COMPETITION POLICY REVIEW: Issues Paper 14th April 2014

SUBMISSION FROM THE

Large Format Retail Association (LFRA)

10th June 2014

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1.0 Large Format Retail Association (LFRA) Overview

The Large Format Retail Association (LFRA), (previously known as the Bulky Goods Retailers Association (BGRA)), is the national peak industry association whose primary focus is on issues relating to appropriate planning and responsible development of Large Format retail outlets. Retail members of the LFRA consist of some of Australia's largest and most respected Large Format retailers including 58 retail brands as follows:

Adairs	Early Settler	Plush
Adairs Kids	Fantastic Furniture	POCO
Amart Sports	Forty Winks	Provincial Home Living
Anaconda	Freedom	Ray's Outdoors
Autopro	Goldcross Cycles	Rebel
Autobarn	Guests Furniture Hire	Sleepys
Babies R Us	Harvey Norman	Snooze
Baby Bunting	IKEA	Sofas2Go
Barbeques Galore	JB Hi-Fi	SPACE
Bay Leather Republic	Joyce Mayne	Spotlight
BCF	Le Cornu	Suite Deals
Beacon Lighting	Lincraft	Super Amart
Bedshed	Masters Home Improvement	Supercheap Auto
Bunnings	Nick Scali	The Furniture Spot
Chemist Warehouse	Officeworks	The Good Guys
City Farmers	Original Mattress Factory	Toys R Us
Costco	OZ Design Furniture	Urban Home Republic
Curtain Wonderland	Petbarn	Workout World
Dare Gallery	PETstock	
Domayne	Pillow Talk	

The LFRA is supported by its' Patron, PwC, and 59 Associate members who are Large Format retail developers, investors, owners and service suppliers:

ADCO Constructions	Domain Central	McMullin Group
ALTIS Property Partners	DOME Property Group	Mirvac
APP/The Planning Group	DD Corporate	Newmark Capital Limited
Architectus	Eureka Home Maker Centre	Norton Rose Fulbright
Arise Developments	Excel Development Group	Nunn Media
Arkadia	Gadens	Primewest
AXIMA Logistics	Gibb Group	Ray White Retail
AXIOM Properties Limited	Gregory Hills Corporate Park	Realmark Commercial
BBRC Asset Management	Griffin Group	RPS Australia Asia Pacific
BWP Trust	HLC Constructions	Savills
Blueprint	ISPT Super Property	Sentinel Property Services
Brecknock	Jana Group of Companies	Terrace Tower Group
Burgess Rawson	Lancini Group of Companies	The Belgrave Group
CarbonetiX	Lander & Rogers Lawyers	The Buchan Group
CBRE	La Salle Investments	TRICO Constructions
CEVA Logistics	LEDA Holdings	VALAD Property Group
Comac Retail Property Group	Leedwell Property	Vaughan Constructions
Cornwall Stodart	Leffler Simes Architects	Vend Property
Dart West Developments	Major Media	Visy Recycling
Deep End Services	McKenzie Hall	

Our representation is diverse. The LFRA clearly represent the interests of Large Format retailers, but we also represent the interests of small operators as many of our members have franchised businesses.

Deep End Services estimates bulky goods sales for the financial year ending 30th June 2014 to be **$61.4 billion** nationally and **20.1%** of all retail sales. Furthermore, it is estimated that Large Format retailers nationally employ approximately 410,700 (FTE) people both directly and indirectly.

Please note that new data is currently being prepared by Deep End Services which in effect will be a review of quantifiable data estimates of our sector.

The LFRA is a key stakeholder in planning and zoning laws and government regulations in this market sector. Consequently, we are actively involved across Australia in numerous reviews of planning policy and planning regulations that affect our industry.

Of note are the following Federal inquiries:

- Productivity Commission's 2014 inquiry into the *'Costs of Doing Business: Retail Trade Industry';* and
- Productivity Commission's 2011 inquiry into the '*Economic Structure and Performance of the Australian Retail Industry';* and
- Productivity Commission's 2010 '*Performance Benchmarking of Australian Business: Planning, Zoning and Development Assessments';* and
- Productivity Commission's 2007 review into the '*Market for Retail Tenancy Leases In Australia';* and
- ACCC's 2008 '*Into the Competitiveness of Retail Prices for Standard Groceries'*

These five (5) inquiries all noted the need to review planning and zoning laws across all jurisdictions in Australia to increase competition and improve productivity.

2.0 Response to Issues Paper (14th April 2014)

2.1 Introduction

This *'Competition Policy Review'* covers a wide range of issues relating to competition laws and policy across the Australian economy. The LFRA has undertaken a review of the *'Issues Paper'* dated 14th April 2014 and will provide a response to a number of the broad topics and key questions raised in this Paper.

The LFRA is particularly focused on issues associated with planning and zoning and other regulations that have the effect of stifling or restricting business activity in our sector. As such, we have made numerous submissions to the Productivity Commission and all State and Territory Government in recent years.

Our key areas of interest in relation to this *'Competition Policy Review'* can be broadly summarised as follows;

- The current restrictions on trading hours in a number of States, most notably Western Australia, which are anti-competitive and contribute to a significant loss of productivity in the retail sector of the economy; and

- The inconsistent planning and zoning regulations across the various States and Territories of Australia that contributes to increased establishment; occupancy and compliance costs to retailers; and

- The slow progress being made in most States and Territories of Australia in relation to the key recommendations of the Productivity Commission arising from its' 2011 report - *'Economic Structure and Performance of the Australian Retail Industry';* and

- The fact that competitive impacts on existing business are still being considered as part of the planning system when they should be excluded from planning altogether.

Arising from these key areas of interest, the LFRA will provide a response to selected key questions contained in the *'Issues Paper'* in the following section of the submission.

2.2 Response to Issues Paper – Key Questions

REGULATORY RESTRICTIONS IN SERVICE MARKETS

Issue 2.17 – Other regulatory restrictions on the provision of retail services, such as those relating to hours of operation or the intensity of competition within a geographical boundary, can have implications for competitive outcomes and consumer welfare.

Question: Are there occupational based restrictions or restrictions on when and how services can be provided, that has an unduly adverse impact on competition? Can the objectives of these restrictions be achieved in a manner more conducive to competition?

The LFRA strongly advocates for the de-regulation of restricted trading hours across Australia on a nationally consistent basis in line with the recommendations of the Productivity Commission in its 2011 report - *'Economic Structure and Performance of the Australian Retail Industry'*

Restrictions on trading hours result in a loss of productivity for retailers as well as an additional compliance and operational cost to the business. It is a most inefficient use of the significant capital investment made to establish a retail business when it is restricted from operating to its full potential. This is most relevant and concerning with the Australian retail sector facing increased competition from global online retail businesses. Online retailing is an open and free marketplace where consumers can purchase anything; from anyone; anywhere; at any time. In this current climate, the physical aspects of retailing from traditional *'bricks and mortar shops'* such as - providing increased levels of product knowledge; increased service and attention to consumer needs; the ability to see, touch and try products; as well as an enjoyable shopping experience, is increasingly important in order to be competitive in the market. Restricted trading hours are also becoming increasingly out of touch with consumers' expectations.

As highlighted in the June 2014 Interim Report by the Productivity Commission *'Relative Costs of Doing Business in Australia: Retail Trade'* there are restrictions on trading hours with varying levels of intensity in Queensland, Western Australia and South Australia.

The LFRA considers the current trading hours' restrictions in Western Australia to be most problematic. The current regulations in Western Australia are overly complicated; anti-competitive and are stifling economic activity and economic growth in the retail sector. The current regulations are also out of sync with most other States in Australia which aside from being an enormous frustration is a direct cost burden to businesses that operate on a national basis.

There are significant benefits to be derived from the de-regulation of restricted trading hours including increased employment and benefit to the community in terms of increased choice, competition and convenience. The perceived disadvantages of increased trading hours are far outweighed by the advantages.

The LFRA urges the review to recommend for the complete de-regulation of restricted trading hours and provide an implementation framework for this to occur.

REGULATORY RESTRICTIONS ON LANDUSE

Issue 2.19 –Land use restrictions may take many forms, including planning restrictions, zoning laws and development assessment procedures. Various policy rationales are offered to justify why unfettered development of land is not permitted. These include environmental considerations and the need to coordinate community services and facilities.

Issue 2.20 – However, inflexible restrictions on land use or complex and costly approvals procedures may create significant barriers to business entry or expansion, and may result in land not being allocated to its highest-valued use. In addition, some policy rationales may be anti-competitive in essence – for example, rejecting a planning application because it may have an adverse impact on existing businesses.

Question: Are there planning, zoning or other land development regulatory restrictions that exert an adverse impact on competition? Can the objectives of these restrictions be achieved in a manner more conducive to competition?

The LFRA has made numerous submissions in the past few years to reviews undertaken by the Productivity Commission. The LFRA supported the key findings and recommendations by the Productivity Commission in its 2011 report – *'Economic Structure and Performance of the Australian Retail Industry'*. These recommendations remain current as they have not been fully implemented and so remain directly relevant to this *'Competition Policy Review'*. The key recommendations in relation to planning and zoning restrictions on land use are as follows-

"…Planning and zoning

Rec. 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.

Rec. 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.

Rec. 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.

Rec. 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.

Rec. 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 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. The Government will also establish the Retail Council of Australia, which 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…"

Since 2011, there has been a trend towards review of planning regulations by most States and Territories. The only review, however, to date that has resulted in positive changes is in Victoria. The major focus of these reviews has been to update and standardise planning regulations. There is a common theme throughout Australia, to reduce the quantum and impact of restrictions that are in place within planning legislation. The removal of restrictions can generally be supported on the basis that by doing so, the planning system will more efficient, competitive and ultimately more productive.

There is also a need for periodic review of planning policy to ensure that the policies and regulations in place are relevant in our economy and society that are constantly evolving. This is particularly relevant in the past few years where retailing has been under pressure from adverse economic conditions; changes in consumer behaviour; price harmonisation; globalisation and the increasing market share of internet based retailing. There has never been a greater need for planning to keep pace with the market it seeks to regulate and there has been some major reviews and changes to planning policy in recent times.

The most significant and progressive shift in planning policy in recent times has come from the Victorian Government in the reform of planning and zoning across the State in 2013. The most significant failure in planning policy and planning reform has come from the recent events in New South Wales where 2 ½ years of work towards implementing a new planning system has failed to be adopted due to political intervention.

In the LFRA's recent submission to the Productivity Commission review - *'Relative Costs of Doing Business in Australia: Retail Trade',* we highlighted that since 2011 there has been some work undertaken in the various States and Territories to implement these recommendations that has led to varied outcomes. The Productivity Commission published a brief summary of state planning and zoning changes since 2011 and included comments from the LFRA on reform (refer Table 5.1: page 95)

Table 5.1 **A brief summary of some state planning and zoning changes since 2011, and LFRA[a] comments on reform**

State	*Progress on implementing recommendations and comment from the LFRA on reform*
NSW	**Progress:** Reviewed its planning regime between 2011–13 and legislation was introduced on 22 October 2013, some of which is still currently before the Parliament. **LFRA comment:** 'The existing planning system was considered to be outdated; overly complex and time consuming and needed to be completely overhauled in order to attract investment in the state to meet the population growth forecasts. The New South Wales Government has undertaken an extensive and exhaustive process of more than two and a half (2.5) years to consult with stakeholders … In December 2013 this entire process reached an impasse in the parliament due to political opposition. It currently remains unclear as to whether the Government will continue to introduce new legislation or revert to the existing system without further change.'
Vic	**Progress:** Broadened its zoning provisions in 2013, but there has been no significant change to third party planning appeals processes. **LFRA comment:** 'In July 2013, the Victorian Government implemented changes to the Victorian Planning Provisions by reforming the State's planning zones … These recent zoning changes in Victoria have created the most flexible planning system for retail development in Australia. The changes are a reduction in the amount of regulation and involve the removal of restrictions while creating an increase in the supply of land for retail development and use. These changes are entirely consistent with the recommendations of the Productivity Commission and should serve as a model for other States and Territories to follow.'
Qld	**Progress:** facilitative as-of-right development processes, but still considers existing business viability. **LFRA comment:** 'Following some 18 months of consultation and debate, the Queensland Government is working to create new legislation to implement a new planning framework for the State … The proposed changes to the Queensland planning system are also based on principles consistent with the Productivity Commission recommendations. The LFRA is encouraged by the recent progress and direction of planning reform in Queensland.'
WA	**Progress:** Commenced a review of the planning system in 2009, and starting in late 2013, is currently in the process of considering adopting track based assessments. **LFRA comment:** In 2013 the Western Australian Department of Planning undertook a review of the Model Scheme Text (MST) which provides standard land use term definitions for use by Councils across the State … This review has not produced an outcome and has in effect stalled or has been placed on hold … In summary, there has been no substantial change in Western Australia for many years now despite the existence of various planning reviews being undertaken. The LFRA is concerned about the future of planning in the State and its ability to identify and implement changes necessary to streamline and integrate the planning system.'
SA	**Progress:** Broadened business zoning in 2011, but floor restrictions remain. Third party appeal processes were previously assessed as leading practice and are unchanged. **LFRA comment:** 'In February 2013 the State Government appointed a panel of experts to review the current planning system in South Australia; consult widely with the community and all stakeholders and make recommendations for the introduction of a new planning system for the State. The project is entitled think-design-deliver and is due for issue of its final report at the end of December 2014 … [T]he LFRA is concerned that there will be an increase in red tape as a result of the review.'
Tas	**Progress:** In early 2014, planning zones were significantly reduced, and a taskforce is currently being assembled to develop standard documents and procedures for applications and permits. **LFRA comment:** Tasmania is currently in a state of *'planning reform'* with a number of key outcomes achieved and processes in place … Under the recently elected new State Government, Tasmania is heading in the right direction of a uniform state planning system which is consistent with other States and again consistent with the Productivity Commission recommendations in 2011.'

[a] LFRA = Large Format Retail Association (sub.19).

Sources: CIE (2013); Department of Planning and Local Government (SA) (2011); Department of State Development, Infrastructure and Planning (Qld) (2013); Department of State Development, Infrastructure and Planning (Qld), pers. comm., 29 May 2014; Department of Transport, Planning and Local Infrastructure (Vic) (2013); Department of Treasury and Finance (Tas), pers. comm., 2 May 2014; Gold Coast City Council (2011); Large Format Retail Association (sub. 19); PC (2011b); Planning Administration Bill 2013 (NSW); Planning Bill 2013 (NSW); Tasmanian Liberals (2014); Western Australian Planning Commission (2013).

Please note that prior to the release of the *'Interim Report'* the WA Government announced the review of their *'Model Scheme Text'* with particular emphasis of retail land use definition. The LFRA strongly supports this initiative and view this as a positive step forward in planning reform.

On the issue of land use definitions, Large Format retailing is a separately defined land use term in all State and Territory planning schemes across Australia. Common to all planning regulations across Australia is the premise that Large Format retailing is a separate category of retailing distinct from core retail or *'shops'* and can therefore locate on land that is zoned for purposes other than core retailing. In this regard, Large Format retailing is a permissible and encouraged land use on lower order Business and Commercial zoned land and in some cases, Industrial zoned land.

There are fundamentally two (2) types of definitions contained in planning laws across Australia that define Large Format retailing including;

- Performance based definition relating to *'bulky goods'* defined by the size, shape and/or weight of the goods. (This type of definition originated in New South Wales and has been adopted in part in other States); and

- List of specific product categories based on their ordinary meaning (e.g. – furniture) that are deemed to comply as *'bulky goods'*. (This type of definition originated in Victoria and has been adopted, in part, in other States.)

The LFRA is concerned with the current *'inconsistencies'* in land use definitions of across Australia whereby each State and Territory; and in some States, each local Council, has a different definition of Large Format or Bulky Goods retailing. Our Retail members operate businesses on a national basis and the current inconsistencies across different States and Local Councils result in much uncertainty and frustration in obtaining planning permits to lawfully conduct our business. Some of the major consequences of these inconsistent definitions include; increased time and costs associated with obtaining planning approvals and planning compliance; increased legal action arising from planning permit appeals and third party objections.

The LFRA strongly advocates there is a need to standardise planning regulations and specifically - land use definitions, across Australia to provide certainty to our industry and remove the current complications that directly result in increased time and cost to businesses and ultimately consumers.

In relation to anti-competitive policies specific to *'issue 2.20'*, the LFRA believe the planning systems in most States do not go far enough to actively encourage competition in the marketplace. This has resulted in an *'in-balance'* in favour of regulating and constraining development rather than actively encouraging appropriate development.

The *'Draft Centres Policy'* exhibited by the NSW Department of Planning in late 2009 was a positive step forward to actively encourage competition. The *'Draft Centres Policy'* included the positive policy statement that; *"...the market is typically best placed to determine the need for retail facilities…"* and the key role of the planning system is in *"…helping to deliver capacity for the appropriate location and scale of development to meet consumer demand…"*

The *'Draft Centres Policy'* also advocated a *'Net Community Benefit' ('NCB')* test in assessing rezoning proposals and removed the requirement to consider competitive impacts on individual businesses in the merit assessment process. The LFRA strongly supported these policy initiatives contained in the *'Draft Centres Policy'* as ways in which the benefits of competition could be delivered while balancing the public interest. Unfortunately, the status of this policy is unclear with subsequent reviews by the New South Wales Government failing to produce any outcome.

'Recommendation 8.2' by the Productivity Commission in its 2011 report – *'Economic Structure and Performance of the Australian Retail Industry'* is absolutely clear in that the viability of existing businesses should not be considered as part the planning process. However most States and Territories still consider this aspect when assessing development applications and rezoning applications.

In relation to strategic planning policy the LFRA has made submission to all State and Territory Governments over the past five (5) years calling for the removal of planning policies that are designed to discourage certain types of development or overly constrain development in certain locations. Examples of such restrictive policies are:

- *'Activity Centres Policy'* – this type of policy seeks to concentrate development within the geographical boundary of an activity centre (commonly a city or key suburban centre) while at the same time actively discouraging development outside of that centre. This has been a major hurdle for Large Format retailing in the past as the majority of suitably located and zoned land for the development of Large Format retail property is located outside of designated activity centres; and

- *'Industrial Land Use Policy'* – this type of policy seeks to preserve industrial land for industrial use while at the same time actively discouraging development for other purposes. This type of policy remains in place all over Australia despite the fact that the industrial sector of the economy has been in decline for many years and the former industrial base of manufacturing has given way to a new industrial base of warehousing and logistics. This type of policy has been a major hurdle for Large Format retailing in the past as the industrial land, particularly in inner city locations is suitable for the development of large format retail property.

The recent planning reforms undertaken in Victoria are the best example of how to achieve the objectives of good planning policy in a manner conducive to encouraging competition.

Earlier this year and after extensive consultation, the Victorian Government released a new *'Metropolitan Planning Strategy'* for Melbourne based on the fact that the previous planning strategy *('Melbourne 2030')* was more than 10 years old and arguably outdated. The LFRA made numerous submissions to the Victorian Government during this period in relation to strategic planning policy and have been primarily concerned with '*Melbourne 2030's'* policy discouraging all out-of-centre development.

The LFRA had consistently put forward the case that planning policy that seeks to restrict all development in out-of-centre locations was not logical or sustainable and was anti-competitive.

The LFRA is fully supportive of the Victorian Government in its approach to its new strategy *'Plan Melbourne'* whereby the negative and restrictive policy of discouraging certain types of development outside of activity was been removed. The new approach adopted was to identify different types of centres and precincts by their role in the broader economy and their unique qualities as opposed to solely their scale and geographical location.

In relation to Industrial land use policy, the Victorian Government adopted a new approach recognising the importance of planning for industrial land on the basis that the pattern of industrial land use has shifted to a freight and logistics base predominantly in outer areas with regional transport links. It logically followed that remnant industrial land in inner city locations were opportunities for urban renewal projects and redevelopment for higher order land uses including Large Format retailing.

The LFRA supported *'Plan Melbourne'* on the basis that it was a thoroughly researched document that put forward practical and logical directions for the development of Melbourne into the future. It also built on the recent reforms to the planning framework introduced by the Victorian Government over the previous 1-2 years which removed floor space restrictions; consolidated land zones; increased permissible uses within certain zones and updated redundant land use definitions. All of these measures contributed to a planning framework that removed previous anti-competitive policies in favour of new policy that is more conducive to encouraging competition.

In summary, this current *'Competition Policy Review'* presents the perfect opportunity to implement positive change in relation to the removal of anti-competitive policies in the planning and zoning regulations throughout Australia.

3.0 Conclusion

The LFRA welcomes this opportunity to contribute to this consultation process on the *'Competition Policy Review'*.

The LFRA would be pleased to discuss any issues raised in further detail with the Panel at a future time.

Please contact the undersigned regarding any aspect of this submission.

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