes. Regulatory bodies should not only focus on consumer education, but equally importantly on business education. Many government departments and agencies engage industry associations to assist in the process of business education, however fair trading agencies generally have not been as active in this field. Retailers trust their industry bodies and are used to accessing information channels and seminars from the associations.

There are also concerns that consumers are sometimes provided with poor advice from government agencies that is not practical. For example it is not unusual consumers to be advised that they are entitled to a refund without first having spoken with the supplier. This can cause considerable angst for all parties, and can result in a delay in the implementation of a practical remedy and disappointment for the consumer about the outcome.

8.2 Inconsistencies in Enforcement

Currently regulatory bodies are not enforcing regulation in a consistent fashion. A particular issue has arisen in relation to enforcement of the Trade Measurements Act where various states may be more lenient than others in relation to its application. In particular bakeries in some states have been told pre-packaged food for lunchtime rushes does not need to be weight labelled, while other products require it. This is both costly and onerous for the bakery and provides a level of confusion. It is also quite curious that an unpackaged loaf purchased does not need to be weighed, yet a loaf sliced half an hour earlier and packaged does need weighing. A review of whether these types of items need to be covered should be undertaken.

More recently there have also been issues with recognition of retail qualifications in the food industry. While this is primarily a food regulation issue it does impact on a retailer's capacity to service its consumers. In some states previously acknowledged retail health certification has been deemed inappropriate as food retailers were unilaterally deemed restaurants. Both retail and restaurant food safety qualifications are equivalent and hence denial of the retail qualification was inappropriate. The consequence of this can result in inability to trade and is damaging for the food retailing industry.

8.3 Methods of Dispute Resolution

The ARA regularly consults with members who do not have the time or means to attend court or tribunal hearings in relation to consumer disputes. Often it is a small transaction that is disputed and has not been resolved through conciliation. Often the result is the retailer meets the consumer's demands. Some retailers attempt to go above and beyond that required by law in meeting and exceeding consumer expectations, but in some instances the demands are not warranted and may be fabrications of events. Regulation should provide the option for disputes relating to small claims to be determined by an administrative body through written submissions, without having to attend a court or tribunal. Such resolution methods should only be followed where it is agreed between the parties to do so. This would effectively and more efficiently meet consumer and business needs.

9. Retail Concerns

Of significant importance to the retail industry is the nationalization of consumer policy and regulation, and the removal or harmonization of inconsistent state regulations. Additionally a review of all consumer regulation needs to occur to measure its effectiveness in meeting consumer and business needs. Issues such as product bans, product safety, liquor licensing, trade measurement and recommended retail pricing need to be reviewed and nationalized. Centralized resources need to be provided to ensure there is a one-stop government shop for consumer related compliance. This will greatly assist businesses in ensuring compliance and in reducing compliance costs.

In addition provisions designed to assist small business in resolving disputes with large business need to be examined. At present it appears they are not being utilised, and hence are not meeting their policy objectives.

The ARA will continue to consult with members on issues under this review and will provide a supplementary submission if required.

10. ARA Contacts

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