25 March 2008

Regulatory Burdens: manufacturing, wholesale and retail
Productivity Commission
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Dear Commissioner

Thank you for the opportunity to provide a submission on the Productivity Commission's (the Commission) Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades issues paper.

This submission is made on behalf of Coles supermarkets, incorporating Bi-Lo supermarkets, Coles Express and Coles Liquor incorporating 1st Choice, Liquorland, Vintage Cellars and Coles hotels. Coles is a national retailer that operates more than 2,100 stores across all states and territories of Australia.

Coles understands the aim of the issues paper is to seek stakeholder views on areas of regulation that are overly burdensome and costly on the manufacturing and distributive trades, as part of the Commission's ongoing annual regulatory reviews. Coles supports fully the Commission's work in investigating regulatory burden on business and supports every effort made to simplify compliance and reduce cost and unnecessary burden on business.

In Coles' view, our primary concern is in relation to the cost and burden that is associated with inconsistencies between state and territories in creating and enforcing legislation. As a national retailer, legislative inconsistency between jurisdictions affects a broad range of areas in which we operate including food, liquor, tobacco, gaming and also impacts on other operational issues including trading hours and occupational health and safety requirements. We have addressed some of these inconsistencies below:

Food

To demonstrate inconsistencies in food regulations and the impact and impost this has on business, we attach Coles' submission to the Bethwaite Review, the Federal Government's Review of Food Regulation that was submitted in February 2007. We note that, to date, there has not been a draft report or any further information forthcoming from the Federal Government in relation to this review.

We have also attached Coles' submission to the Victorian Competition and Efficiency Commission in May 2007, Simplifying the Menu: Food Regulation in Victoria Draft Report. It is Coles' view that the draft recommendations outlined in that Report would benefit consumers, food businesses and governments through increased community awareness about safe food practices and a more flexible and simple food regulatory framework in Victoria.

Furthermore, given the diversity of the products we sell and our extensive supply chain

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network, there are a large number of agricultural regulations that impact on our business including quarantine and agricultural and veterinary chemical regulations. Coles last year made the following comments about the current regulatory framework in a submission to the Annual Review of Regulatory Burdens on Business – Primary Sector:

Simplifying Australian Legislation

The primary production standards being developed for inclusion into Chapter 4 of the Australia New Zealand Food Standards Code should reduce the need for complex regulations or guidelines to be developed by individual states. For example, the Primary Production Standard for Eggs & Egg Production (Proposal P301) is being developed for inclusion into the Food Standards Code, however, Safe Food Queensland (SFQ) has just released an extremely prescriptive (31 page) guideline for egg production within that state. The Egg Food Safety Workbook Guide to Food Safety and Quality has also been developed for Queensland commercial egg suppliers and may be used by regulators within Queensland as a minimum requirement for egg production. This guideline is outside the intent of modern 'outcome based' Australian legislation and may, by its prescriptive and state-based nature, introduce greater complexity for national retailers which could lead to an increase in the price of egg and egg products for consumers.

Auditing Burden Reduction

The current legislative environment requires food businesses and food regulators to demonstrate due diligence in regard to food safety matters. This has lead to a significant increase in the audit activities of manufacturers and retailers through approved supplier audits and regulatory compliance audits. We recommend that in order to minimise this burden, regulators and food businesses consider recognising that food safety due diligence requirements are already met by the food safety component of third party audits presently carried out on food businesses. These third party audits operate to globally recognised standards such as British Retail Consortium (BRC) Standard, SQF and Freshcare.

Tobacco

Each state has different requirements in place that affect the sale, promotion and supply of tobacco products. 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.

Coles' view is that inconsistencies that exist in current jurisdiction-based legislation should be addressed as a matter of urgency in order to reduce the regulatory compliance burden on national retailers. These inconsistencies include:

- the different size restrictions for retail tobacco displays (e.g. VIC is 4sqm, QLD is 1sqm)

- 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)

- different definitions of a tobacco product (i.e. some states classify papers, filters etc as a tobacco product and other jurisdictions do not)

- different graphic and text health warning signage requirements (Tasmania 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, SA requires an A3 graphic health sign for displays with an area of over one and up to three sqm, but an A4 sign for displays less than 1sqm)

- different forms of acceptable proof of age documents (e.g. no mutual recognition of state proof of age cards)

- 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)

- different size requirements for tobacco price boards/signs (e.g. Vic is 1.5mX1.5m, NSW is 2,000 sqcm, QLD is 0.5 sqm, WA & ACT is 1sqm etc) and for lettering on price boards/signs (e.g Vic is 2.1cm x 1.5cm, SA is 20mm, WA is 1cm, Tasmania is 2cm, NSW is 2.0cm x 1.5cm)

- different training requirements (e.g. Vic requires training every six months)

- different treatment of loyalty schemes (e.g. QLD banned in 2005, SA is banning in June 2008)

- different classifications of a tobacco advertisement and promotions (e.g. some states permit and other prohibit the use of special flags such as "was"/"now" etc).

- interpretation of the regulations (eg. NSW has suggested that Nicotine Replacement Therapy products should not be in the service kiosk)

- different penalty provisions for breaches (e.g penalties in WA is $10,000)

- different requirements for point of sale (e.g. one register only in ACT)

- different licensing requirements (e.g. WA, SA, Tasmania and ACT)

- different point of sale display requirements (e.g. cartons, number of packet facings etc. We note that SA introduced a new law in November 2007 that prohibits larger shops from displaying tobacco products, yet there is no restriction on smaller shops, placing larger shops at a commercial disadvantage)

To address these inconsistencies, Coles proposes that the Ministerial Council on Drug Strategy needs to agree to a nationally consistent and uniform approach to tobacco

legislation (e.g. national definition of tobacco product, price ticket/board size and font style requirements, display restrictions, signage etc).

Liquor and Gaming

There are complex liquor licensing requirements in each jurisdiction, some overly burdensome and inefficient. For example, NSW currently has one of the most complex liquor licensing approval systems in Australia. This process requires applicants to lodge either a Category A Social Impact Assessment (SIA) or Category B SIA with the Liquor Administration Board in order for a liquor licence to be granted. We note that the SIA system is expected to be replaced with a Community Impact Statement in the later half of this year however there will be no change to the two-tiered approval system.

Each state also currently has different requirements for Responsible Service of Alcohol (RSA) training and, with the exception of Western Australia, do not recognise RSA training that is completed in another state. Team members who work in liquor stores near state borders for example, Albury and Wodonga, are required to complete RSA training in both NSW and Victoria.

Each state also has different requirements in terms of signage with NSW having the most onerous requirements. Some signage is not relevant because it is specifically targeted at on-premise consumption yet must be displayed in liquor stores in order to comply with the law.

To address the impact overly burdensome and inconsistent relation has on our business, Coles' would like to see:

- mutual recognition of each state/territories Responsible Service of Alcohol/Gaming training
- consistent Responsible Service of Alcohol/Gaming signage for each state and territory.
- the introduction of a simple, cost effective and easy to implement licensing process such as a common public interest test applied across all jurisdictions (eg similar to QLD test).
- a requirement for states to provide clear timeframes for decisions and/or notifications relating to the status of liquor licensing applications

Further areas for consideration

Occupational Health & Safety

The safety of employees is an increasingly important societal expectation in Australia. Company Directors, managers, employees, staff associations and the public expect that during the course of employment, employees will not be injured. Where injuries do occur, the expectation is that the injured are rehabilitated, compensated appropriately and the cause of the injury is prevented from reoccurring.

Employers also realise that there are staff morale, productivity, and efficiency gains to be

made in preventing injury and having a system of rehabilitation and compensation regime that is efficient and effective. It is in this context that the regulatory regimes in occupational health and safety and workers compensation are seen as unnecessary and inefficient.

Because Coles operates in each State and Territory of Australia, we are required to comply with the Occupational Health and Safety Acts in each jurisdiction. We are also a self-insurer for workers' compensation under each of the State and Territory Self Insurer schemes.

Coles is strongly of the view that it is important to have a uniformity of Occupational Health & Safety (OH&S) and Workers' Compensation (WC) systems. In practical terms the most effective solution to achieve this outcome is likely to be a single regulator.

The basic assumption is that all the occupational health and safety regimes are intended to achieve three principal objectives:

- to **prevent** the occurrence of work-related injury;
- to provide for the **rehabilitation** of injured workers, and
- to **compensate** workers where injury does occur.

Indeed these objectives are common to all OH&S regulatory regimes currently established in Australia, although there are inevitably significant differences in matters of detail and emphasis.

For employers with staff in a number of States and Territories, the lack of consistency in State jurisdictions results in duplication of costs, wasted resources, difficulties in benchmarking and an unnecessary financial burden.

Coles' experience supports the findings of other organisations, that for companies operating across State boundaries, being subject to the provisions of separate State OH&S and WC arrangements is less efficient than a nationally uniform system. Some of the specific examples of difficulties that may arise for Coles operating OH&S and WC under eight separate arrangements are:

- Workplace arrangements differ markedly in each jurisdiction. Differing Consultative arrangements, election of Health and Safety Representatives (HSR), HSR training requirements.
- In the area of OH&S, the adoption of slightly different definitions for hazards result in inconsistency, duplication and cost, without reducing the risk of injury. The following hazards are examples where NSW differs from other States making it inefficient for employers to comply:
    - working at heights
    - asbestos management
    - working in confined spaces
    - plant licensing certification and registration
    - electrical safety requirements
    - indoor air quality requirements

- legionella reporting and management standards

- Entry into confined spaces is an example of each jurisdiction seeming to adopt a common standard yet in practice employers having to develop separate procedures and processes. The States have adopted a Confined Spaces definition based on the Australian Standard 2865 - 1995. However, a number of jurisdictions have modified the definition and the supporting documentation in their regulations.

- Each jurisdiction has differing requirements regulating the way return-to-work providers must operate, leading to confusion regarding differing forms, procedures and medical providers' understanding.

- A further consideration is that for those States that allow self-insurers to outsource claims management, there is a shortfall in the number of national claims managers who are accredited in each State / Territory jurisdiction. As a result a national company would be required to have different claims managers in various States.

- There are also numerous differences in the workers compensation area that increases the burden by simply requiring a national employer to adopt differing approaches in the State which they operate. A few examples are, compensation payments leads to unnecessary complexity and duplication of workers comp and payroll systems; differing definitions (worker), differing approaches to what is compensated (journeys and weekly maintenance vs lump sum); and differing approaches to data submission.

For some time the current failings have been recognised. Together with the outcomes of committees and inquiries at various levels, attempts have been made to improve matters by the establishment of consistent national legislation, developing mutual acceptance of the need for continuous improvement.

While the need for more consistent policy and procedure across jurisdictions seems to be widely accepted, there exist bureaucratic barriers to changes at an operational level. For example, the outcome of protecting employees from the effects of exposure to asbestos is common, but the process differs between NSW and other states.

Any legislation that seeks to encourage improvements at the operational level needs to be practical and cost effective, however, the inefficiencies are not solely the product of legislation. The adoption of different practices within the framework of legislation is also a major cause of inefficiency. In the main these differing practices arise due to emphasis placed by the regulator on specific agenda items. It is not uncommon for a local regulator to issue a requirement or licence condition to achieve its own interpretation of the intent of the legislation.

The usual response of "harmonization" and other various previous attempts to use common understandings or requirements as a response to this issue has not and cannot work. This is due to the obvious and inherent self interest forces between the States. An example is the Self Insurance National Audit Tool which was intended to standardise an area of considerable difference between States, however is being interpreted inconsistently across jurisdictions, thus the administrative burden for national self-insurers has not changed while the required level of compliance has increased.

Ultimately, the most appropriate manner to achieve efficiencies is to have a national approach and uniformity must be a primary aim. In practical terms a national Regulator is seen as a potential solution. The current situation of differing state legislation and regulation in OH&S and WC is at odds with the process applied in areas of immigration, customs, work place relations, family law and the Corporations Act.

There are many benefits associated with a national uniform approach to OH&S and workers' compensation. One safety regime ensures that accountabilities and work practices do not change irrespective of where employees work within Australia and one set of workers' compensation obligations allows for ease of understanding, equity and consistency of benefits i.e. one definition of "employee" and "injury / disease".

For the employer, one set of training, as distinct from eight (for each State and Territory), one set of rules to administer, a single regulator to deal with and the ability to consult at a national level, allows it to operate as a truly national company. Each having differing Construction Induction Training is a case in point.

Economies of scale in the number of resources and costs required to administer against one jurisdiction, ie in the areas of reporting, auditing, safety activity, claims management services and licensing and prudential costs provide for speedier implementation of initiatives throughout the organisation and continuous improvement of safe work practices.

Moreover, there are efficiencies with across border issues such as easier staff movement between States when required during peak workloads, without any variation to staff incident notification requirements, inductions, training and benefits. Overall for the employer there is more chance of safety being a success within the company, i.e. reduction in number of lost time injuries.

Reduced administrative and regulatory costs result in maintaining lower costs to customers; whilst for the shareholders there are reduced administrative and regulatory costs for the same benefits.

Organisations in each jurisdiction vary in size, industry risk profile and safety performance. From a national consistency perspective the criteria most suitable to evaluate is the safety performance of the organisation.

The Victorian Safety Map is a good example of a single model that evaluates safety performance and is inclusive of all organisations in the workplace. Depending on the organisation's ability to demonstrate performance in prevention of workplace injury they should be able to achieve a level in the model. Organisations are assigned to the appropriate level and enjoy degrees of autonomy or intervention from the regulator based on safety performance.

Similarly with workers' compensation there should be a national framework with uniformity. Organisations wishing to self-insure should be able to do so based on their financial and prudential capabilities, rather than by the number of staff employed.

As previously demonstrated, a national approach to OH&S and WC would result in many benefits for employees by reducing complexity, duplication and wasted resources for employers and allowing them to focus on achieving the objectives of their OH&S regimes. Any alternative other than a national approach would have an adverse effect on business.

Trading hours

Australia's shop trading hours are governed by State Governments and have resulted in rules that vary from state to state; the only exception being general consistency between Victoria, Tasmania, NT and the ACT.

Despite significant reforms in most states over the last decade, Western Australia still prohibits Sunday trading by shops employing more than 10 people. That state still has a patchwork of rules that are difficult for consumers and retailers to understand. For example they:

- Prohibit trade after 6pm on all but one weeknight for shops employing more than 10 people
- Prohibit Sunday trade in metropolitan Perth by shops employing more than 10 people, but
- Permit Sunday trade in the Perth CBD and Fremantle
- Permit Sunday trade above the 26th parallel and in some country towns
- Allow hotel bottle shops to trade on Sundays.

In NSW which was the first State to permit Sunday trade there are still 50 regions that require permission to trade on Public Holidays and on Sundays necessitating an annual ritual of the State Government deciding who can trade on which public holiday. Trading hours legislation was recently reviewed and a Government announcement is expected soon.

In Queensland, trading hours are determined by the Queensland Industrial Relations Commission that hold legalistic, extensive hearings often necessitating interstate or international trips by the Commissioners and their entourage to view Sunday trading activity. That the South East of Queensland now enjoys widespread Sunday trade was only possible because the State Government overrode a much more limiting decision by the QIRC. There are still numerous regions that do not yet permit Sunday trading such as Toowoomba and Ipswich.

In Victoria, Tasmania, ACT and the NT, where the opening hours have largely been deregulated, shops open according to customer demand and local need rather than according to rules determined by legislators in decades past.

Thank you again for the opportunity to respond to the issues paper.

Yours sincerely

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