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AACS SUBMISSION: REGULATOR ENGAGEMENT WITH SMALL BUSINESS

Regulator Engagement with Small Business
Productivity Commission
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To whom it may concern,

The Australasian Association of Convenience Stores (AACCS), the peak body for the convenience industry in Australia, makes the following submission to the Productivity Commission's report into *Regulator Engagement with Small Business* on behalf of its many members nationally.

There are approximately 5,500 convenience stores operating in Australia which employ well over 30,000 people nationally, often in smaller, family run businesses. Despite operating under some well known brands, these stores are in the main franchised or licensed, while many operate as independently owned businesses. The importance of the convenience industry as a sector of the economy and as an employer is obviously significant.

However, the convenience store industry finds itself at a critical impasse today.

Higher utility costs, the carbon tax, rising costs of labour, security and penalty rates, the recent introduction of plain packaging for tobacco as well as the rumoured introduction of a 'sugar tax' are all negatively impacting convenience stores.

In the Issues Paper, the Productivity Commission quotes Sparrow (2000), who says even when the fault lies with the law, the blame is usually borne by regulators:

To the public, and especially to industry, regulators seem all too often nitpicky, unreasonable, unnecessarily adversarial, rigidly bureaucratic, incapable of applying discretion sensibly, and (worst of all, since regulation costs so much) ineffective in achieving their missions.

While "blame" may often be borne by regulators, the actual financial costs of regulation are typically borne by small businesses. Historically, because convenience stores interact with the community at the coal face, they have been impacted time and again by legislative changes designed to achieve outcomes in other areas, be it health, the environment, taxation or otherwise.

Without effective engagement with small business, regulators miss out on the opportunity to achieve any synergy between the desired outcome and the small business reality. The business case for convenience stores and other small businesses in the design of new legislation has been habitually ignored in the past and this is a key issue the AACCS wishes to raise in its submission.

Plain packaging of tobacco, and its irresponsibly rushed introduction, is a case in point. This legislation has impacted the bottom line of convenience stores en masse, with costs incurred ranging from additional labour and staff training costs to the destruction of stock at an individual retailer level and changes to display cabinets and signage.

These costs could have been minimised should regulators have consulted with our industry to understand the retail implications of the legislation, which Government acknowledged to be a long term solution, prior to its unnecessarily rushed introduction.

Even now, the AACS is attempting to engage with the ACCC on the issue of retailers being liable for the rotation of graphic health warnings on tobacco products which, if not addressed, will place another huge burden unnecessarily on these businesses.

The AACS wishes to emphasise the importance of small business to the overall domestic economy. We also wish to emphasise the need for regulators to consider the business case, not just the emotional case, which is often tied to political purposes on the subjects of health and the environment, for example.

Often it can be the case that the community and small business priorities can be aligned, but not unless regulators undertake to engage with small business and give their concerns genuine consideration.

The convenience store industry requires government support now more than ever. A more effective platform for small businesses to engage with regulators at the conceptual design stage of new legislation, and throughout the implementation process, is an important way to demonstrate this support.

The AACS wishes to thank the Productivity Commission's consideration of our submission in compiling its final report.

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Areas of interaction

Some of the areas in which regulators interact with convenience stores include:

- **Workplace regulations**
- **Workplace health and safety**
- **Public health and safety**
- **Food health and safety**
- **Environmental management**
- **Liquor licensing and management**

Working toward solutions together

The AACCS has identified above the areas in which our industry interacts with regulators. Below we outline in more detail some of the specific examples of these interactions to demonstrate how a commitment to proper engagement can achieve improved outcomes for all, and how a lack of engagement contributes to negative outcomes.

Workplace regulations

As convenience stores attempt to compete with the large supermarket chains and their unmatched buying power, rising labour costs are placing stores under immense pressure. Penalty rates are a barrier to profitability to many small businesses, including convenience stores, and actually reflect outdated notions in the context of the modern workforce.

Convenience stores are small businesses often operating 24/7, providing a unique and essential service in the communities in which they operate. In many instances, they are the life-blood of the community.

These stores employ many young people, students and parents who actually prefer to work at night or on weekends so they can fit in study requirements and other lifestyle pursuits.

There is no credible reason for penalty rates to apply in this instance as the employee has the flexibility and choice to work non-traditional hours. Potential outcomes of enforced penalty rates include the early closure of stores, an obvious disadvantage to customers, or stores employing fewer people.

The AACCS believes a fairer system involves people being allowed to choose when they wish to work across the week and agree on rates for this work. Employees would only be eligible for higher rates once the agreed set of hours for the week is surpassed.

Public health and safety

The introduction of plain packaging for tobacco is a classic example of regulators failing to engage with small business, in blind pursuit of a health outcome and paying no consideration to the small business case. As such, the impacts on convenience stores has been extremely negative and the

experience highlights the consequences of failing to consult and listen to an industry at the coal face of major regulatory changes.

Based on a well intentioned idea, the merits of plain packaging quickly became blurred by political posturing and attempts to secure headlines. Although it was widely acknowledged by regulators that plain packaging was viewed as a long term solution to the reduction of smoking, the legislation involved an absurdly rapid introduction of the new regulations which demonstrated little understanding of the realities of retail trade.

In some cases, convenience store owners were left with obsolete stock on hand which had to be destroyed at their own expense, additional labour and staff training costs were incurred with no subsidy, stores were left out of stock while manufacturers attempted to comply within the brief timeline for the introduction of the legislation, and transaction times have been lengthened substantially.

All of these impacts are at odds with the key point of difference for convenience stores: that their service is to be convenient for customers. Jeopardising the main advantage of convenience stores in the context of the challenges they face competing with the large supermarket chains is irresponsible to say the least.

A recent report from leading international research house Roy Morgan on the impacts of plain packaging on retailers, which the AACCS would be happy to make available to the Productivity Commission, details precisely how negative the impacts to convenience stores have been.

The AACCS wishes to stress the need for regulators to recognise the importance of engaging with small businesses to avoid a repeat of the plain packaging fiasco. With certain lobby groups calling for new taxes on soft drinks and confectionery, for instance, the convenience store owners at the coal face of any proposed changes have a right for their voice to be heard and their concerns to be given due consideration.

Food health and safety

Some states have mooted changing food labelling regulations which effectively include convenience stores in the same category as fast food restaurants. The majority of food sold in convenience stores is pre-packaged and it is therefore impractical and unreasonable for these products to require separate kilojoule labelling. Thankfully, common sense has prevailed in most states, with this issue being acknowledged and exemptions being made.

Nevertheless, it is another example of regulations being drafted and, only after submissions by bodies such as the AACCS, were they changed to more appropriately respond to the real life situation. This example also demonstrates that prior consultation with industry has the potential to save time and cost for all stakeholders involved.

Liquor licensing and management

The AACCS has on numerous occasions called for a level-headed discussion on the merits of permitting convenience stores to participate in the packaged alcohol market, as convenience stores in the US, UK, Europe and South East Asia are permitted to do.

Between them, the two major supermarket chains control approximately 58% of the packaged alcohol market in Australia through their various branded outlets, according to the IBISWorld Industry Report: *Liquor Retailing in Australia July 2011*.

The lack of a level playing field in the packaged alcohol category, indeed in many other product categories as well, is the subject of ongoing interest in the public domain and at the ACCC level. Preventing convenience stores from competing in this category has done nothing to stop the unfettered growth of the major chains to continue and increase their dominance of this category.

Permitting convenience stores to participate in this market is one way in which these small business owners can compete with the ever-growing power of the major chains. However, to date, regulators at State and Federal Government level have resisted engaging with the AACS on this issue.

There is a powerful business case for allowing the sale of packaged alcohol in convenience stores, yet the AACS acknowledges there are other perspectives on this issue as well, relating to addiction and health.

This is why the AACS has publically stated its willingness to work with regulators to develop an ideal framework for the sale of packaged alcohol in convenience stores. We offer our commitment to operate within that framework, which might include regulations such as separate point of sale facilities for alcohol purchases, limits on range and trading hour restrictions.

What is required is the opening of a reasonable, level-headed dialogue that considers the small business case alongside all other perspectives. The AACS is here and willing to engage in such a process.

Environmental management

The AACS acknowledges that, in the lead up to the introduction of the carbon tax, many industries were competing for their concerns to be recognised by regulators. Nevertheless the convenience industry, operating 24 hours a day, 365 days a year, and selling products requiring around the clock refrigeration, was in a unique position.

However our attempts to engage with regulators were not recognised. This meant that any reasonable discussion on the availability of subsidies was impossible and the important role convenience stores play in the community received no recognition.

The AACS wishes to reinforce the need for regulators to engage with the convenience industry on all environmental management issues with the potential to impact, whether directly or indirectly, the operation of convenience stores. Such issues might include vapour recovery as it applies to service stations and regulations concerning container deposits.

Convenience stores are the experts in their field and are at the coal face of having to execute any proposed regulatory changes in these areas. It is therefore necessary to engage with our industry in designing new environmental regulations.

Workplace health and safety

The AACS has been successful in encouraging Victoria Police to engage with the convenience industry, specifically service station operators, regarding a serious workplace safety issue pertaining

to the practice of petrol drive offs. It's an issue that not only costs store operators lost revenue, the safety implications of motorists driving away in haste is obvious.

A recent forum convened by Victoria Police, and involving the Commissioner himself, enabled the AACS, individual retailers and other industry groups to have the opportunity to discuss potential solutions that support police in their efforts to address petrol theft while understanding the retail perspective. This type of engagement between new regulators and small business demonstrates the enhanced outcomes achievable when a collaborative approach is adopted.

Conclusion

The AACS, on behalf of its members nationally, believes it is in the best interests of everyone concerned for regulators to commit to engaging with small business in the development, implementation and ongoing compliance requirements for new legislation.

We wish to stress that the small business case need not be at odds with the broader outcomes desired by regulators, be they related to health, the environment, taxation or otherwise. Often, with proper engagement, the interests of small business and regulators can be aligned.

We thank the Productivity Commission for its consideration of our submission and extend an invitation for the commission to contact the AACS directly for further information.

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