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Liquor Licensing (Liquor Review) Amendment Bill 2016 and Guidelines

Introduction

FoodWorks is pleased to make this submission in response to the South Australian Government's draft Liquor Licensing (Liquor Review) Amendment Bill 2016 and Guidelines.

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

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, that meets the needs of South Australians, and achieves the Government's objectives.

FoodWorks

AURL is an Australian owned and operated independent retail supermarket group trading primarily under the 'FoodWorks' Brand. The business has a network of over 550 stores, of which 18 are located in South Australia, with annual aggregate store turnover in excess of \$2.2 billion. We are keen to grow our presence and invest in South Australia.

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.

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However, independent supermarket 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 resulted in tighter margins for the independent sector.
- Rising store operating costs (eg electricity).
- 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. Facilitating 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 many of these 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)

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 (ie Recommendation 8 of the Harper report).

Community Impact and Public Interest Test

FoodWorks supports the proposed replacement of the current ‘Needs Test’ with a ‘Community Impact and Public Interest Test’.

The 'Needs Test' is anti-competitive and has been removed from the legislation of all other States and Territories, principally because:

- It stifles investment and innovation in the retail liquor market.
- It cannot be justified by any potential public benefit.
- It creates additional costs to small businesses.
- It unfairly favours existing license holders.
- Creates a significant barrier to entry for new businesses without necessarily achieving the Government's harm minimisation objectives.
- In practice it does not provide restraint over access to liquor as intended.
- It hasn't prevented price-competition between liquor stores, nor has it maintained the price of liquor at a level that prevents harm.
- Research suggests that the environment in which drinking occurs, rather than the number of outlets, is the most important determinant of the level of harm.
- It is now largely redundant given the availability of packaged liquor on-line.

We believe the proposed 'Community Impact and Public Interest Test', as set out in the 'Draft Community Impact Assessment Guidelines', will address the Governments harm minimisation objectives and achieve the same level of public benefit without the current anti-competitive bias.

However, we recommend a slight change to the wording of the Guidelines. The first factor listed in the Guidelines for consideration by the Licensing Authority when assessing an application should be amended to better reflect the objects of the Act. This factor should be rewritten to:

'The extent to which the sale and supply of liquor will occur in a manner that minimises the harm and potential for harm (whether to the community as a whole or a significant group within the community) by the excessive or inappropriate consumption of liquor.'

Liquor Sales in a Supermarket

It is the Government's position that liquor should not be sold within a supermarket, and have imposed the following requirements to safeguard against harm:

- The liquor premises must be devoted entirely to the sale of liquor;
- It must be physically separate from premises used for other commercial purposes.
- There must also be a permanent and substantial physical barrier which is non transparent and at least 2.5 meters in height.
- The entrance to the liquor shop must be a separate entrance from the street or shopping centre.
- There must be a separate checkout with an adult operator, trained in RSA and supervised and managed by a responsible person at all times.

It is our view these last two requirements are too restrictive and will continue to stifle investment and innovation in the SA supermarket and liquor industry. Nor are they consistent with previous interpretations of the Act where access into the liquor business is permitted through the adjacent supermarket (eg Woolworths Rundle Mall, Coles Westfield Lakes, Woolworths Walkerville). We therefore recommend the following small amendments to the Bill:

- Allow customers to enter the liquor business through the adjacent supermarket. However, the entrance to the liquor business must occur outside the supermarket checkouts.
- Allow checkout staff to operate a multipurpose checkout counter, where one side is dedicated exclusively to liquor related sales, whilst the other side can serve grocery customers when there are no liquor customers to serve.

It is important to note that we are **not** proposing that liquor should be sold on the same shelves as groceries.

These two small changes will make a significant difference to the performance of independent supermarkets, will benefit the community, and will still meet the Government's objectives. A discussion of these benefits follows:

Small Business

There are significant cost and operational efficiencies that can be gained by allowing entry through the supermarket and operating a multipurpose checkout counter, including:

- It aids security by limiting external entrances/exits to one only.
- The staff levels of both businesses can be better managed.
- It allows for a more efficient use of space, which is essential in small to medium sized supermarkets.
- It enables a more productive workforce and an efficient use of resources.

Without these changes many supermarkets will not have the ability to incorporate a liquor offer into their business. This is important because the addition of liquor allows independent supermarkets to better compete in the market:

- It opens the store up to a new revenue stream;
- It improves the overall offer of the store for customers, allowing one stop shopping convenience;
- 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 (eg cheese & biscuits).

These benefits were 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).*

Wine Industry

Local South Australian producers are at a disadvantage under the proposed legislation. By restricting many independent supermarkets from selling packaged liquor, current laws favour the larger retailers Woolworths (Dan Murphy’s and BWS) and Wesfarmer (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 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 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 to meet these requirements.
- An increasing trend for large retailers is to substitute smaller local 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.

Local Economy

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

- Independent supermarkets play an important role in sustaining country town centres 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.
- 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, store 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.
- They actively support local sporting groups, clubs and charities.

Our recommended changes will:

- Assist FoodWorks and other independent supermarket operators to invest in SA either through existing store improvements or the opening of new stores,
- Create new jobs in the supermarket industry, and
- Create new jobs in the wine industry as new markets emerge for local growers and wineries.

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 and information

Concerns over Supermarkets Selling Packaged Liquor

A number of concerns have been raised over the sale of packaged liquor from supermarkets. Many of these concerns, however, are irrelevant as they assume that liquor will be sold on the same shelves as grocery products. These concerns are discussed below:

1. It increases the risk that liquor will be sold to minors

Based on our experience in other States, there is little risk that the incidence of liquor being sold to minors will increase. Serious penalties apply to breaches and these act as a significant deterrent. Checkouts would also be attended by trained and responsible adult staff.

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.

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.

4. Increases the risk of impulse buying

With liquor to be sold in a separate area from the supermarket, and the requirement to use a separate checkout, will ensure that the risk of impulse buying and substituting liquor for foodstuffs remains extremely low.

5. It will result in lower liquor prices and therefore lead to 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.

6. It will normalise the sale of liquor and promote unhealthy alcohol practices

Some argue that by allowing liquor to be sold in a supermarket it would 'normalise' the sale of alcohol and result in unhealthy alcohol practices, particularly where liquor is displayed and sold alongside grocery products. However, we are unaware of any evidence that supports this argument, particularly in the situation where the liquor sales occur in a physically separate space.

It can also be argued that a supermarket may offer a better environment for the sale of alcohol compared to other licensed venues and help change some of the attitudes that lead towards unhealthy alcohol consumption:

- Selling liquor with food may encourage better consumption of liquor.
- It encourages people to take liquor home and consume as part of a 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.

In the 2016 Review of the South Australia Liquor Licensing Act 1997, the Hon. T R Anderson QC concluded that the physical separation of liquor restriction should remain because it would be *"inconsistent with principles of harm minimisation to have liquor displayed in the same shelves as ordinary food stuffs"*. (p. 181). Importantly, FoodWorks is not proposing to mix liquor and grocery products on the shelves. The two offers will continue to be physically separated. The risk of harm is therefore not heightened by this change.

Other Issues

Licence Fees

FoodWorks encourage the Government to introduce a scaled fee based on the size of the packaged liquor offer. It would be unfair and unreasonable to require a small supermarket with a small liquor offer to pay the same fee as a large liquor barn, particularly given the Government is looking to set fees at a level that better reflects and offsets the cost of alcohol-related harm.

Town Planning Duplication

FoodWorks encourages the Government to remove red-tape and duplication in the town planning and liquor licensing process. For example, the same grounds for objections to a liquor outlet (eg amenity) should not be repeated under both the town planning system and liquor licensing. Such issues should only be raised, argued and appealed under one of these Acts, otherwise it adds unnecessarily to delays and costs for the applicant.

Valid Grounds of Objection

FoodWorks supports a change to the Act that penalises frivolous and vexatious proceedings.

It is recommended that the Government also consider further guidelines on what would constitute an invalid ground for an objection. Invalid grounds should include:

- Whether the proposed business would be successful or not.
- Objections based on direct commercial interests (eg an impact on the sales of a competing licensed business).
- Whether there is insufficient need or demand to justify the proposal.
- When the objector is not actually affected by the application.

FoodWorks Recommendations

Independent supermarkets play an important role in the community. 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. The sale of liquor can significantly enhance the offer available within a supermarket and result in benefit for consumers, suppliers, the local economy and the SA wine industry.

FoodWorks fully support the proposed replacement of the current 'Needs Test' with a 'Community Impact and Public Interest Test' and see this as a significant improvement to the liquor laws in South Australia. However, the specific requirements over the design and operation of packaged liquor stores, in our opinion, are too restrictive and will continue to stifle investment and innovation in the SA supermarket and liquor sector.

The following FoodWorks recommendations, whilst minor in nature, can have a significant impact on the prosperity of the independent supermarket industry, lower the barrier of entry for new businesses, provide wider community benefits, and still meet the Government's harm minimisation objectives:

- 1. Support the replacement of the 'Needs Test' with a 'Community Impact and Public Interest Test'.**

2. Amend the 'Draft Community Impact Assessment Guidelines' so that the first factor listed for consideration by the Licensing Authority when assessing an application better reflects the objects of the Act:
'The extent to which the sale and supply of liquor will occur in a manner that minimises the harm and potential for harm (whether to the community as a whole or a significant group within the community) by the excessive or inappropriate consumption of liquor.'
3. Remove the requirement for a separate entrance to the liquor shop from the street or shopping centre. Replace with a requirement that any entrance to a liquor shop from inside a supermarket must occur outside the supermarket checkout area.
4. Clarify that the liquor checkout operator can multi task when there are no liquor customers to serve, including serving supermarket customers at an adjacent checkout.
5. Introduce a licence fee for packaged liquor that is scaled on the basis of the area devoted to selling and displaying liquor products.
6. Remove red-tape and duplication in the town planning and liquor licensing process. Each process should cover different matters for consideration and approval, including the issue of Amenity.
7. Introduce guidelines on what would constitute invalid grounds for objection, including:
 - Whether the proposed business would be successful or not.
 - Objections based on direct commercial interests (eg an impact on the sales of a competing licensed business).
 - Whether there is insufficient need or demand to justify the proposal.
 - When the objector is not actually affected by the application.

Please advise whether you require any further information or clarification with regards to the content of this submission or any of our recommendations above.

Yours sincerely,



Rick Wight
Chief Executive Officer