

**GOVERNMENT RESPONSE
TO THE PRODUCTIVITY COMMISSION INQUIRY
INTO THE ECONOMIC STRUCTURE AND PERFORMANCE OF THE
AUSTRALIAN RETAIL INDUSTRY**

Trends and issues related to online retailing

Recommendation 4.1 – The ABS should monitor and report online expenditure both domestically and overseas by Australian consumers. The ABS should also consider options that will enable the disaggregation of online spending and employment associated with ‘multi-channel’ establishments and ‘pure play’ online retailers.

Response: Noted.

The ABS already collects a range of data which allows them to report on retail spending. However, as online retailing both domestically and overseas is becoming an increasingly important way of doing business in Australia, the ABS will continue to develop its surveys to ensure that they adequately capture the emerging trends in retail spending.

The ABS will need to consider the budgetary implications (if any) of changes to their surveys in the context of their broader work program and competing priorities.

Retail price differences

Recommendation 6.1 – The Australian Government should request the Australian Law Reform Commission, as part of its forthcoming Copyright Inquiry, to examine whether the costs to the community outweigh the benefits in relation to the parallel import restrictions in the Copyright Act 1968 which prevent retailers from importing and selling clothing or other goods which embody decorative graphic images sold with the copyright owner’s permission in another market.

Response: Do not agree to refer the matter to the Australian Law Reform Commission, instead the Government will consider this matter and explore further options.

The *Trade Marks Act 1995* does not prohibit the resale of genuine branded products that have been parallel imported by Australian retailers. However, the Commission also noted that, for decorative graphic images embodied in clothing or other goods, the rights provided to local copyright holders under the *Copyright Act 1968* may prevent some retailers from parallel importing and reselling certain goods.

In relation to goods which embody copyrighted decorative graphic images, the Commission notes that this could cause Australian retailers, and thus consumers, to pay higher prices for those items if they cannot be parallel imported and resold. However, it should be noted that this only affects intra-brand competition and does not affect the ability of retailers to import other, substitute goods to which copyright would not apply.

The Attorney-General will soon release for public comment draft terms of reference for the upcoming Australian Law Reform Commission Copyright Inquiry. As consideration of whether the costs of the parallel import restrictions for items which embody copyrighted decorative graphic images outweigh the potential benefits from its removal will likely fall outside the scope of that review, the Government will instead consider this matter and explore further options.

Appropriateness of current indirect taxation arrangements

Recommendation 7.1 – There are strong in-principle grounds for the low value threshold (LVT) exemption for GST and duty on imported goods to be lowered significantly, to promote tax neutrality with domestic sales. However, the Government should not proceed to lower the LVT unless it can be demonstrated that it is cost-effective to do so. The cost of raising the additional revenue should be at least broadly comparable to the cost of raising other taxes, and ideally the efficiency gains from reducing the non-neutrality should outweigh the additional costs of revenue collection.

Response: Noted.

The Government will reassess the appropriateness of the low value import threshold when it receives the report of the Low Value Parcel Processing Taskforce (see response to Recommendation 7.2).

Appropriateness of current indirect taxation arrangements

Recommendation 7.2 – The Government should establish a taskforce charged with investigating new approaches to the processing of low value imported parcels, particularly those in the international mail stream, and recommending a new process which would deliver significant improvements and efficiencies in handling. The taskforce should comprise independent members, with the Australian Customs and Border Protection Service (Customs), the Australian Quarantine and Inspection Service (AQIS), Australia Post and the Conference of Asia Pacific Express Carriers providing advice. The terms of reference should outline the criteria that any new system must satisfy including: minimising the costs of processing and delivery delays, streamlining the assessment of Customs Duty, user pays, and without compromise to the border protection functions of Customs and AQIS. This review should report to Government in 2012 and propose an expeditious timeframe for its proposed changes.

Once an improved international parcels process has been designed, the Australian Government should reassess the extent to which the LVT could be lowered while still remaining cost-effective.

Response: Agreed.

The Government will establish a Low Value Parcel Processing Taskforce to investigate new approaches to the processing of low value parcels, particularly in the international mail stream. The Taskforce will comprise at least three members, including members with logistics and supply chain or other relevant expertise, and will be asked to report to the Government within six months of receiving the Terms of Reference.

The Taskforce's report will provide a comprehensive blueprint for reform of the low value import processing system, with costed alternatives, for the consideration of the Government.

Planning and zoning regulation (Chapter 8)

Recommendation 8.1 - State, territory and local governments should (where responsible) broaden business zoning and significantly reduce prescriptive planning requirements to allow the location of all retail formats in existing business zones to ensure that competition is not needlessly restricted. In the longer term, most business types (retail or otherwise) should be able to locate in the one business zone.

Recommendation 8.2 - Governments should not consider the viability of existing businesses at any stage of planning, rezoning or development assessment processes. Impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation or major review – not for site specific rezoning or individual development applications.

Recommendation 8.3 - State, territory and local governments should facilitate more as-of-right development processes to reduce business uncertainty and remove the scope for gaming by competitors.

Recommendation 8.4 - State and territory governments should ensure third party appeal processes within planning systems include clear identification of appellants and their grounds for appeal and allow courts and tribunals to award costs against parties found to be appealing for purposes other than planning concerns.

Recommendation 8.5 - State, territory and local governments should reduce the compliance costs associated with planning systems and development approvals by implementing the leading practices identified in the Commission's recent benchmarking report on planning, zoning and development assessments.

Response: Agree in principle.

The Government recognises that effective planning and zoning regulation is important to encourage well-functioning cities, infrastructure and housing markets which in turn contributes to improving Australia's productivity and wellbeing.

The Government encourages state and territory governments, which are primarily responsible for planning and zoning regulation, to carefully consider and implement where appropriate the findings of the Productivity Commission's report and its previous benchmarking report, particularly the scope to give greater weight to economic considerations in planning decisions to ensure that competition is not restricted unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives can only be achieved by restricting competition.

The Government will also establish the Retail Council of Australia, which will be chaired by the Assistant Treasurer and consist of key industry stakeholders, including business, industry and union representatives. The establishment of this Council recognises that the matters affecting the retail industry span across many ministerial portfolios. It will provide a specific forum for the industry to collectively raise their concerns with the Government and facilitate the consultation needed to inform the Governments' consideration of policy matters relevant to the retail sector, including planning and zoning and retail tenancy leases.

Retail tenancy leases

Recommendation 9.1 – COAG should ensure that all current National Retail Tenancy Working Group projects are fully implemented. It should also re-examine the outstanding recommendations from the Commission’s 2008 retail tenancy report with a view to expanding the work plan of the National Retail Tenancy Working Group.

Response: Agree in principle.

Retail tenancy issues are primarily the responsibility of the state and territory governments. The Government supports implementation of its response to the Productivity Commission's 2008 report *The Market for Retail Tenancy Leases in Australia*.

As outlined in the response to the Chapter 8 Recommendations on planning and zoning in the Commission’s report, the Government will also establish the Retail Council of Australia, chaired by the Assistant Treasurer. This Council will work with COAG and provide further input to governments’ consideration of policy matters, including retail tenancy, which are relevant to the retail sector.

Retail trading hours

Recommendation 10.1 – Retail trading hours should be fully deregulated in all states (including on public holidays).

Response: Noted.

Retail trading hours are primarily the responsibility of the State and Territory governments.

The National Competition Policy provided for a process for the States and Territories reviewing, and where appropriate reforming, a wide range of legislation that restricted competition. A key principle underpinning the reviews was that arrangements that detract from competition should be retained only if they can be shown to be in the public interest.

As part of the National Competition Policy, the Commonwealth implemented measures to encourage all State and Territory governments to deregulate retail trading hours. While noting that various restrictions on trading hours have been retained in some States, a majority of States and Territories have undertaken some reform in relation to retail trading hours.

Workplace relations regulation

Recommendation 11.1 – The Australian Government should, within the context of the current system and consistent with the maintenance of minimum safety net provisions for all employees, examine retail employer and employee concerns about the operation of the Fair Work Act. This should include consideration of options to address any significant obstacles to the efficient negotiation of enterprise-based arrangements, that have the potential to improve overall productivity. The post-implementation review of the Fair Work Act, which is to commence before 1 January 2012, should provide the appropriate review mechanism. This review should be comprehensive, transparent, provide adequate time and opportunity to receive and consider input from all stakeholders, and be conducted independently.

The first review of modern awards, scheduled for 2012, is a further opportunity to address concerns that relate specifically to the operation of relevant retail awards. This review should also provide adequate opportunity for input from all relevant stakeholders.

Response: Noted.

Concerns raised by the Australian Retail Industry about the operation of the *Fair Work Act 2009* (FW Act) may be examined in the course of the post-implementation review of the FW Act, which will be conducted independently, to the extent that they fall within the scope of the review. The review will be an evidence-based examination of the implementation of the legislation and whether it is meeting the Australian Government's policy objectives.

Under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, Fair Work Australia (FWA), the independent industrial relations tribunal, is required to undertake a review of all modern awards (other than modern enterprise awards and State reference public sector modern awards) as soon as practicable after 1 January 2012 (the second anniversary of the commencement day of modern awards).

In conducting the review FWA must consider whether modern awards achieve the modern awards objectives and are operating effectively, without anomalies or technical problems arising from the award modernisation process. FWA is also required to review each modern award, including the Retail Award, in its own right, however, FWA may review one or more modern awards at the same time. It is anticipated that FWA's proceedings will provide the retail industry with opportunities to have their concerns addressed.

Under FWA's two-year review of modern awards, parties covered by a modern award have until 8 March 2012 to apply to vary that award. Following this date, FWA will issue a procedure and timetable for dealing with the applications, taking into account the nature of any proposed variations. Further, the ability to seek a variation to a modern award is not limited to the two-year review process. Parties, including employers in the retail industry, can apply to FWA at any time to vary a modern award if they consider the terms of the award do not meet the modern awards objective in the FW Act.

Other regulatory burdens

Draft Recommendation 13.1 – Governments must prioritise efforts directed at the review and reform of existing regulations that are unnecessarily burdensome, and reduce regulatory inconsistency across jurisdictions where that affords net benefits to business and the community. Consideration also needs to be given to how existing quality control processes for new or amended regulation, including the application of Regulation Impact Statement processes, can be improved to minimise the risk that future regulation will impose unnecessary burdens.

Response: Agree in principle.

The Government will continue to work with COAG to implement regulatory reform across jurisdictions. Given the high priority all governments attach to boosting productivity and the competitiveness of the economy, COAG has asked relevant ministers and officials to develop options for a further wave of regulatory and competition reforms. COAG is scheduled to consider these issues at its next meeting. The Government will raise the desirability for reforms to address regulatory burdens in this context.

In addition, the Government continues to task the Commission with conducting reviews to examine the scope for future regulatory reform, to benchmark regulatory regimes across jurisdictions and to measure and report on the regulatory burden on business. The Commission is Australia's principal review and advisory body on microeconomic policy and regulation and provides independent research and advice on a range of economic, social and environmental issues affecting the welfare of Australians.