



14th September, 2011

Inquiry into Australian Retail Industry
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Commissioners,

RE: Economic Structure and Performance of the Australian Retail Industry: response to draft report

The Bulky Goods Retailers Association Limited (BGRA) is the national peak industry association whose primary focus is on issues relating to appropriate planning and responsible development of Bulky Goods retailing outlets. The BGRA and its members, who represent the major owners and developers of bulky goods premises in NSW, are detailed in Appendix 1.

Further to our submission to the Productivity Commission's review into the Economic Structure and Performance of the Australian Retail Industry of 3rd June 2011, the BGRA wish to provide its response to the draft report released on 4th August 2011. The purpose of this letter is to address those recommendations in the draft report which impact the bulky goods retail sector.

PLANNING AND ZONING REGULATION

DRAFT RECOMMENDATION 7.1

State and territory governments should broaden zoning within and surrounding activity centres to facilitate new retail formats locating in existing business zones.

The BGRA supports the broadening of zoning within and surrounding activity centres to facilitate new retail formats locating in business zones.

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The Commission's draft recommendation 7.1 suggests that all business and industrial zones should become broad 'employment zones' and industrial zones would be limited to only narrow high-impact industrial uses. The new 'employment zones' would be created to include commercial, light industrial, retail and even high-density residential where appropriate. The Commission notes that only high impact industrial businesses would be located separately because of their adverse effects on other land users or because planning outcomes are improved through their location near major economic infrastructure.

The BGRA supports the creation of 'employment zones' as these would create maximum flexibility and competitive neutrality across the retail sector as a whole by eliminating differences between councils on which retail activities are allowed in particular zones. It also has considerable opportunity to be a standard model format across all jurisdictions in Australia.

In its first submission to the Commission, the BGRA referred to the NSW Government's program to introduce a Standard Instrument Local Environmental Plan (LEP) in all 152 NSW local council areas. This program allows new retail formats as permissible with consent in only four (out of eight) standard business zones in NSW without necessitating rezoning and other changes to council plans. The BGRA submit that the local environmental plan standardisation program in NSW does not sufficiently broaden zoning for employment purposes as per the suggestions of the Productivity Commission. And in many regards the program has now unreasonably restricted opportunities for new retail formats to locate in business and industrial zones.

For example, under the NSW Standard Instrument LEP Program, retail premises (including bulky goods premises), are not permissible in three standard business zones which could reasonably include such retail uses. These include the new B6 - Enterprise Corridor, B7 – Business Park, and B8 –Metropolitan Centre zones. And retail premises are now prohibited in all industrial zones in NSW including the IN1 – General Industrial and IN2 – Light Industrial Zones where to date the NSW State Government has encouraged the location of many new retail formats including bulky goods premises. This makes existing centres reliant on complex 'existing use rights' and seriously impedes their future expansion. The restrictions in the NSW Standard Instrument LEP Program are not logical as far as maximising flexibility and competitive neutrality for a broad range of non-offensive business activities, including bulky goods retail.

There are currently planning system reviews underway in Victoria and NSW which will now need to address the Commission's recommendation for governments to broaden zoning within and surrounding activity centres to facilitate new retail formats locating in existing business zones. Although the Victorian Minister for Planning (The Hon Mathew Guy MLC) has already made commitments on 25 August 2011 at the Cornwall Stodart BGRA 2011 Victorian Forum held in South Melbourne to remove prohibitions on Restricted Retail Premises on Industrial land, and other restrictive planning policies which demonstrates a rapid response to the latest recommendations of the Commission for broader zones. But there is a demonstrated need for a standard approach at a national level.

The BGRA recommends that the Council of Australian Governments (COAG) should be the recommended body used to facilitate a national approach to planning and zoning via a Model Code for Local Planning (including standard zones). It is only through a national policy making body that all state and territory governments will have the necessary impetus to address the critical issues of zoning restrictions which are creating great uncertainty and complexity in the land use planning system for the retail industry as a whole.

DRAFT RECOMMENDATION 7.2

Local governments should significantly reduce prescriptive planning requirements to facilitate new retail formats locating in existing business zones and ensure that competition is not needlessly restricted.

The BGRA supports local government reducing prescriptive planning requirements to facilitate new retail formats as this would reduce competitive barriers to retail development in existing business zones.

The BGRA strongly supports the recent announcements and commitments made by the Victorian Minister for Planning (The Hon Mathew Guy MLC) on 25 August 2011 at the Cornwall Stodart BGRA 2011 Victorian Forum held in South Melbourne to amend the definition of Restricted Retail Premises in accordance with the BGRA's suggestions, remove prohibitions on Restricted Retail Premises in Industrial land, and remove the minimum floor area restriction for Restricted Retail Premises in certain zones.

This initiative in Victoria demonstrates how some state governments are actively reducing the prescriptive planning requirements used by local governments to restrict some retail formats. But there is much more work to do in this regard given the substantial inconsistencies and issues inherent in local government practice across all state and territories. For example the policy approach to allow some retail formats within industrial zoned land now differs across all jurisdictions – and NSW now prohibits retail premises in industrial zones.

Whilst there are currently planning system reviews underway in Victoria and NSW which will now need to address the Commission's recommendation for local government to reduce prescriptive planning requirements to facilitate new retail formats, there is a demonstrated need for a standard approach at a national level.

The BGRA again suggests that the Council of Australian Governments (COAG) should be the recommended body used to facilitate a national approach to planning via a Model Code for Local Planning. It is only through a national policy making body that all state and territory governments will have the necessary impetus to overcome local government prescriptive planning practices which are creating great uncertainty and complexity in the land use planning system for the retail industry as a whole.

DRAFT RECOMMENDATION 7.3

Governments should not consider the viability of existing businesses at any stage of planning, rezoning or development assessment processes. Impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation or major review.

The BGRA would support the removal of all adverse impact tests on existing firms and/or activity centres (or town centres) such as a 'sequential test' (that is, proof that no other central location was suitable for the new shop) or a 'test of need' (that is, that proof that the new development was needed to meet local demand conditions) at any stage of the planning, rezoning and development assessment process. These tests have been most problematic as they make it more difficult for competitors to start new businesses by providing incumbents with a procedurally legitimate basis for arguing against the introduction of new entrants.

And the BGRA is concerned that as part of its draft Activity Centres Policy, the NSW Government is currently considering introducing a Sequential Test and Site Suitability Criteria for the assessment of Out-of-Centre proposals. Whilst the BGRA has recently advised the Victorian Planning Review that the criteria set out in any sequential test for rezoning proposals must be pragmatic and provide consistent and fair treatment, this is a challenging task.

The removal of all adverse impact tests would be preferred by the BGRA to create a level playing field across the retail sector as suggested by the Productivity Commission.

The BGRA agrees with the Commission that providing sufficient land at the strategic planning stage, with sufficiently broad uses in 'employment zones', should enable retailers to locate in areas where they judge they can best compete - and planning should be able to accommodate even the newest of current business models requiring significant floor space. Under such conditions, a new retail proposal in a non-designated area should be rare. However, in this situation, considerations of externalities such as traffic congestion and the viability of existing or planned new centres can be an important aspect of city planning which may justify accepting some reduction in competition. But the BGRA suggests that any application of competitive tests must only be used in conjunction with governments allocating sufficient 'employment zones' capable of a 10-15 year growth horizon to meet retail and commercial growth demands. This would entail the review of all activity centre boundaries, the supply of available land and the existing network of Centres.

The BGRA would also support the Commission's recommendation that the impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation or major review – but not for site specific rezoning or development application assessments.

DRAFT RECOMMENDATION 7.4

Local governments should facilitate more as-of-right development processes to reduce business uncertainty and remove the scope for gaming by competitors.

The BGRA strongly supports the expansion of as-of-right or 'code based assessment' (as it is referred to by COAG). The BGRA's first submission to the Commission detailed progress at COAG on the harmonisation of development assessment procedures, specifically code based assessment for commercial and industrial development. It was noted that this initiative has now been referred to the Ministerial Council for Federal Financial Relations who will report back to COAG in mid-2011 on the best way of ensuring a cohesive national approach to further development assessment reform.

The BGRA strongly support code based assessment of commercial and industrial development, including all forms of retail premises including bulky goods premises, and recommends the urgent completion of the COAG work to implement code based assessment for commercial and industrial development in all States and Territories as the most expedient way for this work to be progressed.

The prioritisation of this work also accords with the Commission's support of the Development Assessment Forum's recommendations to stream development into assessment 'tracks' (exempt,

prohibited, self assess, code assess, merit assess and impact assess) that correspond with the level of assessment required to make an appropriately informed decision. This both speeds up most development assessments, and releases assessment resources to focus on those proposals which are particularly technically complex or have significant impacts on others.

By way of an example of a model as-of-right development scheme, in its first submission the BGRA detailed the NSW Government's introduction of the NSW Commercial and Industrial Code in 2009 as a new part of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) which is a code based assessment scheme applying to existing commercial and industrial development, including retail premises plus bulky goods premises.

The NSW Commercial and Industrial Code has simplified the process for approving a change of use, minor external works and internal alterations to some existing commercial and industrial premises, including retail premises plus bulky goods premises. Under the Codes SEPP, certain development types are either exempt development or complying development.

The NSW Commercial and Industrial Code has thus enabled many forms of retail development, including bulky goods retail, to achieve swifter development approvals where the proposed development has minimal environmental impact because complying development applications must be determined by a (building) certifying authority within 10 days. These applications do not require any discretionary action such as a consideration of economic, environmental or social impacts by the assessment body in order to be approved. And where a proposed development is classified as exempt development, no approval (by a certifying authority or planning authority) is required.

DRAFT RECOMMENDATION 7.5

State and territory governments should ensure third-party appeal processes within planning systems include clear identification of appellants and their grounds for appeal and allow courts to award costs against parties found to be appealing for purposes other than planning concerns.

The BGRA has no objection to third parties making comment on planning matters including rezoning and development proposals. But the BGRA strongly supports the recommendation that governments ensure third-party appeal processes within planning systems include clear identification of appellants and their grounds for appeal and allow courts to award costs against parties found to be appealing for purposes other than planning concern. This would reduce compliance costs, time and funding costs for retail developments.

The BGRA again suggests that the Council of Australian Governments (COAG) should be the recommended body used to facilitate a national approach to third party appeals via a Model Code for Local Planning.

DRAFT RECOMMENDATION 7.6

State and territory governments should reduce the compliance costs associated with planning systems and development approvals by implementing the leading practices identified in the Commission's recent benchmarking report on planning, zoning and development assessments.

The BGRA strongly supports the recommendation that governments should reduce the compliance costs associated with planning systems and development approvals by implementing the leading practices identified in the Commission's recent benchmarking report on planning, zoning and development assessments. The suggested practices to reduce compliance costs on retail businesses to be adopted by governments include:

- providing incentives for development applications to be adequate on first submission, such as escalating penalties associated with incomplete development applications
- limiting the range of reports that must accompany an application to those essential for planning assessment, leaving the need for other reports such as for construction site management and most engineering and drainage until after planning approval is obtained
- adopting electronic development assessment/planning systems
- ensuring the skill base of local council development assessment staff includes a good understanding of the commercial implications of requests and decisions and the capacity to assess whether proposals comply with functional descriptions of zones rather than judging them against detailed prescriptive requirements
- streamlining development applications into assessment 'tracks' that correspond to the level of risk/impact and thus the level of assessment attention required to make an appropriately informed decision
- using deemed approval provisions for some development assessments taking longer than the statutory decision-making period
- using deemed approval provisions for referral agencies which fail to meet the referral time limit
- as far as technically possible, resolving referrals simultaneously rather than sequentially.

The BGRA again suggests that the Council of Australian Governments (COAG) should be the recommended body used to facilitate a national approach to compliance costs via a Model Code for Local Planning.

RETAIL TRADING HOURS REGULATIONS

DRAFT RECOMMENDATION 9.1

Retail trading hours should be fully deregulated in all states (including on public holidays).

The BGRA supports draft recommendation 9.1 and advocates for full deregulation of trading restrictions across all states in Australia as there is an indisputable net community benefit to be gained by the increase in choice, competition and convenience associated with increased trading hours.

This is particularly relevant to the bulky goods retail sector and the merchandise sold in bulky goods outlets as there is demand from consumers for the shopping activities to be undertaken at times out of normal trading hours, particularly on weekends. Therefore, bulky goods retailing is ideally suited to weekend trading to allow flexibility, increased opportunity and convenient access for consumers. The BGRA submit that with full deregulation, hourly pay rates and flexibility must be carefully balanced by all jurisdictions.

Of particular concern and utter frustration, is the confusing and over regulated trading hours in Western Australia. The Western Australian Government has failed to proceed, despite undertaking a consultation process, in the next step towards the deregulation of trading hours by not permitting retailers selling “durable goods” to trade on a Sunday.

OTHER REGULATORY BURDENS

DRAFT RECOMMENDATION 12.1

Governments must prioritise efforts directed at the review and reform of regulations that are unnecessarily burdensome and reduce regulatory inconsistency across jurisdictions where that affords net benefits to business and the community.

The Productivity Commission’s draft report noted the Council of Australian Governments (COAG) 2008 agreement to deliver a seamless national economy, under which the Australian and state and territory governments committed to reform priority areas, including the acceleration of the implementation of reforms for existing ‘hot spots’. Many of these and other reforms agreed to by COAG are of specific relevance to the retail industry.

The BGRA’s submission detailed progress at COAG on the harmonisation of development assessment procedures, specifically code based assessment for commercial and industrial development. It was noted that this initiative has now been referred to the Ministerial Council for Federal Financial Relations who will report back to COAG in mid-2011 on the best way of ensuring a cohesive national approach to further development assessment reform.

Four major reviews in the last few years have all made consistent recommendations for regulatory reform including major changes to zoning and planning regimes across all states and territories to enhance competition in the retail sector including:

1. The Productivity Commission’s *Inquiry into The Market for Retail Tenancy Leases in Australia* (2008);

2. The Australian Competition and Consumer Commission (ACCC) *Inquiry into the Competitiveness of Retail Prices for Standard Groceries* (2008),
3. The Productivity Commission's recent *benchmarking report on Planning, Zoning and Development Assessments* (2011), and
4. The Productivity Commission's draft report on *Economic Structure and Performance of the Australian Retail Industry* (2011)

The BGRA hope that recommendation 12.1 of the draft report will provide the necessary impetus for Governments to prioritise efforts directed at the review and reform of regulations that are unnecessarily burdensome and reduce regulatory inconsistency across jurisdictions where that affords net benefits to business and the community. With the benefit of new state governments in many jurisdictions, the opportunity is available to review and redirect policy and regulation to better respond to business and community needs.

Yours sincerely,

Philippa Kelly
Executive Director



Appendix 1.0 Bulky Goods Retailers Association (BGRA) - Overview

The Bulky Goods Retailers Association Limited (BGRA) is the national peak industry association whose primary focus is on issues relating to appropriate planning and responsible development of Bulky Goods retailing outlets. Retail members of the BGRA consists of some of Australia's largest and most respected bulky goods retailers including fifty-three individual business brands as follows:

Adairs	Curtain Wonderland	OZ Design Furniture
Anaconda	Dare Gallery	Pet Barn
Auto Pro	Domayne	PETstock
Autobarn	Dreamland	Plush
Baby Bunting	Early Settler	Nick Scali
Barbeques Galore	Fantastic Furniture	Ray's Outdoors
Bay Leather Republic	Forty Winks	Recollections
BCF	Freedom	Repco
Beacon Lighting	Goldcross Cycles	Sleepy's
Bedshed	Guests Furniture Hire	Snooze
Betta Electrical	Harvey Norman	Sofas 2 Go
Bev Marks Australia	IKEA	Space
Bunnings	JB Hi-Fi	Spotlight
Chateau d'Ax	Joyce Mayne	Suite Deals
Chemist Warehouse	Le Cornu	Super A-Mart
City Farmers	Lincraft	Supercheap Auto
Clive Anthony's	Officeworks	The Good Guys
Clive Peeters	Original Mattress Factory	

The BGRA is supported by the following Associate members who comprise of Bulky Goods developers, owners, service suppliers and agents:

ADCO Constructions	Environmental Earth Services	Primewest Management
APP	Dart West Developments	PROBUILD
Arise Developments	DD Corporate	Realmark Commercial
Arkadia Property Services	Gadens Lawyers	Savills
AXIMA	GTA Lawyers	Terrace Tower Group
AXIOM Properties Limited	HWL Ebsworth Lawyers	The Belgrave Group of Companies
BB Retail Capital	InterfaceFLOR	The Buchan Group
Blueprint	Jones Lang LaSalle	The Planning Group
Brecknock	ISPT	VALAD Property Group
Burgess Rawson	Leffler Simes Architects	Vaughan Constructions
Cardno	Major Media	Vend Property
CB Richard Ellis	McKenzie Hall	Venture Property Services
Century Funds Management	McMullin Group	Visy Recycling
CEVA Logistics	Mirvac	Norton Rose
Charter Hall Group	Northern Territory Airport Corp	Lander & Rogers
Colliers International		
Cornwall Stodart	BWP Trust	

Our representation is extremely diverse. The BGRA clearly represent the interests of large national bulky goods retailers, but we also represent the interests of small retailers as many of our members have franchised businesses.



The BGRA is committed to continued appropriate business expansion based on the current and projected economic growth in both population and new home ownership throughout the State. Our members provide the essential 'homemaker' goods and services to support this growth and are arguably the most affected by planning regulations that govern this market sector. Consequently, we are actively involved across Australia in numerous reviews of planning policy and planning regulations that affect our industry.

The BGRA is a key stakeholder group involved in consultation on numerous major planning policy matters currently being dealt with by the state and local governments around Australia.

Deep End Services estimates bulky goods sales for the financial year ending 30th June 2010 were **\$58.152 billion** nationally and **21.3 %** of all retail sales. Further economic research by Deep End Services estimates that Bulky Goods retailers nationally employ approximately 173,000 people directly and a further 215,000 people indirectly, and in NSW approximately 51,190 people directly and a further 63,578 people indirectly.