



13th November 2018

Food and Grocery Code of Conduct Review
The Treasury
Langton Crescent
PARKES ACT 2600
FGC@Treasury.gov.au

AACS submission re: Food and Grocery Code of Conduct Review

To whom it may concern,

On behalf of members of the Australasian Association of Convenience Stores (AACCS), the peak body for the convenience industry in Australia, we make the following submission in response to the final report on the Review of the Food and Grocery Code of Conduct.

We acknowledge that the Food and Grocery Code of Conduct does not specifically cover the convenience industry and, specifically, convenience stores.

Our submission is therefore brief and addresses only the specific Recommendations we believe should be considered by Government in forming its response to the final report.

Generally speaking, the AACCS supports measures which assist suppliers in their dealings with the major grocery chains, as the proliferation of supermarket home brand lines and excessive discounting on select products by the major chains has had significant and well-documented impacts on some suppliers and producers.

The convenience industry is comprised largely of small businesses and the AACCS advocates for a level playing field for these businesses in their efforts to compete with the major grocery chains.

Thank you for your consideration of our submission.

Jeff Rogut FAIM MAICD
Chief Executive Officer
Australasian Association of Convenience Stores Limited
ACN: 156 638 023



Website: www.aacs.org.au

Mail: PO Box 2309,
Mt Waverley,
Vic. 3149. Australia

About the AACS

Established in 1990, the Australasian Association of Convenience Stores (AACS) is the peak body for the convenience industry in Australia.

Nationally, our industry employs over 40,000 people in over 6,300 stores. The majority of these stores operate as family run businesses, often under licence or franchise agreement, or independent ownership. They regularly employ family members and people from the local communities in which they operate.

The AACS represents the interests of these small businesses; their owners, staff, suppliers and customers.

The convenience industry in Australia was valued at approximately \$8.4 billion (excluding petrol sales) in 2017 according to companies contributing to the *2017 AACS Annual State of the Industry Report*. This report contains the most comprehensive information available on the convenience industry in Australia and we would be happy to provide a copy.

As an Association we enjoy strong ties with our international counterparts including the convenience stores associations in the US, Canada, the UK and New Zealand. We also visit similar stores in South East Asia to keep abreast of changing or emerging trends. For instance, 35 of our members have just returned from China where we visited a number of stores and leading innovative companies such as Alibaba and JD.com.

Response to the Recommendations

In this section, the AACS responds to select Recommendations made in the Review.

Recommendation: The current coverage of products under the Grocery Code should remain unchanged.

The AACS notes that alcohol is not covered in the Code and the Review does not propose changing this. Nor does the AACS seek to have alcohol covered by the Code.

However, the regulatory environment governing the sale of packaged alcohol in Australia must be addressed and necessitates consideration by all authorities responsible for overseeing the operation of the grocery channel, including the ACCC.

The AACS believes the packaged alcohol category should be subject to greater scrutiny and urgent review to increase competition in this valuable sector.

Whether that's in the form of alcohol being included in a voluntary code established by the major grocery chains is questionable, but what is certain is the need to deregulate this market to avoid the 60% market share already enjoyed by the two major chains expanding to an even more unsustainable level.

In March 2017, the Senate Select Committee on red tape recommended that convenience stores should have the right to sell packaged alcohol. Despite this recommendation, individual states and territories remain opposed to granting convenience stores this right, though no reasonable economic or commercial reasons have been offered.

The Review notes:

- *“...the bottle shop lines of Coles and Woolworths are estimated to account for over 60 per cent of the domestic retail sale of liquor in 2017–18. 26 This concentration is expected to increase, as Coles and Woolworths continue to expand their store networks.”*

This is a clear acknowledgment of a lack of competition in this market. As it stands, convenience stores are prevented from participating in this market, a position at odds with most other countries including major economies in the US, UK and South East Asia.

The Review goes on to note:

- *“Despite this high level of concentration, the Review did not identify systemic issues of unfair conduct by retailers or wholesalers against producers of alcoholic beverages. This may be attributed to the different market structures of the various alcoholic beverage industries. For example, the beer manufacturing market is predominantly supplied by two large multinational firms with significant countervailing bargaining power.”*

Wolf Blass is one high profile wine producer who disagrees with this assessment¹. Blass went on the record to argue that the competition regulators and politicians should have taken greater measures to limit the dominance of liquor retailing by Coles and Woolworths.

¹ <https://www.smh.com.au/business/wolf-blass-rails-against-woolies-coles-20151028-gkk9pe.html>

The AACS believes deregulation in this sector to permit convenience stores to be able to sell packaged alcohol, should they so choose, is one genuine measure with the potential to address the lack of competition in this category.

Finally, the Review notes:

- “These diverse market structures limit the ability of the major retailers to exert their market power. There are either a small number of significant producers or a number of alternative revenue streams. For example, wine producers may simply withdraw supply when faced with pushback from the major retailers and expand their sales through other markets, such as through tourism or hospitality channels.”

The AACS believes there should be more “alternative revenue streams” available to distributors and producers of packaged alcoholic beverages, which would particularly support smaller producers struggling for shelf space in stores controlled by the two major chains.

The convenience sector is an obvious channel to address the unsustainable power exerted by the supermarket duopoly in this category.

We include as reference over the following pages a business case supporting the right for convenience stores to participate in the packaged alcohol category.

Recommendation: The Government should consider introducing a targeted mandatory code for industry participants with significant market power that refuse to become signatories.

The AACS does not specifically seek to oppose the introduction of a mandatory code as the convenience industry, and the small businesses which comprise the majority of this sector, operate outside the definition of businesses covered by the code.

Nevertheless, we note that some submissions received in the consultation to date call for a mandatory code “to capture all large retailers and wholesalers in the market”.

We simply wish to emphasise our support for the determination that *“The Review does not believe there is benefit from capturing smaller retailers under the Grocery Code, as it would impose disproportionately more regulatory costs on small organisations.”*

Jeff Rogut FAIM MAICD
Chief Executive Officer
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SECURING THE RIGHT FOR CONVENIENCE STORES TO SELL PACKAGED ALCOHOL

Unrealised potential: the economic importance of deregulation

- We believe less – not more – regulation is needed to enable small businesses to compete on more level ground with the major chains.
- If convenience stores were permitted to sell packaged alcohol, it would open up job opportunities at a corporate level and individual store level, and also at the supplier level.
- Suppliers would have an alternate and diversified national channel to reach their customers.
- The packaged alcohol market in Australia is valued at around \$18 billion per annum. The two majors account for approximately 70% of this market. Deregulation is essential to generate competition in this market.
- Deregulation not only opens up job creation opportunities at the retailer and supplier level, it would foster a more competitive environment for all.

One remedy to a major competitive headache

- The two main supermarket chains use the existing retail framework to dominate alcohol sales to an unsustainable extent.
- Permitting convenience stores to compete in this market is just one way Government could improve the competitive landscape in the Australian retail sector and support small businesses.
- The majors use their market share to negotiate favourable agreements with alcohol producers and exploit their position to promote the sale of their high margin private label products.
- This affects retailers and suppliers. Some of Australia's best known producers of beer and wine are suffering as a result of the anti-competitive tactics of the major chains.
- The proliferation of home-brand products has diminished the ability of these suppliers to reach their market. They are being squeezed out.
- The photo below is of a Woolworths convenience store selling hampers with alcohol included. Small businesses must have the right to be able to compete across the same range of products, including packaged alcohol, all year.

Taking advantage of the convenience model

- The convenience store model naturally aligns with the way consumers purchase alcohol.
- When people buy alcohol, they are influenced by store display, layout and specials.
- These behaviours directly align with the convenience industry's competitive advantages and reinforce the revenue potential for small businesses.
- It is time convenience stores were permitted to use the advantages available to us in our quest to compete with the major chains.

The emotional argument (easily) debunked

- A major argument people make against convenience stores being permitted to participate in this market is that alcohol should not be more readily accessible than it already is.
- But the argument makes no sense. Packaged alcohol is already widely available in the community from a large number of licensed premises.
- Customers can visit drive thru bottle shops at all hours of the day and night to purchase alcohol.

- The capacity to obtain a licence to sell alcohol is limited to a select few, including take away liquor stores, of which approximately 70% are owned by the two major supermarket chains.
- Preventing convenience stores from selling alcohol is not slowing the growth of the industry.
- Coles has just announced the home delivery of alcohol at all hours and every day, further entrenching their position in this category.

Australia: isolated geographically but why economically?

- Convenience stores on almost every other continent are permitted to sell packaged alcohol. Australia is lagging the rest of the world and small businesses are the ones paying the price.
- It's a key product for small businesses in their efforts to compete against the larger chains.
- An analysis of packaged alcohol sales in overseas convenience industries demonstrates the revenue potential for convenience stores in Australia.
- By deregulating the market and allowing convenience stores to sell packaged alcohol, it would generate well over \$500 million in sales per annum for Australian small businesses.

Proven responsible retailers

- Convenience stores have long proven they are more than capable of selling age restricted products such as tobacco and lottery products responsibly.
- We would sell alcohol in line with agreed trading hours as agreed at the local level and we are happy to be involved in this discussion.
- Our industry already places a great deal of importance on staff training and development and this would of course extend to packaged alcohol sales.
- The AACS has contacted various state and territory ministers for the purpose of establishing pilot programs with selected retailers among our membership base to demonstrate the positive impacts accessible to our industry should our stores be permitted to sell alcohol. These programs would of course run in accordance with the relevant trading hour framework that other traders in the local area are subject to.