

S U B M I S S I O N

to the

Regulation Taskforce

***Reducing the Regulatory Burden
on Business***

November 2005

National Association
of Retail Grocers of Australia
PO Box W245
WESTFIELD PARRAMATTA NSW 2150

Contact: Alan McKenzie
Tel.: 02 9806 1915 Fax: 02 9806 1910
Email: alanmckenzie@narga.com.au

Introduction

The National Association of Retail Grocers of Australia is a federation of mostly State-based retailer organizations, representing about 5000 independent retailers.

NARGA member organizations have been concerned over many years at the heavy and constantly increasing compliance burden on the small business sector because of actions by governments at each level - through legislation and regulation and through "voluntary" schemes and codes of practice.

Several reviews of the red tape burden have been completed in recent years, but the recommendations have been largely ignored by governments. The result has been that compliance burdens have continued to increase, with subsequent diversion of funds and human resources away from the core business activities upon which profitability, growth and the creation of jobs are entirely dependent within the small business sector.

In many cases, compliance burdens and resultant costs occur because politicians and bureaucrats do not seem to understand how businesses operate, do not seem to appreciate that small businesses have limited resources in terms of staff, time and funds, nor, particularly in the retail sector, that retail space is private property, has a commercial value and is fundamental to the survival of many businesses.

Yet, on a regular basis, governments are effectively confiscating that private property through requirements which interfere in the day to day operations of the business, such as requirements relating to mandatory signage (or signage restrictions) or where and how to store products for sale or requiring the owners and employees of private businesses to spend time on work for which the owners are not compensated. All such requirements accumulate costs for business and effectively give governments a free ride at the expense of those businesses.

While a gross turnover of, say, \$2 million dollars a year may seem large in the broader small business sector, such turnover in grocery retailing is relatively small and nett profit margins are generally in the range of 2.0 to 3.0 per cent.

Compliance costs and the impact of scarce resources being diverted from generating profit thus have a major adverse impact on the profitability, growth or survival of such businesses.

Overview of Major Concerns

A recent survey conducted on behalf of NARGA revealed the following are the major regulatory compliance/red tape burdens faced by our members (in order of importance):

1. GST/BAS/ABS/payroll tax
2. Occupational Health and Safety (OH&S) laws (the introduction of workplace fatalities laws making employers personally liable, including possible jail sentences, has heightened this concern).
3. Health/hygiene/food safety laws
4. Tobacco legislation
5. Superannuation
6. Work cover costs.

Independent retailers, in their responses, are seeking more flexible tax-related policies and a reduction in the time spent on paperwork.

The response of one of our retailers on the regulatory compliance burden perhaps best captures the nature of the problem:

"Government reports are three per month, two per quarter, three annual ones. We computerized to make this reporting process easier, but have found the daily updating of the computer just as time consuming. The additional impost of constant changes to government laws, e.g., food safety, flammable goods, superannuation, taxation and now industrial relations requires continual education of self as well as staff. It's hard to run a small business as well as try to keep abreast of these changes."

Another response speaks to the problem with OH&S laws and policy:

"OH&S laws have gone overboard in compliance regulations - it is bad enough if we or an employee has an accident, but then the OH&S can come in and fine us amounts that are unreal in relation to our income level...no matter how careful we had been."

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Some Key Issues

GST

The introduction of the goods and services tax regime imposed a substantial compliance burden on independent grocers, arising mainly from the exemption of some food products.

Research by the chartered accountants Hall Chadwick, commissioned by NARGA in 2000, revealed a massive compliance burden on independent retailers in the grocery sector.

The Hall Chadwick survey covered the six months to 31 December 2000 and found:

Excluding the costs of BAS preparation, ongoing GST compliance costs (total for six months) across different sized food and retail grocers were:

- Small (turnover up to \$5 million pa): \$6,199.81 (annualised \$12,399.62)
- Medium (turnover \$5m to \$20m pa): \$15,300.43 (\$30,600.86)
- Large (turnover more than \$20m pa): \$27,295.67 (\$54,591.34).

Compliance costs as a percentage of GST collected showed the much higher relative burden on smaller stores:

- Small 28.25 per cent
- Medium 13.53 per cent
- Large 1.25 per cent.

(This finding is supported by similar overseas studies).

The extra hours of weekly compliance work imposed on NARGA members were:

| | Av. Paid hours | Av. Unpaid hours | Total hours |
|----------|----------------|------------------|-------------|
| ▪ Small | 12.64 | 5.96 | 18.60 |
| ▪ Medium | 24.39 | 5.78 | 30.17 |
| ▪ Large | 61.50 | 8.33 | 69.83 |

Average set-up costs for GST also impacted disproportionately on independent grocers:

- Small \$18,622.41 (1.63 per cent of annual turnover)
- Medium \$44,704.94 (0.58 per cent)
- Large \$212,908.33 (0.17 per cent).

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According to Hall Chadwick, in many instances set-up costs significantly eroded or negated operating profits of small and medium sized stores.

Completion of the Business Activity Statement, undertaken quarterly in the majority of cases, contributed additional compliance costs, primarily in the form of the costs of labour for the store owner and employees and extra costs for external advisers.

For the six months to 31 December 2000, the costs of completing each BAS return (calculated as the total of hourly rates for each of the personnel involved) averaged:

| | |
|----------|-----------|
| ▪ Small | \$819.33 |
| ▪ Medium | \$805.47 |
| ▪ Large | \$186.67. |

NARGA has welcomed recent (2005) changes to the Simplified Accounting Method, which extends coverage to grocery and convenience stores which have less than \$2 million annual turnover and which operate scanning systems. We appreciate the co-operative approach taken by the Australian Taxation Office in working with NARGA to provide some relief from this burden. The benefit of the changes, however, will need to be monitored and reviewed over the coming years.

While we have no later compliance burden data than the Hall Chadwick survey results and acknowledging that the burden might have reduced as grocery retailers have become more familiar with the system, there is no reason to believe either that the burden has entirely evaporated¹.

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The recent survey of independent retailers commissioned by NARGA and referred to earlier, found that GST/BAS was clearly ranked as the number one compliance cost concern of independent grocers. We therefore look to this Review to at least signal the need for further work to be undertaken as to how the compliance burden that GST/BAS imposes on small business can be further reduced through simplification or other measures.

¹ House Standing Committee on Employment, Workplace Relations and Workforce Participation, report *Working for Australia's future: Increasing participation in the workforce*, March 2005, Official Committee Hansard, 27 January 2004, pp. 17-21.

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Given that it is unlikely that any government would look to simplify the GST by extending its coverage to all products, including foodstuffs that are tax exempt, this Review has an important role to play in highlighting this issue in its report to government and if at all possible, by providing a way forward.

Country of Origin Labelling

The recently announced changes to the Country of Origin Labelling regime potentially entail a substantial burden.

NARGA member associations have no objection in principle to making as much information as possible available to the public and we offer to work with government to find ways to implement the new regime in ways which will minimize compliance costs. However, the requirements, as usual, fall most heavily on the independent grocery sector, particularly in relation to labeling of fresh product in stores. Yet, if a tray of sliced salami is labeled "Product of Hungary", who is to know whether it might in fact be "Product of Italy"? Who will verify and how?

The major supermarket chains, which can promulgate a single set of decisions which will result in uniform application of the requirements across a chain and where consumables such as labels can be bought economically in very large print runs, will bear some compliance burden for set up and maintenance.

In the independent grocery sector, however, there is unavoidable replication when each of thousands of independent businesses is required to establish its own set of compliance mechanisms and produce the related consumables at a higher unit cost, thus impacting business profitability and competitiveness. As a rough estimate, initial set up for compliance is likely to be \$3 million plus and ongoing compliance costs of the order of \$10 million a year for independent grocers. Again the sector as a whole is made less competitive by diversion of its resources.

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Red tape imposts distract owners and staff from their core business, reduce the funds each business has to invest in revenue-generation, divert the business owner and staff from their main functions - serving their customers and helping to generate profit for re-investment in the business and creating jobs. The funds are instead diverted to costs which do not generate income and which are of uncertain benefit to customers. If a retail business is able to source a particular product only from overseas at any one time (say, for reasons of unavoidable seasonal supply shortages) what benefit is the *Product of Australia* label to a customer if local product is unavailable?

This begs the question as to what the RIS had to say in relation to the impact of this decision on small business.

Plastic Shopping Bags

The proposed phase-out of plastic shopping bags under “voluntary” arrangements, subject to the threat of a mandatory regime if the “voluntary” targets are not met, means that independent retailers will be required to divert funds from normal business priorities, such as buying stock, refurbishing the store, or employing an additional staff member, to buying and storing the more expensive “reusable” shopping bags.

Shopping bags of various other materials - such as paper, calico or polypropylene - have been promoted. There are a very good reasons why paper shopping bags fell into disuse for the past several decades: they are inferior products, subject to tearing when wet or dry, expensive to produce, distribute (because of weight) and store (because they occupy greater space than lightweight HDPE). Their manufacture, recycling and reprocessing also generate by-products undesirable for environmental reasons. Nor has it been adequately demonstrated that bags of other materials, such as calico or polypropylene are functionally or environmentally superior to the strong, hygienic, waterproof, lightweight HDPE shopping bags currently being phased out and which are likely to be replaced in secondary uses by increased sales of kitchen tidy liners.

At some point the billions of calico or polypropylene bags currently being introduced will be at the end of their serviceable lives and will be

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dumped to landfill, with far greater impacts on landfill volumes than the lightweight HDPE bags they are now replacing. Recycling facilities are rudimentary and reprocessing, again, is not without environmental cost.

Compliance with the phase-out of HDPE bags, though “voluntary”, is not without substantial cost and diversion of resources.

Lightweight HDPE shopping bags are not so much an environmental problem as a litter problem, originating mainly from the route trade and (wind-blown) from poorly managed local government tips, rather than the grocery sector. It is highly unlikely that the overall volume of the litter stream will be altered by the removal of one lightweight product and its replacement by heavier products.

A genuine solution is more likely to be behavioural: people should be encouraged not to litter **anything**, not just discontinue use of HDPE shopping bags as a small part of the "solution".

Display of Tobacco Products in Shops

Queensland and Western Australia have moved to restrict the maximum size of displays of tobacco products in shops.

No evidence was produced by either State to demonstrate a causal relationship between display of tobacco products and the decision to smoke (just as display of soap cannot be shown to cause bathing, or flour baking). The issue is clearly unrelated to sale of tobacco products to under-age smokers, which is already illegal and relatively infrequent², and to the adverse impacts of environmental tobacco smoke in bars, clubs and other public spaces.

According to the study referenced below, about 17 per cent of the sample of "current smokers" among secondary school students in 2002 (the 14 per cent who had smoked at least one cigarette in the week

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prior to the survey - that is 17 per cent of 14 per cent - 2.38 per cent of the total sample) had bought cigarettes, while about 74 per cent (of 14 per cent - 10.36 per cent of the total sample) obtained cigarettes from family and friends. Similar results occur in US research.

About 53 per cent of the total sample in this study had never smoked and another 30 per cent had smoked at least one cigarette in the past year. The total sample of smokers is thus inflated by the inclusion of those who smoked once or a few times and quit.

NARGA supports prohibitions on under-age smoking. In the case of the Queensland and Western Australian legislation seeking to limit the size of tobacco product displays in shops, however, those governments have put in place costly, misguided programs aimed at the wrong target, retailers, since no evidence of a causal relationship between display and use has been produced,

²*Smoking behaviours of Australian secondary students in 2002*, Monograph Series No. 54, report prepared for Australian Government Department of Health and Ageing, by Victoria White and Jane Hayman, March 2004.

while ignoring the source of under-age smoking which is more than 400 per cent greater: family and friends. Adult smokers will not be prevented in any way from purchasing cigarettes, though they may be inconvenienced in small stores.

This is clearly a case of governments wanting to create the impression that they are "doing something", with retailers expected to carry the additional compliance burden. The result, however, is additional cost and disruption for small retailers and service delays for adult customers purchasing legal tobacco products, with no evidence that such imposts will have any impact whatsoever on overall rates of under-age smoking or smoking in the adult population.

Worse, since tobacco product sales constitute a large percentage of overall sales in small retail outlets, any inconvenience to customers is likely to lead to disproportionate reduction of sales and the transfer of those sales to the major retail outlets, such as supermarkets. Thus families and individuals who bought into small retail businesses under one set of rules have been retrospectively disadvantaged by legislation which is almost certain to fail to achieve its stated goals.

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Regulation Impact Assessment

While Australian governments have agreed to a system of regulatory impact assessments whenever new legislation is proposed, the system fails in practice.

NARGA has previously pointed out³ that the RIS process requires considerable time in research and preparing submissions, while no obligation falls on governments to respond. The mere completion of an RIS satisfies the requirement, no matter how inadequate the RIS itself.

³ House Standing Committee on Employment, Workplace Relations and Workforce Participation, report *Working for Australia's future: Increasing participation in the workforce*, March 2005, Official Committee Hansard, 27 January 2004, pp 25-26.

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Evidence put forward, arguments raised, logic laid out are in general not acknowledged or are outright ignored in governments' final responses to RIS submissions. Points raised in submissions are left unanswered.

The process itself is therefore no more than another regulatory burden and we are not aware of any instance where the "do nothing" option has been the one adopted. Yet if all proposed legislation were subject to a rigorous cost/benefit analysis, rather than a box ticking exercise, the no regulation option might be the best and most obvious outcome.

This submission raises issues related to only a handful of concerns. The regulatory burden on small business grows almost every time governments decide to act in any area related to business activity.

While major corporations can afford the cost, time, consultancy or research fees, space and staff required to optimize their response to government regulation, small businesses often cannot do so.

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The result is that government regulation or requirement for "voluntary" action entails a disproportionate regulatory compliance burden for small businesses.

In our view, extensive reconsideration of the RIS process is needed to ensure that such compliance burdens are minimized, especially for small business, and that steps should be taken to reduce the burden of compliance with existing regulation while a new regime is put in place to minimize the impact of future regulation.

Some regulatory compliance burdens seem to us to arise, at least in part, from political posturing, often based on inadequate understanding, flawed logic, unsubstantiated assertions and faulty, unvalidated data.

Where industry organizations or individual businesses are required to provide comment, input or submissions to processes for government consideration, there has been an increasing trend for government agencies to set almost impossibly short periods in which industry must lodge submissions.

If one might be a little cynical, it almost seems that in some instances government does not really want to listen to industry, but they want to be able to say they have consulted. By restricting times for submissions, it appears governments are deliberately attempting to

reduce the number of submissions received, so that they do not have to depart from the course they intended from the start.

Conclusion

Perhaps it is time for Australia to emulate the provisions of the United States *Data Quality Act*, introduced as part of the financial year 2001 Consolidated Appropriations Act (Public Law 106-554 section 515).

The *DQA* required the US Office of Management and Budget to develop government-wide standards for the quality of information used and disseminated by the United States government. The legislation seeks to ensure and maximize the quality, objectivity, utility and integrity of information (including statistical information) disseminated by US federal agencies and upon which government decisions might be based.

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In implementing the data quality provision, the legislation directed the OMB to issue guidelines for data quality which would define four key terms - "quality", "objectivity", "utility" and "integrity" and for other agencies to issue their own conforming guidelines in response.

The intention of the *DQA* is to base government decision-making on information which is objectively accurate and valid. This would be likely, in our view, to promote decision-making which is transparent, based on sound science and which will be the basis of rational regulation. Obversely, it would help avoid the introduction of bad policy (that is, policy unsupported by objective facts, so far as they can be established).

In passing, it is also more likely, in our view, to be able to take into account the likely regulatory impacts of government decisions and result in a more comprehensive cost-benefit evaluation of any proposed government regulation.