Woolworths Limited

Response to Issues Paper

Productivity Commission Annual Review of Regulatory Burdens on Business - Manufacturing and Distributive Trades

April 2008

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Productivity Commission Annual Review of Regulatory Burdens on Business - Manufacturing and Distributive Trades

Woolworths Limited: Response to Issues Paper

1. Introduction

This is a submission on behalf of Woolworths Limited (**Woolworths**) in response to the Productivity Commission Issues Paper for its Annual Review of Regulatory Burdens on Business - Manufacturing and Distributive Trades.

Woolworths is made up of some of the most recognisable and trusted brands in retailing, serving millions of customers every day with great choice, low prices and excellent quality. As a group across Australia and New Zealand Woolworths Limited has more than 3000 stores and 180,000 employees. Our retailing expertise stretches across food & grocery, liquor, petrol, general merchandise and consumer electronics.

As a national retailer, Woolworths is subject to a myriad of Commonwealth and state regulations. Woolworths is of course committed to complying with all applicable laws and works hard to ensure that our people, processes and systems support strong compliance in delivering the goods and services to our customers every day. Unfortunately, many of those regulations overlap and in some instances there are inconsistencies between Commonwealth regulation and that of the States and Territories, and some regulations that are uniform in their terms are enforced or interpreted inconsistently between Commonwealth and state regulators. Other Commonwealth regulations appear to impose significant burdens which do not appear to be outweighed by the policy objectives sought to be achieved by that regulation.

This submission sets out the nature of the regulatory burdens faced by Woolworths and the costs associated with regulatory compliance in three areas:

(a) costs as a result of the inconsistencies between the Commonwealth regulation and that of the States and Territories in which Woolworths operates (and potential costs if the Commonwealth introduces regulation in areas which are presently regulated by the States and Territories);

(b) costs of onerous Commonwealth regulation; and

(c) costs as a result of the inconsistent application and enforcement of nationally uniform regulation by regulators in different jurisdictions in Australia.

Woolworths is aware of Professor Stephen Corones and Professor Sharon Christensen's Consultancy Report for the Productivity Commission in relation to its separate Review of Australia's Consumer Policy Framework. The authors have given a clear description of the inconsistencies between the state and federal regimes. There seems little doubt that Australia's consumer policy framework would benefit from reform.

2. Inconsistent Regulation

2.1 Examples of inconsistent regulation

It is Woolworths' experience that Commonwealth and state regulation of certain specific retailing, manufacturing and distributive activities has different and at times inconsistent requirements. While some form of regulation of these activities is generally warranted, no apparent consumer benefit arises from imposing different regulatory requirements in different jurisdictions in respect of activities that are common across the country.

Inconsistencies in regulations between the jurisdictions result in additional compliance burdens and costs for national operators such as Woolworths. Those costs are consequently passed on to consumers in the form of higher prices.

Examples of areas in which inconsistent legislation operates (or potentially operates) at the Commonwealth level and across and various States and Territories of Australia include:

- Product safety regulations;
- Chemicals;
- Goods transportation and load limitations regulations;
- Workers compensation regulations;
- Container deposit regulations;
- Corporate registration regulations; and
- Liquor licensing and staff training regulations.

2.2 Examples of Costs of Compliance with Non-Uniform Regulation

Where different regulatory regimes exist at the Commonwealth level and in the States and Territories with respect to substantially the same activity, significant advice and expertise is required in order to interpret and apply those regulations to the activities of a national operator such as Woolworths. While Woolworths recognises that advice and compliance costs are a necessary part of doing business, those costs would be reduced if uniform regulation applied in relation to specific regulated activities, regardless of the state or territory in which those activities take place.

Compliance is a particular area where increased costs arise from the existence of inconsistent regulation between the Commonwealth and States/Territories. Woolworths operates nationally and has in place national compliance policies and systems. It seeks to ensure its national compliance policies and systems with respect to activities that are subject to different regulation satisfy the regulatory requirements of the Commonwealth and of each State and Territory in which it operates. In general terms, it does so by incorporating the most stringent elements of each regulatory regime across all jurisdictions. This means that Woolworths complies with a higher standard than is required in the States and Territories with less stringent regulatory regimes for particular regulated areas, creating inefficiencies and ultimately increasing the cost to the end user of affected products. Retailers wholly operating in a single state have an advantage over retailers operating nationally or in more than one state as the retailer operating in a single state must only satisfy one set of standards, which might be less onerous than those in other States. If Woolworths were to establish separate compliance policies and systems for Woolworths' operations in each State and Territory, such an approach would restrict the ability of Woolworths to operate uniformly across the country, and would reverse national supply chain efficiencies Woolworths has achieved over 5 years (at an investment cost of several hundred millions of dollars) and thus result in significantly higher prices.

The complexities arising from differing regulations also affect Woolworths' overseas operations. For example, Woolworths recently established a buying office in Hong Kong. Woolworths found it necessary to employ an additional person in that office specifically to interpret Australian regulatory legislation for manufacturers in China which supply Woolworths nationally (and hence must conform to the regulations of the Commonwealth and each of the States and Territories in which Woolworths operates).

Examples of the sorts of costs that arise from inconsistencies between Commonwealth and State/Territory regulations include:

(a) *Product Safety Regulations*: Currently, there is the potential for different product safety regulations to apply to the same product across the Australian States and Territories. At the Commonwealth level, products must comply with mandatory standards under the Trade Practices Act 1974 (Cth) and banning orders made under that Act. The States and Territories also have in place similar regulation. A consequence is that some products can be sold in some jurisdictions but not in others. It has been Woolworths' experience that on occasion, products have been banned in one or more states or territories, but not in all States and Territories and not at the Commonwealth level. For example, inflatable novelties that contain polystyrene beads were banned in NSW and Tasmania but were permitted to be sold in other States and Territories. For example, ring caps for toy guns are restricted from sale in Tasmania but can be sold in all other states. Similarly, sales of push-bikes are different in each State due to different Risk & Safety Legislation.

As a national retailer, Woolworths is burdened by having to ensure that products comply with the Commonwealth regulations and regulations in place in each State and Territory in which it operates. This either requires Woolworths to ensure that all products are produced to meet the standards imposed by the jurisdiction with the most stringent regulations and that it only sells products that meet the most stringent requirements. The alternative is to separately assess each product against the regulations of each jurisdiction or to simply not sell the product in any state because the restrictions required by one state may render it uneconomical to do so. In either case, the costs of compliance are higher than they would be if nationally uniform regulations were put in place.

(b) *Chemicals.* Chemicals fall into one or more of six legal categories. The four principal categories are:

- industrial chemicals, administered by the Office of Chemical Safety incorporating the National Industrial Chemicals Notification & Assessment Scheme (within the Department of Health and Aging). These products include chemicals used in household products (cleaning products, paint), consumer products (cosmetics and toiletries), laboratory chemicals and in manufacturing (dyes, solvents, adhesives, plastics).

- agricultural and veterinary chemicals, under the jurisdiction of the Australian Pesticides & Medicines Authority (within the Department of Agriculture Fisheries and Forestry). These products include animal medicines, pesticides and herbicides and include pool chemicals.

- medicines and medical devices for human use administered by the Therapeutic Goods Administration (within the Department of Health and Aging). Such products include some sterilants, disinfectants, and OTC medicines.

- food additives, contaminants and natural toxicants regulated by Food Standards Australia New Zealand (within the Department of Health and Aging). These chemicals include colourings, flavouring, antioxidants and other chemicals which may be present in foods (eg antibiotics in meat products).

Woolworths needs to be cognisant of the regulatory environment relating to each of these categories. The characterisation of products - for example, of cosmetics as

industrial chemicals and pool chlorine as an agricultural/veterinary chemical - is not always self evident. The multiplicity of regulators is clear.

Depending upon their nature, chemicals may also be a poison and/or dangerous good. Each State and Territory has separate Poisons legislation and imposes requirements relating to their manufacture, distribution, possession, recording, reporting and storage. There are some differences in these requirements between jurisdictions, but generally a similar approach is adopted based upon the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP). Regulations also exist in all States relating to the storage, handling and transport of dangerous goods. While these requirements have been standardised, their relationship with other pieces of state legislation also needs to be considered.

(c) *Goods Transportation and Load Limitations Regulations*: Currently, each State and Territory has different regulations relating to load requirements and driver fatigue. While the National Transport Commission is endeavouring to introduce uniform model legislation, that has not yet been adopted by all States and Territories. As a national operator, Woolworths transports products from warehouses located in one State to locations in another State, over a distance in which it may be subject to two or more jurisdictions' regulations. For example, Big W logistics ships some products from its warehouses in Queensland or South Australia to some locations in Western Australia. As a result of these differences between the requirements in the States and Territories, Woolworths and other national operators are faced with onerous and costly requirements to ensure its vehicles comply with the jurisdiction that imposes the highest standards in order for the vehicles to transport products across jurisdictional boundaries. While these inconsistencies impose high burdens, there does not appear to be any policy reason justifying the differences in load requirements and driver fatigue regulation in each jurisdiction.

(d) *Workers Compensation Regulations*: Numerous inconsistencies exist across State, Territory and Commonwealth Workers Compensation Legislation. Woolworths, as a national operator, must comply with each of the regulations in the States and Territories in which it operates, which is costly and time consuming. Further details of the regulatory burdens relating to workers compensation legislation and the associated costs of compliance are detailed in Woolworths' submission to the Department of Education, Employment and Workplace Relation’s Comcare Review (see attached document).

(e) *Liquor Licensing and Staff Training Regulations*: Appendix B to the Issues Paper identifies hours on certain liquor products being sold; compulsory codes of conduct and lack of national consistency as issues raised in submissions to the Regulation Taskforce during 2005. Woolworths considers that this issue remains of concern.

Training competency requirements are inconsistent between States for staff to work with and sell Liquor. As a national retailer, Woolworths is affected by the restrictions that these regulatory inconsistencies impose on the transferability of staff between Woolworths stores in different States since staff must be retrained to work in another State. This is of particular concern in relation to stores located near State and Territory borders.

In addition, Federal intervention in liquor sales in the Northern Territory has very prescriptive requirements which are difficult and costly to comply with.

(f) *Container Deposit Regulations:* Container Deposit Legislation currently operates only in South Australia. The Commonwealth or other States and Territories are considering similar legislation, the requirements of that legislation, in particular the container deposit amount, should be consistent across Australia.

(g) *Corporate Registration Regulations:* Appendix B to the Issues Paper identifies "lack of uniformity in respect of business names and company registration" as issues raised in submissions to the Regulation Taskforce during 2005. Woolworths considers that this issue remains a concern.

South Australian regulations require companies operating in South Australia to be registered and to have a head office address in South Australia. As a result, Woolworths must be registered as Woolworths SA Limited and maintain a Head Office address in South Australia in addition to being registered generally as Woolworths Limited and maintaining a head office address in New South Wales for its operations in the other Australian States and Territories. This creates unnecessary additional costs.

2.3 Regulatory Burdens Arising from Commonwealth Regulation

There are some Commonwealth regulations which appear to impose significant burdens and which do not appear to be outweighed by the policy objectives sought to be achieved by that regulation. Ensuring compliance with these regulations has proved onerous and costly. Examples include:

(a) *Non-tariff trade barriers and quarantine regulations:* Non-tariff trade barriers and quarantine regulations create significant regulatory burdens, particularly with regard to the importation of certain products and foods. Woolworths submits that the Commonwealth food quarantine regulations should be reviewed to ensure that restrictions are only imposed where the burden is justified by the level of risk the regulation is seeking to address.

(b) *Compliance with national and international standards:* Additional burdens on retailers exist where companies seek to comply with both international and national standards. In areas where regulation applies uniformly across Australia, it is important that this nationally uniform legislation takes into account equivalent international legislation. For example, an Australian Standard is enforceable by law for the testing of toxicity in toys. However, there is also an ISO equivalent standard and testing is conducted internationally to this standard. The ISO Standard is not recognised in Australia. This means that costs are incurred by companies for duplicate testing and compliance. Accordingly, to avoid this duplication, satisfactory results from international testing should be recognised by Australian regulations as exempt from re-testing nationally.

(c) *GST:* The complexities of GST legislation have led to inconsistent interpretation (and hence application) of those laws by the ATO, creating uncertainty and additional costs of compliance. The GST legislation is extremely complex and because it was designed for a paper based transaction environment, it imposes additional costs of compliance on business. In addition, the legislation creates conflict as businesses move to an electronic transaction environment. Woolworths has expressed its concerns in a submission addressed to the previous Government on possible improvements to the administration of the tax, but has not yet seen any noticeable change. A copy of that submission addressed to the Minister for Revenue and the Assistant Treasurer is attached.

2.4 Need for Uniform Application and Enforcement of Regulations

Where national laws regulate businesses across all Australian jurisdictions, it is important that the relevant legislation is applied and enforced uniformly and consistently.

In Woolworths' experience, even where regulation is uniform or close to uniform, regulatory implementation and interpretation differ significantly. This raises similar costs to the costs arising from non-uniform regulatory legislation.

Examples are as follows:

(a) *Country of origin labelling for unpackaged products* - In late 2005 amendments were gazetted to the Food Standards Code expanding the range of unpackaged product subject to Country of Origin labelling requirements, and requiring that the country of origin be named. In reviewing this proposal, the legitimate concerns of industry regarding font size were given little weight by FSANZ, meaning that an application to amend the provisions Food Standards Code to reduce the required font size was necessary. Now there are two different font sizes required for unpackaged food – 9mm for fresh Produce and nuts and 5mm for unpackaged food sold from a refrigerated a display case which represents an unnecessary burden on business. The requirements that the country of origin be named is unnecessarily burdensome given that the same object could be achieved by requiring businesses to label the product as either "Australian" or "Imported" as the case may be. This would avoid compliance costs associated with changing labels where product is sourced from multiple countries.

Woolworths estimates that the costs of implementing the changes and seeking an amendment to the Food Standards Code was $1.05M.

(b) *Food Standards Code:* Although the Food Standards Code has been adopted by all States and Territories, responsibility for enforcement generally lies with the States and Local Government, meaning that there are hundreds of agencies involved in the enforcement and administration of the Food Standards Code .

Some jurisdictions are not enforcing the country of origin labelling requirements. Non-enforcement creates difficulties for Woolworths because considerable time, effort and costs have been incurred in all Supermarkets to ensure national standards compliance however, other smaller fresh food businesses or independently owned supermarkets often do not comply, which gives these businesses an unfair competitive advantage.

(c) *Food premises and assistance animals* - under the Food Standards Code animals are not permitted in food handling areas. There is an exception for "assistance animals" in food handling areas used by customers. However, the definition of "assistance animal" is unclear - it refers to the Disability Discrimination Act 1992, however, the term "assistance animals" is not used in the Disability Discrimination Act 1992.

There is inconsistent interpretation between State authorities and Local Government Environmental Health Officers. There is the potential for people to bring their pets into store and falsely claim that the animal is an "assistance animal". The regulatory burden for businesses such as Woolworths is that if Woolworths allows an animal onto its premises that is not an "assistance animal" Woolworths will contravene the Food Standards Code; if, however, Woolworths refuses entry to a person accompanied by an animal that is a guide dogs, a hearing assistance dog an animal otherwise trained to alleviate the effects of disability then Woolworths may contravene the Disability Discrimination Act 1992.

The definition of "assistance animal" needs to be clear and consistent between the Food Standards Code and the Disability Discrimination Act 1992 so that businesses can comply with their obligations - for example, the animal must be trained, certified and controlled in a harness and solid grip handle rather than a lead.

3. Additional Comments

Woolworths also wishes to bring to the Productivity Commission's attention the following to related materials for its consideration, both of which are attached to this submission:

- Woolworths' comments in relation to the Bethwaite Review regarding how the food regulatory framework could be streamlined and made nationally consistent to improve the competitiveness of the Australian food industry and reduce the regulatory burdens faced by business; and
- Woolworths' comments to the Legal Metrology Branch of the National Measurement Institute in response to the National Trade Measurement System Discussion Paper of December 2007 regarding the need to improve consistency of national trade measurement regulations and reduce regulatory burdens on business.

4. Attachments

1. Submission by Woolworths Limited to the Department of Education, Employment and Workplace Relation’s Comcare review
2. Submission to the Honourable Peter Dutton (GST)
3. Woolworths Submission to Bethwaite Review
4. Woolworths Comments to the National Trade Measurements Discussion Paper

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Submission by Woolworths Limited to the Department of Education, Employment and Workplace Relation's Comcare review.

February 2008

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Executive Summary

Woolworths Limited provides this input to the review of Comcare by making general comments on OH&S and Workers' Compensation legislation in Australia rather than exclusively on the Comcare scheme itself.

Our feedback is summarised below:

- Woolworths Limited is a large and diverse organisation with approximately 150,000 people supporting millions of customers across thousands of locations in Australia alone.
- Woolworths view is that the appeal of the Comcare scheme for those organisations that have applied and those that may be considering it, is that it does not necessarily represent a better scheme but rather offers national consistency.
- Self insurers like Woolworths, have a greater incentive to get safety right as they manage their own financial destiny so it's in their best interests to minimise accidents and injuries.
- The Federal Government should be commended for its election commitment to review workers' compensation and occupational health & safety legislation that would reduce the administrative burden on businesses.
- It would be of greater benefit for all concerned if there was a move to a national framework of consistent legislation, implemented and administered by the states and territories. The benefit is to the workers, the employers and the regulators – more harmony in legislation means more effort and focus on safety performance and claims management and less on administration. Consistency across jurisdictions would further treat all Australians equally and not have the standards of safety or the level of benefits in the event of an injury determined by where the employee happens to live and work.
- There is great opportunity to improve the lives of working people by ensuring that mutually compatible law, regulation, policy and performance measures delivers better outcomes for employees and their employers across the nation.
- Including its overseas operations, Woolworths has over 180,000 staff and operates in a variety of jurisdictional frameworks. Our experience reflects that time spent in 'administering' these different schemes would be far better spent improving safety and claims outcomes.
- The ALP's election policy to harmonise OH&S regulation and workers compensation schemes which aims to "… uphold existing safety standards, while streamlining the different State systems and reducing complexity for employers and employees…" is indeed possible. Commitment, passion and leadership will be required.
- Much has been said over the last few years in the pursuit of harmonisation of OH&S and Workers' Compensation legislation. As the administrative burden on operating a business in Australia increases the need for change is a major imperative; it is incumbent upon the federal government to act now to assist business to improve the safety of all working people.

Woolworths Limited

Woolworths Limited is Australia's leading retail company made up of a number of businesses all providing our customers with quality, range, value and everyday low prices. We're built on a passion for retail, attention to detail, working hard, ensuring the safety of our customers and our people, and having fun.

Woolworths Limited is Australia's largest non-government employer. Woolworths' 150,000 Australian-based employees operate almost 3,000 stores, petrol sites, support offices and distribution centres in Australia and New Zealand, and hotels in Australia.

Some 50,000 of our employees are located in rural and regional areas. We also train more apprentices than any other company in Australia, approximately 5,000.

Our major brands in Australia are Woolworths, Safeway, Caltex/Woolworths petrol, Dick Smith Electronics, PowerHouse, Tandy, BWS, Dan Murphy's and BIG W.

Due to the diverse business mix and large employee base, Woolworths puts a high priority on safety and keeping our staff, customers, vendors and contractors safe.

Woolworths are particularly proud of the frameworks that are in place to ensure that safety and claims matters are visible across the organisation – these include:

- Woolworth's demonstrable governance process involving two way communications from Site to Board level.
- Active Safety Committees in sites where required plus a system for safety management in smaller sites where a specific requirement doesn't exist.
- Area, Regional, Divisional and Corporate Safety Executive Committees to give safety the focus and visibility it needs.
- Recognition programs including our 'heroes' program to recognise the good work of our people, along with CEO Safety Award and CEO Safety Club.
- Surveys of claimants, business units and management by each State / Territory self insurance department to gauge satisfaction and identify issues.

Terms of Reference

Safety & Health

Legislative Requirements

Woolworths operates in all Australian states and territories and complies with eight different sets of legislation. The legislative framework comprises of Acts, Regulations, Codes of Practices, Guidelines, Building Codes, Council Requirements and Australian Standards. Whilst some minor gains have been made in the pursuit of harmonisation to date, consensus has not been achieved and consequently employers have to review, analyse, map out differences and develop systems to deal with each states differences.

Establishment of a Federal OHS Legislative framework will eliminate development efforts across the states and territories and enable the safety standards to be enhanced, rather than comprising of the fragmented research and development effort that currently exists. Efficiencies gained by the regulator can then be re-directed to assist organisations to improve safety performance and injury prevention.

It is worth noting that other federal governments such as that in the United States have made significant strides to assist businesses in harmonisation. Specifically, organisations in the United States can access one set of regulations (Code of Federal Regulations covering 52 different States) available through the OSHA web site to determine the required standard.

If the government were to harmonise the schemes there are some aspects that would need to be reviewed for effectiveness. For example, in NSW, the legislation allows the Union to prosecute employers for safety breaches in the workplace. Whilst there is a role for everyone to enhance safety in the workplace, prosecutions should be applied only by the regulator and not by employees or their representatives. Prosecutions should be undertaken by the regulatory agency (WorkCover) who is independent. It is appropriate that unions are able to raise their concerns with the employer in the first instance and then report the matter to the WorkCover Authority if they are not satisfied with the outcomes. As there is no right of appeal in NSW for OHS Prosecutions it is important for this process to be independent.

Recommendation

i. The Federal Government should develop and implement a consistent framework of OH&S law to be implemented at a national level.
ii. Unions should have the right to be engaged in activities that improve safety but not to prosecute organisations. The Government should review and eliminate their ability to do so.

Requirements for Self- Insurers (National Audit Tool (NAT))

Along with the numerous legislative and regulatory requirements across jurisdictions for all employers, self Insurers must also maintain a Safety & Health Management System that is compliant with the various state Self Insurance Safety & Health OH&S Standards.

To assist with compliance the Heads of Workers Compensation Authorities (HWCA) developed a National Audit Tool (NAT) to standardise the audit approach.

Safety and health professionals aim to integrate safety into everyday operational activities and the establishment of NAT unfortunately does not align to particular standards. In fact it disconnects safety & health from operational imperatives. Instead of focusing on integration, business increase their competency to 'pass' audits rather than improve performance.

Recommendation:

i) The NAT should be realigned with the same sequence of elements and grouping as used in AS/NZS 4801:2001 to avoid unnecessary confusion and additional costs across Australia to improve value and benefit.
ii) Each organisation should be free to use any audit tool that is customised to its own business and operations so long as it is aligned to AS/NZS 4801:2001. Conformance to an acceptable performance standard should be encouraged, as this approach will encourage integration of Safety & Health into existing business processes and operating parameters.

Safety Management Systems are seen as a control tool to manage and regulate self insurers. However, there has been no meaningful research to suggest that Safety Management Systems improve the safety performance of organisations.

Organisations that have demonstrated significant improvements in incident and injury reduction may have done so through commitment from Boards, CEO's and Senior Management who demonstrate safety leadership and through people based safety programs aimed at winning and engaging the hearts and minds of front line staff – none of these elements are reviewed by the NAT.

If the NAT framework is designed to deliver better OHS performance and outcomes, the non self insurers should be similarly regulated. The same high standard should be applied to all large employers if the true intent is to improve safety & health outcomes. As Woolworths bears the cost of its performance, both from a social responsibility and financial perspective, it is in our own interest to continue to drive performance improvements.

Recommendation

i.) The Federal Government should commission an independent review of the effectiveness of Safety & Health Management Systems in reducing injuries. The published findings should also include the critical elements of an effective safety & health management system and include areas such as culture, behavioural safety processes and leadership.

ii) Each state conducts an audit of the National System on a rotating schedule, and use the results nationally for licence renewal. Each state could conduct site based verification audits to validate the results of the National Audit conducted once.

Even though the HWCA have developed and accepted the NAT, they have done so without any meaningful consultation and or agreement from business stakeholders. Woolworths has not found the NAT to have produced benefit and in fact has further complicated the compliance regime to self insurers.

In 2004 Woolworths developed a National Safety & Health Management System and its own National Audit Tool called SEDS (Safety, performance Evaluation and Development System) to measure its performance against the various Self Insurance Requirements. The Woolworths Audit Tool was aligned to AS 4801:2001 and the various Self Insurance requirements. The Woolworths SEDS tool is also mapped to the Safety MAP requirements and NSW Scoring systems to generate reports required by the VWA and the NSW WorkCover Authority.

Woolworths has invested considerable time and resources to develop and maintain its Safety & Health Management System, Audit Tools and Audit Protocols. Despite Woolworths having a National Safety & Health System it has to redirect its safety resources to manage audits completed by the regulators in various states. Each State (except WA, NT) will now conduct its own audit using the NAT Audit Tool with varying audit methodologies, scoring and consequences.

Recommendations:

i) That the NAT should be implemented consistently by all jurisdictions with mutual recognition of audit outcomes across jurisdictions through the development of one Standard, one NAT, one scoring system and one consequence model.

ii) Organisations should be provided with adequate time to conduct a review and make enhancements without consequences for a period of 18-24 months to phase-in the new requirements.

iii) The implementation of extended audit cycles for good performers, supported by self-audit at a set frequency.

iv) The Government should allow each organisation to quantify the impact of the introduction of the NAT and fund the development of system enhancements through the reduction of administration fees for the first period of introduction. Each organisation would bear the cost of implementation within its organisation.

Compensation

Similar to the challenges faced in the area of Occupational Health & Safety, Workers' Compensation legislation is different in the eight States and Territories meaning employers and employees are burdened with complex and inconsistent regulation.

As a self insurer, the requirements of the legislation extend to rehabilitation, claims management and return to work needs to dictating resourcing, financial stability and financial provisioning as terms of self insured licences.

As per Occupational Health & Safety, the goal for workers' compensation should be a nationally consistent scheme with a common approach to the key areas:

- self insurance licence eligibility criteria (e.g. % of subsidiary owned to be eligible for self insurance)
- return to work accreditation (e.g. standard of training / certification required)
- step down provisions / rates (e.g. uniformity of when payment rates decrease over the life of a claim)
- consistency in entitlements – (e.g. journey claims are recognised in some states and not in others).

The target should be national consistency – not necessarily a national scheme. A broadening of eligibility for Comcare or even development of an alternative national scheme is not necessarily the answer. Taking the best of the various State and Territory schemes and developing a national framework is likely to be a more effective and efficient outcome.

The Woolworths business is a people business. As the largest private employer in the nation our interests are best served in preventing injuries to our people. In the event that they are injured then the best result for the employee and the employer is a speedy return to pre-injury duties. Where this is not possible, then a scheme that adequately compensates injured workers, on a consistent basis across the country, is the best outcome.

To achieve this, a genuine review of all schemes, with a focus on outcomes, is essential. This review, done with the active participation of representatives of both self insured and scheme insured employers, employees and their representatives and the various regulatory bodies should be charged with development of a nationally consistent framework.

Any review must also be given a defined period in which to deliver an outcome – failure to achieve this should mean the option for organisations to opt for Comcare (or some other future national scheme) without penalty from State / Territory regulators.

Consultation

Should Woolworths consider making any move away from its current workers' compensation arrangements, consultation would be undertaken with our employees and / or their representatives to gain their input and feedback on occupational health and safety and workers compensation outcomes.

Woolworths does this now – it communicates with, and seeks comment from, employees and / or their representatives (e.g. Shop Distributive and Allied Employees Union) on our Safety & Health Management System and on matters affecting their safety and health.

The same courtesy extended to our employees for providing input into the safety and health systems affecting them in the workplace should be extended to organisations in developing Occupational Health & Safety legislation and Workers Compensation regulation.

An independent review, along the lines of the Finity review conducted last year should occur to determine what constitutes the best system to deliver a balanced benefits scheme.

Finance

There are many reports that one of the key reasons that organisations apply to join the Comcare scheme is that there is a financial benefit. The Comcare option is not necessarily a financially beneficial move – detailed actuarial analysis would be required and may actually reveal an increased cost in some jurisdictions.

The appeal of the scheme to some, regardless of the higher claims costs, is the off-setting benefit of uniform OH&S regulation and one workers compensation scheme. This means significant efficiencies and better safety and claims management for employees and employers.

State scheme administrators apply significant financial pressures on self insurers due to concerns about shrinking premium pools. This assumption is not correct - some analysis conducted in South Australia shows that self insurance is not a threat to premium pools or average premium rates and that the regulators' pressure on self insurers is both misguided and economically unsound.

Some regulators are wary of self insurance generally but with the emergence of Comcare as an alternative, some are applying draconian exit fees arrangements for those considering the shift to the national scheme. This is despite the fact that the financial impact to state schemes is not so much about self insureds moving to Comcare but rather any scheme insured's who may be considering the move – this would be a direct loss of premium from the scheme.

Further, inconsistency in State / Territory regulation means different financial constraints across businesses operating nation wide. This increases the pressure on State Governments to ensure their scheme is performing financially without unduly punishing business and thereby increasing the overall cost of living in those jurisdictions.

Some jurisdictions have extremely onerous requirements in regards to the life of a claim. The financial impact of not having access to commutations in NSW is a penalty on employers and employees alike. For those employees who have reached maximum medical improvement and can't return to the workplace (and indeed may re-injure if they did) there should be an ability to negotiate a way forward in the best interests of the employee and the employer.

Recommendation:

- A review of the financial incentives associated with Occupational Health & Safety and Workers Compensation legislation should examine how they could be used to improve safety and claims outcomes rather than serving as a punitive measure that stifles a productive working relationship between regulators and employers.

Access

There should be no assumption that organisations like Woolworths would want to move to Comcare – it is the complexities of self insuring in multiple jurisdictions that has driven the interest in Comcare – not the scheme itself. The real interest for our organisation is national consistency in the OH&S regulations and workers compensation schemes.

Comcare was established to provide a national scheme for federal public servants. With large numbers of its customers (ie Federal departments and authorities) transferred from public to private ownership structures through the wave of privatisations in the 1980s and 1990s, insureds then became employees of private companies rather than public servants. Comcare has since been seen as an improvised response to the States unwillingness to entertain national consistency or to ease the regulatory and financial disincentives and barriers to self insurance.

All Australians should have access to, and the benefit of, uniform OH&S laws and workers compensation schemes. These laws and regulations should be about delivering better safety outcomes and care of injured workers and not about 'red tape'.

If the findings of this review mean access to Comcare will be restricted, then harmonisation efforts must be accelerated - national consistency (as opposed to a national scheme) is the option that delivers the necessary simplification and efficiency.

Recommendation:

- Should it be determined that access to Comcare is to be restricted, then a genuine alternative, or nationally aligned State / Territory schemes must be offered.
- Should access to Comcare be more widely available, then an organisation that elects this path should not be penalised by way of exit fees by State or Territory regulators.
- Should access to Comcare remain accessible to organisations operating nationally, then the benefits structure and the appeals protocols that currently exist must be reviewed. The uncertainty created for both employees and employers with the current drawn out appeals process is unacceptable.

Conclusions / Observations

The Federal Government is to be congratulated for creating this unique opportunity to make real and lasting change to the way Australia cares for its workers.

Whilst the scope of this review is the Comcare scheme itself, the fact that organisations have moved, or are considering a move to the scheme says more about the poor levels of consistency across the State and Territory schemes rather than highlighting some significant benefit of Comcare.

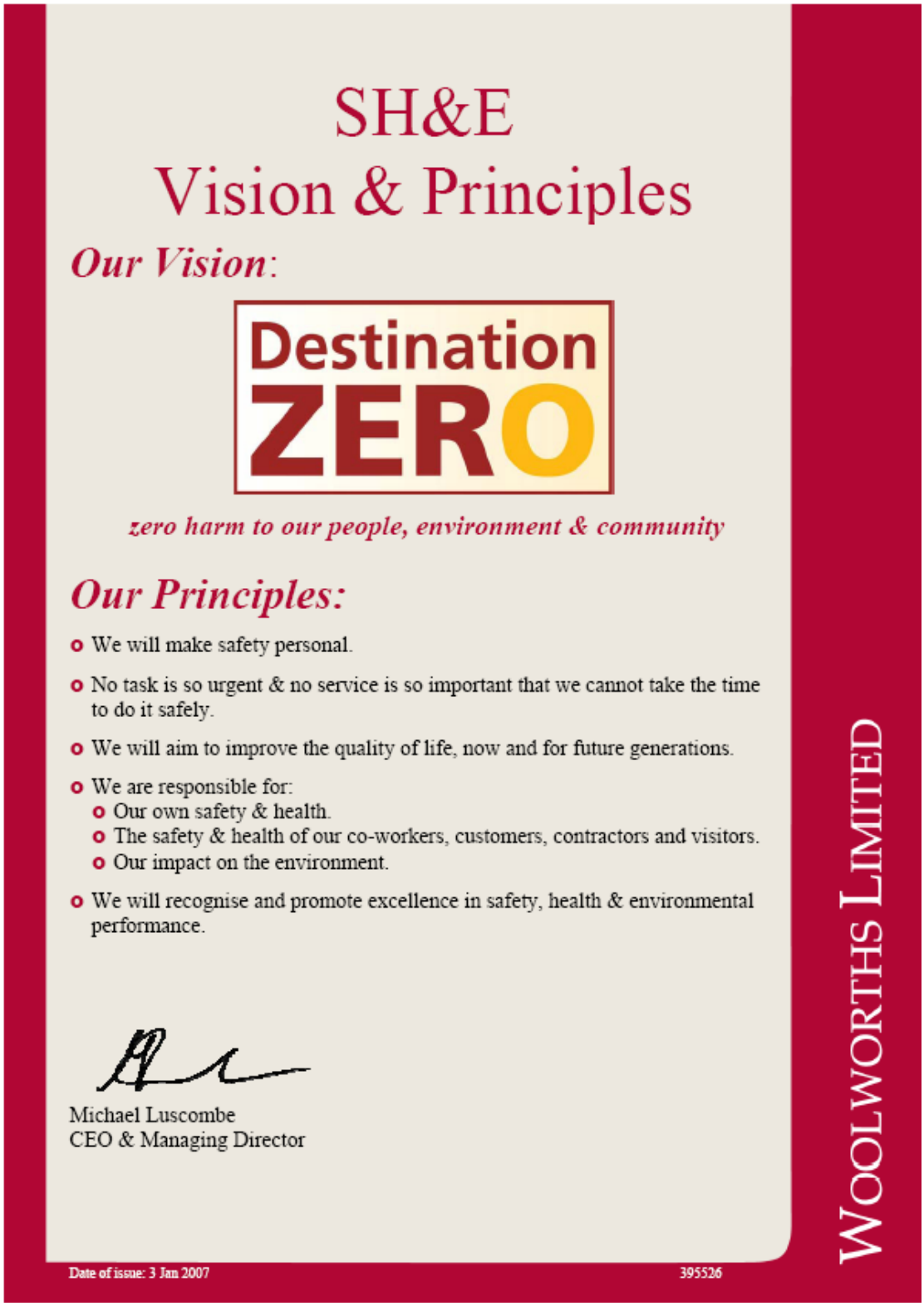
This situation of inconsistent legislation is not impossible to fix – granted it will take determination, tenacity, broad consultation and a lot of vision to achieve a true step-change.

What it will take however is a realisation by State and Territory regulators that the time has come to change – to realise that we don't have the eight best regulatory schemes in the world and that a hybrid model, adopted by all, achieves the most important goals – improved safety outcomes and greater care of injured employees.

Woolworths is appreciative of the opportunity to provide input into the review process and trusts that our feedback is taken as it is genuinely intended – a view on how we, working with our employees and the regulators can make significant improvements in protecting our greatest asset – our people.

Attachments:

Destination Zero – Safety Vision and Principles



SH&E
Vision & Principles

Our Vision:

Destination ZERO

zero harm to our people, environment & community

Our Principles:

- We will make safety personal.
- No task is so urgent & no service is so important that we cannot take the time to do it safely.
- We will aim to improve the quality of life, now and for future generations.
- We are responsible for:
  - Our own safety & health.
  - The safety & health of our co-workers, customers, contractors and visitors.
  - Our impact on the environment.
- We will recognise and promote excellence in safety, health & environmental performance.

Michael Luscombe
CEO & Managing Director

Date of issue: 3 Jan 2007 395526

WOOLWORTHS LIMITED

Destination Zero – Rehabilitation Policy

Rehabilitation Policy

Woolworths Limited is committed to assisting employees who have sustained injuries or illness to return to full and gainful employment. We are dedicated to providing an effective rehabilitation program, which is continually reviewed and updated in accordance with legislation and regulatory requirements.

In pursuing this commitment we will:

- Prevent injury and illness through a safe and healthy working environment.
- Recognise and complement other organisational policies and procedures where relevant.
- Commence the illness and injury management process as soon as possible after the occurrence of an injury or illness in a manner consistent with medical advice.
- Provide early reporting systems and early intervention procedures at the workplace that will enable employees to stay at work or return to work as soon as it is safely possible after the injury.
- Make every effort to assist in the safe and early integration of injured or ill employees back into the workplace following the occurrence of an injury or illness by the provision of safe and appropriate work.
- Make participation in an injury or illness management program not prejudice an injured or ill worker. Return to work plans will be reviewed regularly.
- Expect employees to participate and co-operate in an agreed rehabilitation program. This is an employee responsibility.
- Facilitate our illness and injury management program so it operates effectively by consulting with employees or their representative.
- Maintain confidentiality of employees' information during return to work and rehabilitation.
- Manage all claims in an equitable, timely and efficient manner.
- Provide appropriately qualified expertise for injury management activities.

This signed statement of Policy confirms our commitment.

Michael Luscombe
CEO & Managing Director

Destination ZERO

Date of issue: 3 Jan 2007

395525

WOOLWORTHS LIMITED

Minister for Revenue and the Assistant Treasurer
Room M1.22
Parliament House
Canberra ACT 2600

Dear Minister

Woolworths Limited: Various GST Issues of Concern

The purpose of this submission is to bring your attention to a number of GST issues that are of significant concern to Woolworths and the general business community and to seek a meeting with the view of effecting suitable legislative amendments or changes in Australian Taxation Office (ATO) policy.

The issues are as follows:

1. Wash transactions
2. GST classification of goods
3. Reliance on supplier's classification rulings
4. Administration of pricing adjustments
5. GST treatment of Woolworths' Essentials Cards (shopping cards for charities)

Wash transactions

This is arguably the biggest GST issue facing business today.

In a normal taxable transaction the vendor levies the GST and pays this to the ATO and the purchaser claims an input tax credit (ITC) for an identical amount from the ATO on its BAS.

Wash transactions are business to business transactions where for some reason the supplier neglects to charge the purchaser GST on a taxable transaction and the purchaser does not claim a corresponding GST credit on its BAS. <u>It is important to note that there is no loss to consolidated revenue in these circumstances</u>. The potential for wash transactions is quite significant in business and are caused by errors in classification, dual supply situations and almost all complicated contractual situations.

The current approach of the ATO to underpayments of GST on wash transactions is to assess the supplier for the GST liability in respect of the transaction and impose interest (GIC) on the liability. In some circumstances, further penalties may be imposed. The financial impost of the interest over a period of up to 4 years can be significant. The supplier's immediate reaction is to approach purchasers to accept a price alteration to include the GST which the purchasers can immediately claim as an ITC. In these circumstances the supplier's net loss is the GIC and, in some instances, an amount of penalty.

However, where the purchaser is no longer in business or refuses to accept the additional charge for the GST the supplier bears the full cost of the GST liability, which is patently at odds with the express intention of the legislation. In these cases the revenue is also unjustly enriched at the expense of a taxpayer.

We consider that there is a direct conflict between the policies underlying the GIC, that being to compensate government for the time value of money, and its imposition where there is no revenue impact.

GST classification of goods

The GST legislation relating to the classification of goods has largely been reproduced from the sales tax legislation, with some exceptions. That legislation evolved over a period in excess of sixty years and was largely the result of an amalgamation of changes in government policy and consumer tastes, product development and marketing and a series of court cases. It is our view that the GST legislation dealing with the classification of food is disjointed and should be rewritten in a cohesive manner that properly reflects well considered government policy. This may mean that some products that are currently accepted by the ATO as being GST-free will become taxable (eg some GST-free "breakfast bars" which compete with taxable muesli bars), while other products that are currently taxable will become GST-free (eg taxable "crispbreads", which are really akin to GST-free bread rather than taxable biscuits).

Given the number and variety of products sold by Woolworths, it is expected that issues will inevitably arise from time to time as to the correctness of individual interpretations made by the ATO. There are occasions however, where we really struggle with certain decisions of the ATO. A well known example in Woolworths is the "banana chip" issue in which the ATO determined that very small quantities of a taxable product could "taint" an otherwise GST-free product and make it taxable. Specifically, the ATO determined that the inclusion of a small number of banana chips (1 or 2 grams) in a breakfast additive made the otherwise GST-free additive (500 grams) taxable. Similarly, the ATO determined that the inclusion of a small number of taxable glace cherries in an otherwise GST-free packet of mixed fruit made the product taxable. To complicate matters, the ATO advised that the breakfast cereal *Kellogg's Just Right* with banana chips remains GST-free.

It is my view that the government should request the Inspector General of Taxation to conduct a review of the classification system and make recommendations to the government on simplifying the process.

Reliance on supplier's classification rulings

The ATO maintains that there is no legal mechanism to allow retailers to rely on a private ruling given by the ATO to a supplier. The basis for the GST classification of goods sold by Woolworths is the classification adopted by suppliers. Whilst we review individual products as far as practicable, we are inhibited by not being able to physically examine many of the 50,000 plus products that we sell. As most suppliers have only a few products that need classification we believe that retailers are discriminated against by the ATO because it is physically impossible to obtain rulings on our range because of the need to submit samples and provide technical information only available from the supplier.

We contend that retailers (and wholesalers) should be able to rely on private rulings given to suppliers, given that suppliers generally develop, manufacture and market their own products and are in the best position to provide the detailed information necessary for proper classification by the ATO. Retailers are clearly disadvantaged by the sheer volume of products that they sell and simply can not be expected to seek the broad range of rulings that good governance demands. In practice, retailers do seek their own rulings on some products and reliance on supplier's rulings will mean a significantly reduced workload for ATO officers and retailers alike.

Importantly, the current situation may lead to a totally unfair situation. Retailers are not entitled to an input tax credit in circumstances in which they are required to make an adjustment of tax for a product which they have sold GST free and on which the ATO has issued a GST free ruling to the supplier. This exacerbates the problem because not only are they not entitled to rely on the supplier’s ruling, they have to pay tax on the full value of the product sold. They would otherwise only have to account for tax on their margin.

It is accepted that retailers can not rely on supplier’s rulings in circumstances where their own marketing affects the classification of goods. This will only apply to a limited number of goods where a marketing test applies to a particular class of goods.

Administration of pricing adjustments

Post invoice adjustments such as rebates are regarded as adjustments that require subsequent BAS adjustment and necessitate the raising of tax adjustment notes. The effect of these adjustments is revenue neutral because the payment of a rebate requires an increasing BAS adjustment to be made by the purchaser and a decreasing BAS adjustment to be made by the supplier.

This process has required significant software development by both suppliers and purchasers and poses a significant revenue risk where a purchaser does not make a consequent increasing adjustment to their BAS. The process is becoming

increasingly complicated with the advent of e-invoice systems by which purchasers accept the responsibility of issuing adjustment notes for some adjustments, while suppliers are responsible for the issuance of other adjustment notes.

The ATO recognises this risk and we understand devotes a significant proportion of its audit activity to verify that the correct accounting treatment has been made for adjustments. For instance, in the current Woolworths GST audit that has been in progress for in excess of 2 years, the ATO requested details of some 4 million accounts payable transactions for one year. The initial review (based on ATO audit software) indicated that we had a liability of in excess of $16 million per annum over the 4 years plus a potential unspecified liability. After an intensive review process and many months of administrative work by both the ATO and my staff the liability was settled at $12,000 per annum for the four years of the audit.

I am advised that under the Canadian legislation suppliers and purchasers can agree not to issue adjustment notes and merely base their GST liability on the original invoice. If this process was permitted under our legislation the administrative benefits to both business and the ATO would be significant while greatly reducing an area of risk to the revenue.

Essentials Card – shopping card for the clients of charities

Woolworths produces and sells a shopping card largely for the benefit of charities and their clients. Approximately 98% of the cards are sold to various charities, including St. Vincent de Paul and the Salvation Army. The cards have an average value of less than $20 and can only be used to redeem essential goods. They can not be used to redeem alcohol, cigarettes and general merchandise.

Historically, the charities provided paper vouchers of their own manufacture to clients to redeem goods from supermarkets and other specified retail stores. Under these arrangements, the ATO accepted that the charities' clients were agents for the charities. The effect of the agency arrangement was that the charities were entitled to a refund of the GST paid on the goods redeemed by their clients. However, the administration created by this arrangement for both retailers and charities is substantial. Retailers must collect all receipts and forward them to a central processing area where individual tax invoices can be raised for each charity (sometimes as many as 200 branches for each charity). These invoices are then forwarded to the various branches where they need to be matched with the original voucher before payment is authorised.

Charities are now moving to purchase Woolworths' plastic Essentials Card, which provides far greater flexibility and security, rather than using their own paper vouchers. Woolworths has recognised the administrative saving in using the cards and provides a 5% discount to the charities on the purchase of the cards. The ATO contends however, that an agency relationship can not exist between the

charities and their clients where they use the Essentials Card for the purchase of goods. The effect of this is that the charities, while benefiting from our 5% administration bonus, are not entitled to claim GST refunds in respect of the tax payable on goods purchased with the Essentials Card. I am advised that Mr Stephen Howlin, an ATO Assistant Deputy Commissioner, attempted to get the agency principle accepted by the ATO, but the legal area of the ATO refuses to be persuaded by the legal advice provided to Woolworths in relation to agency.

The approach of the ATO is at odds with the spirit of a speech made by The Hon Mal Brough, Minister for Families, Community Services and Indigenous Affairs, on 29 April this year titled “Social Innovations Dialogue”. In that speech the Minister suggested that certain welfare recipients have their payments directed specifically for the benefit of their children by ensuring that payments are only used to purchase essential goods and services. The Minister then went on to say that debit cards could be used to deliver targeted welfare.

I am certain you would agree that the above issues are of vital importance to business in general and if actioned would greatly contribute to increasing efficiencies in the GST regime. In particular, the classification and adjustment issue would help reduce the administrative tax burden on less sophisticated businesses without any cost to revenue.

I would welcome the opportunity of discussing the above with you in the hope that we may be able to advance the issues for the benefit of all business taxpayers.

Yours faithfully

Woolworths Submission to Bethwaite Review

Summary

Woolworths acknowledges that elements of the Australian regulatory system have improved as a result of the Blair review. However, the lack of legislative consistency and administrative co-ordination between the State and Local Government jurisdictions continues to impose significant and unnecessary burdens on industry with little or no consumer benefit.

Woolworths does not express a view on what the law should be, other than that it should be uniform so that all Australian consumers have uniform rights.

Inconsistency imposes costs on industry, and creates difficulties with compliance. Inconsistency either means that differing levels of consumer protection exist depending on location of residence, or that business is being burdened with unreasonable and unnecessary regulation.

Inconsistent Legislation

The Blair review recommended that all domestic Food Laws in Australia be developed nationally and enacted and enforced uniformly. This has not occurred and there is still significant inconsistency and duplication between the law of the Commonwealth and the States and Territories. Probably the largest area of inconsistency is in respect of food safety legislation, an area that is not adequately addressed in the *Model Food Act.* Western Australia has not yet adopted the *Model Food Act,* and the *Uniform Trade Measurement* provisions have not yet commenced in Western Australia.

Other examples of inconsistency include the South Australian *Prices Regulations* which prohibits the return of unsold bread, the "intentional contamination" provisions of the Queensland *Food Act,* the *Container Deposit Legislation* in South Australia and *Quarantine Regulations* in Tasmania (preventing the sale of imported salmon and other imported fish products in that State).

Due to inconsistent adoption of the Civil Liability Reforms following the Ipp Report into the *Trade Practices Act* and *State Fair Trading Acts,* consumers are entitled to differing levels of damages for no reason other than their State of residence and where an incident occurs.

Inconsistent Implementation

All levels of Government (Federal, State and Local) adding up to hundreds of agencies are involved in the enforcement and administration of Food Laws. This leads to inefficiencies and inconsistent implementation of otherwise uniform laws. Examples include: different interpretation of what constitutes "meat" in the context of the Trade Measurement Legislation; selective enforcement of Standards (for example, Country of Origin); differing interpretation of safety requirements (for example, the display of

pet food and fish in Victoria); different approaches to business registration and auditing; and differences of interpretation of regulations by different bodies within jurisdictions. To highlight one concern of Woolworths some Local Councils undertake routine sampling of products and put the onus on the retailer (rather than the manufacturer) to rectify any deficiencies.

Improved Governance

Woolworths considers that there is an urgent need for improvement in these main areas:

- Product recall;
- Co-ordination between and within jurisdictions;
- Stakeholder consultation/communication;
- Overlapping roles of FSANZ and the Ministerial Council; and
- Food safety plans/audits.

Introduction

Woolworths Ltd ("Woolworths") employs approximately 145,000 staff across Australia in 753 Supermarkets; 138 Big W general merchandise stores; 1023 Liquor Stores (including stores attached to Supermarkets); 380 consumer electronics stores; 495 Petrol Sites and 260 Hotels.

In its Supermarkets, Woolworths operates butchers and bakeries, and is the largest retailer of private and generic label food, grocery and liquor products.

Woolworths acknowledges that whilst elements of the Australian regulatory system have improved as a result of the Blair review, the lack of legislative consistency and administrative co-ordination between the State and Local Government jurisdictions continues to impose significant and unnecessary burdens on industry with little or no consumer benefit. The problems are largely caused by:

- duplication of legislative coverage - through Federal (*Trade Practices Act*) State and Territory (*Food Acts* and State and Territory general consumer protection legislation);
- duplication of enforcement - resulting in inconsistency in interpretation within and between State and Local Government jurisdictions; and
- inconsistency in laws between the States - for example, notification of intentional contamination under Queensland's *Food Act* and Western Australia's failure to date to adopt the *Model Food Act* (with the *Health Act* and *Food Hygiene Regulations* remaining in force). It also appears as though Western Australia continues to operate under the *Weights and Measures Act* (the Western Australian *Trade Measurement Act* adopts the Uniform *Trade*

Measurement Legislation and whilst it has passed through Legislative Council, and has received royal assent, the operative provisions are not yet in force).

The scope of this submission is limited to issues which are clear examples of the problem which have a significant impact on Woolworths business. In preparing this submission, Woolworths does not express a view on what the law should be, other than that it should be uniform so that all Australian consumers have uniform rights.

1. **Consistent Legislation**

The Blair review recommended that all domestic Food Laws in Australia be developed nationally and enacted and enforced uniformly. This has not occurred and there is still significant inconsistency and duplication between the law of the Commonwealth and the States and Territories.

For example:

- Although the *Model Food Act* has been adopted in most States and Territories, food safety legislation and responsibility for enforcement differs significantly from State to State.
    - In Victoria, all food business are required to develop and maintain food safety programs, including programs for low risk businesses, such as petrol stations that have a milk fridge and liquor stores that conduct wine tastings.
    - The New South Wales Food Authority runs a centralised food business notification scheme. The notification process can then determine whether there is a need for third party auditing, approved food safety programs, approved templates or just an annual inspection. It is understood that the New South Wales Government have proposed an amendment to the *Food Act* which will require mandatory inspections by Local Government at food premises, however Local Councils may choose several categories to comply with the proposed legislation or may choose to absolve this responsibility back to the New South Wales Food Authority. Currently, Local Government are responsible for annual store inspections under the *Food Act* and the New South Wales Food Authority remains responsible for meat unit audits under the *Food Regulation*, Part 3 Food Safety Schemes.

- In Queensland, there is no clear distinction between responsibilities for Local Government EHO's and the Department of Health Population Centre EHO's, who both inspect supermarkets according to the *Food Act*. There is also a duplication of effort by SafeFood Queensland who use contract auditors to audit meat and delicatessen departments under the *Food Production (Safety) Regulation*. The use of contract auditors involves an inordinate amount of time to perform the audit, thereby increasing revenue because of an hourly charge. Also, both Local Government and Safe Food Queensland perform pre-opening inspections of supermarkets for registration/accreditation purposes.

- In South Australia, Local Government EHO's and PIRSA both inspect supermarkets on a fee for service basis. PIRSA inspect meat and delicatessen departments and EHO's inspect the entire store once or twice annually. In 2 years of inspecting premises, PIRSA have not identified any significant problems.

- Northern Territory Health perform annual inspections in Supermarkets efficiently and as needed. There is no duplication of effort in this state.

- Western Australian Local Councils EHO's perform annual inspections and some Councils charge for the service whilst others do not. Additional inspections performed are in Supermarkets as a result of customer complaints.

- Registration/audit fees between each jurisdiction vary considerably.

- Some State legislation, such as the South Australian *Prices Regulations* which prohibits the return of unsold bread, and the "intentional contamination" provisions of the Queensland *Food Act* exist only in one State. Other examples include *Container Deposit Legislation* in South Australia and *Quarantine Regulations* in Tasmania preventing the sale of imported salmon and other imported fish products (for example, pickled herrings) in that State.

- Western Australia has not yet adopted the *Model Food Act*. At the time of writing this submission, Western Australia continues to operate under the *Weights and Measures Act*. The *Trade Measurement Act* adopts the Uniform *Trade Measurement Legislation* and whilst it has passed through Legislative Council, and has received Royal Assent, the operative provisions are not yet in force.

- Civil Liability Reforms following the Ipp Report have not been implemented uniformly. The *Trade Practices Amendment (Personal Injuries and Death) Act* provides that sections 52 (misleading conduct) and 53 (misrepresentation) are no longer available as causes of action in personal injury claims based on a failure to warn. However, equivalent reform has not been made to all State *Fair Trading* legislation and so causes of action remain available in Western Australia, Northern Territory, the Australian Capital Territory and South Australia.

- Similarly, the *Fair Trading Acts* in New South Wales and the Northern Territory have equivalent provisions to Part V Division 2A of the *Trade Practices Act*, whereas other States do not. The result is that a consumer who is injured in New South Wales or the Northern Territory can recover significantly more compensation because of higher caps on damages in these States.

- Part 2 Division 3A of the New South Wales *Fair Trading Act* empowers the New South Wales Department of Fair Trading to require the production of evidence substantiating claims. Similar provision exist in Victoria, the Australian Capital Territory, Queensland, South Australia and the Northern Territory, but not in the *Trade Practices Act*, nor in Tasmania or Western Australia.

- The recent tort reform process in Australia has extinguished the right to aggravated and exemplary damages in common law personal injury claims in some states but not others (Tasmania, Western Australia, the Australian Capital Territory and Victoria). Damages for loss of earning capacity are capped at 3 times weekly earnings in all States and Territories except South Australia. However, under the *Trade Practices Act*, damages are capped at 2 times weekly earnings. Significant differences also exist between the average weekly earnings for each State and Territory, resulting in different damages awards depending on the place of injury.

Woolworths customers are entitled to expect an identical set of legislative standards and consistency in regulatory administration and enforcement across all the States and Territories of Australia. What level of protection the law affords should not depend upon the State in which a consumer resides.

Woolworths is not proposing a lower level of regulation. As a national business, State boundaries are irrelevant to Woolworths' operations and in most cases, Woolworths' own systems for managing food safety adopt the most stringent State regulations, and then for consistently implement this requirement throughout all supermarkets. It is important that *Food* and *Fair Trading* Laws be enacted in a uniform manner and without additional, individual State requirements.

The following problems flow from a lack of legislative and regulatory consistency:

- Inefficiencies resulting in unnecessarily higher cost to food manufacturers, processors, distributors and retailers.

- Food safety standards in different jurisdiction must mean one of two things. If higher standards are necessary to ensure public health and safety, then this means that consumers in jurisdictions with lower safety standards are not being adequately protected. If the less stringent standards suffice, then accordingly it must mean that additional regulation represents an unreasonable and unnecessary impost on industry. Both scenarios are undesirable from a public policy viewpoint.

- Compliance difficulties - for example, the Western Australian *Weights and Measures Act* (which is still in force, as the operative provisions of the *Trade Measurement Act* are not yet in force) prohibits the sale of in-store baked muffins and cakes over a certain size without a reference to weight on the packaging. As a practical matter, Woolworths cannot separate the Western Australian business in respect of the packaging of muffins and cakes, meaning that muffins and cakes must be sold nationally by weight. However, this increases the risk of a short measure offence. When these items are sold singly, customers generally are not concerned about the weight of a muffin or cake, they purchase it to suit their needs.

2. **Consistent Implementation**

In Woolworths' experience, even where legislation is uniform or close to uniform, regulatory implementation and interpretation differ significantly. This raises identical issues to those identified in the section headed "consistent legislation", namely:

- cost to industry;

- either differing levels of food safety depending on location, or unreasonable and unnecessary regulation on business; and

- difficulties with compliance.

All levels of government (Federal, State and Local) are responsible for the enforcement of Food Laws to a greater or lesser extent. At the Federal level, AQIS is responsible for imported food. Depending on the particular jurisdiction and type of business conducted, a number of State Departments/Agencies are involved. For example, in Victoria, the Food Safety Unit, PrimeSafe, and the Dairy Food Safety Victoria each have responsibility for the administration of Food Law. In Queensland, Queensland Health and SafeFood Queensland have responsibility for the administration of Food Law. In New South Wales, State Government

agencies have been amalgamated into the New South Wales Food Authorities. Local Council EHO's also have a role. All up, hundreds of agencies are responsible for the enforcement/administration of Food Laws.

The ACCC and State and Territory Consumer Affairs Departments administer consumer protection/trade measurement legislation which has a significant impact on all food business.

Examples of inconsistent implementation that Woolworths has encountered include:

- The *Uniform Trade Measurement* legislation provides that "meat" must be sold by weight. Woolworths has received different advice from jurisdictions regarding the interpretation of the word "meat". For example, Woolworths has been advised by the Queensland Office of Fair Trading that "meat " means red meat only. However, the Victorian and Tasmanian Consumer Affairs Departments have advised Woolworths that it applies to all animal flesh other than seafood. The New South Wales Department of Fair Trading takes a more stringent interpretation still, excluding crustaceans, but not other types of seafood. In respect of value added products, there is no consensus regarding when a product is so significantly altered, that it ceases being meat.

- Although *Trade Measurement* legislation is largely uniform, South Australia and the Australian Capital Territory inspect all scales annually despite Woolworths having a contract with Wedderburn who perform full services on all scales annually. These inspections are nothing more than revenue raising exercises. On average in South Australia the charge is $550 per store.

- The enforcement of the new Country of Origin Labelling requirements for unpackaged products. Some jurisdictions have openly stated that they will not enforce the Standard. Non-enforcement creates difficulties for Woolworths because considerable time, effort and costs have been incurred in all Supermarkets to ensure national standards compliance however, other smaller fresh food businesses or independently owned supermarkets often do not comply, which gives these business an unfair competitive advantage.

- Pre-packaged pet food is sold in supermarkets without risk of contamination, however PrimeSafe in Victoria requires segregation and signage for the sale of pet food. PrimeSafe also requires separate storage areas for pet food which must be appropriately identified with signage. No other Australian jurisdiction has similar requirements.

- In Victoria, PrimeSafe does not permit retailers to display whole or gutted fish on ice for customer inspection and self service. Whilst PrimeSafe does not regulate supermarkets, they provide this interpretation to the *Food Standards Code* to Council EHO's for enforcement. Apart from one or two Council EHO's in New South Wales, no other Australian jurisdiction has the same interpretation for the sale of seafood.

- There appears to be a general lack of knowledge or understanding amongst Local Councils EHO's when using guideline documents. Safe Food Australia offers a Guide to Food Safety Standards, which is often quoted by EHO's as enforceable requirements rather than a guide to the Food Standards Code.

- There are inconsistent approaches to registration requirements and food safety audits (such as the frequency and duration). Whilst this is partly due to different legislative frameworks, it can also be due to inconsistent interpretation and implementation. For example, some Local Councils in Tasmania count each department within a supermarket (eg, butcher, bakery, deli) as separate food businesses requiring separate registration and are invoiced separately. Audits are most frequent in jurisdictions that have implemented fee-for-service premises inspection or audit arrangements, for example EHO's & PIRSA Auditors in South Australia, New South Wales Food Authority for Meat Department Audits and SafeFood Queensland for Meat and Deli Department audits. Safe Food Queensland use contract auditors and there are numerous occasions when Major Non-Conformances (NCR's) are raised and in some instances for seemingly trivial matters. The raising of Major NCR's is justification for a return visit to the store to verify corrective action has been taken and to close out the NCR. Fees are charged at the applicable rate for this return service.

- Under the *Model Food Act*, Woolworths is responsible for all food sold even where it has no practical control over the manufacture, processing, packaging and distribution. A good example is Nutrition Information Panels. Some Local Councils undertake routine sampling and testing. If a problem is identified, retailers may be called upon to ensure the problem is corrected. This is, strictly, the responsibility of the manufacturer and communication should be between the Council EHO and the manufacturer, rather than the retailer.

- Differences in interpretation of the *Food Standards Code* can and do occur within jurisdictions, for example:

- Local Council EHO's in Tasmania demanding bin liners for the bulk dumpster bins located outside of the store.

- Standard 3.2.2 Div 3 Clause 8(2) of the *Food Standards Code* requires that self-service ready to eat food be "supervised". Local Council EHO's in Tasmania interpret this as requiring a full time supervisor for the self serve displays, eg loose nut and loose bread roll displays.

- Local Council in Queensland not issuing an Opening Certificate for a new store because an EHO is not satisfied that the cleaning system complies with the Australian Standard and considers it irrelevant that the product has been approved as compliant and is approved for use in Woolworths Supermarkets by every other Council in the Nation.

- Specific Signage required for Hand Wash Basins by some Councils in New South Wales.

- No clear understanding for Microbiological limits for Listeria monocytogenes (Lm) in ready to eat food sold over the counter. In some states Lm is a reportable organism of public health concern while in others it is not. Also some Council EHO's take a zero tolerance approach whilst others accept up to 100 cfu's per gram.

There is duplication of food regulation contraventions at both a State and Federal level and this extends to intra-State regulation (for example, dealing with false and misleading representations in connection with the supply of a food product). Notwithstanding that Woolworths is a retailer and effectively has no control over the claims made in labelling by the manufacturer it is exposed to liability. For example, sections 13(3) and (4) of the New South Wales *Food Act* (and provisions in other State Food Legislation) make it a serious offence to sell food which has been falsely described (and similar provisions exist in other States). Very limited defences are available - in particular, a defence of mistaken and reasonable belief and a warranty defence which were available under Act's predecessor are no longer available. Similar offences also exist under the *Trade Practices Act* (section 75AZC - including that the goods have a particular composition and in relation to the Country of Origin of a product) and equivalent offences in the State *Fair Trading Acts*. The result is that alleged breaches of the labelling of national brands are frequently brought to the attention of Woolworths by regulators and Woolworths is exposed to direct liability despite the fact that the appropriate approach is for regulators to take action with the manufacturer.

For example, Councils in Victoria and in Western Australia will test food for conformity with the Nutritional Information Panel (NIP). NIP is not a Food Safety concern, however this is still tested. The *Food Standards Code* offers no tolerance for Nutritional Information and, as a practical matter, in a

manufacturing environment it is not feasible to guarantee an absolute quantity in every product. As well, NIP quantities are not always tested and instead are determined by calculation based on the knowledge of individual components or ingredients (which is permitted under the *Food Standards Code*).

In addition, all tests require a degree of interpretation, for example, fat analysis. There is no prescribed method of analysis and different methods - for example, soxhlet and acid hydrolysis - yield different results. No clear guidelines exist which allow for consideration for a degree of tolerance (for seasonal variation) as exists for offences such as short measure under *Trade Measurement* legislation.

3. **Improved Governance**

Woolworths considers that there is an urgent need for improvement in these main areas:

- Product recall;
- Co-ordination between and within jurisdictions;
- Stakeholder consultation/communication;
- Overlapping roles of FSANZ and the Ministerial Council; and
- Food safety plans/audits.

Product Recall

Depending upon the nature of the product concerned, a product recall must be notified to a number of regulators at the State and Federal level, for example the ACCC and FSANZ and the State Offices of Fair Trading and State Departments of Health. There seems to be no logical reason for the multiplicity of recall notification requirements which the law technically requires.

There is no guidance given in any government document about what level of risk requires a recall. For example, concerns in the past have been expressed about the long terms risks of the presence of some chemicals in food. Where guidelines as to maximum limits exist, they can be applied. However, on one view, any level has the potential to cause injury and some would advocate for a recall although the reasonable man might dismiss the risk as far-fetched.

Although not strictly a "recall" issue, Queensland also has separate provisions relating to notification of food tampering incidents in the *Food Act* which are not replicated in other state laws. This requirement does not exist for other products - including pharmaceuticals where there has been tampering incidents in Australia in the past.

In practice, the Queensland provisions means that two bodies are involved in relation to such incidents - the Police and Queensland Health. Other State laws make it an offence to contaminate goods (for example section 93IB of the New South Wales *Crimes Act* Contaminating Goods with Intent to Cause Public Alarm or Economic Loss). In New South Wales, it is an offence to conceal a serious indictable offence. The Police will need to be involved in intentional contamination issues, and it makes sense that any reporting requirements be included in State *Crimes Acts.*

Co-ordination

Woolworths acknowledges that in some areas co-ordination between the States and Territories is good. For example, in respect of recalls the practice is that a manufacturer only need to notify the ACCC, FSANZ and the manufacturer's "home state". Nevertheless, a legal obligation to notify the States also exists in the *Fair Trading Act*. However, on many important issues, including food poisoning outbreaks, there is a lack of co-ordination between the jurisdictions.

A recent example is the investigation into Salmonella Saintpaul on rockmelons. Whilst investigations were initiated by the New South Wales Food Authority, it required considerable effort to work with all jurisdictions along the East Coast of Australia who required essentially the same information. This information would have been more easily provided once to a central Commonwealth authority (for example, Department of Health and Ageing). In addition, several Councils in Victoria took rockmelon samples for testing. There was no coordinated approach between jurisdictions (Queensland, New South Wales, the Australian Capital Territory, Victoria and Tasmania) nor Local Government investigations. The entire exercise was very much an ad hoc and disjointed process without any conclusive results.

A co-ordinated approach for investigation into food poisoning outbreaks is essential and specifically this responsibility should not be left solely to ad hoc investigations and samplings by local government EHO's.

Stakeholder Consultation/Communication

Whilst FSANZ is obliged to undertake stakeholder consultation, there is room for significant improvement. Submissions are seemingly ignored, and inadequate consultation often occurs when last minute changes are made to FSANZ's recommendations. Two recent examples illustrate this point:

- Country of Origin Labelling for unpackaged food - the changes to Country of Origin regulations for unpackaged food arising out of P292 required labels to be in 9mm font size, which is both impractical and unnecessary, from a consumer

perspective and is an extremely costly imposition on Supermarkets. In Woolworths case, two tickets were required for each display of affected goods. In its submission to government , Woolworths objected to the requirement for 9mm font on this basis. It appears as though this submission was ignored. Subsequently, retailers were required to make their own application to amend the *Food Standards Code* to change the font size to one which is more practical. On 7 December 2006 an amendment to the *Food Standards Code* was gazetted to change the font size to 5mm. This entire exercise incurred great costs and should not have been necessary if the review and submission process was managed efficiently and correctly through FSANZ and the Ministerial Council in the first instance. Woolworths estimates that the costs incurred by it as a result of this incident are in excess of $1 million (with implementation $882,400, Consultancies and Market Research $120,000 and numerous meetings involving up to 30 staff and senior management).

- The addition of artificial chemicals to mass consumption products (for example folate and iodine to bread). The addition of these chemicals to bread effectively means no freedom of choice for consumers, some of whom are opposed to fortification of foods with vitamins and minerals. The addition of folate was initially proposed to be added to bread making flour during the milling process, however, because of the lack of controls at milling operations it was decided that the requirement was to be applied to the final product (bread) thus shifting the responsibility on retailers.

  There was a distinct lack of consultation when the decision was made to shift way from flour to bread (one hastily convened teleconference) and no RIS conducted to measure the impact of changing away from the milling operations to Retail Bakery operations.

  State and Territory *Food Acts* dictate that the retailer is responsible to ensure that all food sold complies with the *Food Standards Code*, and even though there cannot be any guarantee of maintaining the correct levels of folate in every loaf of bread, nevertheless this expectation remains.

  The Ministerial Council has requested a further review of FSANZ's recommendation.

There is also a need for improved consumer education carried out at Government and industry levels. For example, most consumers do not understand the difference between a "best before" and a "use by" date. Woolworths suggests that this is a task that should properly be undertaken at the national level (for example, FSANZ).

Roles of FSANZ/Ministerial Council

Both FSANZ and the Ministerial Council are involved in the standards setting process, often leading to waste and inefficiency.

Under the *Food Standards Australia New Zealand Act* 1991, FSANZ is responsible for the assessment of applications and proposals to amend the *Food Standards Code*. Generally, this involves two rounds of public consultation, and the preparation of applications and submissions is a time consuming and costly exercise for industry (and Government). At the conclusion of this process FSANZ either rejects the application/proposal, or makes a recommendation to the Ministerial Council to approve the amendment. The Ministerial Council can the either approve the amendment (after which it will be Gazetted), or request a further review by FSANZ. After this review has been conducted, the Ministerial Council may request a second review, and after this second review is completed, the Ministerial Council may amend or reject FSANZ's recommendation.

In this way, the process of standards setting is politicised. It is only at the very end of the standards setting process that an applicant knows whether their application will be rejected on political grounds. This creates waste (in terms of the costs associated with preparing applications/submissions) and uncertainty (in that an applicant cannot know whether their application will be accepted even if the application is supported by science).

Food Safety Plans/Audits

In this regard , the food regulatory system in Victoria is one of the better systems and is acknowledged by Woolworths as meeting most of industry's needs. Woolworths has opted to use third party auditing of food safety programs, which provides the most suitable outcome for our Supermarket business. Third party auditing provides consistency of interpretation of the *Food Act* and Regulations because the same auditors review all Supermarkets and Petrol Sites within the State of Victoria.

Woolworths is a responsible retailer and ensures compliance with regulations and whilst it is not necessary in most States, Woolworths has introduced and complies with food safety programs in accordance with the *Food Standards Code* Standard 3.2.1 (Food Safety Programs). These programs are audited by trained internal food safety auditors and in addition in Victoria all stores are audited by third party food safety auditors.

This ensures a consistent approach to food safety throughout all Woolworths Supermarkets and is a self imposed requirement.

Woolworths refers to the discussion in this submission regarding the inconsistent approaches to food safety regulation between the States, and Woolworths questions the need for such

inconsistent and duplicitous regulation. Accordingly, for national businesses, Woolworths also proposes the implementation of a single food safely plan covering the whole of its food retailing activities, together with a single audit program**.**

Conclusion

It is Woolworths submission that there exists significant legislative inconsistencies, inconsistencies in the implementation of Food Laws, and that there exists opportunities for improvements in the governance of Australia's food regulatory system.

Consumers are entitled to expect an identical set of legislative standards and consistency in regulatory administration and enforcement across all the States and Territories of Australia. What level of protection the law affords should not depend upon the State in which a consumer resides. Under the present system it cannot be said that Australian consumers have uniform rights. At the same time, businesses who operate across State borders are burdened with the costs associated with a lack of uniformity. This situation needs to be urgently resolved.

8 February 2008

The Legal Metrology Branch
National Measurement Institute
PO Box 264
LINDFIELD NSW 2070

Attention: Mr Murray Gordon

Re:- National Trade Measurement System Discussion Paper December 2007

Dear Mr Gordon,

Woolworths Limited welcomes the opportunity to make comment to the Legal Metrology Branch of NMI in response to the National Trade Measurement System Discussion Paper of December 2007.

In principle, Woolworths Limited fully supports the National Trade Measurement System. There are however some comments to be made based on information contained in the Discussion Paper and the Uniform Trade Measurement Legislation (UTML)as noted below:-

General comments

- Consideration needs to be given to ensure International consistency with CODEX requirements.

- If AQS becomes a mandatory requirement, there will need to be a commensurate reduction in the level of inspections at a Supermarket level.

- Regulations need to be flexible and easily amended in a timely manner when changes occur in the industry due to development of new Technology. Setting up an Industry Mechanism for consultation with NMI on any such issues will assist this process. Such Consultative mechanisms could include a Web Seminar (WEBinar) such as that managed by FSANZ on their website see link provided.

  http://www.foodstandards.gov.au/newsroom/webseminars.cfm

  A consultative process between Industry and NMI for exchange of information including technological change and timely changes made to Regulations will be of great benefit.

- There needs to be an avenue for appeal and the establishment of an Industry Consultative process will assist greatly. Amendments to Legislation as a result of technological advances in the industry is important, eg customer electronic weighing and scanning needs continuous review. A single contact point for consultation is essential.

- National Guidelines for consistent interpretation and enforcement needs to be developed concurrently with the Regulations. It is suggested that a Consultative Committee be set up to assist in this process and be comprised of both Government and Industry representatives.

- Develop Guidelines for appropriate levels of enforcement to ensure compliance, eg start with Negotiations/Warnings and progress to Infringement, then only if necessary Legally enforceable Undertakings and Prosecution as a last resort. Infringements should also not be used as a means for 'revenue raising' by the Inspectorate.

- Guidelines need to be developed to provide appropriate audit and inspection durations in a Supermarket and which is not the result of Customer Complaints. Inspections sometimes may be the consequence of Political Pressure from the Ministers Office or Current Affairs Programmes or simply for the purpose of raising revenue. Some inspectors have spent in excess of 4 hours and up to 3 days in supermarkets checking Pre-Packed Articles and verifying instruments. Guidelines for the period of time required to perform 'Ad Hoc' audits and inspections in Supermarkets will be very helpful.

Page 9 – Use of Measuring Instruments for Trade

There needs to be some provision for consultation to address new or emerging technologies and appropriate changes to industry or market practices and specifically which may require amendments to Regulations.

This may be achieved by ensuring that Acts and Regulations are less prescriptive in nature. To ensure compliance the submission or application of specific data is necessary to indicate equivalence with existing outcomes and/or agreement that customers will not be disadvantaged. Unfortunately the more prescriptive the Act or Regulations, the more restrictive they become and are outdated quickly and change is difficult under present circumstances.

An example to remove some of the prescription of the UTML includes the section for 'Marking of Measurement', which provides significant detail for positioning, Set out and Form, Size of characters etc. Surely the key is 'legibility' irrespective of Container Size or Dimensions or whether the characters are set out in upper case, lower case or a combination thereof (eg does if matter if the abbreviation for kilogram is in the form of:- KG, Kg or kg). Consumers are not disadvantaged by reading the abbreviation for SI Units in a combination of case sizes, the important point is that consumers are not mislead and the formatting is generally understood and not misleading.

Page 9 – Use of measuring instruments for prepacked articles

Para 1 – Name and address of the party responsible for the packing of the product – is it desirable to include the manufacturers or packers or importers or distributors address in Australia? This would allow for consistency with the Food Standards Code. Currently the Regulations only require an address in a State or Internal Territory, which implies Australia however is not specific.

Page 11 – Verification of Instruments

Whatever the System considered, it should be consistent with applicable guidelines developed for planned audits and not 100% inspection. Fee for service for this work in some states is inconsistent with other states. Some states perform 100% inspection for the apparent purpose of raising revenue. A 100% inspection of all instruments including Pertol Hoses and Pumps is not necessary especially when Licencees also perform the work on a regular basis.

Page 13 – Mandatory Periodic Verification

This should only be based on risk. There is no need for mandatory periodic re-verification. Woolworths has in excess of 20,000 scales nationally and to implement mandatory periodic verification will increase costs significantly, which would be passed onto our customers to their detriment. This would certainly be a regulatory burden and would not serve the interests of consumers. Accuracy of modern electronic instruments which are well

maintained with regular servicing will remain compliant without the need for any additional re-verification. Annual servicing of instruments is sufficient to verify an instruments' accuracy without the necessity for periodic re-verification. Risk may be determined by the Licensee performing the servicing of instruments.

It is acceptable to note that instruments must operate correctly at all times and this is the responsibility of the owner of the instruments to ensure daily (increased frequency if required) checking for accuracy.

Defences should be in place for accidental problems (eg Certification Seals accidentally removed or dropping off) or for one-off occurences without the imposition of fines etc.

Page 14 – Transactions by Measurement

- The UTML or its equivalent under NMI must be more flexible and take into consideration new packaging technologies and methods of sale to improve the speed of a transaction. The definition for 'Point of Sale' (POS) needs further consideration and the Checkout Register should be identified as the final POS, particularly with the introduction of customer self checkout systems. Customers demand new and more rapid processes and improved methods for checkouts to ease congestion and waiting time in queues. The system for 'Unit Pricing' in some instances is inappropriate, eg. including the Price/Kg, Total Price and Net Weight on ticketing for Random weight Pre-packed Articles. Allowance needs to be considered and provision of some flexibility for pre-packed Produce which in some instances are only packaged for Hygiene purposes or to 'clear' older stock at reduced prices per kiolgram.

- Allowance for dehydration of pre-packed food needs to be considered, specifically given Australian climatic conditions. Fruit and Vegetables will continue to respire whilst on display for sale. Respiration results in dehydration and under current legislation there is no allowance for this and depending on climatic conditions some produce items will dehydrate at a rapid rate therefore resulting in an underweight problem despite the product remaining within its shelf life period. There needs to be some flexibility for 'net weight' and 'net weight when packed' to allow for dehydration and providing customers are not disadvantaged.

- Drained Weight of some pre-packed foods must be considered, specifically if the products are packed in liquid (brine, water, syrup etc). Package Net Weight for these types of products is superfluous and it is the 'Net Drained Weight' which is important and far more applicable. Eg in the case of Olives packed in Brine, it is only the olives which are consumed and the brine is discarded. It is the Drained weight rather than net weight that is more important for these foods and the edible portion should be a minimum content in the package.

- Consideration needs to be given for Risk & Safety (OHS) and Health Regulations when applying Unit Pricing. Some Produce products are pre-packed only for the purposes to prevent spills which may cause OHS incidents or food may be wrapped to prevent cross contamination and for compliance with Food Safety Standards.

There must be some consideration given to the stringency of Unit Pricing as prescribed in the UTML for Pre-Packaged Articles, specific to Fruits and Vegetables (grapes, cherries, cut fruits & veg etc). These items can all be weighed and priced at the checkout. The customer only need be aware of the $/Kg and may use courtesy scales to obtain an approximate weight before payment. The customer retains the right to accept or reject the transaction at the Register.

Page 14 – Unit Pricing

Consider Unit Pricing as a Voluntary Code of Practice for all Retail businesses.

In conclusion:

Woolworths appreciates this opportunity to comment and make submission on the National Trade Measurement System and in summary consideration should be given to:-

- Remove the prescription for Methods of Marking – this does not disadvantage customers.
- Unit Pricing requires some flexibility for pricing and consideration needs to be given to Point of Sale (place), Risk and Safety and Food Hygiene. This will assist to streamline certain transactions and specifically for customer self check out processes.
- Net Weight, Net Weight When Packed, Net Drained Weight are options for marking depending on types of products, containers and climatic conditions - provided customers are not disadvantaged.
- Setting up a Consultative Committee or Consultative Mechanism which will allow for consultation between industry and NMI to develop Guidelines; to lodge appeals; to amend regulatory burdens; to speed up changes or amendments to legislation etc. Consider WEBinars similar to the FSANZ process.
- Mandatory Re-verification only according to Risk and can be managed by Licencees.
- Inspectors need to be trained to Audit and guidelines need to be developed for Audit times and frequency. Remove the need for Inspections except possibly as a result of Customer Complaints and be more flexible with penalties (fines, prosecution etc) – fines should not be an excuse to raise revenue and prosecution should be a last resort and only for continual breaches as a result of continuous Systemic breaches.