



1 February 2017

Mr Gerry McInally
Committee Secretary
Senate Select Committee on Red Tape
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr McInally

RE: TREASURY SUBMISSION TO THE SENATE SELECT COMMITTEE ON RED TAPE

Thank you for the invitation to make a submission to the Select Committee on Red Tape inquiry into the effect of restrictions and prohibitions on business (red tape) on the economy and community.

Treasury welcomes the Select Committee's inquiry into red tape and recognises that a continued focus on regulatory reform will be an important contributor to long-term productivity growth and maintaining living standards in Australia.

We understand that the Committee has decided to examine red tape in specific areas progressively, commencing with the sale, supply and taxation of alcohol. In addition to providing comments on that specific matter, we have taken this early opportunity to provide some overarching comments on regulatory reform generally, and the Government's existing programmes.

We look forward to the Committee's findings and reports on these specific issues and will consider the need for further submissions in relation to other areas identified by the Select Committee.

Yours sincerely

Paul McCullough
Division Head
Market and Competition Policy Division

**Treasury submission to the
Senate Select Committee on Red Tape:
Effect of restrictions and prohibitions on business (red tape)
on the economy and community**

Treasury welcomes the Select Committee's inquiry into the effect of red tape on the economy and community.

Australia needs to boost productivity if it is to sustain living standards over the next decade and regulatory reform is an important contributor to long-term productivity growth.

Regulation plays a valuable role in supporting well-functioning markets. It can remove distortions and help align market behaviour with social standards by, for example, protecting community safety or the environment. Done well, regulation can enhance flexibility, responsiveness and dynamism at the firm and individual levels by promoting the process of competition. However, regulation can also have the effect of imposing costs on business and constraining competition in labour and product markets, potentially outweighing the benefits regulation brings. In particular, regulation can:

- impose significant 'red tape' or regulatory compliance costs, including the time and money that businesses spend on understanding their obligations, completing forms, or complying with reporting requirements; and
- create regulatory barriers to competition, leading to an inefficient allocation of resources, higher prices, less choice for consumers and less incentive for firms to innovate.

Moreover, unnecessary, outdated or poorly designed regulation can fail to deliver the benefits intended.

Reducing red tape

Just as a car needs a regular, comprehensive service to keep it running well, 'regulatory systems' need regular, comprehensive review to ensure that they are still effective and impose minimal burden. For this reason, Treasury is pursuing a program of *Regulatory System Renewal* under the auspices of the Government's Regulatory Reform Agenda.

For the period from the commencement of the Commonwealth Government's red tape agenda in late 2013 until the latest published Annual Red Tape Reduction Report (published in March 2016), Treasury contributed \$1.27 billion to the Government's overall \$4.8 billion reduction in unnecessary red tape¹ while fully complying with the Government's regulatory impact analysis requirements for new regulation.

Treasury's Regulatory System Renewal programme, which formally commenced on 1 July 2016, builds on regulatory cost reduction activities in previous years. Regulatory System Renewal is a programme of targeted continuous improvement of regulatory frameworks in the Treasury portfolio, involving a rolling series of reviews of discrete subject matter areas. In areas such as competition and consumer law, corporations law and taxation, the programme also pursues opportunities for regulatory simplification, principles-based drafting, and technology neutrality in regulation. Addressing the Government's various commitments in relation to regulatory improvement and reducing regulatory burden concurrently provides an efficient and effective means to improve outcomes for the groups being regulated.

1. Australian Government 2015, *2015 Annual Red Tape Reduction Report*, Canberra
<<https://www.cuttingredtape.gov.au/annual-red-tape-reduction-report-2015>>

Reducing barriers to competition

Treasury supports the view that there is a need for 'better regulation, and regulation that does not impede competition, rather than deregulation for its own sake.'² Competitive forces in markets provide incentives for firms to innovate, operate efficiently, and be price-competitive. It is vital therefore that regulation only constrains competition where there is a clear public interest in doing so. The guiding principle is that regulation should not restrict competition unless the benefits outweigh the cost of the restriction to the community as a whole and the objective can only be achieved by restricting competition to that extent.

For example, regulation of the sale of alcohol may reduce competition in various markets, but this may be justified where the regulatory response is properly directed at reducing harm from alcohol consumption in the community.

The introduction of the National Competition Policy (NCP) in the 1990s saw all governments review and significantly remove unnecessary anti-competitive regulations, delivering substantial gains to the Australian economy. The Productivity Commission (PC) estimated that the NCP reforms, including the regulatory review process, contributed to increasing Australia's GDP by at least 2.5 per cent.³

The 2015 Competition Policy Review identified a wide range of opportunities for further efforts to remove unnecessary regulatory barriers to competition⁴. In its response to the Review, the Government committed to expand its Regulatory Reform Agenda to incorporate a competition regulation review and to work closely with the States and Territories to advance reform.

On 9 December 2016, the Commonwealth, New South Wales, Western Australia, Tasmania, the Australian Capital Territory and Northern Territory signed the *Intergovernmental Agreement on Competition and Productivity-Enhancing Reforms* to build future productivity, growth and jobs.⁵ This important agreement lays the foundations for governments to work together to build a more productive and well-functioning economy.

The Intergovernmental Agreement (the IGA) embodies a commitment by the signatories to remove unnecessary regulatory barriers to competition; boost innovation to deliver high quality, effective human services; promote efficient investment in and use of infrastructure in areas such as road transport, water and energy; and advance other productivity-enhancing reforms across the economy.

Under the terms of the IGA, jurisdictions retain flexibility to develop reforms within and across their priority areas. In identifying eligible reforms the parties can draw from a range of regulatory areas including, but are not limited to, those identified in the Harper Competition Policy Review: commercial planning and zoning; taxis and ride-sharing; retail trading hours; pharmacy regulation; liquor and gambling licensing; agricultural marketing arrangements; mandatory product and other standards; and occupational and professional licensing.

All jurisdictions – State, Territory and Local as well as Commonwealth – have a responsibility to their citizens to advance productivity-enhancing reforms that will enhance living standards by supporting a more competitive, flexible economy. Therefore, the Commonwealth is progressing reforms in areas where it has responsibility. These include introducing legislation into the Parliament on 1 December 2016 to strengthen section 46 (the misuse of market power provision) of the *Competition and Consumer Act 2010* as part of a

2. Commonwealth of Australia 2015, *Competition Policy Review*, Canberra, page 120.

3. The PC's estimate reflects a quantitative assessment for a subset of the NCP reforms and the final estimate relied on a number of assumptions. For further details, see: Productivity Commission 2005, *Review of National Competition Policy Reforms*, Report No. 33, Canberra, <<http://www.pc.gov.au/inquiries/completed/national-competition-policy/report>>

4. Commonwealth of Australia 2015, *Competition Policy Review*, Canberra, see: recommendations 8-14.

5. Council of Australian Governments 2016, *Intergovernmental Agreement on Competition and Productivity-Enhancing Reforms*, <<https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-competition-and-productivity-enhancing-reforms>>

broader suite of competition law reforms; introducing legislation on 1 September 2016 to repeal certain media ownership, control and diversity laws; developing a response to the Productivity Commission's 2016 inquiry report into *Intellectual Property Arrangements*; and conducting an independent review of pharmacy remuneration and regulation.

Alcohol sales, supply and taxation

The committee has advised that it will first examine the effect of red tape on the sale, supply and taxation of alcohol. The sale and supply of alcohol at the retail level is mainly a matter for the states and territories.

Treasury acknowledges that the taxation of alcohol is complex. As noted in the Australian Government's Tax discussion paper titled *Re:think*⁶, rates of taxation vary considerably for different types of alcoholic beverages. This reflects policy changes over time to meet multiple objectives — raising revenue, reducing the social costs of excessive alcohol consumption, and supporting wine producers and independent beer producers.

The system of taxation of alcohol imposes taxes on the smaller number of 'upstream' suppliers, which results in fewer taxpayers and lower overall compliance costs than if these taxes were imposed at the retail level. Wholesalers, and particularly the small wholesalers, are likely to have a far narrower array of products than retailers. Being closer to the production process, they are also better placed to evaluate those products against tax classifications.

Most alcoholic beverages are subject to excise or excise-equivalent customs duty under one of 16 different excise categories (including 4 that incur no excise) depending on alcohol type, concentration, commercial use, and container size. Excise is levied at various indexed rates currently between \$3 and \$81 per litre of pure alcohol (which equates to around \$0.04-\$1.03 per standard drink).

Wine and some other alcohol products, such as traditional cider, are treated separately and subject to the Wine Equalisation Tax (WET). The WET was introduced as part of the GST tax reform package with the intent of equalising the amount of tax on wine with that which existed under the wholesale sales tax system.⁷ While alcohol excise is based on the alcohol content, WET is generally based on the wholesale price of the wine. WET applies at 29 per cent of the value of the wine at the last wholesale transaction, before adding GST.

In some cases it can be difficult to determine if a product is subject to excise or the WET. Differences in the rate of tax can create incentives to engineer products to receive a more favourable tax treatment.

There are a number of concessions for alcohol including the Wine Equalisation Tax Rebate (WET Rebate) and a Brewery Refund Scheme that is being extended to distilleries from 1 July 2017.

- The WET Rebate provides producers with a rebate of 29% of the value of eligible domestic wholesale sales. Rebates are capped at \$500,000 (equating to \$1.7 million in wine sales) per financial year. From 1 July 2018, this will be reduced to \$350,000 and a cellar-door rebate for up to an additional \$100,000 will be introduced.
- The Brewery Refund Scheme allows breweries (and, from 1 July 2017, distilleries) to claim a refund for 60% of the excise paid up to a maximum refund of \$30,000.

Alcohol excise and excise-equivalent customs duty generated \$5.4 billion in revenue in 2015-16 and the WET generated \$883 million, net of producer rebates, which are typically around 25 per cent of total WET⁸.

6. Australian Government 2015, *Re:think, Tax Discussion Paper*, Australian Government, Canberra.

7. Australian Government 1998, *Tax reform: Not a new tax, a new tax system*, Australian Government, Canberra.

8. Australian Government 2016, *2015-16 Final Budget Outcome*, Australian Government, Canberra; and ATO 2015, *Taxation Statistics 2013-14*, ATO, Canberra.

The current operation of the excise and the customs laws impose various regulations on the alcohol industry. This includes regular reporting requirements and regulatory control over the physical movement of goods. Under the current arrangements, most businesses pay excise weekly. Businesses with interests in both domestically produced and imported alcohol are required to deal with separate regulators.

Alcohol excise is part of the underbond system, which is based on the concept of the monitoring of goods until they reach their taxation point (entry into home consumption). Underbond systems are used in much of the world to strike a balance between enforcing payment of excise and enabling commercial production, alteration, packaging and the deferral of payment of excise to a time closer to the point of sale of the goods. Among the regulatory controls, businesses are required to have a license for each manufacturing premises and storage premises. They are also required to apply for a movement permission each time goods are to be moved. The ability to defer excise ensures local manufacturers are not disadvantaged compared to importers.

In the case of spirits such as brandy, rum and whisky that face two year maturation requirements, it also prevents excise being payable well in advance of when the goods can legally be sold. Allowing storage at sites other than areas of manufacture ensures manufacturers with less on-site storage space are not disadvantaged.

Treasury is exploring ideas to streamline administration and reduce regulatory burden associated with alcohol taxation and will examine the committee's final report with interest.