

**Productivity Commission**

**Review of national competition policy**

**Reforms**

**Submission**

**December 2004**

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## **1. The Australian Liquor Stores Association**

The Australian Liquor Stores Association Incorporated (ALSA) represents, through its State and Territory Associations, over 4,000 retail liquor stores throughout Australia. These include specialist independent retailers, small general stores and major retail chains.

ALSA was formed to allow the collective views of its member associations and organisations within the packaged liquor business community to come together on national issues to present a common view.

Membership of ALSA consists of:

Liquor Stores Association of New South Wales  
Liquor Stores Association of Western Australian  
Liquor Stores Association of Victoria

LSAV has made a submission to the Productivity Commission Review expressing their specific views

Liquor Stores Association of South Australia  
Liquor Stores Association of Northern Territory  
Master Grocers Association of Victoria

Woolworths Limited

Woolworths has made a submission to the Productivity Commission Review expressing their specific views

Coles Myer Liquor Group

Coles Myer Liquor Group has made a submission to the Productivity Commission Review expressing their specific views

While ALSA has not had any direct involvement in the various state legislation review processes by way of submissions, it believes that it is important to provide the following comments in relation to the Review of National Competition Policy Reforms as it relates to all state jurisdictions and particularly liquor retailing.

We further note that individual members of ALSA have made submissions to the various NCP reviews.

## **2. Background in Australia of the National Competition Policy and the package liquor industry.**

Under the Competition Principles Agreement (CPA), state jurisdictions agreed to list and review various legislation that was thought to be, or could potentially be taken as anti-competitive.

The Legislation Review Process (LRP) found that the Liquor Licensing Act in each state fell into this category and as such required review.

The common feature and indeed, the most important aspect to all of these reviews, regardless of the current status of each State, is that the Public Interest Test has been interpreted differently by each State jurisdiction and applied in a way that is not consistent.

The Public Interest Test as per the Commissions review document states.

*The guiding principle under the NCP is that Competition will generally enhance community welfare by encouraging greater efficiency. Governments are given the flexibility, however, to deal with circumstances where competition is considered to be inconsistent with social, environmental, equity and regional objectives.....*

It is also very important to note in the review that the following breaches of priority legislation review were made as at the 30 June 2003 extension deadline.

NSW:	Liquor Legislation
QLD:	Liquor Legislation
WA:	Liquor Legislation
SA:	Liquor Legislation
NT:	Liquor Legislation

*Source: Review of NCP reforms Table 2.2, page 20*

This clearly demonstrates the fact that all 5 of these jurisdictions have found it incredibly difficult to balance the issues faced by the penalties of NCP, with the real needs of the community when dealing with liquor legislation.

The real issue that all States have faced is to ensure that the legislation provides the people of Australia with responsible and socially acceptable legislation in a way that ensures a controlled approach to access of liquor.

The result of this is a national packaged liquor market with significant national players and smaller players who trade in more than one state having liquor licensing laws with some six (6) different styles of legislation whereas prior to the review Australia had only two (2) different styles of laws.

Unquestionably, the NCP has been an indictment on liquor legislation as the competing interests of controls over liquor licensing and compliance with NCP has been extremely difficult for all State Governments.

The NCP has had and will continue to have a devastating impact on the fabric of liquor licensing control and if liquor is not removed from the jurisdiction of the NCP there is the potential for catastrophic changes to the culture of how Australians access liquor in a retail environment.

It is clear in every State in Australia that the communities and Governments do not want to see unrestricted control of liquor licensing.

In fact when the NCP was introduced in 1995 into Federal Parliament by the then Assistant Treasurer, George Gear MP he told parliament:

*“The NCP agreement does not compel specific reforms by Governments. It is not about competition for competition’s sake”*

The then Labour Government also stressed that:

*“It is important to understand that this Government is not interested in reform or competition for its own sake. The package recognises that economic efficiency is one element of a broader public policy context, which also includes social considerations. Explicit recognition is given to these broader elements of public interest in the bill and in the competition principles agreement.*

*The package gives appropriate recognition not only to competition and efficiency considerations but also to all other policy objectives, which Governments must balance in making policy decisions, such as ecologically sustainable development, social welfare*

*and equity considerations, community service obligations and the interest of consumers. The package gives clear recognition to these objectives, with the clear intent that Governments should give full and proper considerations to these matters when they make decisions about economic reform”*

Source: ALP website [www.alp.org.au/policy/pdprincp270501.html](http://www.alp.org.au/policy/pdprincp270501.html) [since removed]

Furthermore, in a letter from the Federal Treasurer to ALSA in June 2001 Mr Costello said:

*“The guiding principle in these reviews is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs and the objectives of the legislation can only be achieved by restricting competition”*

Source: Letter from Peter Costello to the Australian Liquor Stores Association, 7<sup>th</sup> June 2001

These quotes clearly outline the intention of the NCP and its purpose.

ALSA believes that it was never the intention of the NCP to deregulate industries that were serving the communities of Australia well. More particularly, ALSA does not believe that on second thought, any Government indented to open a market, which sells a drug.

### **3. Liquor Sales in context with National Competition Policy**

The sale and consumption of alcohol within the Australian society gives rise to a number of considerations when examining the impact of National Competition Policy.

It is in this context that ALSA asserts that there is a need for a more 'public interest' approach when considering the issue of competition reform.

There are many factors that indicate the significant difference between alcohol, as a product, and other retail products.

There are four main areas that distinguish alcohol retailing from other forms of retailing

- **Price Competition**

A major criterion of competition reform is the benefit or otherwise of the regulation to the consumer, and the most effective measure is retail pricing. A close up examination of retail prices demonstrates that both average retail prices and promoted (or advertised) prices are substantially the same across all state markets.

Liquor has never been so cheap in Australia as it is today. In fact regardless of the review processes, the market and consumer will dictate the requirement for price competitiveness. This is proven by the average prices around Australia of the most popular products being priced at very similar price points irrespective of the regulative environment.

You only have to look at the daily newspapers to see that competition is alive and well in all states.

- **Harm Minimisation**

In recent times, it has been recognised that the most effective method of dealing with alcohol misuse revolve around the ability to implement Harm Minimisation strategies.

All State and Territory Governments support the principles of Harm Minimisation.

Many have introduced Legislation to formalise their intent to treat this very important issue as a priority. All jurisdictions of Government, State and Federal, recognise that strategies to address alcohol misuse and abuse, reduce the potential cost of such abuse to the community.

The existing regulatory framework in most states is acknowledged as assisting significantly in the implementation of Harm Minimisation strategies.

These states control the distribution of outlets by way of granting new licenses based on the principle of 'need', in other words, the Licensing Authority must assure itself that there is the 'need' in the community for the issuance of the license.

Many leading health professionals support the existing regulatory framework, which has the effect of controlling the number of outlets selling packaged liquor. Professor Tim Stockwell from the National Drug Research Institute has concluded that

*"...at the very least the possibility that limits over outlet density might be an effective means of controlling alcohol problems needs to be taken seriously..."*

The Ministerial Council on Drug Strategy supports the concept of control over the density of liquor outlets. Key Strategy Area 4 of the The National Alcohol Strategy – A plan for Action 2001 to 2003-4 states that:

*"the numbers and type of premises in an area are consistent with limiting alcohol related harm" (p28)*

A sudden or rapid increase in the number of outlets selling packaged liquor would mean a lowering of standards in Responsible Serving practices, as new entrants join the industry. This would have a negative impact on the achievements already made in this important area of Harm Minimisation.

- **Industry Structure**

The current structure of the retail liquor industry allows for adequate access to alcohol by consumers. A range of outlets is available to

the consumer including liquor stores, hotels and clubs. The existing Licensing system allows for an increase in the number of licenses to take into account population growth and the changing buying habits of consumers.

Many owners of retail liquor businesses have built up a significant investment in their businesses and operate them successfully under the existing framework. Should there be a radical change to the structure of the industry, these small business operators would face serious economic hardship and possibly the loss of their livelihood.

- **Economic Inefficiencies**

The liquor industry supply chain has been developed to account for both the number and distribution of retail outlets. Any significant increase in the number of outlets, as a result of deregulation would add an increase in costs to the supply chain. As there would not be any significant increase in the volume of alcohol sold, the result would be an increase in wholesale prices and therefore retail prices to the consumer. Suppliers to the retail sector are simply not structured to service a larger number of outlets, without a significant increase to their cost structure.

*It should also be noted that there would be no increase in government revenue as a result of any increase in the number of outlets selling packaged liquor.*

Around Australia each state has had some level of impact from the NCP. This impact clearly varies from state to state and as a result of the time frame that has surrounded this process.

There are now clearly defined differentials in the outcome from each review, which has been undertaken in each state.

In fact, in some states, reviews continue today.

The following table outlines the current status of the fundamental issues in each state as it relates to the package liquor industry.

STATE	CURRENT LAWS	NCP REVIEW STATUS
Victoria	Deregulated, Public Interest test. Huge increase in retail outlet numbers	Completed
Queensland	Deregulated, Public Interest test, retail outlet numbers controlled by pre-requisite to own a hotel first	Completed
Western Australia	Regulated by a "needs test" no changes made as yet	Not completed
New South Wales	Deregulated, Social Impact Assessment, retail outlet numbers to be controlled by this measure, however not tested yet	Completed
South Australia	Regulated by a "needs test" no changes made as yet	Not Completed
Tasmania	Deregulated in part. Outlet numbers controlled	Completed
Northern Territory	A public interest test introduced special social conditions will restrict proliferation of licenses.	Completed
Australian Capital Territory	De-regulated. Has always had no controls. Market dictates outlet numbers	Not required

#### **4. National Competition Policy – Small business impact**

There is much debate about who is the real beneficiary of regulated industries that de-regulated.

Nationally it is reported that the ownership of the packaged liquor industry is broken up as follows:

Independent owned liquor stores	60% <i>approximately</i>
Coles/Woolworths owned liquor stores	40% <i>approximately</i>

If regulated markets have provided this structure due to the historic nature of the retailing industry in which small family owned businesses are the backbone and corner stone of retail, then it is clearly not in the national interest that these businesses are penalised by losing their business.

The legislation that has served the people of Australia very well for many years in providing a professional, well managed, responsible packaged liquor industry cannot be taken from under the feet of these people.

The beneficiaries clearly are those that would otherwise not have a share of the market, due to the regulation that precludes them from gaining greater access.

One could interpret this as anti-competitive, which may, in part be a valid assumption when speaking in relation to a product or service that was not a drug.

The Pharmacy Guild of Australia in their submission to the PCC review state:

*“deregulation has its place – that is, when a rigorous test of public benefit has been applied and found to be advantageous. To deregulate simply for the sale of deregulation is not only irrational, it can actively work against the public benefit it is purported to enhance”*

Source: The Pharmacy Guild of Australia National Secretariat, submission to Productivity Commission review of National Competition Policy Arrangements, June 2004, P5, 3.11

ALSA totally supports this notion. It is clear that NCP has a place in the Australian society. But as it moves its way through complex and difficult legislation that regulates markets for sound and good reason in the interest of the public, it should stop short of bloody

minded insistence of policy, forsaking the fabric of an industry based on hardworking, family Australians, whose contribution to the Australian economy cannot be disregarded to satisfy policy.

## **5. Alcohol and the Community**

Alcohol is a drug and it must be dispensed responsibly.

There are great debates being carried out around Australia in relation to the way in which Australians access and use alcohol.

The NSW Government held a summit to specifically address the issues of Alcohol Abuse in that state and found some 318 recommendations to assist in reducing the issue.

This is embryonic and a range of working parties and taskforces are now working towards implementation of many of these recommendations.

It was clear from the Summits outcomes, that it did not support any increase in the number of outlets. It was further made clear that the issue of access to liquor was in itself an issue that needed to be addressed as it relates to young people.

All of these findings are at odds with the notion that liquor licensing laws should be relaxed to a degree that would allow a more open access by the community, and particularly young people, to liquor.

State and Territory Governments recognize that policies are required to manage these areas. Such issues as underage drinking, binge drinking by young adults, drink driving and alcohol abuse by indigenous people are major priorities of public health.

To continue to force State Governments to make changes to liquor licensing laws to free up markets and provide more access will not serve to assist in controlling the abuse issues evident in all jurisdictions in Australia.

In fact the National Competition Council in its own submission to the review said in relation to the Northern Territory:

*"In relation to alcohol problems in the Northern Territory, the Council has made clear that restrictions on the sale of alcohol can be shown to be in the public interest."...*

Source: National Competition Council submission to the Productivity Commission on the Policy review page 24.

This statement is a clear acknowledgement of the issue. That is that it is in the public interest to maintain licensing controls to minimise alcohol related problems.

It is however, inconsistent with the National issues of alcohol problems, as other states are not void of similar or related issues.

In all of our representations to Governments at both Federal and State levels are yet to find a politician that believes that alcohol should be made more available in Australia.

## **6. Conclusions and recommendations**

Significant social detriment can result from the inappropriate use of alcohol and therefore the product alcohol needs to be treated differently from other retail products

State and Territory Governments recognize that policies are required to manage these areas. Such issues as underage drinking, binge drinking by young adults, drink driving and alcohol abuse by indigenous people are major priorities of public health.

State Governments also recognise that the existence of a regulatory framework, which controls the number of outlets selling alcohol, assists in the implementation of harm minimisation strategies.

It is, therefore, in this context, that ALSA believes that it is paramount that the Productivity Commission Review finds that Liquor Licensing Laws be removed from the jurisdiction of the NCP, to allow ALL states to implement appropriate laws to regulated the proliferation of liquor outlets into the future, as pertinent to their circumstances.

Federal Government recognises that the 'public interest' is best served by maintaining the licensing regulations, which now exist in some states and not at all in other states.

For these reasons it is most important that the states be left to regulate the sale of liquor as they see fit and in the interests of the communities and people that live in each state.

Liquor Licensing should never have been included in the policy in the first place. It is a drug that needs to be tightly regulated as it is dispensed around Australia.

What Australian parent would want alcohol to be so cheap and accessible that it might increase the drinking culture beyond the issues we all already face.

Would it not be better for Governments to be spending time on the issues rather than semantics of legislation that WILL increase alcohol related problems around Australia?

ALSA re affirms by way of this submission for State Liquor Licensing laws to be removed from the jurisdiction of the NCP in the ***public interest***.