



8 August 2013

## **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 6,000 convenience stores operating in Australia which employ over 40,000 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 but the industry finds itself facing significant challenges today.

Higher utility costs, the rising costs of labour, security and penalty rates, plain packaging for tobacco, further tobacco excise hikes 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.

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

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## Areas of interaction

The main areas in which regulators interact with the convenience industry 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 AACS has identified above some of 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 AACS 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**

### **- Tobacco plain packaging**

The introduction of plain packaging for tobacco was 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 report from leading international research house Roy Morgan on the impacts of plain packaging on retailers, which the AACS would be happy to make available to the Productivity Commission, details precisely how negative the impacts to convenience stores have been.

The AACS stresses 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, 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.

## **Public health and safety**

### **- Graphic health warnings for tobacco**

As an example of the positive outcomes achievable when regulators engage with small business, at its instigation the AACS worked with the Government to take decisive action to remove a loophole in the previous regulations governing the rotation of graphic health warnings on tobacco products.

The action represented a win for common sense, resulting in no major adverse impacts to retailers and no adverse health outcomes.

Previously, the *Competition and Consumer (Tobacco) Information Standard 2011* placed the onus on retailers to rotate the graphic health warnings on tobacco products and ensure only stock featuring current warnings are sold.

This meant retailers would have incurred additional costs associated with re-training staff and implementing new stock management procedures. This cost burden would be complicated by the fact all tobacco stock is in plain packaging, while transaction times would have been further impacted and there was potential for stock with out of date warnings having to be returned or destroyed, again at the retailers' expense.

The regulations were not thought through nor costed in any way.

Following engagement involving the AACS, an amendment was proposed that clarified that the responsibility for updating stock with current warnings lied with manufacturers and importers, a move which made practical retail sense, and was thankfully instated by regulators.

The AACS commended the Government for not only recognising the impracticalities of requiring retailers to rotate these health warnings, but for taking the necessary action to rectify the standard.

### **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 AACS, 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 AACS 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.

We have made a submission to the Council of Australian Governments (COAG) in this regard and we continue to meet with Government Ministers at both a State and Federal level to articulate the business case.

We have also written to the Treasurer and Prime Minister on this issue yet we have not even received acknowledgment of our correspondence in these instances.

Invariably our case is met with encouragement and support from those Ministers we have met with, yet the disconnect between private pledges of Ministerial support, regulator engagement and legislative action remains.

The need for deregulation, in this case, is obvious. According to the IBISWorld Industry Report: *Liquor Retailing in Australia September 2012*, "During the past decade, the supermarket duopoly increased their combined market share to over 58% of industry revenue".

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.

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 a framework that encompasses all perspectives. 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 willing to engage in such a process and encourages regulators to do likewise.

### **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**

For some time now the AACS has actively sought to raise awareness of a serious workplace safety issue pertaining to the practice of petrol drive offs. This crime not only costs store operators lost profit, upwards of \$30 million annually on a national basis in fact, it also has major safety implications due to motorists driving away in haste after committing these crimes.

The regulator response has been both encouraging and disappointing at the same time. In Victoria, for instance, we've had some success in engaging with Victoria Police to emphasise the criminal nature of petrol drive offs - it's theft after all – through meetings and correspondence with Police representatives and the Victorian Police Minister.

We have outlined our perspectives on this issue at industry forums. This collaborative exercise has 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.

Despite these efforts and the apparent support for our position, regulatory support has yet to be forthcoming. Potential solutions put forward by the AACS have been tabled but no action has been taken to implement these solutions.

We remain willing and eager to assist regulators to address this, and other, issues. However the concerns of small business seem unable to break the barrier whereby regulatory action is taken.

Another area the AACS believes regulator engagement with small business is necessary, and one which could generate considerable financial savings and reduce red tape, concerns a national approach to health and safety.

At present, the various state based health and safety authorities are governed by different rules, codes and procedures, which makes education and compliance unnecessarily difficult and confusing.

A national code would represent a simpler, smarter step in the right direction and the AACS welcomes the opportunity to engage with regulators to this end.

## 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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