FOODWORKS

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Consumer and Business Services
Attorney-General's Department
Government of South Australia

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# Introduction

Australian United Retailers Limited (AURL), trading as FoodWorks, is pleased to make this submission in response to the South Australian Government's discussion paper on liquor licensing.

We thank the Government for this initiative and hope that our submission helps to create a regulatory system that finds the right balance between minimising the harmful effects of excess liquor consumption and creating a vibrant competitive liquor market.

In particular, our submission discusses the merit of allowing supermarkets to sell alcohol and the regulatory changes required to ensure that this is done in a responsible way, meets the needs of South Australians, and achieves the Government's objectives.

# AURL / FoodWorks

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

All our stores are independently owned by our retail members, the majority of which are held in single ownership. Our retailers 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.

There are 390 FoodWorks branded stores across Australia. These vary considerably in size, ranging from 100 sq m to 2,567 sq m, with an average size of 562 sq m. In South Australia we have 18 stores, of which 17 are branded FoodWorks. We are keen to grow our presence and invest in South Australia.



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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 73% of the market.
- 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.
- 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.

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. Allowing FoodWorks stores to sell liquor would be an important step in this direction. A growing and prosperous independent supermarket sector will aid the South Australian economy and create the necessary competitive tension in the supermarket industry to drive benefits for consumers.

# Harper Review & Federal Government Response

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.

Whilst the report acknowledges a place for regulation in the liquor industry so as to achieve harm minimisation objectives, it also notes that current laws restrict competition and reduce consumer choice. (Pages 89 & 145).

> *"Trading hours restrictions and restrictions preventing supermarkets from selling liquor impede competition. The Panel recommends that restrictions preventing supermarkets from selling liquor be reviewed as part of a new round of regulation reviews (see Recommendation 8) and that retail trading hours be deregulated (see Recommendation 12)."* (Page 89)



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The report recommends that the States and Territories adopt a 'public interest' test to assess existing legislation that impedes competition.

> **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.

The report recommends that restrictions preventing supermarkets from selling liquor be reviewed by the States and Territories as part of a new round of regulation reviews (refer pages 88, 146 & 150). It recommends that as part of these reviews the following issues should be considered:

- Do the regulations meet their stated objectives at least cost to consumers and are not unduly restricting competition?
- Do the restrictions favour particular competitors ahead of others?
- How do other jurisdictions balance competition and harm reduction outcomes?
- The public interest in minimising harm from problem drinking.
- The impact of regulatory restrictions on the ability of small businesses to compete.

With regard to this last point the Panel considered that:

> "*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)

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



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# How Is Competition Restricted?

## Prohibition on Supermarkets

The sale of alcohol is restricted under current South Australian legislation. Under the Act (Clause 37) a retail liquor licence can only be sought where:

- The premises is devoted entirely to the sale of liquor; and
- Is physically separate from premises used for other commercial purposes.

As a result, supermarkets are prevented from selling alcohol in the same building. Recently an application by Costco to sell liquor from its Kilburn outlet was rejected by the Liquor Licensing Court as it would involve selling alcohol on the same premises as other unrelated goods.

This type of provision is anticompetitive and has drawn criticism in various Government reviews, including:

> *"Some restrictions on the sale of alcohol (and on gambling) appear to favour certain classes of competitors to the detriment of consumers. All regulations must be assessed to determine whether there are other ways to achieve the desired policy objective that do not restrict competition."* (Harper Review, P. 146).
>
> *"On the other hand, regulations that prevent responsible sellers from entering the industry, discriminate between sellers of similar products/services and impose arbitrary restrictions on seller behaviour are irrelevant to harm minimisation."* (National Competition Council, June 2001, Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms, P. 21.7)

## 'Needs' Test

The South Australian legislation also includes a requirement for the applicant to demonstrate why the proposed liquor licence is necessary and why other licensed venues in the area do not adequately cater to the needs of the public (refer Section 58 of the Act – The 'Needs' test).

The SA 'Needs' test is anti-competitive. It creates additional costs to small businesses, unfairly favours existing license holders and creates a significant barrier to entry for new businesses without necessarily achieving the Government's harm minimisation objectives.

We note that most licence applications receive objections and that these are predominately from existing liquor stores who do not wish to see further competition in their market.



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The 2003 South Australian review of competition policy concluded that the 'Needs' test was a serious restriction on competition that public benefits could not justify and recommended its abolition. It also found that the 'Needs' test was not able to provide restraint over access to liquor as designed.

> "*…the need test exercises no real restraint over the access of customers to as much liquor as they care to buy.*" (P. 35)
>
> "*…the need test in ss. 58 and 61 is a serious restriction that cannot be justified by public benefits and should be abolished*." (P. 4)
>
> "*…the harm minimisation benefits delivered by this test could be delivered in other, less restrictive ways*." (P. 35).
>
> *"The panel was not persuaded that the need test has prevented price-competition between liquor stores, nor that it has maintained the price of dispensed liquor at a level that prevents harm."* (P. 38)
>
> (Draft Report, April 2003, National Competition Policy Review, Review of Sections 37(2), 58 & 61, South Australia)

As a result of similar reviews across Australia, South Australia is now the only state that still legislates a 'Needs' test. As discussed later in this report, all other Australian States and Territories have replaced their 'Needs' tests with public interest tests.

# Benefits of Allowing Supermarkets to Sell Packaged Liquor

It is our position that allowing supermarkets to sell liquor will benefit many stakeholders, including Small Businesses, Suppliers, Consumers, as well as the Local Economy. It will also help to reduce the unhealthy market dominance held by Coles and Woolworths in the liquor industry.

These benefits are discussed below:



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## Small Business

To compete effectively in the grocery market it is necessary for independent supermarkets to provide customers with a complete offer. The ability to sell liquor plays an important role in this:

- It opens the store up to a new market (new revenue stream);
- It improves the overall offer of the store for customers, allowing one stop shopping convenience;
- It allows the store to better compete;
- It brings in new customers;
- It results in a larger average basket size; and
- It has flow-on benefits for other departments in the store, particularly for complementary products.

On average liquor accounts for **18%** of sales in a FoodWorks supermarket.

**Case Study – Nyngan, NSW**

Nyngan is a country town in rural NSW. A 1,248 sq m FoodWorks competes against a 1,200 sq m Supa IGA.

FoodWorks opened a new store in 2005, but was unable to include a liquor offer at that time. Whereas the competing Supa IGA included liquor in its offer.

Following the addition of liquor into the FoodWorks, with no change in store size:

* Total store sales increased by **36%**
* Non-liquor sales increased by **22%**
* Liquor sales grow to around **17%** of store sales

The largest sales increases, outside liquor, were in Meat & Tobacco.

As a result, the FoodWorks went from a marginally viable store to a prosperous business able to offer the Nyngan community greater choice.



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The importance of liquor to a supermarket business was also identified by the ACCC in their 2008 retail pricing review:

> *"As discussed in greater detail in section 9.5.2, attaching a liquor arm to a grocery business **adds value** to the business and allows other grocery retailers to compete more effectively with the MSCs. Any impediment to liquor retailing that the MSCs seek to impose on other grocery retailers therefore not only restricts competition in liquor retailing but also has the potential to insulate the MSCs' grocery businesses from a greater level of competition as they would otherwise be subjected to."* (ACCC, Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, 2008, P194).

The independent supermarket sector generally doesn't have the capacity to run separate supermarket and liquor stores as required under the current SA legislation. The majority of FoodWorks supermarkets are owned and operated by individual retailers, whose capital is tied up in the supermarket business. Running a separate liquor store in addition to a supermarket would add considerable cost to a retailer, including:

- Setup costs, such as an additional lease, legal advice, back-office systems, connection to services (power, gas, water, waste), etc.
- Increased administration costs, such as record keeping, tax, salaries, reporting, etc.
- Increased operating costs, including rent, services, Council rates, managing staff levels, managing separate deliveries, etc

In many cases there is also no opportunity to secure a nearby tenancy to setup a stand-alone liquor business.

## Local Producers

Local South Australian producers are at a disadvantage under the current legislation. By restricting the type of business that can sell packaged liquor for off premises consumption, current laws favour the larger retailers Woolworths (Dan Murphy's and BWS) and Coles (First Choice, Liquorland and Vintage Cellars).

This has a number of implications:

- The dominance of Wesfarmers and Woolworths in the SA liquor market is depriving farmers and food producers of the flexibility and power to negotiate their contract terms. This is due to the unequal bargaining position of small producers versus the large liquor retailers.
- Smaller niche producers have difficulty in finding markets to sell their product. The large liquor retailers are demanding large volumes, at low cost, where the availability of stock can be guaranteed. Many small producers are unable, or unwilling, to meet these requirements.



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- An increasing trend for large retailers is to substitute smaller niche brands with home brand products. This further reduces shelf space and opportunities for small producers to sell their products to consumers. In May 2014 Coles Managing Director, John Durkan, announced that *"…he would rationalise the liquor product range and tailor store offerings to local demographics, upgrade stores and simplify the supply chain by reducing direct-to-store deliveries from suppliers*." (The Australian, May 29, 2014).
- Woolworths and Wesfarmers now own hundreds of their own wine brands, with labels that look like they are produced by local wine producers. These products now occupy prime shelf space at the expense of real local producers.

The following extract discusses these issues further:

> **The new reality for grocery suppliers in Australia**
>
> **November 01, 2012**
>
> **Bain & Company, Australia**
>
> By David Zehner and Melanie Sanders
> www.bain.com
>
> *"In a country with one of the world's most concentrated grocery landscapes—with Coles and Woolworths accounting for almost two-thirds of grocery retail sales—fast-moving consumer goods (FMCG) suppliers have long felt they were highly dependent upon the two major retailers that sell their goods. But for many suppliers, these challenges have increased dramatically in the past two years, to the point where management teams must fundamentally reshape strategy for a new reality in the grocery channel. Today's world is characterised by lower prices, growth in private label and increasing sophistication on the part of retailers in allocating shelf space.*
>
> *These changes have taken their toll on local and multinational suppliers. In response, the Australian Food and Grocery Council has campaigned for the appointment of a supermarket ombudsman to oversee the relationship between the supermarkets and suppliers, as well as legislation to limit the amount of shelf space that supermarkets can allocate to private label. But all signs point to an even more challenging environment in the future. Woolworths has been particularly transparent about its approach, and its strategy, released publicly in November 2011, makes for sobering reading. The company called for everything from improved buying terms to doubling the penetration of its own brands to removal of "substitutable" products from supermarket shelves. Coles is likewise raising the bar for its suppliers. What FMCG executive wouldn't find cause for concern?"*



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*"As grocery stores stock more fresh produce and high-margin general merchandise like stationery and apparel, they will need to limit the share of shelf space for packaged groceries. And, of course, grocers are devoting more real estate to private labels in most categories. In the years ahead, this competition for shelf space will create a growing challenge for suppliers—there simply won't be space for all of the brands and products that are currently displayed. Consider Coles' decision to stop selling Greenseas tuna but to maintain the John West brand. The de-listing of brands in core grocery categories will play out more frequently as the major grocers begin effectively to act on the wealth of basket- and shopper-level data that their loyalty programs produce. Products that command shopper loyalty will hold their place, but products with readily available substitutes are at risk."*

*"For most FMCG suppliers, Woolworths and Coles will remain top-priority customers for the foreseeable future. But there are also opportunities to grow outside of the two major retailers, and a more diverse mix of distribution channels is often favourable for suppliers. For example, one reason Australia's major brewers remain highly profitable is that they invest heavily to market to pubs, clubs, restaurants and convenience stores—the world beyond the two leading supermarkets. For other suppliers, diversifying will mean focusing on grocers other than Woolworths and Coles, such as Metcash and Costco. Some may develop exclusive brands or private labels for sale through Aldi. Aldi has opened 25 stores a year since entering Australia in 2001 and plans to open its 300th store in the country by the end of 2012."*

In contrast independent supermarket, as part of their brand positioning and in order to seek a competitive advantage over the major chain retailers, actively purchase locally made products. By allowing independent supermarkets to sell liquor it would open up new markets for SA liquor producers, and in particular would benefit smaller producers looking to sell their products to SA consumers.

## Consumers

The sale of liquor in supermarkets will provide a number of benefits to consumers. Some of these benefits will come directly from competition in the market as retailers seek to implement different strategies to attract and retain customers. These benefits include:

- Greater choice and convenience of retail locations
- Ability to undertake one stop shopping
- A differentiated range, including from smaller local producers
- Improved levels of service



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Local independent supermarkets also engage with their communities, and take an interest in their customers. They support local sporting groups, clubs and charities. Harm minimisation strategies can be better implemented where the retailer and store staff know their communities and customers.

The 2010 review into liquor legislation in New Zealand (Alcohol in our lives: curbing the harm) also concluded that there was a social benefit for supermarkets to sell liquor:

> *"While restricting all alcohol sales to specialist liquor retailers has considerable support from submitters and appeal as a harm-reduction strategy, in our view this would unreasonably restrict access for consumers who, for two decades now, have enjoyed the convenience of purchasing alcohol as part of their household's supermarket shop.*
>
> *Furthermore, setting aside the criticisms of supermarkets' approach to alcohol retailing, we believe in principle the continued association between food and alcohol remains valid as part of an overall strategy to foster a more responsible and moderate drinking culture as articulated in the objectives of our proposed Alcohol Harm Reduction Act."* (P. 161)
>
> *"We are therefore proposing that the association with food will remain a necessary but not sufficient condition for the granting of an off-licence if liquor is to be sold alongside other products. This proposal mirrors the mandatory requirement that all on-licence premises have food available to patrons at all times."* (P. 162)

## Local Economy

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.



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- Typically, profits are held locally and are reinvested locally. This is in contrast to 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.
- They actively support local sporting groups, clubs and charities

In addition, by supporting local suppliers and producers this will also have a positive flow-on effect to the SA economy.

# Concerns over Supermarkets Selling Packaged Liquor

A number of standard concerns are typically raised when the issue of selling packaged liquor from supermarkets is debated. We have addressed each of these as follows:

**Issue 1: Increases the risk that liquor will be sold to minors**

There is little risk that liquor would be sold to minors if sold in supermarkets. This has not been the experience in Victoria. Serious penalties apply to breaches and these act as a significant deterrent. Checkouts would be attended by trained and responsible adult staff. In Victoria a further safeguard is to require the liquor to be displayed and sold in a clearly defined and separate area of the supermarket which can be more easily monitored.

**Issue 2: Penalties are insufficient to ensure liquor legislation is followed**

The suspension or loss of a liquor licence or the risk of a fine is serious and is more than sufficient to ensure that liquor legislation and regulations are adhered to by supermarket operators. The potential to damage the reputation of the brand is also a significant deterrent for supermarket companies.

**Issue 3: It would lead to a lowering of store standards and retail offer**

Increased competition in the liquor market will encourage existing retailers and new entrants to develop a higher standard of offer so as to compete for customers. Protectionism typically leads to complacency and a lack of reinvestment in businesses.



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**Issue 4: Increases the risk of impulse buying**

The risk of impulse buying and the substitution of liquor for foodstuffs can be managed by requiring liquor to be displayed in a separate liquor area within the supermarket and not on grocery shelves.

**Issue 5 - It will result in lower liquor prices and therefore greater consumption**

Liquor prices in SA are already competitive. Major liquor retailers such as Dan Murphy's, First Choice, Cellarbrations, Sip'n Save, BWS, Thirsty Camel, and Liquorland already ensure low prices for consumers. There is no evidence to suggest that allowing liquor to be sold in supermarkets will materially lower current liquor prices.

In the 2003 review of SA liquor legislation the draft report found:

> *"The panel was not persuaded that the need test has prevented price-competition between liquor stores, nor that it has maintained the price of dispensed liquor at a level that prevents harm. However, if the need test is delivering a public benefit in this respect, the same benefit could be delivered by other measures that are less restrictive of competition."* (P. 38)

**Issue 6 - It will normalise the sale of liquor and promote unhealthy alcohol practices**

It is argued that by allowing liquor to be sold in a supermarket it would 'normalise' the sale of alcohol and result in unhealthy alcohol practices. However, we are unaware of any credible evidence that supports this argument.

The availability of liquor in a supermarket may offer a better environment for the sale of alcohol than other licensed venues and help change some of the attitudes that lead towards unhealthy alcohol consumption:

- Selling liquor with food could be seen to encourage better consumption of liquor.
- It encourages people to take liquor home and consume as part of meal, in a safe environment.
- It does not encourage onsite drinking, does not put customers in cars when they are intoxicated, nor does it encourage binge drinking in venues where such behaviour is the norm.
- Alcohol can be treated as a more 'normal' part of life, rather than been seen as 'forbidden fruit' and consumed irresponsibly.



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This was the conclusion of the 2010 review into liquor legislation in New Zealand that selling liquor with food helps to create a better attitude towards the consumption of liquor:

> *'We are therefore proposing that the association with food will remain a necessary but not sufficient condition for the granting of an off-licence if liquor is to be sold alongside other products. This proposal mirrors the mandatory requirement that all on-licence premises have food available to patrons at all times."* (P. 162)
>
> *"Furthermore, setting aside the criticisms of supermarkets' approach to alcohol retailing, we believe in principle the continued association between food and alcohol remains valid as part of an overall strategy to foster a more responsible and moderate drinking culture as articulated in the objectives of our proposed Alcohol Harm Reduction Act."* (P. 161)

The risk of 'normalising' liquor in a supermarket can also be reduced by allocating a separate and dedicated area within the premises for the display and sale of liquor (eg Victorian legislation).

# Needs Test

As discussed earlier the current SA 'Needs' test is anticompetitive.

Advocates for retaining the 'Needs' test argue that by limiting the number of outlets selling liquor it is possible to minimise the risk of excessive consumption. However various investigations have found little evidence to suggest that just limiting packaged liquor licenses will result in better harm minimisation outcomes:

> "*However, evidence shows no clear relationship between the availability of liquor (number of outlets) and the level of consumption."* (National Competition Council, June 2001, Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms, P. 21.7)
>
> "*The panel was not convinced that the need test has a major impact in minimising harm caused by availability."* (Draft Report, April 2003, National Competition Policy Review, Review of Sections 37(2), 58 & 61, P. 34, South Australia).



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To our knowledge there has been no proof of a causal link between the number of outlets selling packaged liquor and higher incidents of liquor related harm. An alternative explanation is that there is a correlation between higher liquor outlets and areas of higher demand. This was an issue considered by the National Competition Council in 2001:

> "*Research also suggests that the pattern of alcohol use, particularly the environment in which drinking occurs, rather than the number of outlets and level of consumption, is the most important determinant of the level of harm*. " (National Competition Council, June 2001, Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms, P. 21.7)

Much of the research in this field shows that once socio-demographic variables are removed there is little correlation between outlet density and domestic violence. Of the few studies that show any correlation, these were typically between on-premises outlet density (eg hotels, night clubs), not off-premises outlet density. (McKinney C, Caetano R, Harris T, Ebama M. Alcohol Availability and Intimate Partner Violence Among US Couples. Alcoholism: Clinical & Experimental Research 2009;33(1):1-8., and Livingston M. The ecology of domestic violence – the role of alcohol outlet density. Geospatial Health 2010; 5(1):139-149.)

The 2010 NZ review also found no evidence of a link between outlet density and alcohol related harm. Rather it also found that the type of outlets available were more relevant to health & law and order outcomes, with on-site premises being more influential (eg hotels, clubs and nightclubs) to poor outcomes.

The NZ report concluded that there was no justification to reinstate a 'needs test' in New Zealand, rather there should be a 'public interest' test where the licence authority could refuse an application on the achievement of the object of the Act, the impact on the amenity of the locality and through locally developed alcohol policies. Density issues could be dealt with by looking at the public impact of any license application, rather than attempting to assess the level of need.

> "*We remain of the view that to reduce harms arising from liquor outlets, what is needed is an assessment of the suitability of the particular type of outlet in the particular area, rather than a blunt assessment of the number of outlets. There is also a need for greater consideration of the local impacts of liquor licences*." (P. 147)

The NSW review of liquor legislation in 2003 found that their 'needs' test was being used by liquor retailers to keep out competition and protect their market share, rather than for any specific harm minimisation purposes. The test also introduced significant legal costs on applicants. The review concluded that "… *the costs to the public of this restriction in its current form outweigh the benefits*". (P. 30). As a result, the NSW 'needs' test was abolished and replaced with a Community Impact Statement.



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It can also be argued that the 'Needs' test is now redundant given the availability of packaged liquor on-line. SA consumers have no difficulty obtaining as much alcohol as they wish to buy, irrespective of the number of physical premises available in any given area. This was the conclusion of the 2003 draft report into SA liquor legislation:

> *"The need test is based on the assumption that liquor sales take place at physical premises visited by the customer, and therefore that regulation of supply can be achieved by regulating the number and location of licensed premises. This assumption was once generally true but is arguably no longer so for packaged liquor sales."* (P. 35)
>
> *"The panel therefore considered that the need test exercises no real restraint over the access of customers to as much liquor as they care to buy."* (P. 35)

# Public Interest Test

An objective of this review is to find the right balance between restricting competition and minimising the harm caused by excessive consumption of alcohol. The recent Harper review into competition policy recommended a useful framework to assist the Government in this review. It proposed the following questions to help assess the State's current legislation and the alternatives:

- Do the regulations meet their stated objectives at least cost to consumers and are not unduly restricting competition?
- Do the benefits of the restriction to the community as a whole outweigh the costs?
- Can the objectives of the legislation only be achieved by restricting competition?
- How do other jurisdictions balance competition and harm reduction outcomes?

Clearly the current legislation that prohibits supermarkets from selling liquor and which requires a 'needs' test restricts competition and works to discourage a competitive market for the supply of liquor.

It is our view that the benefits of removing the needs test and allowing supermarkets to sell liquor outweigh the likely costs:

- It will give a significant boost to the prosperity of independent supermarkets and help them to compete against the major chains.
- It will open up new markets for local producers / suppliers.
- Consumers will be given greater product choice and greater convenience.
- The local SA economy will benefit from more prosperous local supermarkets and local producers / suppliers.



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- The increased risks of liquor being sold to minors, impulse buying, greater consumption due to lower prices, and the 'normalisation' of liquor can all be managed appropriately under existing legislation or by alternative methods that are not anti-competitive.

In our opinion the Government's public policy objectives as stated in the Liquor Licensing Act 1997 are generally not supported by these current restrictions. In particular, they:

- Fail to encourage a competitive market for the supply of liquor, and favour certain competitors over others.
- Restrict the market available to SA liquor producers and suppliers, to the dis-benefit of the liquor industry.
- Are out of step with community views on where liquor may be sold. This was highlighted as far back as June 2001 in the NCP Assessment (Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms). This review noted that such restrictions have been relaxed "…*because community attitudes to where alcohol can be bought and consumed have changed considerably*." (Page 21.6).

Rather the Government's policy objectives would be better served by allowing supermarkets to sell liquor and replacing the 'needs' test with a Community Impact Statement. There are also a range of other harm minimisation strategies that can better achieve the Government's objectives without being anti-competitive. These issues were also considered in the 2001 NCP Assessment:

> "*Further, experience has shown that misuse of alcohol is often better addressed via more relaxed drinking environments and targeting of problem areas — for example through campaigns against drink-driving and under-age drinking. However, vestiges of earlier approaches remain embodied in legislation in some jurisdictions, significantly restricting competition in liquor retailing*." (P.21.6)

> *"On one hand, licensing laws prescribe the legal minimum age for drinking and require liquor retailers to be suitable persons with an adequate knowledge of the relevant Act. They also place limits on trading hours, forbid practices that encourage excessive consumption and prevent the sale of alcohol to intoxicated persons. These regulations have a clear public benefit rationale and have been supported in NCP reviews. Ideally, regulations of this type should apply to all sectors of the liquor industry similarly, with licences granted to those who meet the prescribed standards.*



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*On the other hand, regulations that prevent responsible sellers from entering the industry, discriminate between sellers of similar products/services and impose arbitrary restrictions on seller behaviour are irrelevant to harm minimisation. This requires careful analysis of the evidence. As an example, one argument frequently raised to support limitations on entry is that increased availability of alcohol equals increased consumption which leads to increased alcohol-related problems. However, evidence shows no clear relationship between the availability of liquor (number of outlets) and the level of consumption. Australia, Canada and New Zealand are among many developed countries to have experienced a general downward trend in average consumption levels since the late 1970s. This trend occurred at a time of considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages, and increased numbers of liquor outlets (Roche 1999, p. 39).“* (Page 21.7)

Supermarkets are permitted to sell liquor in Victoria, NSW, ACT, and NT. It is also common to require the liquor to be displayed and sold in a designated area within the supermarket (refer summary table below).

SA remains the only jurisdiction in Australia that still requires a ‘Needs’ test. All other States and Territories have moved to a community interest type test. This is considered a superior mechanism for managing outlet density issues because:

- It allows the market to determine whether there is sufficient demand to support additional outlets.
- It allows the relevant authority to consider the more important issues of harm minimisation and amenity impacts.
- Unlike the ‘needs test’ it does not favour, or protect, existing license holders, rather it focusses on the public interest of the wider community.
- It still allows the community an opportunity to voice any concerns they may have.



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| | Supermarkets Permitted to Sell Liquor | 'Need' Tests |
|---|---|---|
| **NSW** | YES<br>Must have a retail floor area greater than 240 sq m.<br><br>If business is carried out on the premises besides the sale of alcohol, alcohol may be sold only in a separate area of the remises – the alcohol sales area. This area must be adequately separated from the other areas of business. For example, in a supermarket, the alcohol sales area, including cash registers etc, must be separate from other parts of the supermarket. The sale or supply of alcohol for take-away purposes must be the principal activity carried out in the alcohol sales area. | **NO**<br>Requires Community Impact Statement. A license for the sale of packaged liquor will not be approved unless evidence has been provided that the overall social impact will not be detrimental to the well-being of the community. This statement may consider:<br><br>• undue disturbance to the neighbourhood of the proposed licensed premises caused by the operation of the premises and/or the conduct of patrons;<br>• alcohol-related anti-social behaviour or crime;<br>• alcohol-related hospitalisations and health problems;<br>• increases in pedestrian and motor traffic numbers;<br>• drink driving and drink walking;<br>• increase in domestic violence associated with alcohol consumption; and<br>• litter and other pollution associated with the operation of the premises. |
| **VIC** | **YES**<br>Greater than 240 sq m (otherwise may be considered a convenience store).<br>Within a specified area (red-line area) which is to be used predominantly for the sale of liquor.<br>With permission may sell from any checkout in the supermarket.<br>Excludes petrol stations, milk bars, convenience stores or mixed businesses. | **NO**<br>Subject to town planning permission to ensure use is consistent and appropriate for area.<br>Planning permits must, and liquor licence applications may, consider the **Cumulative Impact of Licensed Premises**. Includes issues such as:<br>• Local amenity<br>• Proximity to sensitive uses (eg schools)<br>• Any existing alcohol related issues in the area |
| **ACT** | **YES**<br>Liquor must be displayed in one part of the supermarket only (the liquor display area). | **NO**<br>Public consultation required for new permits.<br>Risk Assessment Management Plan (RAMP) is also required for a commercial permit, covering a variety of issues, including community impact (noise, amenity, damage, etc). |
| **NT** | **YES** | **NO**<br>A public interest test applies to applications for new liquor permits. This covers a variety of issues, including:<br>• Harm minimisation<br>• Public order and safety<br>• Noise<br>• Amenity<br>• Disturbance, offence and annoyance |



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| | Supermarkets Permitted to Sell Liquor | 'Need' Tests |
|---|---|---|
| **WA** | **NO**<br>The Act has been interpreted to require a separate bottle shop. | **NO**<br>Public Interest Assessment required. Liquor licence permits may be refused in the public interest. This includes such matters as:<br>• Objects of the Act.<br>• Amenity<br>• Risk of offence, annoyance, disturbance or inconvenience<br>• Harm minimisation<br>• Support to the liquor, tourism and hospitality industries<br>Moved from a 'needs' test to a public interest test in 2006/07. |
| **QLD** | **NO**<br>If you hold a commercial hotel licence you can apply to operate 3 detached bottle shops away from the main premises (generally no more than 10 kms from the hotel).<br>The site is to be predominately used for the sale of liquor. Items that are deemed not to complement the sale of liquor (eg most packaged groceries) are prohibited. | **NO**<br>A Community Impact Statement (CIS) is required for certain applications, including for a commercial hotel licence. The CIS will consider impacts on such issues as:<br>• Local amenity<br>• Safety (public disorder, vandalism, public drunkenness)<br>• Traffic<br>• Economic (tourism, employment, cultural, etc)<br>• Sensitive facilities<br>• Character of the area |
| **TAS** | **NO**<br>Restricted to stand-alone bottle shops or bottle shop portion of a hotel.<br>Supermarkets are prohibited to sell liquor under the Act.<br>To apply for a Special Licence it must show that it offers something to the community beyond standard grocery lines. | **NO**<br>Consider whether granting the liquor licence would be in the best interests of the community, including such matters as:<br>• Amenity<br>• Choice / diversity<br>• Economic benefits<br>• Community support<br>• etc |
| **NZ** | **YES**<br>Supermarkets limited to wine and beer sales. May sell liquor in grocery aisles.<br>Service stations and takeaway food shops prohibited. | **NO**<br>'Need' test was replaced with an impact assessment in 1989. |



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# Conclusion

FoodWorks supports the Government's harm minimisation objectives and agree that regulation, including restrictions on the type of outlets that may be permitted to sell alcohol, are a necessary part of the State's liquor regime. However, competition objectives also play an import role in the State's regulatory framework and should be given due weight in determining the suitability of current and proposed liquor legislation.

The current South Australian liquor legislation has a number of anti-competitive elements. They allow certain types of competitors to sell liquor, whilst preventing other responsible sellers from entering the industry. They also create significant barriers to entry for new businesses, allowing existing license holders to prevent new business from competing in the market without necessarily achieving the Governments harm minimisation objectives.

**It is our recommendation that supermarkets should be permitted to sell liquor.**

Independent supermarkets play an important role in the community. A growing and prosperous independent supermarket sector will aid the SA economy and create the necessary competitive tension in the supermarket industry to drive benefits for consumers. The sale of liquor can significantly enhance the offer available in a supermarket to the benefit of consumers, suppliers, the local economy, and the SA wine industry. Community attitudes as to where liquor may be sold have also changed considerably since the current legislation was enacted.

Concerns over the sale of liquor in supermarkets are, in our opinion, unfounded. However, even if there are some potential negative impacts, there are other approaches that can be implemented to mitigate these impacts without unnecessarily restricting competition.



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**The Government is also urged to move from a 'Needs' test to a Public Interest test**:

- The current 'Needs' test is being used to protect existing outlets from new entrants, without addressing harm minimisation objectives.
- It has been made redundant given the community's easy access to liquor via on-line retailers.
- The public benefit of this regulation is questionable.
- All other States and Territories have now moved away from a 'Needs' test to a public interest test.
- It would be consistent with competition policy.
- The SA liquor industry will receive the benefits that flow from greater competition.

**Rick Wight**
Chief Executive Officer



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