coles

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Business Regulation and Benchmarking
The Role of Local Government
Productivity Commission
PO Box 1428
CANBERRA ACT 2601

Via email: localgov@pc.gov.au

**RE: BUSINESS REGULATION BENCHMARKING – ROLE OF LOCAL GOVERNMENT**

Coles welcomes the opportunity to provide comment on the Productivity Commission Issues Paper: *Business Regulation Benchmarking – the Role of Local Government.*

Coles operates over 2,200 outlets nationally; including supermarkets, convenience, liquor stores and hotels and employs more than 100,000 team members across all States and Territories of Australia.

Given the diversity of our business and product range, we interact with around 500 local governments across Australia on a myriad of laws and regulations that impose significant compliance costs on our business.

Local governments play a critical role in terms of infrastructure, planning, environment, health, community and other services. From our business perspective, local governments play a significant role in terms of education and awareness, administration of laws (e.g. registrations, licensing, inspections, consents, approvals etc) and monitoring or enforcement of regulation developed by all levels of government.

While we agree regulation is necessary to achieve certain policy objectives, it is the cumulative impact of regulation that imposes the greatest burden on our business. As a national retailer, we strongly support any reform program aimed at simplifying and reducing the regulatory compliance burden on business, across and within local government.

Ideally our business would like to be more engaged and represented in the development of any new local government policy or local laws and in the management of activity centres where our businesses are located. We believe that effective governance is best served by establishing effective structures for representation, consultation and engagement. For example, there may be opportunities for some councils to more actively support Chambers of Commerce or similar representative organisations by providing core funding or administrative support or by appointing suitably qualified personnel to liaise with businesses and facilitate economic development.

From a property development or planning perspective we welcome the opportunity to engage more closely with councils prior to any applications being submitted and through the assessment phase.

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**Nature and extent of local government**

Local governments undertake a wide range of regulatory functions that impact on our business including; administration of food laws (e.g. tampering, licensing, annual inspections, labelling, investigation of complaints), maintenance and management of shopping centre infrastructure, administration of local laws (traffic, parking, shopping trolleys, noise etc), strategic planning and development (e.g. permissions for new uses, signage, development consents, conditions etc), environmental management (e.g. chemical storage, stormwater management, approvals) and special rate schemes for marketing and promotion of activity centres etc.

While progress has been made to improve the effectiveness and consistency of all levels of government regulation, inconsistencies in the development and enforcement of local government regulation remains a key issue for our business. For a national retailer with 2200 outlets, any form of inconsistency limits our ability to implement nationally uniform processes and procedures, or alternatively, requires us to implement the most stringent requirement at a much greater expense. Inconsistencies also create duplication in paperwork or administration, team communications and require specialist legal, regulatory and compliance resources to monitor all possible regulations to ensure ongoing compliance.

This submission highlights many areas of opportunities to reduce business costs (administrative and operational) through improved consistency in the development, interpretation and enforcement of local government regulation.

**Food regulation**

Despite significant progress at a Federal and State level to improve consistency of food policy, there are still differences in the interpretation of regulation between those responsible for developing it and those responsible for enforcing it. For example, between Food Standards Australia & New Zealand and relevant Food Authorities and between Environmental Health Officers (EHO's) on issues such as food safety and food borne illness/poisoning bacteria.

Recently, our supermarkets have received mixed advice from councils about the regulatory requirements for open fish displays. In Brisbane for example, we can display fish fillets but not in Cairns where only the whole fish is permitted. In Victoria, our Werribee store is required to put plastic cloches over fish on ice (impacting on sales) whereas our Donvale store does not require the plastic cloches.

In those supermarkets in New South Wales where we have removed the fish box displays from the front area of the fish slab display, certain councils have requested additions or modifications to the sneeze guards currently in place (e.g. adjustments, height requirements etc). In many cases, our supermarkets have been treated differently to others (e.g. fish markets and wholesalers) who operate the same fish display standards.

While independent food safety data has been provided on open fish display on ice demonstrating food safety compliance, certain councils have still opposed the displays on the basis of risk that smaller retailers who may not have the same robust procedures and controls may copy. We believe the overall objective should be for councils to ensure that any retailer who offers the concept is doing so in a way that is safe.

There are also varying interpretations of product testing and sampling requirements of self-serve hoppers (e.g. bread self-serve) between councils where some EHO's have held the view that we must have person supervising at all times.

Likewise, some councils do not permit tastings in liquor stores (even if we use disposable and recyclable plastic cups) if the store does not have a sink or hand washing facilities, while other councils have permitted such practices.

**Audits/Inspections/Registrations**

There are widespread differences in the number of food safety visits or inspections across councils nationally (e.g. some annual and bi annual store visits or inspections) and the frequency and cost of audits and inspections can differ markedly depending on jurisdictional location. In addition, a number of councils may charge for initial inspections, whilst others may only charge for follow-ups after an identified breach. In Queensland for example, one council will charge an administration fee and expect documentation for all sites in a single manner, while another council may require a food business with multiple premises within the municipality to process each site separately, which creates unnecessary administrative burden.

We note that in Queensland one council has introduced a self audit program which requires participating stores to complete and file. Whilst we fully support the introduction of a self audit scheme, we note that participating stores are still charged additional administration and annual fees by council. These stores are also charged for other government bodies completing similar audits which increase the regulatory cost burden.

We further note that in New South Wales food businesses are required to be registered with the Food Authority and local governments can electronically access this information. However, some local governments also require food businesses to register their details separately with them adding unnecessary paperwork and administrative burden.

In Western Australia, food businesses must be registered with the local government authority and to pay an annual fee for inspections by EHO's. This is done on behalf of the Western Australia Government with 'guidance notes' as to how fees should be scoped. This is generally a set fee per store per annum. However, some councils have taken the opportunity to separate each store into specific areas or sites e.g. butcher, baker, delicatessen, fruit & vegetables and have applied the fee to each one so that in this example the fee would be significantly higher. The regulatory input is arguably the same between councils and the use of this 'loophole' adds to the regulatory burden, but not to service levels.

Another issue is that often an inspection may result in a perfect score by one EHO, but a poor performance by another EHO who may have a different interpretation, approach and/or priority. Understanding that there will always be some subjective disparity, we welcome any measure aimed at ensuring a more uniform audit and inspection approach and improved consistency in terms of fees setting between councils. We are aware that the New South Wales Food Authority is taking a partnership role in New South Wales with an active liaison group with the State's 152 councils and consider this to be best practice.

From a liquor perspective, we note that some liquor stores require a food notification to be lodged and a fee paid and others don't.

**Maintenance actions**

Maintenance orders can vary between councils and EHO's. In Queensland for example, we have found some individual inspectors have imposed maintenance orders or extra processes that are not legally required (i.e. direction to reseal the floor in dairy freezers where these freezers hold only packaged food and the floors do not present a food safety risk). Another example is a direction to retain a log of poultry rotation within the deli (where rotation is already mitigated through other national programs).

We have also found councils data requests and data collection methods differ for Backflow Prevention, Cooling Towers, Trade Waste and Fire Certification. Many councils also enforce these requirements differently with some issuing fines of varying amounts and others warnings.

**Planning and development consents**

Planning systems and development consent conditions vary between States and local governments, each with different focuses on factors such as design, traffic, noise, signs, trading hours/delivery hours, trolley management etc.

In New South Wales our supermarkets operate in approximately 90 councils where each council can set prescriptive conditions in development consents. A specific example is the plastic bag conditions imposed by Manly Council in the Stockland Balgowlah and Coles Balgowlah consents. In this consent, council wanted to ban plastic bags and other plastic materials, but existing stores were not required to meet the same conditions and the Manly Council could not retrospectively impose these conditions on existing stores creating competitive issues. The outcome was that Land and Environment Court determined that the council's planning controls did not require that plastic bags be prohibited and the condition banning plastic bags would result in competitive disadvantage compared to other retailing centres in the local government area.

Another council in New South Wales imposed a specific condition requiring at least a security guard on premise during all supermarket trading hours at a significant cost to our business. Coles contracts security guards on a needs basis and has its own criteria to ensure public and team member safety. Security is a high priority for Coles and our resources, programs and allocations are made based on retail and site knowledge which we believe should be the case rather than on a council's imposition.

In New South Wales, noise restrictions are often contained in the development consent and based on the relevant EPA Act which has mandatory requirements for design and construction. However, it is not uncommon for councils to order additional acoustic requirements or require reports to investigate an alleged issue which could be investigated in a more timely and efficient way.

Local governments can also impose restrictions on the time during which goods can be transported and offloaded which can significantly impact on business costs and operational efficiencies. For example, some councils specify allowable truck length, axles etc and others only allow rigid or semi-rigid vehicles etc. Unfortunately, such restrictions can increase truck numbers and thereby add to traffic congestion in a local government area. We believe businesses are best placed to assess individual sites for vehicle types in keeping with road rules and Australian standards.

Other council requirements vary in relation to height limits, operating hours, delivery hours, parking ratios etc. In some cases, no weekend deliveries are stipulated in the development consent. Whilst we understand the aim of a restriction is to protect the amenity of the local area, certain restrictions are unworkable for businesses seeking to offer customers fresh produce such as bread and milk on the weekend. We firmly believe operational issues should not be included in either a planning permit or development consent because they are fundamentally not a building or planning issue.

In addition, the recent Victorian council practice of asking for Section 173 agreements to enforce various aspects of operation, including maintenance of landscaping, waste management and opening hours for public toilets adds unnecessary legal costs and can result in project delays. We respectfully suggest a stronger penalty system for non-compliance for all developments (new and existing) would remove the need for councils to put these requirements into planning permits.

As a major property developer, we have found each council and sometimes individual planners have different ways of processing a planning permit, identifying the issues and then writing the mandatory conditions. Often, the scope of the permit is extended beyond the use of the land in question to cover matters such as how the use is to be built which is a Building Code of Australia (BCA) and compliance matter for the certifier/building surveyor. Accordingly, we believe there is significant opportunity for a National or even State Authority to define more stringent guidelines parameters or a standard proforma so that councils have an exact framework to work within and importantly, so that businesses that operate in multiple locations can expect a level of consistency in their approval process. We note that the Victorian Government seems to do this better than most States through its use of a standard approval format.

There are also opportunities for local councils to improve the level of engagement and consultation before property development applications are submitted and throughout the assessment process. For example, some councils encourage a pre-lodgment meeting whilst others may refuse to discuss the proposed project until an application is submitted. We consider pre-lodgment meetings to be most helpful and a best practice approach to ensure that applicant meet the application criteria, understand timing etc and has all the information required before submitting. Where the value of a project can go into the multi-million dollars, a pre-lodgment meeting is an important step in the process that can ultimately save the local government and applicant significant time and money.

There is also opportunity for improvements to the assessment period for planning permits. Often the planning application is stalled while a council planning officer reviews once aspect, before going to the next step in a somewhat linear process. Unfortunately, this has meant that the process to obtain a planning approval can often take longer than the rest of the design.

We believe authority referrals should also be allowed to be requested by the applicant, so that they are simultaneous with the council's internal review, reducing the workload for council planning and allowing the applicant to resource the task to meet their own development objectives. In these cases, responses could still be sent to council, but copied to the applicant or could be received prior to the application being lodged with council so that they are accessible to the council with the application.

In addition, we submit that councils should be encouraged to follow applicable Australian Standards. In many current applications, planning permit conditions are drafted to reflect what the planner believes is a good idea, however, it often contravenes the Australian Standard (e.g. where councils go beyond the EPA parameters). To this end, there is scope for guidelines to be developed for councils on the detail

and structure of conditions to help address the inconsistencies and differences in priorities (e.g. some councils will write a page on landscaping, a few lines on carparking and another council the opposite). We suggest a standard "writing format" and standards for content could be developed so that each council writes a particular condition in a planning permit in a similar way so to avoid double ups and inconsistencies.

In summary, it is important that applicants (and major tenants) of new sites are fully engaged in the assessment process so potential issues can be openly discussed before assessment approval – otherwise there may be conditions imposed that have unintended consequences that are very difficult to change later on.

**Liquor**

In Victoria, new laws came into effect in April 2011 that require a planning permit for a packaged liquor licence. Whilst the Victorian Department of Planning and Community Development issued a practice note for councils which suggested councils should consider 500m radius of proposed sites for cumulative and cluster impact assessments, we have seen many inconsistencies in application. One council has determined that a 500m for one application is insufficient and is considering a 2km radius and some councils are requiring applications to be advertised while others do not. There are also differences in the level of social impact assessments required with some councils requiring complex demographic information and others not requiring it at all. The impact of these inconsistencies is that it makes it difficult to anticipate time frames and our business may end up paying holding rent whilst a council deliberates on the application.

**Car parking**

There are significant differences in the way in which car parking is enforced between councils. For example, time limits are enforced indiscriminately which means some customers are compelled to shorten their shopping trips to avoid penalties which impacts on retail businesses. If councils applied appropriate resources they could implement systems to identify wrongdoers (i.e. parkers who are not shoppers occupying customer car parks). Using an appropriate measure of discretion to ensure that penalties are applied only where there is evidence of persistent wrongdoing they might achieve the desired behavioural change.

**Shopping trolley management**

More recently, a number of councils have created shopping trolley local laws in an effort to address trolley abandonment. Whilst we do not object to this in principle, we note that certain councils are mandating one form of containment system only (e.g. coin locks) which is not a customer friendly solution nor welcomed by many elderly customers or parents. We submit there should be flexibility in the local laws to allow for new technologies (such as wheel lock systems) to be installed that would benefit consumers. There also needs to be a more consistent approach in terms of enforcement because approaches and fees can vary significantly. Our business would like to work more closely with councils to better identify any trolley hot spots so that we can adjust our trolley management plans to ensure timely collection.

Notwithstanding, we are pleased that a number of councils are effectively using our 1800 TROLLEY (1800 876 553) number and **1800Trolley@coles.com.au** to report any abandoned shopping trolleys and working closely with us to address this community issue.

We note that some councils have reported significant improvements where they have worked collectively with retailers and other stakeholders on trolley management issues, thus reducing the burden on local councils (e.g. Blacktown NSW).

**Trading Hours**

Australia's shop trading hours vary between States and local government can also impose their own trading hour restrictions on business. We consider Victoria and Tasmania to be the best practice approach where trading hours have largely been deregulated and shops open according to customer demand and local need.

In New South Wales the State Government has effectively deregulated hours except for some public holidays. Despite this, councils can impose restrictions that do not cater for changing consumer patterns. Additionally, other legislation in NSW allows local restrictions on trading hours including the New south Wales Environmental Planning and Assessment Act 1979 (the EPA Act) and the Liquor Act. The EPA Act allows local council to limit trading in the planning regime.

In Western Australia there has not been Sunday trading historically except for a couple of stores that aren't above the 26$^{th}$ parallel which is un-regulated. Metro sites have been given delivery vehicle curfews and restrictions that prohibit or imply prohibition to stores on Sunday's. With the political indications suggesting that Sunday trade may be allowed at the next election in 2013, it would be most useful if there could be harmonising of processes for enabling the same/similar delivery provisions as for the other six days of the week. Sundays are generally an hour or two later in the am, but deliveries are also less. Currently, where exceptions have been allowed, loads have to be delivered by the distribution centre later at night which in itself creates curfew issues, so as not to be in direct breach on Sunday trade. During seasonal peaks in trading this creates substantial inefficiencies in logistics and labour costs. Even a simplified way of allowing councils to issue short term exemptions during seasonal peaks (within reasonable limits) would bring welcome flexibility.

As a national retailer, we firmly believe trading hour uniformity would significantly reduce business cost at several levels, operational, administrative and logistical and most importantly benefit consumers.

**Opportunities for improvement**

In conclusion, there are many opportunities to achieve greater uniformity of local government regulation and interpretation through more regular meetings and engagement with industry.

We are aware that the New South Wales Food Authority has an industry working group that meets three times a year – including regulators, local council EHOs, businesses, not-for-profit organisations (such as school canteens association) etc. We consider this approach to be best practice because it allows all parties to ask questions, raise issues and address inconsistencies which could potentially be adopted at a local government level.

There may be opportunities to improve the consistency in interpretation by providing an update of new concepts to appropriate State Authorities – allow concerns/objections to be resolved before rolling out; then local government representatives would only have to check that the procedures agreed are being followed at store level. This would benefit councils and business by reducing the time spent educating individual EHO's and decrease the time required during an inspection for stores and the EHO.

Yours faithfully

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