

NARGA

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The Committee Secretariat
 House of Representatives Standing Committee
 on Health and Aging
 Parliament House, Canberra ACT 2600

By email to: haa.reps@aph.gov.au

Dear Secretary

Submission: Tobacco Plain Packaging Bill 2011

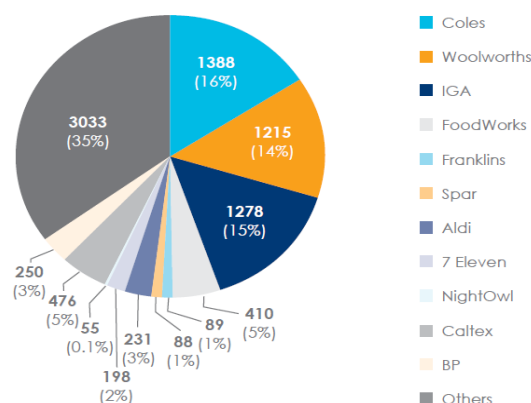
NARGA represents the independent retail grocery sector comprising over 5000 stores employing more than 225,000 people.

The independent grocery sector now comprises less than 20% of the national grocery market, yet provides essential supplies to thousands of regional and remote communities, particularly those considered too small to be of interest to the major supermarket chains, as well as providing competitive pressure to those chains through larger stores in metropolitan and regional centres.

In addition to the 5000 independent supermarkets represented by NARGA there are around 3300 convenience stores, a significant proportion of which are associated with petrol outlets.

The store number breakdown is given by the following pie chart taken from a report on the grocery food chain prepared by Accenture Australia¹ (the Accenture report – copy appended).

Fig 31. Grocery Retail Number of Stores (2009)

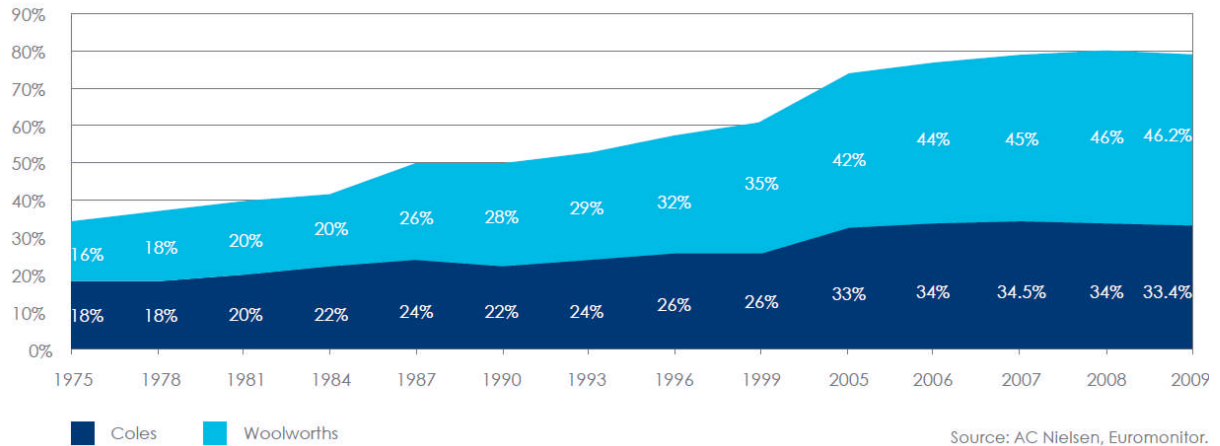


Source: Euromonitor, Retailing in Australia 2009. Companies annual

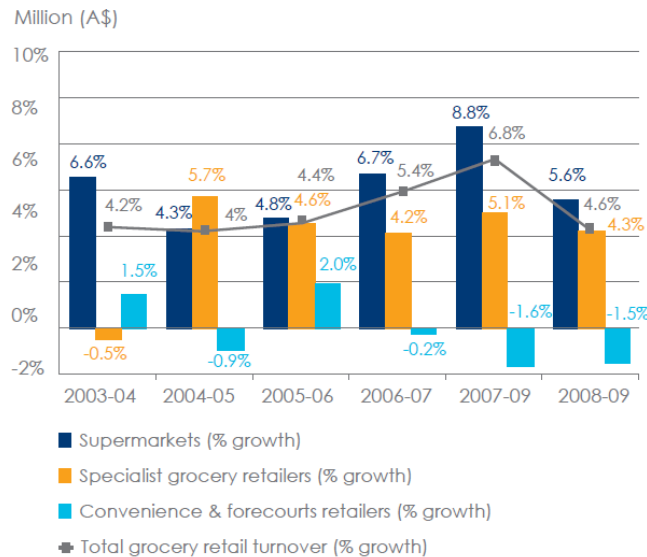
¹ The challenge to feed a growing nation, Accenture Australia, November 2010

The same report shows that the retail grocery market is dominated by the major chains which between them have close to 80% of the market, a share that has been growing steadily since the mid 1970s as shown by the graph below:²

Fig 30. Growth in Market Share of Woolworths & Coles (1975-2009)



The Accenture report also tracked growth by turnover channel, comparing growth in supermarket turnover to growth in specialty stores and convenience stores. As shown in the chart below, whilst the first two categories of stores show good growth, convenience store turnover has declined in the last three years and in the prior three years has shown significantly lower growth rates than have the other two categories of stores, growth rates well below industry trends.



Source: Euromonitor International: Retailing in Australia 2009.

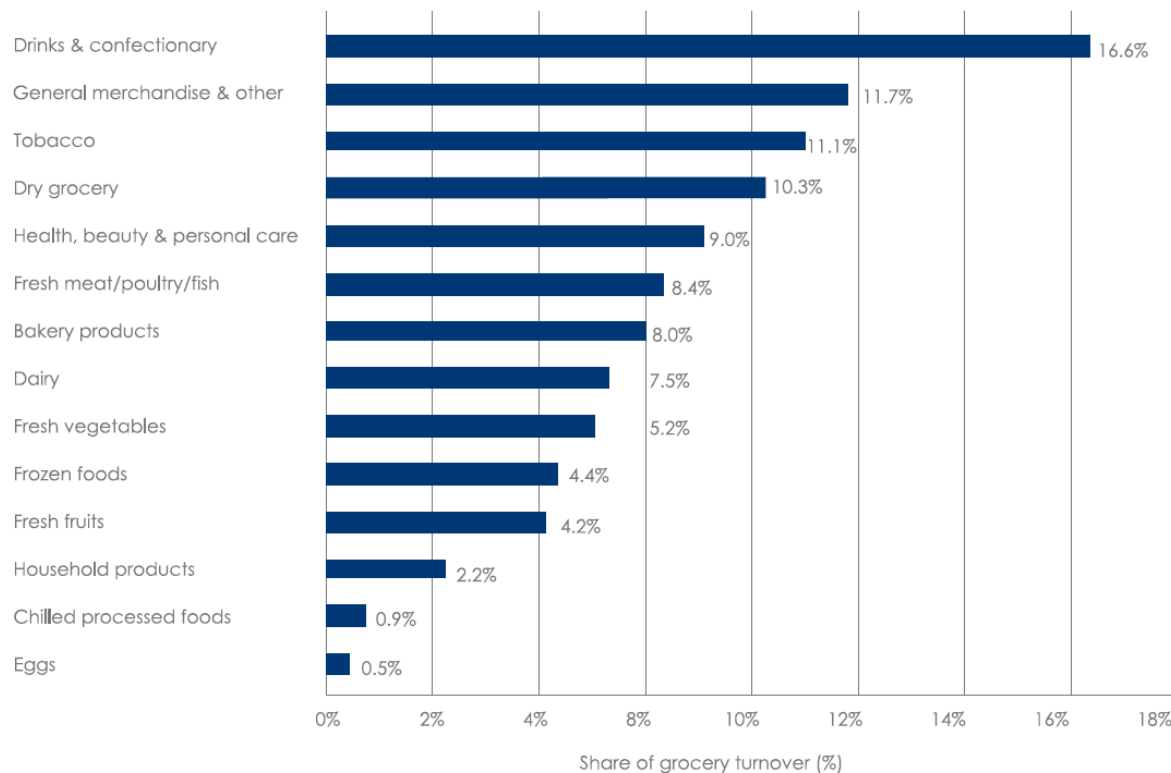
This decline in turnover is due to the drift of business away from convenience stores to larger stores and the resultant closure of small independent stores.

² Ibid p.

Tobacco sales

The Accenture report confirms that 11.1% of retail grocery turnover is related to cigarette and tobacco sales³. However, the proportion of turnover of smaller stores and petrol outlets represented by tobacco related sales is much higher than average and can represent more the 50% of the final margin of smaller outlets such as family run corner stores – i.e. the margin on which they base their survival and livelihood. They are also a significant generator of customer store visits which suggests sales will be more broadly impacted.

Fig 34. Grocery Retail Departments Turnover (\$ million) 2008



Sources: consolidated data from various sources: Euromonitor Data, ABS, and other official statistics from industry associations.

Such stores will be significantly affected by a reduction in tobacco sales and their demise will further contribute to increased levels of market concentration in the sector.

Tobacco related sales make up a much smaller proportion of sales in the larger supermarkets – a proportion less than the 11.1% average, suggesting that the chains will be much less affected by any downturn in tobacco sales.

Smaller stores are already at a competitive disadvantage given the absence of specific anti-competitive price discrimination laws in Australia and absence of action by the regulator on this issue – no action has ever been taken by the regulator on anti-competitive price discrimination. This means that smaller stores are paying higher wholesale prices for cigarettes and other products that they sell, compounding the impact of any reduction in tobacco sales resulting from plain packaging.

³ Ibid p.30

We note here that Australia is the **only** OECD country that does not have some form of prohibition against anti-competitive price discrimination in its competition law.

This means that small stores are at a competitive disadvantage versus the larger chains when they purchase cigarettes (and other products) and doubly disadvantaged by the fact that they are more reliant on tobacco sales to stay in business.

Absence of a prohibition of anti-competitive price discrimination also affects independent petrol retailers who, unable to buy fuel at the same low prices offered to the major chains, are more reliant on sales from their convenience business, and hence tobacco sales, to stay in business.

Unintended Consequences

We suggest that one of the unintended consequences of any reduction in tobaccos sales brought about by the proposed plain packaging legislation will be an increase in the closure rate of small family based convenience stores and independent petrol outlets and a corresponding increase in the market concentration of these two sectors.

We note that these outlets have already had to adjust to state legislation prohibiting display of tobacco products and the related increase in labour costs. The plain packaging requirements will see labour costs increase further as it will take longer to serve each customer.

Competition from illegal tobacco is, of course, also of concern. Plain packaging will make illegal product more difficult to detect. Any growth in illegal product sales will further reduce sales in small businesses.

Whilst the government has the ability to address any shortfall in excise revenue resulting from lower levels of tobacco sales by adjusting the excise tax rate upwards, small retailers and petrol outlets, given the competitive pressure they are under, do not have the luxury of adjusting margins upwards to counteract reduced sale volumes.

Possible ways of addressing the problem of the decline in viability of the smaller convenience stores and petrol outlets in a market with declining tobacco sales include:

- The establishment of an excise rebate scheme to support such small stores, where a proportion of the excise collected by the government on tobacco products is rebated to each store as sales decline and/or;
- Addressing the competition issues in the sector through a prohibition of anticompetitive price discrimination clause in the Competition and Consumer Act 2010 which will make it easier for these outlets to compete on price across the broad range of products stocked and stay in business.

Specific comment

Clause 54 permits authorised officers to seize equipment which may contain evidence of an offence which may be held for up to 24 hours or longer in order to be examined by the officer or an expert (Clause 65). Whilst Clause 66 allows for compensation to be paid should electronic equipment be damaged in the process of seizure and examination, no compensation appears to be available for business disruption associated with the seizure of that equipment.

Such compensation should be available as in most retail stores the computer that stores any information relevant to tobacco sales is also the computer that drives all of the cash registers and checkout equipment. Loss of this computer therefore represents a major disruption to the business.

Clause 56 allows 'persons assisting authorised officers' to enter premises, and Clause 57 allows both the authorised officer and persons assisting to use force in the execution of a warrant. The Bill does not specify the qualifications a 'person assisting' must hold in order to be allowed to assist an authorised officer.

Our concern is that the role of 'person assisting' could be abused with the result that an authorised officer could come to a business premises assisted by one or a number of people who could be disruptive to the business. We suggest that the role of 'person assisting', their qualifications and the reasons for which they may be required to assist need to be clearly defined in the Bill in order to prevent potential abuse of the 'person assisting' role.

Summary

In summary the introduction of plain packaging for tobacco products will disadvantage smaller businesses such as convenience stores and independent petrol outlets because, as well as having to carry the increased labour cost associated with each sale of a tobacco product in future they:

- Are more dependent on tobacco sales for their viability as such sales represent a higher proportion of their turnover and profit;
- They are disadvantaged competitively because they cannot buy goods at the same low price as major chains can – Australia's competition law does not have a prohibition against anti-competitive price discrimination. This disadvantage applies to tobacco products and fuel, as well as all of the other products stocked by small stores;
- They face competition from illegal tobacco sellers who are likely to be advantaged by the proposed changes.

Our concern is that the move to plain packaging for tobacco products, which has not been tried anywhere else in the world, may have the unintended consequence of a decrease in the number of currently viable small businesses in the convenience and independent petrol sector which in turn will lead to higher levels of market concentration in the grocery and fuel sectors.

We ask the government to recognise this as a problem and to propose means of minimising the impact of the Bill on the viability of affected small businesses.

We also suggest that the Bill needs to be amended to allow for compensation for costs associated with the disruption of business activities resulting from the seizure of electronic equipment and to more clearly specify the qualifications, role and function of 'persons assisting' the authorised officers as outlined above.

Please contact me should you require any further information.

Yours faithfully,

Ken Henrick
Chief Executive Officer