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Research Director

Health and Ambulance Services Committee

7 January 2016

Introduction

Australian United Retailers Limited (AURL), trading as FoodWorks, is pleased to make this submission to the inquiry into retail tobacco licensing in Queensland.

Terms of Reference

That the Health and Ambulance Services Committee inquire into licensing arrangements that affect the sale and use of tobacco in Queensland.

That, in undertaking this inquiry, the Committee should consider:

- What arrangements currently apply in Queensland with respect to licencing the wholesale and retail supply of tobacco products
- What licencing arrangements apply in other States and Territories for the wholesale and retail supply of tobacco products, and
- The capacity for licencing arrangements for tobacco wholesalers and retailers to support broader public health objectives

The minutes of the Health and Ambulance Services Committee held on the 2 December 2015 include a range of issues that are of interest to this committee, including:

- The aim of reducing smoking rates in Queensland
- Reducing the uptake of smoking by young people
- Ultimately creating a smoke-free future
- A belief that strong tobacco retailing laws that reduce supply and demand are an essential part of a comprehensive tobacco control approach

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- A recognition that Queensland’s tobacco legislation is strong and that there are well-established restrictions on the sale and supply of smoking products, including:
 - a complete ban on the display, promotion and advertising of tobacco in retail outlets
 - restrictions on the sale of tobacco to children under 18 years of age
 - restrictions on the location of vending machines
 - measures to capture electronic cigarettes as smoking products
 - Various compliance measures, including:
 - education advice for retailers and staff about their legal obligations
 - requirement for retailers to train their staff about asking young people for identification and not selling tobacco to children
 - investigation and enforcement by Queensland Health environmental health officers
 - formal warnings and penalties for breaches of the retail provisions
- An interest in the capacity for tobacco licensing arrangements to support broader public health objectives
- Whether tobacco licensing schemes could be used to strategically reduce the availability of tobacco products by:
 - limiting the number of licences available
 - specifying the type of retailer that can sell tobacco—for example, not issuing tobacco retail licences to supermarkets
 - restricting the number of licences in areas known to have higher rates of smoking
 - prohibiting retailing of tobacco near schools or licensed venues
 - additional restrictions on the sale of tobacco, such as the hours when it may be sold
 - making the cost of the licence prohibitive to small businesses
- The benefit of introducing brief intervention health material at the point of sale for cigarettes

AURL / FoodWorks

AURL is an Australian owned and operated independent retail supermarket group trading primarily under the “FoodWorks” Brand. The combined business has a network of 553 stores, of which 390 are branded FoodWorks, with annual aggregate store turnover in excess of \$2.2 billion.

All stores are independently owned by our retail members, the majority of which are held in single ownership. Our stores have considerable autonomy to decide how their business is operated and the flexibility to tailor their store to meet the needs of their local community.

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FoodWorks stores vary considerably in size, ranging between 100 sq m to 2,567 sq m, with an average size of 562 sq m. In Queensland we have 224 stores, of which 129 are branded FoodWorks.

Independent supermarkets, such as FoodWorks, make a significant contribution to the economy and the social fabric of local communities:

- Independent supermarkets play an important role in sustaining country town commercial districts and high street locations. These retailers act as anchor tenants and attract the customer traffic that is required for smaller local speciality shops and service providers to survive.
- Compared to the major chains, independent supermarkets contribute significantly more to their local economies. Various US studies show that independent retailers can contribute 2-3 times more to the local economy than chain stores, ie they have significantly higher local multiplier effects. (www.amiba.net)
- Independent supermarkets source a greater proportion of their goods and services from local producers and service providers, such as local accountants, cleaners, transport companies, storage facilities, etc. By purchasing from local producers, suppliers and service providers, more money is kept to circulate through the local economy.
- Typically, profits are held locally and are reinvested locally. Unlike the major chains where profits are returned to the corporate head office and are distributed amongst shareholders, including international investors.
- More prosperous local supermarkets will see a rise in local employment, and vice versa.
- They actively support local sporting groups, clubs and charities

Independent retailers are facing significant challenges across Australia:

- Australia has one of the most concentrated supermarket industries in the world, with Coles and Woolworths accounting for a 73% market share.
- The major chains have accelerated the opening of new stores, including new small store formats targeted at traditional independent supermarket locations.
- The price war between the major chains has led to lower prices and as a consequence tighter margins for the independent sector.
- Queensland liquor legislation has given the major chains an unfair trading advantage in this State.
- Rising store operating costs.
- Growth in private label products.
- Growth of on-line shopping and its extension into traditional independent supermarket territories (eg small country towns).
- How to improve store efficiencies and cut operational costs, yet strive for excellent customer service and a first-class offer.

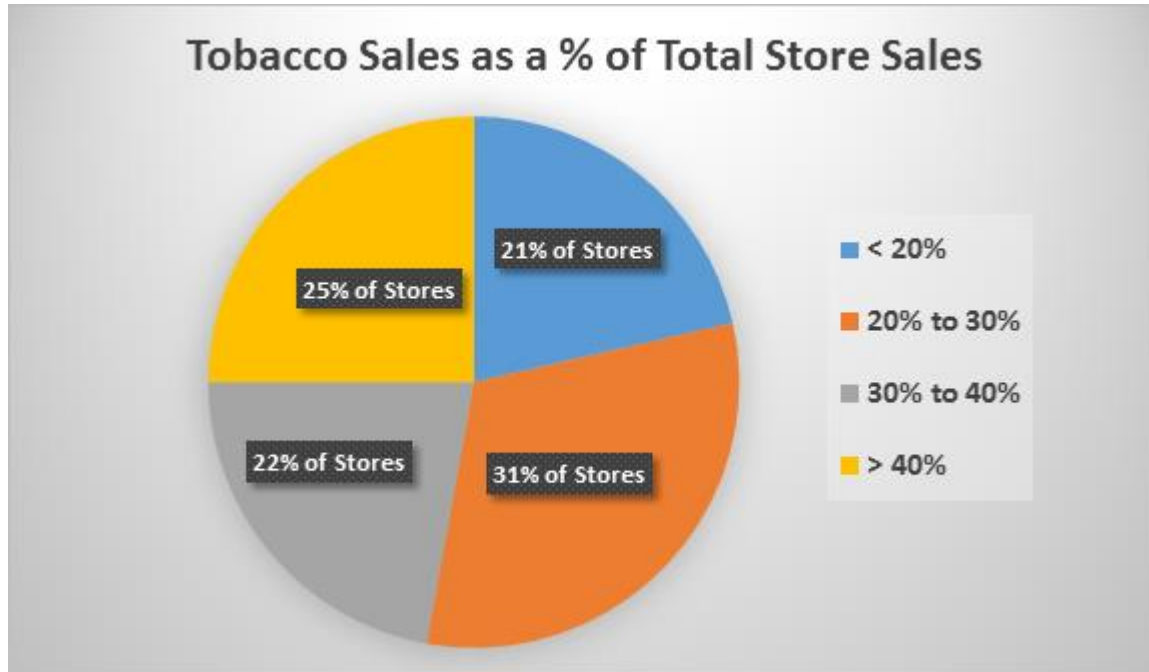
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The sale of tobacco is an important part of our business. In Queensland tobacco sales account on average for 26% of store sales, taking up a relatively small amount of space in the store. For one quarter of our stores, tobacco sales account for over 40% of total store sales.



It is our view that action needs to be taken to foster greater competition within the Australian supermarket industry by strengthening and supporting the independent supermarket sector. Creating more administrative burdens and introducing a tobacco licensing system that would likely impact the viability of smaller independent supermarkets is of serious concern to FoodWorks. A growing and prosperous independent supermarket sector will aid the Australian economy and create the necessary competitive tension in the supermarket industry to drive benefits for Australian consumers.

FoodWorks supports efforts to create healthy communities, however, any change affecting the ability of independent supermarkets to sell tobacco needs to be based on credible evidence, should not favour some competitors over others, must demonstrate a net benefit to the whole community, and should only be considered where no alternative measures exist.

Competition Reforms

In March 2015 the Harper Report into competition policy was released. Harper and his committee undertook a wide ranging review of competition policy in Australia with the aim of reforming current legislation so as to boost productivity, assist economic growth and foster healthy competition.

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The report acknowledges a place for regulation to achieve harm minimisation objectives, such as those that apply to the sale of liquor. However the panel found that such restrictions should not be designed to benefit particular competitors, but should be designed only to achieve the stated public policy benefits:

The Panel's view

Liquor retailing and gambling are two heavily regulated sectors of the economy. The risk of harm to individuals, families and communities from problem drinking and gambling is a clear justification for regulation.

As with other regulations, liquor and gambling regulations should be included in a new round of regulation reviews (see Recommendation 8) to ensure that they are meeting their stated objectives at least cost to consumers and are not unduly restricting competition.

Reviews of these regulations should draw on evidence, including comparing competition and harm reduction outcomes from the different approaches adopted across jurisdictions. The public interest in minimising harm from problem drinking and gambling should be given proper weight as part of any such review.

The impact of regulatory restrictions on the ability of **small businesses** to compete should be considered as part of such reviews. (Harper Report, P. 150)

Rather than introducing further restraints on small businesses, the panel supported the removal of restrictions on what type of goods can be sold in supermarkets:

*“consumers and small businesses operating in the retail sector can benefit from introducing more competition through eliminating barriers to entry. This can include **lifting restrictions** on trading hours and **on the types of goods that can be sold in supermarkets** and service stations.” (P. 286)*

The report recommended that the States and Territories adopt a ‘public interest’ test when contemplating new laws that would impede competition. This test would require evidence that the benefits of the restriction outweigh the costs to the community, and that this would be the only way to achieve the objectives:

Recommendation 8 — Regulation review

All Australian governments should review regulations, including local government regulations, in their jurisdictions to ensure that unnecessary restrictions on competition are removed.

Legislation (including Acts, ordinances and regulations) should be subject to a public interest test and should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Factors to consider in assessing the public interest should be determined on a case-by-case basis and not narrowed to a specific set of indicators.

In November 2015 the Federal Government released its response to the Harper Report. Whilst no specific response was made in relation to tobacco retailing, the Government supported the Harper recommendation (No. 8) to review all government regulations so as to ensure that unnecessary restrictions on competition are removed.

Licensing Scheme Consideration

Creating a licencing scheme with the intent or result of preventing independent supermarkets from selling tobacco is strongly opposed on the following grounds:

- **It would significantly impact the profitability and viability of small independent supermarkets.**
 - The sale of tobacco is an important part of an independent supermarket.
 - In Queensland tobacco sales account for on average 26% of FoodWorks sales, taking up a relatively small amount of space in the store.
 - Tobacco sales account for at least 40% of total store sales for one quarter of all FoodWorks stores in Queensland. These stores, and possibly more, would no longer be viable should they lose the ability to sell tobacco products. Many of these stores are located in regional and remote Queensland.
 - Selling tobacco allows consumers to undertake one-stop shopping, adding to the level of convenience offered by FoodWorks to our customers. Convenience is one of the most important competitive advantages for independent supermarkets.
 - Many FoodWorks customers visit specifically to purchase tobacco. However, whilst in our store they regularly purchase other products. The loss of these customers from our store network will result in significant impacts, not just in terms of lost tobacco sales.

- **The proposed licensing scheme would create unnecessary restrictions on competition and unfairly favour particular competitors.**
 - The major chain supermarkets will be better able to afford a large licence fee.
 - This would make it significantly harder for independent supermarkets to compete with the chains.
 - This is approach is contrary to the recommendations of the Harper Committee.

- **There is no evidence to prove that reducing the number of outlets will reduce the incidence of smoking or the level of demand.**
 - There is no credible evidence that shows a causal link between outlet density and rates of smoking.
 - Our analysis of the ABS Household Expenditure data shows that rates of tobacco use vary considerably on socio-economic characteristics (eg income, level of education, ethnicity, etc).
 - It is our argument that outlet density is being influenced by demand (ie more shops sell tobacco where the demand is higher).

- The recent NSW study into tobacco regulation (Public Health Research & Practice, 'Tobacco retail regulation: the next frontier in tobacco control?', July 2015) also failed to find a link between higher outlet density and higher usage rates:

"It is unclear if these associations are a product of tobacco retailers responding to higher demand, or whether the increase in retail outlets also increases smoking rates in certain communities." (Page 3)

"It remains unclear whether the availability of tobacco affects the likelihood of smoking cessation". (Page 3)

"In particular, there is a lack of context-relevant evidence to assess whether a positive licensing scheme, and controls on the density and proximity of tobacco outlets to certain communities, schools or licensed venues, would reduce tobacco-related harm." (Page 4)

- In a similar way, outlet densities are expected to be higher near schools due to the land-use and zoning requirements of local councils that aim to develop centres of activity.
- **Consumers will find alternative sources of supply or change their buying patterns. This is expected to result in an increase in consumption amongst smokers:**
- Consumers may be encouraged to buy in bulk when they visit a tobacco retailer. This may have an unintended consequence of increasing consumption amongst smokers.
 - Similarly, consumers will be encouraged to purchase cigarettes when they find them available, rather than when they need to purchase them. This too may increase the level of consumption amongst smokers.
 - An increase in the rate of purchasing when travelling overseas (legal limit of 50 cigarettes per adult, with families able to pool their allowances).
 - Move to online sales / home delivery (eg www.ifag.com.au, www.woolworths.com.au).
 - The purchase of 'black market' tobacco will increase (see below for further discussion).
 - Unless the number of outlets selling tobacco are dramatically reduced, consumers are unlikely to have to travel very far to purchase cigarettes. Given the likely time penalty will be small the likelihood of modifying smoking behaviour is expected to be negligible.
 - Cigarettes are not impulse purchases. Most smokers tend to make a specific shopping trip. Whilst limiting the number of outlets may be a successful strategy to reduce the purchase of impulse items (eg chocolate), it will have far less effect on tobacco products. If required, smokers are prepared to travel further for such products.

- **We expect that by actively reducing the number of locations where tobacco can be legally sold, you would be pushing smokers to purchase more through the black market.**
 - In Australia, illicit trade already represents 14.3% of the market, costing the Australian Government \$1.42 B in lost revenue in 2014/15. (KPMG, *Illicit Tobacco in Australia*, 9 Oct 2015).
 - Such outlets often sell products in branded packaging.
 - They typically don't care who their consumers are, including selling to children.
 - They also don't abide by other relevant tobacco laws and regulations.

- **The use of licensing to reduce tobacco consumption rates in specific geographic areas or amongst particular socioeconomic groups is considered to be discriminatory.**
 - Why should these consumers be made to travel further to purchase cigarettes than other communities?

- **The existing regulatory system in Queensland is already working well and would not be enhanced by introducing a new licensing scheme:**

'Queensland's tobacco legislation is strong and there are well-established restrictions on the sale and supply of smoking products.'

'While Queensland does not have a tobacco licensing scheme, the tobacco retailing measures we have in place are effective'.

'Because of the other systems that we have put in place we actually do know all of the outlets that sell cigarettes so we do not need to have a licensing scheme to know where it is being sold, and because of the processes in place that people have to educate their staff so that they do not sell to minors, all of that work is already happening that you would potentially put a licensing program in place for.'

"I think it is quite fulsome now. I think it has built up over time, and we have done essentially over the last number of years what you would do if you were going to bring in a licensing scheme. So I am not sure that a licensing scheme would add a lot of value to what we are currently doing other than potentially nudging some people out of the industry."

(Dr Jeannette Young, Chief Health Officer and Deputy Director-General, Preventive Health Branch, Prevention Division, Department of Health, Public Briefing – Inquiry in Tobacco Licensing Arrangements in Queensland, 2 Dec. 2015)

- **The Queensland Government should continue to support and implement strategies with proven results, including:**
 - Consumer education on the harm of smoking
 - Display bans in retail outlets
 - Advertising bans
 - Packaging restrictions
 - Retailer and staff education on the State's tobacco legislation
 - Enforcement of the legislation
 - Restrictions on selling to children
 - Prosecuting illegal tobacco retailers
 - Using pricing (exercise duty) as a dampener on demand

- **If a licensing scheme is to be pursued, which we oppose, then the cost should be in line with other States and should be revenue neutral.**
 - \$270 is the average licensing fee across those Australian States and Territories with such a scheme.
 - \$300 has been suggested in the briefing material as sufficient to cover the cost of administering the licensing scheme in Queensland.
 - The fee should not be constructed to specifically disadvantage small business.

- **We do not support the idea of providing additional health material at point of sale for cigarettes.**
 - Retail staff are not trained to answer health related questions from consumers.
 - Retail staff are not health practitioners and should not provide health advice.
 - There is sufficient information on cigarette packaging to advise consumers of the dangers of smoking.
 - Consumers should also be encouraged to discuss their smoking habits with their GP or to ring Quitline. Such discussions should be held with health professionals, not retail sales staff.

Conclusion

The Federal and Queensland Governments have been successful in reducing the rates of smoking within the community over the last decade. This has been achieved through an array of measures, particularly around reducing demand. Whilst we agree that more can be done to reduce smoking rates, we do not believe that introducing a licensing scheme aimed at the supply side will achieve the Government's public health objectives. Further, we are of the view that such a licensing scheme would not pass the 'Public Interest' test for competition:

- It would unfairly restrict the ability of small businesses to compete.
- There is no evidence that the proposal would achieve the Government's health objectives.
- Consumers will easily find alternative sources of supply, some of which are illegal, whilst others may have an unintended consequence of increasing consumption amongst smokers.
- It will make consumers travel further to purchase cigarettes, will do little to curb demand, but will put more cars on the road, increase traffic congestion, pollution, etc.
- The cost to the community as a whole is expected to significantly outweigh any potential benefits.
- There are other harm minimisation methods available that have proven results, are more cost effective, and do not impede competition.

As the demand for cigarettes falls, over time so too will the number of retail outlets. We recommend that the Government allow market forces to dictate the number of retail outlets, rather than arbitrarily legislate how many outlets there should be for a given area.

Independent supermarkets play an important role in the community, yet still rely heavily on tobacco sales to survive. It is our view that action needs to be taken to foster greater competition within the Australian supermarket industry by strengthening and supporting the independent supermarket sector. Creating more administrative burdens and introducing a tobacco licensing system that would likely impact the viability of smaller independent supermarkets is of serious concern to FoodWorks. A growing and prosperous independent supermarket sector will aid the Australian economy and create the necessary competitive tension in the supermarket industry to drive benefits for Australian consumers.

On this basis we urge the Committee not to pursue a tobacco licensing scheme in Queensland.



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