

20 May 2011

Mr Philip Weickhardt
Presiding Commissioner, Retail Industry Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
Via email: retail@pc.gov.au

Dear Mr Weickhardt,

Coles welcomes the opportunity to provide a submission to the Productivity Commission Issues Paper *Economic Structure and Performance of the Australian Retail Industry*.

Coles operates over 2,200 outlets; including supermarkets, liquor stores, hotels and convenience stores; and employs approximately 100,000 team members across Australia. Given the diversity of our operations the regulatory compliance burden on our business is significant.

As a national retailer, Coles supports:

- a nationally consistent and harmonised approach to regulation to reduce inefficiencies and duplication of effort involved in modifying and distributing separate processes, procedures and compliance training in each jurisdiction
- greater coordination and cooperation between regulatory agencies to ensure that consumers and industry are not disadvantaged by ambiguity caused by the requirements of different regulation.

In relation to the focus of the retail industry inquiry on online sales, Coles supports the investigation to ensure traditional 'bricks and mortar' businesses can complement their existing offer, without any unnecessary impediments, to sell goods and services through a website. While Coles' key business in food and liquor does not experience significant competition from overseas websites, we support the review of importing laws. Coles is the biggest retailer in the domestic sale of food and liquor online.

While the proportion of total food and liquor sales bought online is not yet a significant proportion of Coles' total sales, our Coles Online business (the weekly grocery offer) services 85 per cent of the Australian population. Our Liquorland Direct and Vintage Cellars (online liquor offer), which do not require localised refrigerated transport, reach all of the population with access to postal services.

We thank you for the time that you have already spent with the business, both face to face and over the phone. We trust that you have also reviewed a confidential Consumer Report prepared for Coles on food affordability. The Report also covers changes over time between key food distribution channels and how household income is allocated on these and other key activities within the economy. We have also set out a summary of our online business and answers to relevant questions in the attached document. Should you wish to further discuss our submission please feel free to contact [REDACTED].

Yours sincerely

Robert Hadler
General Manager Corporate Affairs
Coles

Summary of Coles Online

Online shopping through the Coles Online brand began in 1999 with delivery across the Sydney and Melbourne metropolitan areas. The service was initially restricted to the Sydney and Melbourne metropolitan areas as the service was run out of a distribution centre in each capital city. The online service moved out of distribution centres into six stores across Sydney and Melbourne in 2008.

In 2010, our online service expanded to all States and Territories in order to respond to customer demand. Now Coles Online services over 85 per cent of Australia's population with delivery in all capital cities and major towns.

Our online businesses offer four types of services:

- Home delivery: Delivery to your doorstep or kitchen bench via refrigerated van
- Business delivery: Delivery to offices and a wide variety of other organisations requiring groceries (eg child care centres, community groups, aged care, detention centres)
- Remote delivery: Delivery to remote areas of the NT, WA and far north Queensland. Remote customers of Coles historically ordered via telephone or fax with their own courier arrangements in place (road, rail, barge or air). This has been transitioned to full visibility of a virtual supermarket on the internet with significant benefits all round
- Collection: Customer collection of groceries ordered online – either at a designated Coles supermarket or another location with chilled storage facilities (not including liquor) (see <http://www.youtube.com/watch?v=oNNu6P-IA1o>)

Coles Online features:

- A huge range of all popular supermarket items (covering 22,000 SKUs)
- Online exclusive specials
- Weekly catalogue specials
- Unique product offers such as 'Fruit & Vegetable Boxes' and 'Create Your Own Hampers'
- Personal account areas to manage your orders and create custom lists
- Express Shop search functionality
- Fresh and easy recipe ideas
- Seasonal product range
- Detailed product information and nutritional information
- A convenient range of delivery time slots
- FlyBuys points. You can continue to collect 2 standard FlyBuys points for every \$5 you spend with Coles when you register your FlyBuys number in 'My Account'

- A 4 cent per litre Coles Express Fuel Discount voucher with every delivery.

A tour of the features of Coles online shopping can be found here:

<https://www.colesonline.com.au/wcsstore/ConsumerDirectStorefrontAssetStore/images/catalog/Tutorial/Help1010.swf>

Summary of Liquorland Direct and Vintage Cellars

Customers are able to purchase liquor and other gifts and accessories through our Liquorland Direct and Vintage Cellars Wine Club brands. Delivery of liquor is available direct to the customer's door.

This service is available over the phone or on our websites: www.vintagecellars.com.au or www.liquorlanddirect.com.au.

Liquorland Direct and Vintage Cellars can deliver to all of the Australian population with access to postal services.

Coles Response to relevant Issue Paper questions

Trends in retail trade and drivers of structural change

To what extent is current retail performance a result of structural rather than cyclical change? If it is structural change what are the implications and evidence of this?

Have sectors within retail been affected differently, depending on whether they sell items considered to be discretionary consumption by households? Have the sales of durable goods (the purchases of which can be deferred) differed from the sales of non-durable goods such as groceries?

What further evidence from the market is available in support, or otherwise, of the view that many categories of retail goods are continuing to grow in terms of volume but that prices have decreased, thus squeezing margins? What specific categories of goods are affected and what factors other than the strength of the Australian dollar are bringing about this price deflation?

To what extent has competition from overseas and Australian online retailers contributed to falling revenue growth experienced by Australian bricks and mortar retailers? What data supports this? Is this a trend which will continue?

Since the acquisition by Wesfarmers in 2007, a five year turnaround plan has been developed for the Coles business. The turnaround plan seeks to take Coles from continual decline and build it back to a position of strength and in doing so, establish a platform that allows the company to prosper in the future.

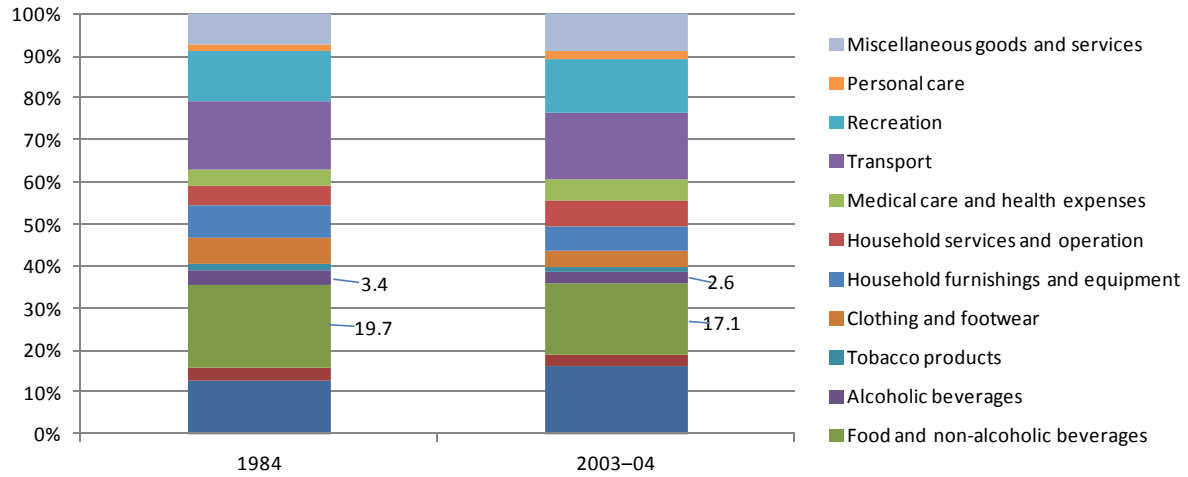
A central element of this turnaround plan is an imperative to restore customer belief that Coles is a shop you can trust to deliver quality, service and value.

As set out in the Coles' submission to the *Senate Standing Committee on Economics Inquiry into the Impact of Supermarket Price Decisions in the Dairy Industry*, Wesfarmers appointed a new management team dedicated to restoring Coles to its former position as a respected household icon, with customers at the heart of everything it does.

Along with building new stores, designing new formats, improving service, improving availability, improving quality and replacing worn out equipment, we have been reducing prices and driving change to such an extent that we have moved our prices from food inflation to food deflation.

While the amount spent on groceries has increased over the past 20 years, spending on food and drinks has decreased as a percentage of all household expenditure (Figure 1). Since the Wesfarmers acquisition, Coles has significantly increased competition in the supermarket sector and taken progressive action to reduce grocery prices. Coles' food prices have fallen by four percentage points, from food inflation of two per cent per annum to food deflation of two per cent per annum. Coles estimates that this shift could save its customers between \$800 million to \$1 billion per annum and through the suppression of competitor price increases across the grocery industry, save Australian consumers well over \$2 billion per annum in total.

Figure 1: ABS Household Expenditure Survey, 1984, 2003-04



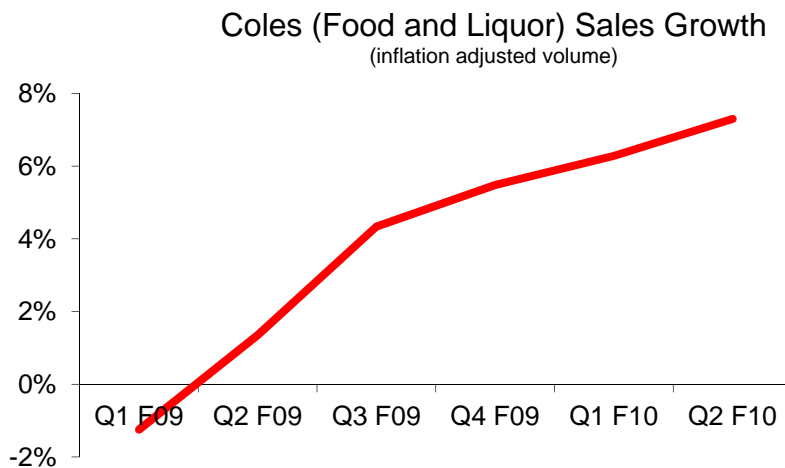
Source: Australian Bureau of Statistics, 2004, Cat. No. 6530.0 Household Expenditure Survey, Table 1: Household expenditure

Despite increases in fresh produce prices due to the recent floods and cyclones, Coles still recorded food deflation of 1.4 per cent (excluding the impact of higher tobacco excise) in the third quarter of this financial year (2010/11).

Coles has taken action to ensure that lower retail prices do not harm food suppliers. In the case of milk, Coles fully funded the retail price reductions, and paid a higher wholesale price to milk processors to ensure there was no margin pressure on dairy producers at the farm gate. In addition, Coles supports the development of a sustainable agricultural sector by working with farmers to invest in innovation and import replacement (see attached Case Studies).

The focus on providing quality, service and value has seen a turnaround in total supermarket food and liquor sales. Figure 2 shows Coles' food and liquor sales for the last 15 months.

Figure 2: Quarterly percentage change in sales



Profitability

What are the major factors influencing the profitability of retail businesses in Australia? Why are some retail sub sectors more profitable than others?

The profitability of retail businesses in Australia is influenced by a large range of factors which can be summarised as cost factors and price / volume factors. Costs factors include general inflation, availability of supply, global commodity prices, economies / efficiencies of scale. Price / volume factors include levels of demand, the business model being operated, location of the retail outlet, levels of substitutability and levels of competition).

Differences between the profitability of retail sub-sectors arise from different ranges of products being sold and different business models in selling them. For example, the cost price input of luxury clothing is very different to the cost price input of canned food. Luxury clothing retail typically operates with a high profit margin, low volume and low store space model, whereas grocery retailing operates with a low profit margin, high volume and high store space model. Profitability should also be viewed in relation to the capital required to generate that profit. For example a small convenience store may have lower profitability than a department store, however the capital required to develop a convenience store is significantly lower than department store.

Significant differences in the profitability of retail business within the same sub-sector can also arise as retail businesses may choose to operate vastly different business models. For example a high street electronics retailer may choose to increase volume by lowering prices or maintain a higher profit margin per product by increasing prices, but with lower volumes. Cost prices of retail business in the same sub-sector will also vary, impacting profitability, due to differences in contracting terms.

Coles' strategy is to focus on driving volume to fractionalise the cost base. This allows us to improve productivity, increase sales per square metre and drive a higher return on capital employed.

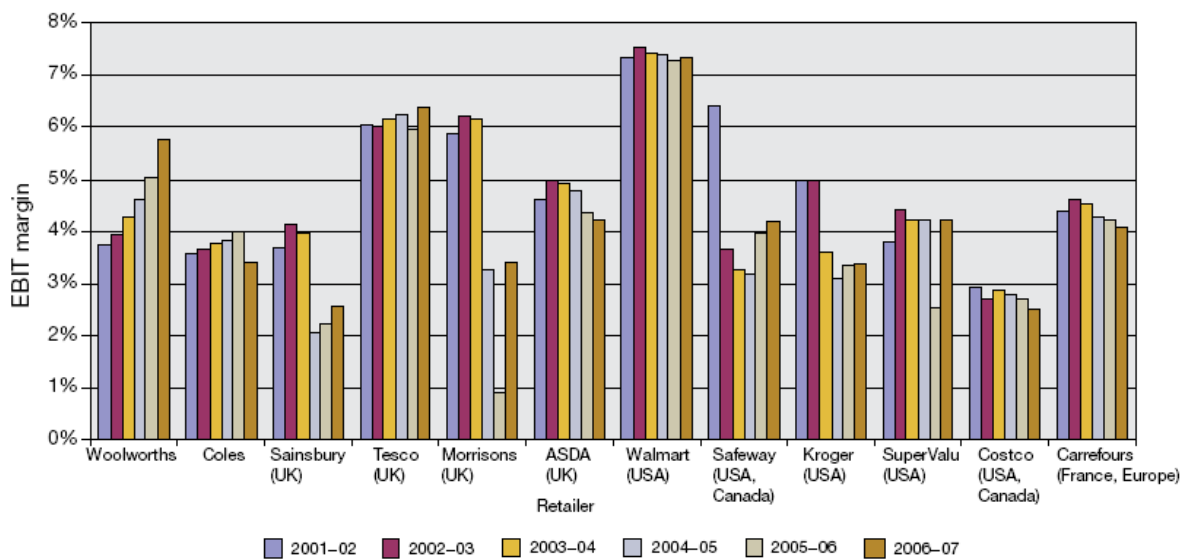
Where both costs and profits are high by international comparison does this inevitably mean consumers in Australia are paying higher prices? If so, is this a likely permanent position? If not, what are the forces which are likely to change it?

International comparisons are notoriously difficult to determine. OECD data set out in a Deloitte report prepared for the Australian National Retailers Association in July 2010 finds that:

- Overall consumer price inflation (2007-2009) in Australia at 6.25 per cent, is above the OECD average of 4.2 per cent; but
- food price change (2007-2009) in Australia is 1.49 per cent, much below the OECD average of 3.5 per cent; and
- food price change (March 2009 – March 2010) in Australia was -2.8 per cent compared to an OECD average of -2.21 per cent.¹

Grocery retailing in Australia is a low margin, high volume business with EBIT margins typically in the range of 4 to 5 cents in the dollar. This is low compared to other sectors of the Australian economy. In 2008, the ACCC reported that EBIT margins for grocery retailers in Australia appear to be much lower than overseas supermarkets.

Figure 4: International grocery retailers EBIT margins, 2001-02 to 2006-07



Source: public annual reports

Source: ACCC (2008), *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, Chart 6.3, page 110

¹ Deloitte (2010) *Recent Food Inflation in Australia* Report prepared for the Australian National Retailers Association, 28 July 2010

Retail employment

How have retailers responded to changing demand conditions in regard to staff employment?

Coles employs approximately 100,000 team members and is continuing to offer new roles and enhanced training opportunities as sales grow.

Generally we observe a need to improve the overall value proposition to employees. This ranges from targeted recruitment for highly skilled and experienced employees to the retention of existing skilled and experienced employees and a focus on succession planning and internal leadership development. Cultural change programs, improved communication and increasing overall engagement to business objectives are also important.

Regionally it is difficult to recruit in WA, particularly the North West and Queensland and some regional areas where the mining sector competes for local labour.

What are the current impacts and likely future impacts of the growth of online shopping for employment, including regional employment, in the retail industry?

While online shopping in the grocery and liquor market represents only a small proportion of total food and drink sales in Australia it is growing significantly. Coles Online saw a doubling of sales in 2010. Coles sells liquor online through our Liquorland Direct and Vintage Cellars Wine Club. We have experienced growth in sales in the online liquor market as we have seen in groceries. In the more mature online grocery shopping markets, such as in the UK, online shopping represents about 4 per cent of the food and drink market, and it is expected to grow to 12 per cent by 2014.² Coles does not anticipate material employment impacts in its business from the growth in online retail.

The growth in online retail has led to an increase in employment to service the online market. Online purchases are picked from the existing supermarket shelves and require drivers to delivery groceries.

When Coles first started online sales, distribution centres were used to pick and deliver groceries. Now, Coles online operates out of selected supermarkets.

Productivity trends

What have been the main factors driving recent productivity trends in the retail trade?

What have been the main factors driving recent productivity trends in the retail trade?

How has productivity performance differed across the various retail sectors?

How does productivity in retailing in Australia contrast with comparable best practice overseas retailers?

What are the productivity trends overseas in different sectors and how do they compare with Australian experience?

² Australian Food News (2010) *Online grocery sales boom in US and UK*, website: <http://www.ausfoodnews.com.au/2010/02/24/online-grocery-sales-boom-in-us-uk.html> cited 9 May 2011; USDA Foreign Agricultural Service (2011), *United Kingdom Retail Foods 2010*, website: http://www.nutfruit.org/UserFiles/Image/pdf/usda4_110325.pdf cited 9 May 2011.

What factors, if any, inhibit Australian retailers from achieving overseas best practice labour productivity benchmarks?

Coles' main focus is on improved supply chain efficiency and high stock turn over to fractionalise the cost base and drive improved productivity.

New and increased technology in our stores and supply chain network (eg automated ordering, self scanning) has been significant factors within supermarkets. Improving customer service, efficiency and training/development of employees and simplifying business operations, improves productivity and reduces the cost of doing business.

Being a Federation of States and Territories tends to see duplication, inconsistencies and different interpretations in the regulation of many retail products and activities. The added cost of doing business across these jurisdiction differences - from planning and zoning regulations through to display requirements and trading hours - translates into higher prices for consumers.

Developments in the retail industry

How is the structure and character of the retail industry likely to change in the next 20 years?

What factors are likely to drive changes in the structure of retailing in the next 20 years?

Which retail models are likely to survive and which are likely to struggle given current industry trends?

Given low barriers to entry, Coles would expect continued innovation and competition in grocery retail. Coles' strategy is to provide Australians with shops that trust to deliver quality, service and value.

Online trading: opportunities and challenges

Trends in e-commerce activity

Why have Australian retailers been relatively slow to take-up online trading? What impediments are there to the greater use of online trading by Australian retailers? Are there impediments (other than consumer protection issues — see later) to the use of online retailing by Australian consumers?

Are there any logistic concerns that have impeded the take up of online shopping? For example, are there any concerns relating to the costs, timeliness, effectiveness and efficiency of the delivery of purchased items by Australia Post and other courier and express freight services?

As set out in our introductory statement Coles Online deliveries are available in every Australian state and territory, and all capital city areas. The delivery area covers about 85 per cent of the Australian population. Our Liquorland Direct and Vintage Cellars offers are available to all of the Australian population with access to postal service.

Coles Online, Liquorland Direct and Vintage Cellars customers tend to shop online for convenience, value and quality.

Shopping for food and drinks online is quick and easy and can be done at any time. This is particularly important in jurisdictions with limited shop retail opening hours, for example, in Western Australia.

Shopping online also allows customers to stick to a budget. They are able to get a running tally of how much they are spending and can add and remove items easily.

To a lesser extent for food and drink retail, customers can use Coles Online, Liquorland Direct and Vintage Cellars to research and seek ideas prior to shopping for an item.

Around 5 per cent of Coles supermarkets have a Coles Online distribution hub within the supermarket. This provides a simple way of providing an online service, and the change in the store occupancy costs is not high.

The only material barrier to the expansion of our online service is the cost of provision of localised refrigerated transport to regional, rural and outback areas.

Impact of online trading on businesses and consumers

How significant is the impact of online trading on domestic retail businesses?

What factors explain Australian consumers' willingness or reluctance to purchase online from overseas suppliers? What is the relative significance of these factors?

How significant will online trading be for the Australian retail industry in the future? Is it likely that Australia will realise similar growth in market share for online retailing to that seen in the USA and Europe? What retail sectors are likely to be impacted the most by the growth of online trading? What new business models might be created by online trading?

The availability of online shopping for food and drinks in Australia provides an important segment of the Coles offerings. While the share of online sales is growing, it is difficult to imagine that online sales for food and drink will represent a significant component of total sales in the near future. Analysts estimate that grocery and alcohol bought online represents 1 per cent of total sales in this sector.

Coles estimates that we are about 3 to 4 years behind the UK in the growth in online sales of food and drink. As mentioned previously, online food and drink sales in the UK are estimated to be about 4 per cent of total sales.

General merchandise and apparel retailing has significantly more potential given shopping often starts with a category need (a summer dress, a boy's toy, a television) with the shopper's goal to select the right specific product for their needs. The internet and mobile devices are very strong in distilling specific product information to the customer instantly – either at home or in a shop – to direct this purchase. Immediate product specifications, customer ratings, customer reviews, available retailers, comparative prices etc will become more prevalent in the shopping decision. This is why a multi-channel strategy is so important for general merchandise and apparel retailers. More people start with the internet to decide exactly what they want, fewer start in the high street.

Consumer protection

Are there additional measures that could be taken by industry or governments to increase consumer confidence in the security of purchasing online?

Coles has a number of mechanisms to answer questions that customers may have in relation to shopping online. Frequently asked questions available on the Coles Online, Liquorland Direct and Vintage Cellars sites answer questions regarding:

- Details of the security software to ensure protection of personal and financial information
- Available payment methods (which include payment by EFTPOS on delivery)
- Details of our privacy and security statement
- Information on how products can be returned and our returns policy
- For Coles Online Our 'No Worries' Guarantee
- How products are delivered and kept fresh.

Government could have a greater role in educating consumers to understand, for example:

- How to identify a secure website (eg, the lock in the top of the screen and websites beginning with HTTPS rather than HTTP indicating a site has a secure certificate); and
- The importance of not shopping from links forwarded in emails.

There may also be merit in regulations regarding a requirement to ensure that payments are only undertaken if there is a secure or encrypted website.

Consumer guarantees, warranties, refunds etc.

What impacts have the consumer guarantee provisions of the new Australian Consumer Law had on the ability of consumers to obtain an appropriate remedy (for example refund, exchange or repair) when they experience a problem?

How have the new provisions impacted on retailer costs and is the impact consistent with that anticipated when the new laws were being developed?

Are there any significant examples of problems with regard to the safety, quality or performance of goods purchased by Australians from overseas online traders? Where problems are experienced with online trading, what avenues of redress have been pursued and how successful have consumers been in obtaining a satisfactory outcome?

Coles' refund policy prior to the introduction of the new Australian Consumer Law was comprehensive and included the ability for consumers to obtain an appropriate remedy. As such, Coles has not experienced any increase in costs in relation to refunds, exchanges or repairs as a result of the introduction of the new law.

While there has been little impact in complying with the consumer guarantees, there have been significant financial costs being experienced in complying with mandatory reporting provisions. Financial impacts are also being experienced as a result of trying to put measures in place to comply with the requirements that will need to be on 'warranty as to defects' notices as of 1 January 2012.

Other issues impacting on the performance and efficiency of the industry

Planning and zoning regulation

How do the different ways that states and territories determine the size and number of activity centres impact on retailing? Are the definitions of centres unnecessarily constraining different types of retailers?

We note that the Productivity Commission recently completed a research report in Planning, Zoning and Development Assessments — *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*. We support the Commission's findings that planning regimes that encourage clustering of businesses in centres can have the impact of creating more intense competition. And that State Government restrictions (in particular the ACT Government's decision to exclude certain retailers from some sites) will not lead to a net increase in competition. Coles has summarised our experience with planning and zoning regulation in the following paragraphs.

The regulation of planning and zoning varies significantly in each jurisdiction. However, broadly speaking, the approach in each of the State and Territories to planning and zoning is one based on prescriptive regulation and development controls rather than economic principles. As the most simplistic level this put artificial caps on the size of individual stores or the centres themselves. In a constantly changing, dynamic industry, retailers find it difficult to fit into inflexible and outdated planning regulations.

The South Australian and Victorian governments have both completed 30 year plans for their capital cities which provide a good basis on which planning decisions can be made. Their planning processes are relatively straight forward and clear. Notwithstanding this, we believe that there is a lack of land available for larger format retail operations in both major cities.

In Queensland there is a hierarchy of planning documents. Most areas have a regional plan that set out the various levels of centre hierarchy. Individual councils provide a more detailed assessment process through a local planning scheme. However, the regional plan produced by the State are often based on perceived economic need, growth etc, and the development of the plans is an arduous process with drafting, public consultation, review etc. The local planning schemes that are produced by Councils then provide the detail on what activities can occur within the various hierarchy of activity centres i.e. shopping centres, bulky goods, residential etc. Local councils rely heavily on external economic consultants for drafting of the planning schemes especially retail uses and most Councils have external consultants prepare specific reports that often specialise in retail such as the hierarchy or uses permitted within their definitions.

In NSW, the planning application process is broadly similar to Queensland, however, the focus is more on the local council. This results in the council often being required to review complex planning applications which may affect more than on local government area.

In the past Coles has noticed that often the local council response to a complex application is to develop a 'retail strategy', or to fall back upon a previous out of date retail study. This approach may result in fewer community benefits, as full regional economic assessments are avoided and arbitrary limits on the size of centres are determined by consultants to make these decisions.

For example, the Sydney Metropolitan Growth Centres are currently being reviewed. An approach which has attempted to set out the exact location of activity centres. Coles suggests that better outcomes may be achieved if a plan was to set out the principles of an activity centre (eg. necessary infrastructure available) rather than to set out the exact location. An approach which sets out the exact location may have the adverse effect of driving up land values of the chosen location and limiting competition because of an arbitrary constraint on land supply.

Part 3A of the *Environmental Planning and Assessment Act 1979* will be repealed under the NSW Government's decision to hand major project assessments back to Local Councils. Under the current Act, residential, commercial or retail developments with a capital investment value greater than \$100 million planning applications can be declared a major project, and therefore be assessed by the State Government. This means that the State Planners are focussing more on specific developments rather than their primary function of strategic planning and policy formulation. Whilst Coles supports the repeal of Part 3A and believe that the State Government should be focussed on developing strategic planning and policy formulation, the original problem of inaction at the local level will remain unless the approval process is structured to ensure professional, independent review of planning assessments performed by local councils. The Joint Regional Planning Panels (JRPP's) which were constituted under the previous state government should continue to perform this important function whilst councils continue to perform the planning assessment role.

In Coles' experience, the most restrictive jurisdiction of all is the ACT, where the size of the centre (and even the supermarkets within them) is specified **to the square metre** via the Crown Lease. This is principally done to ensure the Territory extracts additional revenue via 'betterment tax' for any increase granted in floor area. This has resulted in a rigid retail hierarchy which effectively locks out competition and maintains the status quo.

We believe that the planning schemes which define a 'retail centre' and which sets out whether a 'supermarket', 'discount department store' or a 'department store' is excluded has the effect of maintaining an existing retail hierarchy at the expense of competition.

The retail uses most affected by the focus on activity areas are large format retail uses - upwards of 2,000m² floor area. These uses are quite impossible to locate outside the existing centres due to the lack of zoned land. This means that the incumbent landlords of retail centres are able to reap most of the benefits.

An additional concern is the difference in standard and format of the local planning schemes relating to retailing and what activities can occur in a particular area. There are large differences in definitions across different local planning schemes, both within an individual jurisdiction and across each jurisdiction.

For example, there are multiple definitions of 'shop' around Australia. In one planning scheme it can be almost any size, in another it may include a supermarket, in another a supermarket might be excluded, in another it may be restricted to premises under an arbitrary floor area.

NSW has taken steps to 'standardise' definitions used by councils via their template, but variances still continue. In Queensland, the Sustainable Planning Act, which replaced the Integrated Planning Act last year as the overarching State planning tool in Queensland, now stipulates how planning schemes are written in terms of definitions.

Coles suggests that similar councils are facing similar issues in the development of their council land. A national approach, based on sound economic principles, may make it easier for councils to make more efficient and effective decisions. A national approach would also create certainty and confidence across different sectors.

In addition to the restrictions noted above, retail developers are particularly vulnerable to Council and State governments imposing onerous restrictions or charges on developments. Probably the most pertinent example of this is the Queensland Government's Priority Infrastructure Charges - known as PiP's - which have been levied by councils on several major projects.

Which retail activities would be most/least likely to benefit from a broadening of zone definitions, as suggested by the Productivity Commission (2011), which expands the range of sites available for commercial activity?

In simplistic terms, probably the greatest beneficiaries of the broadening of zone definitions will be the large format retailers; particularly bulky goods retailers or those requiring upwards of 2,000m² to operate profitably. However, this will depend on what the broadening entails. For example, increasing the number and detail of definitions 'supermarkets' would not benefit as a supermarket is a specific use. But, if the broadening was increasing the number of zones or increasing the type of uses within the zones, uses such as supermarkets would be improved along with those other speciality retail uses which attach themselves to the larger 'anchor' stores.

Retail trading restrictions

How do retail trading restrictions impact on the flexibility of retailers to respond to changing consumer preferences?

Retail trading hours remain a significant sectoral impediment in several States. Australia's shop trading hours are governed by each State or Territory government and have resulted in rules that vary from state to state; we believe the Victorian model is the best practice approach that should apply across Australia.

The WA Government is to be commended for the recent removal of 6pm trading restrictions on weeknight trading but still prohibits Sunday trading in the Perth metro area, other than special trading precincts and above the 26th parallel. We welcome the WA Government's stated intention of removing the Sunday trading restrictions after the next election.

In Queensland there remains a patchwork quilt of different trading hour restrictions outside the SE corner of the State. Change or removal of these restrictions is via a lengthy and costly application and hearing process with the Queensland Industrial Relations Commission (QIRC). While not a criticism of the Commission itself, the fact that most of Queensland trades without trading restrictions suggests the time has come for the Government to remove the remaining restrictions in line with the south east corner.

In NSW, trading hours remains an unnecessarily complicated process of applications and exemptions both regionally and seasonally. While some of this is a legacy issue, we note the NSW Government is reviewing the Act with a view to simplifying it.

In South Australia, while largely deregulated, there remain several trading anomalies that require trading legislation to be modified. The key one from a retail perspective is that all public holidays are non-trading days, other than for retailers operating in premises under a proscribed floor space. In 2010 South Australia had 10 non-trading days compared to three and a half days in most other States. These included substitute or additional days that were declared public holidays in lieu of the actual public holiday, for example with Christmas and New Year falling on weekends. South Australia needs to reduce the number of non-trading days in line with other States and public expectations about access to shops during these busy trading periods.

Given the recent growth of online retailing, do the benefits to some parts of the community of the current retail restrictions continue to justify the costs to the broader community?

Coles does not believe that the 'benefits' of retail restrictions justify the costs to the broader community in an environment where customers can purchase goods at any time of the day. If consumers can purchase goods and services on line 24/7 the justification of trading hour restrictions is further diminished and puts

'bricks and motor' retailers at a further disadvantaged if they are unable to open when their customers want to consider or purchase similar goods and services.

Do current retail trading hours restrictions reduce or redistribute expenditure in the retail industry? In other words, does the 'retail dollar' remain in the retail industry or is it spent in other industries?

Without being able to measure it with recent data, previous studies on the issue by Kiel & Haberkern³ dating back to the 1990's suggest that retail trading hour restrictions both reduces and redistributes expenditure in the retail industry.

Trading hour restrictions see a transfer of sales to unrestricted retailers by a law discriminates between retailers able to open or not based on the number of employees and or their floor space.

Where major retailers are unable to open there is a leakage of the retail dollar to other goods and services consumed by the public at the same time, but we do not have recent reliable data.

What have been the effects of longer opening hours in those jurisdictions that have relaxed restrictions (for example, on retail sales and employment within different retail sectors)? Was there any redistribution of retail sales between small and large retail businesses following longer opening hours?

Coles has seen an increase in customer numbers following changes to trading hours, but it is not clear how much of this is due to changes in shopping patterns amongst existing customers and increased activity for new customers.

Given the experience of the ACT and the Northern Territory with fully deregulated retail trading hours, what would be the implications of removing all retail trading restrictions in other Australian jurisdictions?

Experience in these jurisdictions - and those of Victoria and Tasmania which have almost identical trading hours and non-trading periods around public holidays - strongly suggests the removal of remaining restrictions in other States will result in similar trading patterns.

If some jurisdictions retain restrictions on retail trading on public holidays, are there any community benefits in standardising the number of restricted trading days across Australia (that is, for those jurisdictions that are not fully deregulated)?

There are clear benefits from standardising the number of restricted trading days across Australia. There are a number of days that are observed, by tradition or convention, as closed days. Among these are Christmas Day, Good Friday and the morning of ANZAC Day. Coles believes that national consistency on these days is appropriate and urges all States to adopt the best practice model in Victoria.

What problems are created by different processes in different states (and in some cases different regions within states) for retailers to seek exemptions to restricted trading laws?

There are a number of problems created by different processes in different states (and regions). The key problem relates to the delays in notice or permission to trade in some States, particularly NSW and South Australia around busy holiday periods. Late notice means planning for stock, staff and advertising during these periods are often less than optimal. Also significant resource costs associated with regional trading hour applications in Queensland.

³ The Impact of the Deregulation of Retail Trading Hours in Australia. MarketShare P/L

Is there evidence from the use and times of usage of online retailers in states with more restrictive shopping hours — particularly Western Australia — of consumer demand unable to be satisfied through bricks and mortar retailers?

Coles Online has greater penetration in Western Australia and South Australia where retail trading hours are more restrictive than other jurisdictions.

Other competition issues: market structure and conduct

Are there any important competition issues or specific aspects of the enforcement of competition laws, that have not been considered by recent reviews that need to be addressed?

A number of industry groups have promulgated views which essentially attempt to subvert competition law into a de-facto protection of one group of (usually small) competitors from competition (usually from larger competitors), particularly where industry is restructuring.

Competition law is fundamentally targeted at promoting competition between competitors for the benefit of consumers not for protecting one competitor or group of competitors from one another.

Coles suggests that if Government policies were targeted to provide a competitive advantage to one group of competitors in a sector against others in the same sector, then other more direct methods, such as tax and income policy, should be used rather than competition policy.

Labour market issues

Are there any significant and enduring skill shortages in the retail industry? Which sectors or regions are affected? Are current training arrangements sufficient to satisfy future skill requirements in the industry?

Key skill shortages are in trade areas such as bakers and butchers within supermarkets. With low unemployment levels the labour market is highly competitive at all levels. As noted above, regionally it is difficult to recruit in WA, particularly the North West and Queensland and some regional areas where the mining sector competes for local labour.

There is an increased focus on succession planning and internal leadership development for future leaders of the business.

What are the current and future implications of the growth of online shopping for skills development and training requirements in the retail industry?

In the food and liquor markets, online shopping does not outsource the requirements for retail trade certificates and apprentices etc.

What are the major pressures driving wage costs and to what extent are productivity improvements offsetting the effects of wage increases?

Cost of living pressures, particularly utilities, fuel and childcare, leading to reduced household discretionary spending. As a service business, supermarket productivity improvements are generally measured through sales growth, profitability and customer service, these factors are considered in determining wage movement.

How are current workplace legislation, awards and other institutional factors impacting on the retail sector, in particular: the level and structure of employment; wage outcomes; penalty rates, labour market flexibility and productivity performance?

The Fair Work Act establishes the legislative framework for bargaining (including the better off overall test) for the formation of new Enterprise Agreements with employees. This Act also establishes minimum national employment standards and Awards. Award modernisation has had an impact on the Retail Industry by establishing a National Modern Retail Award, including penalties with increased costs. However, as this is relatively new legislation its impacts are yet to be fully realised.

Are there any significant remaining differences in labour market laws operating across Australian jurisdictions. If so, what are the implications of these differences for labour market costs, flexibility and mobility?

As a Federation of States and Territories there are differences which add costs to doing business. For example at a State level there are different Long Service Leave laws, different Workers Compensation and occupational health and safety requirements⁴ and different Public Holidays legislation which impact on wages where they overlay State based trading hour regulation. There are also different State based Equal Opportunity and Discrimination laws.

What are the implications for employees and employers, and for efficiency and productivity in the sector, of the current use, or lack of use, of commission-based remuneration and incentive payments in the retail sector?

Generally incentive payments are limited to store management teams in supermarkets.

Is it inevitable that Australian retailers will always on average have higher labour costs as a percentage of sales than their offshore counterparts? If not, why not? Does this mean Australian consumers will necessarily always pay higher prices? Does this mean online sellers from overseas will always have a competitive advantage?

There will be implications for 'traditional bricks and mortar' retailers where offshore based online retailers sell goods competing with existing local retailers. In many of these offshore locations wages and rents would be far less than their Australian counterparts. How much impact is hard to say as some categories of retail goods will be more affected than others.

Other regulatory burdens imposed on the retail industry

Regulation that is unnecessarily burdensome, complex or redundant

To support a case for change, the Commission invites participants to provide information, including quantitative information where this is possible, to shed light on the nature and extent of any unnecessary regulatory burdens impacting on the retail sector.

Duplication and inconsistency of regulation between jurisdictions

The Commission seeks views on the nature and extent of any duplication and inconsistency, the

⁴ We understand that there is currently a national process to harmonise occupational health and safety regulations

consequences for retail businesses and proposals and a timetable for reform. The Commission is interested, for example, in receiving information about the nature and consequences of jurisdictional differences in the regulations governing the display and sale of tobacco and alcohol products.

Has progress in reaching agreement to, and implementing, relevant COAG regulatory reforms been adequate? If not, what can be done to facilitate more rapid progress in addressing regulatory cost burdens associated with jurisdictional inconsistencies and overlaps?

As set in our covering letter, as a national retailer, Coles supports:

- a nationally consistent and harmonised approach to regulation to reduce inefficiencies and duplication of effort involved in modifying and distributing separate processes, procedures and compliance training in each jurisdiction
- greater coordination and cooperation between regulatory agencies to ensure that consumers and industry are not disadvantaged by ambiguity caused by the requirements of different regulation.

Coles is pleased with COAG's approach to the *Seamless National Economy* reform agenda. In particular we are pleased with the reforms that have taken place in trade measurement, consumer policy, product safety and wine labelling.

And we continue to work with governments regarding the other proposed areas of national reform, in particular:

- consistency in the monitoring and enforcement of food standards and improved food labelling policies and laws
- uniform Occupational Health and Safety (OH&S) laws and proposal for model regulations
- registration of business names.

In addition to the areas which have been flagged for COAG reform, and haven't already been set out in this submission (eg. Planning regulation and trading hours), Coles submits that there are a number of areas which we would seek national consistency. These suggestions are outlined below.

Restrictions on the sale of certain goods online

Some jurisdictions prohibit the sale of particular products online. For example, the South Australian Government does not allow the sale of tobacco via the internet, this prohibition has also been proposed by the (previous) NSW Government.

The sale of liquor is governed by the State and Territory liquor licensing laws.

Coles does not support a prohibition of online sale of tobacco or alcohol. Our reasons for not supporting a prohibition are outlined below.

The prohibition of tobacco sale is against Australian Government Policy – it disadvantages those without access to retail shops, and will disadvantage online retail

When introducing the *Tobacco Advertising Prohibition Amendment Bill 2010* (the Amendment Bill) to amend the *Tobacco Advertising Prohibition Act 1992* to restrict the advertising of tobacco products on the internet

or in electronic media, a total ban on the sale of tobacco products online was discussed. In Minister Roxon's (the Minister for Health and Ageing) Second Reading Speech she noted that "a complete ban on internet retail sales has not been included in this bill." The Minister states that this is because:

- The internet should be maintained on the same footing as, and not be disadvantaged compared to other retail points of sale
- Internet sales help to ensure, for example, that people living in rural and regional areas are not disadvantaged when purchasing grocery items including tobacco products over the internet.

While the Minister's statement was in relation to tobacco products, the reasons could similarly be extended to online alcohol retailers.

Will create gap for unscrupulous operators

Coles also contends that the prohibition of online sales from responsible retailers will leave a gap in the market which may be filled by unscrupulous operators. These operators cannot be captured by State, Territory or Australian Government laws relating to taxation, advertising, health warnings and sales to minors.

Coles strives to comply with the various Australian laws in relation to the sale of alcohol and tobacco. Where not restricted, Coles sells alcohol and tobacco products online and undertakes a number of steps to ensure legislative compliance. This includes a requirement for all Coles Online drivers who deliver alcohol or tobacco products to complete a form that confirms they have sited ID (proof of age identification) on every delivery.

Tobacco regulations

While the Commonwealth, State and Territory governments have had a national policy for addressing alcohol, tobacco and other drugs since 1985, there is not national agreement on how to achieve the objectives in this policy. There are a number of national forums which target the reduction of smoking rates within Australia, for example:

- the Ministerial Council on Drug Strategy has an agreed on a national strategy on drugs – including a specific tobacco strategy. *The National Drug Strategy 2010-2015* outlines an Australian approach to harm minimisation through demand reduction, supply reduction and harm reduction.
- COAG's National Healthcare Agreement includes an agreement by the governments of Australia to a target of reducing the national adult smoking rate to 10 per cent and halving the Aboriginal and Torres Strait Islander smoking rate by 2018.

The lack of national agreements on the achievement of objectives means that Coles, as a national retailer, has to comply with multiple policies in regard to signage, display, licensing, ticketing, definitions of tobacco products and sales to minors.

Coles believes that if Australian governments can share an agreed objective, then an agreement on how this objective should be achieved should be the next step. Coles believes that the approach to the regulation of sale of tobacco and liquor products should be uniformly applied across Australian jurisdictions.

Dangerous goods storage legislation

While there is harmonised legislation on the transport of dangerous goods, each Australian jurisdiction has different legislative requirements for the storage of dangerous goods.

The licensing and notification limits for each class of dangerous goods are different in each jurisdiction. For example if you hold over 10,000kg of aerosols in Victoria you need to notify the regulator, however, in South Australia there is no notification requirement for aerosols. National companies cannot assess sites to one set of licensing criteria, instead they must assess sites to each jurisdiction's specific class and quantity thresholds which differ significantly.

Each jurisdiction also has different requirements for when and how requirements are discharged (eg. placarding, manifests, registers etc).

A harmonised system of the storage of dangerous goods would reduce the training, management and compliance burden on national businesses.

Quarantine rules

A number of Australian jurisdictions have state or region based quarantine rules which limit the ability to move food between zones. For example:

- fruit fly zones - most of Victoria & SA are 'fruit fly free', however, in reality there are outbreaks within these regions, Tasmania claims quarantine is required when in reality fruit fly does not overwinter in Tasmania
- only honey which is made in WA can be sold in WA
- only Australian rice which is made in the Riverina district can be sold in the Riverina district
- only fin fish which is caught in Tasmania can be sold in Tasmania.

As a national retailer there is significant administrative and compliance burden in order to comply with these restrictions. We recommend that an independent review of all quarantine rules be completed and that only those which provide positive economic impacts (benefit vs. cost, including an estimate of consumer health) are continued.

Product Stewardship legislation

Coles notes that the Australian Government has recently introduced the *Product Stewardship Bill 2011*, which received its second reading speech on 23 March 2011. The objective of the bill is to establish a "national framework to enable Australia to more effectively manage the environmental, health and safety impacts of products, and in particular those impacts associated with the disposal of products." It is our understanding that the first products to have regulations established under the *Product Stewardship Bill 2011* will be end-of-life television and computers.

Coles is working to reduce the environmental impact of our operations and products. While we aim to provide customers choice and quality products at low prices, we note that other product stewardship schemes have been proposed under the *Bill* including plastic bag and beverage containers.

Some jurisdictions have already implemented or are in the process of implementing programs that address

plastic bag and beverage container waste. Where jurisdictions believe regulatory intervention is necessary Coles would encourage a national approach to ensure consistency and minimise administrative burden. We believe a consolidated approach will lead to less waste generated and more resource recovery.

Lotteries legislation

If a business or community group would like to run a competition (for example, a raffle) then they must comply with different requirements in each state and territory. The lottery regulation in each jurisdiction has different limits and thresholds for gaining a permit (if one is required), different requirements for getting a permit number and different requirements for the running of the competition. For example, for Coles to run a raffle in:

- ACT: a permit is not required, but we cannot raise more than \$500
- NSW: a permit is not required and there is no maximum amount of money raised
- Tasmania: a community group must conduct the raffle (and can do so without a permit if proceeds are less than \$5,000), and Coles team members cannot sell tickets on their behalf.

We understand that a *Not-for-Profit Sector Reform Council* was announced by the Minister for Social Inclusion in December 2010. One of the items on the agenda of the Council is to “consider harmonisation of federal, state and territory laws on fundraising.” We believe that this is an important item to be on the reform agenda to simplify the ability for charities to raise funds. The current legislation makes it difficult in particular:

- Coles does not seek to retain a profit and all proceeds are directed to the charity group
- it is very onerous for Coles to comply with to conduct a national fundraising activity
- when our stores are approached to conduct fundraising for state-based or local groups, the current regulatory requirements may make this prohibitive
- For our business, where we have run raffles, this is a quick and easy way for us to raise money for a charity group. In 2 weeks in SA, we were able to raise more than \$30,000. In WA, in 2 weeks we raised more than \$42,000. As such, should the requirements be simplified, it would enable Coles to conduct more of this type of fundraising to aid charity groups.

Coles believes that a nationally harmonised system to reduce the red tape involved in fundraising would provide better outcomes for community groups and not-for-profit organisations.