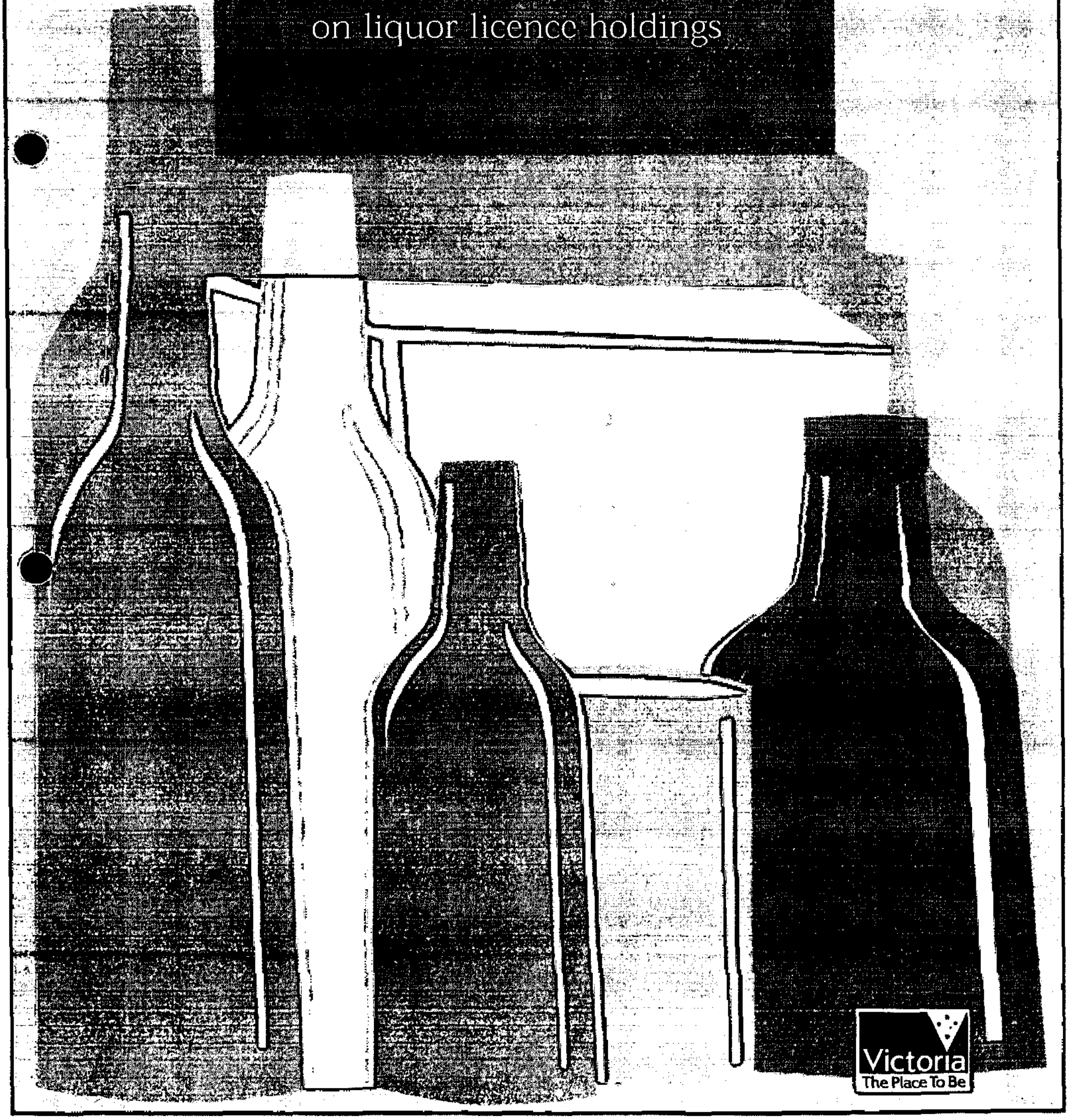
Review of

# 8% limit

on liquor licence holdings



# Foreword

The purpose of this review is to examine the case for retaining and/or extending legislative limits on holdings by the same or related persons of certain categories of liquor licences under the *Liquor Control Reform Act 1998*. The review was commissioned under terms of reference jointly issued by the Treasurer and the Minister for Small Business to examine the socio-economic consequences of legislative limits and develop a range of reform options.

Commonly referred to as 'the 8% rule', section 23 of the *Liquor Control Reform Act 1998* restricts a person or corporation from holding more than 8% of the total number of packaged liquor licences. In effect, only Safeway and Liquorland (the 'major chains') hold a sufficient number of packaged liquor licences to have their expansion plans directly constrained by the 8% rule. No other retailer is likely to be constrained by the 8% rule in the foreseeable future.

At the 1999 election, the Victorian Government made a commitment to retain the 8% rule on packaged liquor licences, tighten loopholes and extend the provision to other licence categories. The basis for this commitment is the Government's aim to promote the viability of small businesses and to ensure that consumers are able to access a diverse range of liquor outlets and products.

Previous reviews have cast doubt on the effectiveness of the 8% rule, and a June 1999 assessment by the National Competition Council (NCC) contends that its retention breaches competition policy principles. The Government has indicated that it is willing to consider alternative approaches to the 8% rule that are more effective at meeting the underlying intent of its policy commitment.

The Office of Regulation Reform ('the Office') conducted the review with the advice and guidance of an expert reference group. To gain an accurate understanding of how the market for packaged liquor operates, particular emphasis was placed on discussing the issues in detail with key industry associations and individual businesses. This included meeting with interested parties, convening a half-day workshop with key stakeholders on the effect of the 8% rule, seeking public submissions, and a survey of consumers to establish the effect of the 8% rule on their purchasing behaviour.

In accordance with the terms of reference, the Office examined: the costs and benefits of reform, with particular regard to the interests of consumers; the effectiveness of protections of the *Trade Practices Act 1974*; social welfare considerations; economic and regional development effects; and employment and investment impacts. The review was confined to matters relating to the effect of the 8% rule. It was not the Government's intent that the review re-examine broader liquor policy settings, such as the removal of the needs criteria in the 1998 reforms.

The Office would like to thank all those individuals and organisations who have contributed to the review. The Office also wishes to thank members of the Reference Group for their specialist comments and continuous support throughout the review.

# Glossary

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|---|---|
| 'the Act' or 'new Act' | *Liquor Control Reform Act 1998.* |
| ADF | Australian Drug Foundation, an independent, non-profit organisation that provides information/education/practical assistance to the public to reduce the alcohol and drug problems in the community. |
| AHA | Australian Hotel & Hospitality Association, Victoria. |
| Director | Director of Liquor Licensing Victoria. |
| 'independent liquor store' | A liquor store whose core business is the sale of packaged liquor and which is not owned by a major chain. |
| 'independent supermarket' | A supermarket that is not owned by a "major supermarket". |
| Liquorland | The packaged liquor sales division of Coles Myer Ltd. It trades under the Liquorland, Liquorland Direct, Vintage Cellars and Quaffers banners. |
| LLV | Liquor Licensing Victoria. |
| LSAV | Liquor Stores Association of Victoria. |
| 'major chains' | Safeway's liquor stores (including Dan Murphy) and Coles-Myer's Liquorland, Quaffers and Vintage Cellars stores. |
| 'major supermarket' | A supermarket owned by Safeway/Woolworths or Coles-Myer. |
| MGAV | Master Grocers Association of Victoria. |
| NCC | National Competition Council, the Commonwealth Government's advisory body on National Competition Policy issues. |
| 'NCP review' | The National Competition Policy review in 1998 of *Victoria's Liquor Control Act 1987.* |
| 'needs criteria' | Until the *Liquor Control Reform Act 1998*, existing liquor stores could object to an application to open a new liquor store on the grounds that there was insufficient need or demand to justify a new licence. |
| 'the Office' | Office of Regulation Reform, Department of State & Regional Development. |
| 'predominant activity' | Under the *Liquor Control Reform Act 1998*, packaged liquor licensees must ensure that the predominant activity of the licensed premises is the sale of packaged liquor. LLV interprets this as being that (at least) half of the licensed premises' turnover comes from packaged liquor sales. |
| Safeway | Australian Safeway Stores, the Victorian supermarkets division of Woolworths Ltd. |
| VWIA | Victorian Wine Industry Association. |
| '1998 reforms' | The reforms to Victoria's liquor regulatory framework implemented through the *Liquor Control Reform Act 1998* (which came into operation on 17 February 1999). |

# Contents

# Executive Summary

## Background

The Government supports the development of a viable small business sector and the promotion of diversity in the packaged liquor market for consumers. To this end, it made a commitment at the 1999 election to retain the 8% limit on packaged liquor licence holdings by the same or related person under the *Liquor Control Reform Act 1998*.

This policy position has been challenged by the National Competition Council, which has recommended that an annual deduction from Victoria's National Competition Policy payments should be incurred if the 8% rule is not removed by 31 December 2000.

The purpose of this review was to examine the legislative limits on holdings, to further identify its socio-economic consequences and to develop a range of feasible reform options in the context of the underlying intent of the Government's policy commitment.

## Approach

The review process was comprehensive and involved:

- consulting with 28 major players, such as industry and community groups;
- calling for submissions, which attracted 16 submissions from industry bodies and companies including independently-owned liquor stores;
- convening a workshop with representatives of key interest groups such as the Liquor Stores Association of Victoria, Australian Hotels Association, independent grocers, and the Turning Point Drug and Alcohol Centre;
- commissioning a consumer survey of 1,000 liquor purchasers across Victorian geographic areas;
- undertaking site visits and case studies, covering Ballarat, Castlemaine, Mornington, Warrnambool and Melbourne's suburbs;
- conducting analysis of current packaged liquor licence types from data supplied by Liquor Licensing Victoria;
- reviewing the findings of previous research and reviews, including the 1998 NCP review and the NCC's assessment; and
- seeking advice from the review's reference group, comprised of Government (Treasury & Finance), academia (University of Melbourne) and industry (VECCI).

## The Victorian market for packaged liquor

**Regardless of any restrictive effect of the 8% rule, the Office has found that the Victorian market for packaged liquor is intensely competitive and offers consumers a diverse range of shopping experiences since the changes introduced by the *Liquor Control Reform Act 1998*. There is no significant barrier to entry for businesses to obtain a packaged liquor licence. A comparison of interstate regulatory arrangements of packaged liquor licences revealed that the Victorian regulatory framework is clearly the most progressive in Australia.**

Some key comparisons include:

- the cost of a Victorian packaged liquor licence is $500, compared with about $60,000 in New South Wales.
- Unlike Victoria, three States (Queensland, South Australia and Tasmania) prohibit supermarkets from selling liquor; and
- Victoria has more liquor stores per capita than New South Wales, South Australia or Western Australia.

## Consumers

A survey conducted during the course of the review revealed that consumers have different preferences that influence their selection of a type of retail outlet:

- the ***price competitiveness*** of a particular outlet;
- its ***convenience***, in terms of enabling one-stop shopping, location (eg. proximity to home), the particular attributes of the location (eg. availability of parking) and the ability to order from home using the telephone or internet;
- the outlet's product ***range***, either in terms of the quantity and breadth of the liquor products on offer or the nature of the liquor products (eg. regional wines); and
- the ***service*** offered by the outlet, such as a friendly welcome, staff offering detailed product knowledge, conducting wine tastings and home delivery.

The survey found that a higher value is placed on the convenience afforded by the close proximity of liquor outlets than other factors. However, each of the above factors is still rated highly, ensuring a market for a diverse range of liquor outlets.

## Industry

The Victorian packaged liquor market is competitive and diverse, reflecting the four key factors that influence consumer purchasing decisions. There are in excess of 3,000 outlets, with 1,906 hotels (general licences) and 1,291 packaged liquor outlets, of which 789 are in metropolitan and 502 in country areas.

Packaged liquor licensees cover 196 premises operated by the major chains (Safeway, and Liquorland), 34 by Franklins, 413 independent supermarkets, 421 independently-owned liquor stores, 106 general stores and 121 other businesses such as caravan parks and vineyards.

Safeway (Woolworths) and Liquorland (Coles-Myer) are the only entities directly constrained by the 8% limit. Safeway has 101 licensed supermarkets and 47 that are unlicensed. Liquorland has 93 outlets, although 53 Coles supermarkets remain unlicensed.

Each type of liquor retailer has tailored its market presence around the diverse range of consumer preferences. The location of liquor stores is widely dispersed, with most of a store's customers coming from the local neighbourhood.

There is an uneven distribution of the different types of retailers across Victoria. Independently-owned liquor stores are the predominant liquor retailer in inner Melbourne; major and independent supermarkets in outer Melbourne; and independent supermarkets and general stores in the country.

Twenty-eight geographic areas were identified in which Safeway, Liquorland, independent supermarkets and independently-owned liquor stores co-exist. These were found in inner and outer Melbourne and in regional and rural centres (Ararat, Bairnsdale, Ballarat, Balwyn, Bendigo, Bentleigh, Boronia, Cheltenham, Chirnside Park, Dandenong, Doncaster, Ferntree Gully, Geelong, Greensborough, Malvern, Melton, Mildura, Moonee Ponds, Mordialloc, Mornington, Morwell, Mulgrave, Prahran, Ringwood, Shepparton, Werribee, Williamstown and Wodonga).

# The effectiveness of the 8% rule

The 8% rule has been an element of Victoria's liquor legislation since 1983. Its introduction was in response to the rapid increase of packaged liquor licences held by S.E. Dickens (later to be renamed Liquorland). In May 1982, Dickens held 7.89% of all packaged liquor licences (amounting to 61 in total). In conjunction with the 'needs criteria' contained in previous liquor legislation, the 8% rule limited the number of new entrants to the industry.

The removal of the 'needs criteria' has increased diversity. In the ten years between 1988 and 1998, there were only 314 new packaged liquor licences issued. In contrast, 156 new packaged liquor licences have been issued following the removal of the 'needs criteria' in February 1999, representing an increase of 13.7% in 15 months (4 licences have since become inactive). Of these 152 additional licences, 90% were granted to small businesses (half in country Victoria).

An analysis of the 152 new packaged liquor licences reveals:

- 56 independently-owned supermarkets and general stores in such locations as Ouyen, Wartook, Korumburra, Longford and Koonoomoo;
- 52 businesses such as internet retailers, vineyards and caravan parks;
- 29 independently-owned liquor stores; and
- 13 to Franklins, one to Liquorland and one to Safeway.

The 8% rule does not represent an absolute cap on the number of packaged liquor licences an entity may hold. It currently permits a major chain to apply for one additional licence for every thirteen packaged licences issued to other entities. The percentage rule has permitted the major chains to undertake gradual expansion by obtaining additional licences.

The Office estimates that if new packaged liquor licences continue to grow at current levels, Safeway will be able to license all of its supermarkets within five years without breaching the 8% rule.

Within the constraints of the cap, the major chains are still able to transfer their licences between premises to maximise the return from the total number of licences held. As a result, independent liquor stores can never be certain that a major chain will not open a store nearby.

While holdings of packaged liquor licences are limited to 8%, the Act does not prevent a major chain from seeking a general licence, which also permits the sale of packaged liquor. While there has been few instances of this occurring, the report has recommended that the Director of Liquor Licensing should be required to reject an application for a new general licence if the applicant would be unable to obtain a packaged liquor licence on the grounds of the legislative cap.

### *Market share*

While its original intent was to prevent market dominance by any one entity, a cap on the number or percentage of liquor licences does not directly translate to a constraint on market share. Industry estimates are that the major chains have a market share of two to three times the percentage of packaged licences they hold, accounting for approximately 40% of packaged liquor sales in Victoria.

# Impact of 8% rule

## *Consumers*

The main cost imposed by the 8% rule is the inconvenience caused to consumers by not being able to take advantage of 'one-stop shopping' at a major chain outlet near their home. Of the 1,000 consumer survey respondents, 21% said they shopped at an unlicensed Safeway, Coles or Franklins supermarket. Just over half (56%) of this group said they would buy their liquor there if it was to become licensed. However, there is no certainty that all supermarkets would be utilised for liquor sales. Liquorland requested AC Nielson to conduct an exit poll of its customers and the survey revealed that 64% of customers choose to shop at a particular store that is close by (for proximity reasons). Most consumers enjoy a highly competitive market; however, the major chains are not considered the price leaders.

## *Industry*

Independent liquor stores are the only type of packaged liquor outlet where the sale of liquor is their core business. There are 421 licensed independent liquor stores; of these, 50 independent liquor stores are located in close proximity to unlicensed major chains and thereby obtain some shelter from the competitive environment through the 8% rule. Some of these are located in seven small country towns that have an unlicensed Safeway or Coles supermarket without existing competition from another licensed major. They are Bacchus Marsh, Kangaroo Flat, Kyneton, Leongatha, Ocean Grove, Rye and Wonthaggi.

In these cases, the addition of a liquor store by a major chain is likely to have a significant impact on the revenue of the independent liquor stores in the town. Clearly in very small markets there is little flexibility for the independent liquor outlets to reposition themselves.

This leaves 371 independent liquor stores that are already competing with the major chains, independent supermarkets, hotel bottle shops and other independent liquor stores in their local area. All provincial cities in Victoria have at least one licensed major chain outlet already in existence.

Any change to the 8% rule is unlikely to have significant development effects in the Melbourne metropolitan area, which is already highly competitive. Independent liquor stores are increasingly required to meet the challenges that competition from new entrants brings or risk losing custom. The size and diversity of the economy and population base provides an opportunity for many of these small businesses to reposition themselves in response to competition.

Many small businesses have already positioned themselves in the boutique services market. The range and the services that they provide, such as specialised liquor services or the provision of complementary products, distinguish them from other liquor stores in their area.

## *Harm minimisation*

There is no evidence to suggest that the 8% rule contributes to either lowering or increasing the incidence of alcohol-related harm, but it is uncertain whether its removal will have an adverse impact on those in the community that are most at risk. As holders of a number of liquor licences, the major supermarkets have strong incentives to ensure compliance with the requirements of liquor regulation.

However, some submissions expressed concern that an increase in binge drinking by certain groups may follow any rapid expansion by the major chains if it was combined with heavy marketing of alcohol and aggressive price competition. While it seems unlikely that significant price falls would follow any relaxation of the 8% rule, the report recommends that the impact of the possible replacement of the 8% rule on the incidence of alcohol-related harm be considered and and that a monitoring strategy be developed.

# Conclusions

In terms of competition and diversity, the 8% rule has had an uneven impact across Victoria. A diverse range of liquor retailers is well represented throughout inner Melbourne and regional centres. The 100 unlicensed Safeway and Coles supermarkets, if granted licences tomorrow, would not significantly add to competition and diversity, other than in a small number of locations in outer Melbourne and rural Victoria.

In the short term, the 8% rule provides some protection to the 50 independently-owned liquor stores that are co-located with unlicensed Safeway and Coles supermarkets. However, there is no technical impediment to Safeway or Coles transferring an existing licence to any of its unlicensed supermarkets adjacent to these independently-owned liquor stores. Thus, the current protection could be lost at very short notice, leaving small businesses little time to adjust their business strategies.

Additionally, the 8% rule does not affect the increasing presence of the other major supermarket chains such as Franklins and the anticipated entry of Aldi.

In view of this, small and large business interests within the liquor industry acknowledge that the 8% rule is not an effective way to promote the viability of small business, but have differing views on alternative mechanisms that would ensure diversity in the market.

The review found that liquor retailers tend to not co-locate within the same shopping centre precinct, but are usually one to two kilometres apart. In view of this, the decision by the 50 independently-owned stores to co-locate with unlicensed Safeway and Coles supermarkets appears to reflect the past "needs criteria" regulatory provision, which provided a degree of exclusivity in the immediate neighbourhood. It is estimated that if growth continues, all Safeway stores will be able to have a packaged liquor licence within five years. This could potentially impact on all 50 of the independently-owned stores co-located with an unlicensed major chain outlet. In some cases, independently-owned liquor stores may have already been established in the area prior to the location of the major chains.

The removal of the 8% limit may increase the risk of aggressive price competition between the major chains, and could conceivably lead to market domination by several players. Without effective mechanisms in place such market behaviour would have obvious spillover effects on both independently-owned liquor stores and supermarkets.

The Office considered three broad approaches that could be adopted in rrelation to the 8% rule:

A. **retain the 8% rule** in its current form and consider expanding the application of the rule to other forms of liquor licences;

B. **abolish the 8% rule entirely** and leave the future development of the industry to the influence of prevailing market factors; and

C. **replace the 8% rule** in its current form with other measures designed to meet the Government's policy objectives of ensuring the development of a viable and diverse small business segment in the packaged liquor market.

Given the above conclusions, it would be in the public interest to retain the 8% limit until a suitable alternative is developed that meets the Government's objective of promoting the viability of small businesses and ensuring consumers have access to a diverse range of liquor outlets and products.

> ***Recommendation 1:***
>
> ***The 8% rule should not be removed until there is a mechanism in place to ensure diversity in the market place.***

Seeking to develop such a mechanism could involve the liquor industry considering the following possible reform options or other suitable alternatives that meet the objectives of the 8% rule without unduly restricting competition.

C1 **Phase-out linked to industry adjustment program** The 8% limit could be phased out in conjunction with the support of an industry development program aimed at improving the capacity of small liquor stores to compete in the market, with particular emphasis on those stores most adversely affected. The program should be industry-led and delivered by an independent industry body. Two possible ways of approaching this are:

- retaining the 8% limit for up to three years; or
- relaxing the limit by 1% each year for three years, for final abolition in 2004.

C2 **Retain a cap in regional Victoria** - Removing the 8% rule in the Melbourne metropolitan area, while retaining some restrictions on the expansion of the major chains in rural areas, such as through a regional cap.

C3 **Cap on market share** - Limit the market share of a single major chain and/or the combined share of three to four major chains.

If a suitable alternative to the 8% rule could be developed, the Government's policy objectives would be promoted more effectively while the risk of being found to break National Competition Policy commitments is minimised. The resulting benefit will be increased vitality in the economy and greater choice for consumers.

In respect to other matters relating to the Terms of Reference, it is recommended that:

> ***Recommendation 2:***
>
> ***The Act be amended to require the Director of Liquor Licensing to reject an application for a general licence if the applicant would be unable to obtain a packaged liquor licence on the grounds of section 23 (ie. the 8% rule).***

> ***Recommendation 3:***
>
> ***The Minister for Small Business seeks the approval of the Commonwealth Minister for Employment, Workplace Relations & Small Business to expand the scope of the Retail Grocery Industry Code of Conduct and Ombudsman scheme to include packaged liquor retailing.***

> ***Recommendation 4:***
>
> ***The Minister for Small Business instructs the Co-ordinating Council on the Control of Liquor Abuse to consider what impact a possible replacement of the 8% rule might have on the incidence of alcohol-related harm and to begin preparation of a strategy for monitoring that.***

# 1 The 8% rule and its review

The 8% rule restricts any person or corporation from obtaining a packaged liquor licence if, at the time of application, they hold more than 8% of the total number of such licences. The only retailers whose expansion plans are directly constrained by the 8% rule, both currently and for the foreseeable future, are Safeway and Liquorland.

The present Government made a commitment at the previous election to retain the 8% rule and extend it to other licence categories. This review has been commissioned by the Minister for Small Business and the Treasurer to examine the socio-economic impacts of this policy. Its findings aim to inform the Government of the best means of achieving the underlying intent of the 8% rule.

The objective of the 8% rule is to promote the viability of small businesses in the packaged liquor market and, flowing from this, to facilitate diversity in the type of liquor stores that are available to consumers. This latter intent is consistent with the stated objectives of the *Liquor Control Reform Act 1998.*

All previous reviews of Victoria's liquor legislation since the introduction of the 8% rule - Nieuwenhuysen (1987), Public Bodies Review Committee (1995) and National Competition Policy (1998) - have found that its retention is not in the public interest.

During the course of the review, the liquor industry raised a range of broader policy issues, such as concerns regarding the recent strong growth in the number of packaged liquor licences. The terms of reference however, bind the review to consider only matters relating to the 8% rule.

## 1.1 What is the 8% rule?

Section 23 of the *Liquor Control Reform Act 1998* limits the number of packaged liquor licences held by a person or corporation to no more than 8% of all such licences at the time of application. This provision is commonly referred to as the '8% rule'. As the total number of packaged liquor licences granted or in force varies over time, so does the actual number of licences that an applicant can hold, without being refused a licence on the basis of section 23.

**Box 1a: Section 23 of the *Liquor Control Reform Act 1998* (the '8% rule')**

The Director [of Liquor Licensing] must not grant or transfer to a person a packaged liquor licence if, at the time of the application for the grant or transfer:

- in the case of a natural person, the person holds more than 8% of all packaged liquor licences granted and in force under this Act; or
- in the case of a body corporate, the sum of the number of packaged liquor licences held by the body corporate and by any related entities is more than 8% of all packaged liquor licences granted and in force under this Act.

The 8% rule has been an element of Victoria's liquor legislation since 1983. Its introduction was in response to the rapid increase of packaged liquor licences held by S.E. Dickens (which later became Liquorland). In May 1982, Dickens held 7.89% of all packaged liquor licences (amounting to 61 in total).

An application by Dickens for a sixty-second licence was refused by the then Liquor Control Commission on the basis that it would not be in the interests of the public for a single licensee to hold such a proportion of licences. Parliament subsequently passed a Bill to amend the 1968 Act and to introduce an 8% limit on both packaged and general licences. The statutory limit on packaged liquor licences was set at 8% due to the particular circumstances at the time. While other aspects of liquor regulation have changed, the rate has not.

Safeway and Liquorland are the only retailers whose expansion strategies are currently (and in the foreseeable future) directly constrained by the 8% rule. Safeway currently holds 103 packaged liquor licences (7.98%), while Liquorland holds 93 licences (7.2%).

## 1.2 Why review the 8% rule?

At the 1999 Victorian general election, the Government's small business policy statement included the following commitments:

> 'A Bracks Labor Government will immediately and retrospectively close legislative loopholes which allow large retailing chains to accumulate more than 8 per cent of the total number of packaged liquor licences.
>
> 'Labor will also reinstate an 8 per cent limit on market concentration in other areas of retail liquor licensing.'

In order to assist the Government in developing a framework to consider how best to proceed with its policy commitment, the Minister for Small Business and the Treasurer have commissioned this review. The Minister for Small Business has already conveyed to stakeholders that the Government is willing to consider alternative measures to the 8% rule that better meet the underlying intent of its policy commitment.

The review is also required to consider the Government's NCP commitments (see Box 1b). In 1998, the former Government undertook an NCP review of the *Liquor Control Act 1987*, which found that the 8% rule is anti-competitive and does not generate a net public benefit. It therefore recommended that the 8% rule for both general and packaged liquor licences be removed from the Act.

**Box 1b: National Competition Policy (NCP) legislation reviews**

The review and, where appropriate, reform of legislative restrictions on competition is a key element of the NCP package of reforms agreed to by the Council of Australian Governments in April 1995 under the Competition Principles Agreement.

The guiding principle that forms the basis of legislation reviews is that new and existing legislation 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.

As part of the NCP package, the Commonwealth agreed to provide 'competition payments' to the States in three tranches, conditional on certain implementation targets being met by 1997-98, 1999-2000 and 2001-02. These competition payments amount to over $16 billion. In 1999-2000, Victoria's share amounts to approximately $152.2m.

It is the role of the National Competition Council to recommend to the Federal Treasurer whether the States have made satisfactory progress and are therefore entitled to the competition payments.

The former Government's response to the NCP review, as reflected in the *Liquor Control Reform Act 1998*, only partially adopted the panel's recommendation. It removed the 8% rule for general liquor licences, but retained it for packaged licences on the basis that promoted diversity and harm minimisation objectives.

The NCC was not convinced that the retention of the 8% rule for packaged liquor licences satisfied NCP guiding principles. In response, it indicated in its second tranche assessment in July 1999, that it will consider an annual deduction from Victoria's NCP payments if it does not remove the 8% rule by 31 December 2000.

By July 2001, the NCC will have undertaken its third tranche assessment of progress by jurisdictions with the NCP reform agenda. To avoid the risk of financial penalties, Victoria would need to convince the NCC that it has satisfied its NCP commitments in relation to the 8% rule.

**Box 1c: Findings of previous reviews of the 8% rule**

The 1986 review of the *Liquor Control Act 1968*, chaired by Professor John **Nieuwenhuysen**, concluded (p. 339) that:

'The 8 per cent limit...is arbitrary and discriminatory...It limits one firm. This seems in no-one's interest except those of other retailers of liquor who may be unable to match Dickens [now branded Liquorland] in convenience, price, service or range, despite their access to buying groups whose numbers exceed the 8% ownership limit. It seems extremely remote from any policy of anti-alcohol abuse. I recommend that no limit...be included in a licensing Act.'

The 1995 Inquiry into the Liquor Licensing Commission Victoria, by the Victorian Parliament's **Public Bodies Review Committee**, found that:

'The Committee believes that segmentation of the retail industry into buying groups makes a mockery of the current legislation, and supports Liquorland's contention that it is discriminated against in the market place.' (paragraph 4.313).

and recommended that:

'no commercial, economic or numerical restriction whatsoever be placed on people or companies seeking a liquor licence.'

Most recently, the 1998 **National Competition Policy** review of the *Liquor Control Act 1987*, conducted by a review panel chaired by the Hon. Haddon Storey QC, found that:

'The restriction is not necessary to limit monopolisation...There is little evidence that [diversity] has been contributed to by the 8% rule'.

'The Review concurs with the view [of the KPMG consultants] that consumers would benefit from abolition of the rule as a result of the increased convenience of one-stop shopping. Indeed, the Review believes that convenience may be the greatest benefit'.

'The Review recommends that the 8% rule for general and packaged liquor licences be removed from the Act.' (pp. 76-8).

# 1.3 What is the objective of the 8% rule?

During the 1983 parliamentary debate on introducing the 8% rule, the then Minister Ian Cathie stated that its intention was to 'prevent domination of the liquor industry in the long term by hotel chains and supermarket chains.' There was no suggestion at the time of its introduction that the 8% rule was intended to serve a harm minimisation objective. However, as will be discussed in Chapter 4, organisations concerned with alcohol abuse have argued in favour of retaining the 8% rule on harm minimisation grounds.

The NCP review found that it was unclear which objectives were addressed by the 8% rule. The review suggested that it could be argued that, by protecting independent liquor stores from the competition of major chains, it is directed towards the objectives under the *Liquor Control Act 1987* of proper development and diversity.

As the liquor regulatory framework has been progressively liberalised over recent decades, the focus of the legislation has shifted from industry protection to objectives of minimising harm and reflecting consumer preferences. The 8% rule is arguably the last industry protection measure contained in Victoria's liquor legislation. The objectives of the current legislation, the *Liquor Control Reform Act 1998*, are essentially to:

- contribute to minimising harm arising from the misuse and abuse of alcohol;
- facilitate the development of a diversity of licensed facilities reflecting community expectations; and
- contribute to the responsible development of the liquor and licensed hospitality industries.

It should also be noted, that when announcing this review, the Minister for Small Business indicated in the media release that 'the Bracks Labor Government is committed to ensuring diversity in the liquor industry, and a major part of this includes protecting the viability of small businesses.' It is apparent that the underlying intent of the Government's policy commitment is to:

- promote the viability of small businesses in the packaged liquor market, and
- to facilitate diversity in the type of liquor stores that are available to consumers.

A key task of this review is to examine how effective the 8% rule is in meeting these two objectives.

## 1.4 How has the review been conducted?

The review has been undertaken by the Office of Regulation Reform, a unit within the Department of State and Regional Development, in accordance with the terms of reference. A checklist of the terms of reference is at Attachment F.

The terms of reference reflect the Government's intention that this review should be broad and should go beyond the standard analysis that often characterises NCP reviews. They require the Office to explicitly consider any structural adjustment costs of reform, and social welfare and regional development impacts, in addition to economic analysis. This policy approach by the Government, which is consistent with NCP principles, is also reflected in recently revised competitive neutrality guidelines.

In commenting on its expectations of the review, the NCC stated in its submission (p.4) that:

> 'The Council is satisfied that the current review of the 8 per cent limit is sufficiently independent and consultative, particularly given the full NCP review of the *Liquor Control Act* in 1998. Nonetheless,...the third tranche assessment will look to see that the conclusions reached by the current review are consistent with those that would have been reached by an objective observer, on the basis of the evidence. Consistent with the CPA [Competition Principles Agreement] tests, the Council will look for removal of the 8 per cent limit for packaged liquor licences by the end of 2000 unless the new review provides a compelling case to show that the limit offers a net benefit to the whole community.'

A major priority for the Office was to fully inform the Government of the socio-economic impact of the 8% rule. As a result, the review placed particular emphasis on understanding how the market for packaged liquor operates in Melbourne and regional Victoria. This involved:

- undertaking individual meetings with over 20 interested parties (see Attachment A);
- calling for submissions, of which 16 were received (see Attachment B);
- convening a half-day workshop with key stakeholders, facilitated by the De Bono Institute, that sought to develop measures that would fulfil the intent of the 8% rule (see Attachment C);
- commissioning a survey of 1,000 consumers to assist in determining the impact of the 8% rule on their purchasing behaviour (see Attachment D);
- seeking case studies on how the 8% rule impacts on regional areas and individual liquor stores; and
- drawing from the expertise of the reference group.

During the course of the review, the liquor industry raised a number of broader policy issues, such as the recent growth in the number of packaged liquor licences. However, the terms of reference bind the Office to only address matters directly relating to the 8% rule. It was not the Government's intent that this review would be an examination of broader liquor policy settings.

# 2 The market for packaged liquor in Victoria

- The market for packaged liquor provides consumers with a variety of preferences in what they consume and the experience they are seeking when making their purchases.
- Most consumers place a high priority on convenience when determining where to make their packaged liquor purchases, particularly a store's proximity to home.
- As a result, the locations of liquor stores are quite dispersed. While independent liquor stores often locate in local shopping strips, away from the major supermarkets, there are several instances where they co-exist nearby.
- There are over 3,000 outlets from which packaged liquor can be purchased. However, there are marked regional differences in the range of liquor outlets on offer to consumers. For instance, independent liquor stores comprise 43% of liquor outlets in Melbourne, but only 15% in country Victoria. The major chains have 196 liquor outlets.
- The per capita consumption of liquor has fallen over the past two decades, despite strong growth in the number of packaged liquor outlets.
- The industry is facing new challenges from online sales and new entrants.

## 2.1 How do consumers determine their liquor purchasing decisions?

As liquor is consumed across a wide variety of ages, cultural, economic and gender backgrounds, consumers have quite different preferences as to the type of liquor they prefer and the experience they are seeking when buying liquor. Some consume liquor on premises such as in a restaurant, hotel, café or club. Others purchase packaged liquor for consumption at other venues such as the home.

### Factors that determine where consumers make their packaged liquor purchases

Once a consumer has decided to purchase packaged liquor, the next decision is which outlet to purchase their liquor from. With a particular product having undergone a standardised production process, its quality should not differ greatly between outlets. This characteristic differentiates liquor from the purchase of other items such as fruit and vegetables, where their quality varies between outlets. A bottle of a certain brand and type of scotch is the same regardless of where it is purchased.

Broadly speaking, there are four key factors that influence the decision to purchase:

- the *price competitiveness* of a particular outlet;
- its *convenience*, in terms of enabling one-stop shopping, location (eg. proximity to home), the particular attributes of the location (eg. availability of parking) and the ability to order from home using the telephone or internet;
- the outlet's product *range*, either in terms of the quantity and breadth of the liquor products on offer or the nature of the liquor products (eg. regional wines); and
- the *service* offered by the outlet, such as a friendly welcome, staff offering detailed product knowledge, conducting wine tastings and home delivery.

### The relative importance of these factors

In order to understand the nature of the market for packaged liquor, it is important to know how consumers value the four factors that influence their decision. One method used widely to understand consumer behaviour is market research. This method provides an insight into the relative importance of price competitiveness, convenience, range and service to consumers when choosing where to buy liquor.

Liquorland included in its submission the results of a market research on customer preferences conducted on its behalf by AC Nielsen in February 2000. The study revealed that the most popular reason (64%) for a customer choosing to shop at a particular liquor outlet is that it is close by. Proximity to a supermarket (25%), another aspect of convenience, was the next most popular reason. Price (13%) was a third-order consideration.

This finding is consistent with the results of a 1998 exit survey of Liquorland's customers at six of its stores. This survey found that 88% of customers chose to make their purchases at that particular store because they live nearby. Likewise, Tooheys indicated in discussions with the Office that 80% of retail beer customers purchased their beer within 5 kms of home.

The Office's consumer survey asked respondents to rate the importance of the four factors that influence where they buy packaged liquor on a five-point scale from very important to very unimportant. The results indicated that the location of the store was considered either very important or important by 84% of respondents, while the other three factors (price, service and range) were valued only marginally less than location. Only a minority of respondents (42%) considered the availability of other products (eg. food) in the liquor store as very important or important.

Convenience is clearly an important factor in determining where consumers make their packaged liquor purchases. However, while this market research should reflect broad consumer attitudes, it overlooks many subtleties in the preferences of a particular type of consumer. For instance, some liquor purchasers would value service and range more highly than price competitiveness and convenience of a liquor store.

## 2.2 What is the composition of the Victorian packaged liquor market?

### Size of the market

The size of the Victorian packaged liquor market is difficult to determine. Since a 1997 High Court decision, which found that the States' business franchise fees were unconstitutional, Victoria no longer has access to any official data on wholesale liquor purchases. The market is also difficult to determine because it is uncertain what proportion of hotel liquor sales derive from packaged liquor.

However, the NCP review (p.14) considered that, based on business franchise fees data for 1996-97, the size of the entire Victorian liquor industry was approximately $1.4 billion. The LSAV provided the Office with an updated estimate of $1.8 billion per annum.

In 1996-97, sales from packaged liquor stores accounted for approximately 50% of total liquor industry sales. Sale of packaged liquor by hotels is not included in this figure. The Office estimates that including hotel packaged liquor sales increases total packaged liquor sales by 10% to 60% of total liquor industry sales.

Based on the LSAV's estimate of the market of $1.8 billion, the Victorian packaged liquor market would be approximately $1 billion per annum (60% of total liquor sales). This represents packaged liquor sales by both hotels and by packaged liquor outlets.

### Liquor consumption trends

Per capita consumption of alcohol in Australia over the past three decades has fallen, although this trend has stabilised in recent years. As indicated in Table 2a, during this period, beer consumption has fallen, spirit consumption remained stable, but wine consumption has experienced a strong increase.

**Table 2a: Per capita consumption of alcoholic beverages in Australia**

| | Beer | Wine | Spirits |
|---|---|---|---|
| 1969/70 | 119.4 | 8.9 | 1 |
| 1974/75 | 136.5 | 12.2 | 1.2 |
| 1979/80 | 132.3 | 17.2 | 1 |
| 1984/85 | 114.5 | 21.3 | 1.2 |
| 1989/90 | 111.6 | 18.3 | 1.18 |
| 1994/95 | 96.9 | 18.2 | 1.26 |
| 1996/97 | 94.7 | 18.8 | 1.28 |

*Source: Liquor Merchants Association of Australia, based on ABS statistics. Beer and wine consumption is measured in litres, while consumption of spirits is measured in litres of alcohol.*

The NCP review (p.19) highlighted that, while the number of packaged liquor outlets has grown significantly over the past decade, per capita consumption has not increased. The review also noted that Australia had an average consumption level similar to comparable countries such as New Zealand, the United Kingdom and the United States, and was significantly lower than many European countries.

According to Turning Point's analysis of liquor consumption patterns across Victoria from 1994/95 to 1995/96, rural regions had a higher total per capita consumption of alcohol than metropolitan regions. The analysis also found that, when compared with metropolitan regions, the rural regions had a higher per capita consumption of beer but a lower per capita consumption of wine (See Turning Point, *The Victorian Alcohol Statistics Handbook*, August 1999, pp.8 and 9).

## Type of packaged liquor outlets

There are several types of packaged liquor outlets operating in Victoria. These seek to satisfy consumers in a variety of ways. As a result, there is significant diversity in the industry. Some outlets have a competitive advantage over others due to their high quality service, while others have the advantage due to the convenience of their location, product range or price competitiveness. The different types of liquor outlets are briefly described below, although it should be noted that the generalisations are simply to highlight the variety of outlets and will not necessarily be indicative of individual situations.

***Independent liquor stores*** - There is a wide range of outlets that operate as independent liquor stores, many of which are located in suburban shopping strips. Most (82%) are located in metropolitan Melbourne. They generally are not co-located with licensed major chains or independent supermarkets. Apart from a few chains, most operators own only one or two stores. This category of liquor outlets comprises businesses that are highly dependent on packaged liquor sales. The range and service offered by independent liquor stores varies greatly according to how they position themselves in the market. While most independent liquor stores are competitive on price, few are price leaders.

***Independent supermarkets*** - Based on the membership of the Master Grocers Association of Victoria (MGAV), about half of all independent supermarkets are licensed. The significance of liquor sales to its licensed members varies from between 10% and 35% of turnover. Most of these supermarkets are family-run businesses. The largest operator is Ritchies, with 18 stores mainly located in outer Melbourne and country Victoria. Independent supermarkets tend to locate in small shopping strips where the major chains are not present. About half of the licensed independent supermarkets are in country Victoria.

***Major supermarket chains*** - Coles-Myer's Liquorland has 93 outlets, which operate under the Liquorland, Liquorland Direct, Vintage Cellars and Quaffers banners. Woolworths's Safeway supermarkets operate 101 liquor stores, while its six stand-alone Dan Murphy stores are all located in Melbourne (four operate on general licences). Franklins is the third largest supermarket chain in Victoria with roughly 60 stores, two-thirds of which are licensed.

*Hotels* - Generally hotels offer packaged liquor sales either through an attached bottle shop or a drive-through facility. As a result, hotels offer their customers a convenient place to shop. However, hotels are generally not focused on packaged liquor sales. Their turnover also consists of revenue from on-premises consumption of liquor, meals and gaming machines. The Australian Hotels Association (AHA) has noted that the total number of pubs has been reasonably stable over the last 20 years

*Clubs* - These outlets are able to offer packaged liquor to their members only. As a result, few have developed commercial operations in this area.

*General stores* - In areas of special need, a convenience store, mixed business or milk bar can also sell packaged liquor under the *Liquor Control Reform Act 1998*. Licensed general stores are usually located in country Victoria as the metropolitan Melbourne and large regional centres are well serviced by packaged liquor outlets.

*Direct/Online retailers* - In discussions with the Office, Safeway estimated direct mail (mainly Cellar Masters, owned by Liquorland) represents approximately 10% of the packaged liquor market. Recent online competitors such as Wine Planet account for approximately 1% of the market, although this figure is growing.

As can be seen from the above profiles of packaged liquor outlets, independent liquor stores is the only type of outlet whose businesses are tightly focused on the sale of packaged liquor.

Other outlets such as hotels and supermarkets have other sources of revenue to offset any downturn in packaged liquor sales. This is an important factor to consider when assessing the impact of reforms on the industry. As a result, the review's analysis will focus mostly on independent liquor stores.

**Box 2a: Internet liquor retailing**

Online retailing is changing the way that people shop and do business. Therefore, it is no surprise that packaged liquor retailing is going online. While it currently only represents about 1% of the packaged liquor market in Australia, it is tipped that this figure will grow strongly.

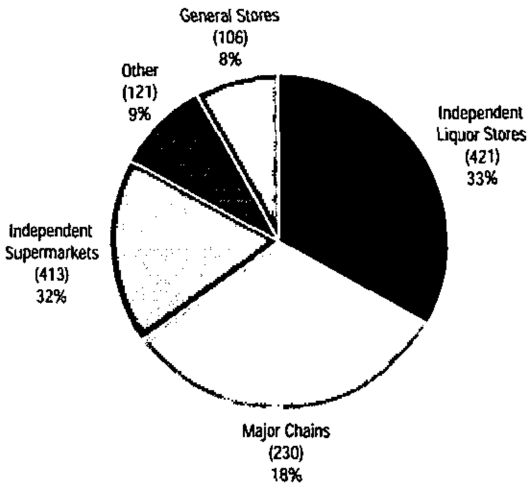
Wine Planet is the largest seller of liquor on the internet, accounting for about half of the online market. However there is a wide range of companies offering liquor sales online. Some are internet businesses, while others are liquor stores that offer an on-line service. While internet retailing in the future may still only constitute a small portion of the market, stores that do not offer this service are likely to lose customers.

Establishing an internet site is relatively inexpensive and independent liquor stores can also have an online presence. Alternatively, independent liquor stores can join LiquorLink, a Newcastle-based internet company that relies on local liquor stores to deliver the liquor purchased online.

## Number of packaged liquor outlets

There are currently over 3,000 outlets that can sell packaged liquor to the public: 1291 of these are defined as packaged liquor outlets and 1906 are hotels. An analysis of the 1291 packaged liquor outlets is given in Graph 2a.

**Graph 2a: Packaged liquor outlets by type, as a proportion of total**




*Source: LLV statistics, interpretation by the Office*
*Other: Vineyards (29), Tourist Parks (24), Delis (15), Internet (15), Wholesalers (14) and Other (24)*

The Liquor Stores Association Victoria (LSAV) highlighted in its submission (p.30) that the total number of retail liquor outlets has grown dramatically during the post-war period. Its analysis included restaurants, even though they cannot sell packaged liquor to the general public.

Based on the same data presented by the LSAV, it can be seen from Table 2b that the number of liquor stores over the post-war era has grown strongly, while the number of hotels has grown little. Taking these two types of packaged liquor outlets together, the per capita number of packaged liquor outlets has remained quite stable during this period.

## Ownership distribution of packaged liquor stores

As described in Table 2c, the Victorian industry comprises a handful of companies that own a very large number of outlets; and hundreds of small businesses.

## Geographic distribution of packaged liquor stores

Of the 1,291 packaged liquor stores in Victoria, 789 (61%) are located in metropolitan Melbourne, while 502 (39%) are widely dispersed throughout regional and rural Victoria. For simplicity, these categories are referred to as 'metro' and 'country'.

As can be seen from Graphs 2b and 2c, there are significant differences in the composition of liquor outlets between metropolitan Melbourne and country Victoria. Independent liquor stores account for 43% of all packaged liquor outlets in metropolitan Melbourne, yet in country Victoria independent liquor stores represent only 15% of outlets. In contrast, independent supermarkets play a large role in country Victoria, representing over 40% of all packaged liquor outlets.

**Table 2c: Packaged liquor stores - key players**

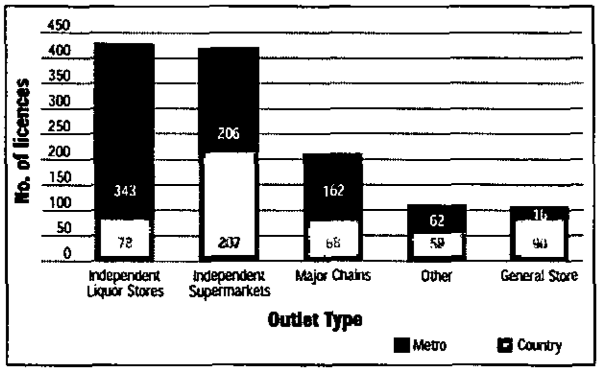
| | |
|---|---|
| *Major chains* | |
| • Safeway | 103 |
| • Liquorland | 93 |
| • Franklins | 34 |
| *Independent liquor stores* | |
| • Harry's Liquor Markets | 15 |
| • Philip Murphy | 6 |
| *Independent supermarkets* | |
| • Ritchies supermarkets | 18 |
| *Others* | 1022 |
| *Total packaged liquor outlets (excluding hotels)* | 1291 |

**Table 2b: Number of packaged liquor outlets, 1956-2000**

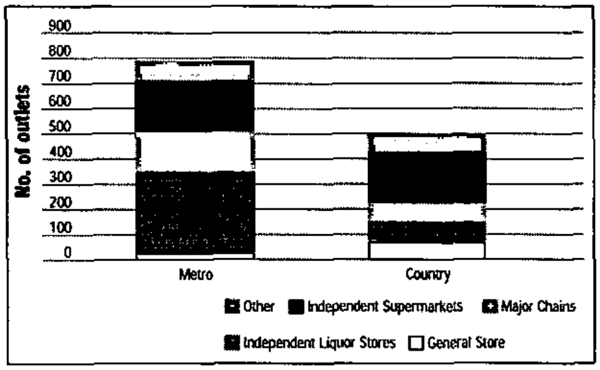
| | June '56 | June '68 | June '78 | June '88 | June '98 | April '00 |
|---|---|---|---|---|---|---|
| Total Victorian population (million) | 2.59 | 3.32 | 3.81 | 4.23 | 4.64 | 4.72 |
| Liquor stores (packaged liquor licences) | 290 | 552 | 731 | 819 | 1,133 | 1,291 |
| **Persons per liquor store** | **8,943** | **6,022** | **5,214** | **5,172** | **4,103** | **3,656** |
| Hotels (general licences) | 1,647 | 1,541 | 1,434 | 1,434 | 1,827 | 1,906 |
| Total packaged liquor outlets (liquor stores and hotels) | 1,937 | 2,093 | 2,165 | 2,253 | 2,960 | 3,197 |
| **Persons per packaged liquor outlet** | **1,575** | **1,588** | **1,761** | **1,880** | **1,570** | **1,476** |

*Source: LSAV Submission (p.30) and Liquor Licensing Victoria*

**Graph 2b: Packaged liquor stores - metro/country split by type of outlet**




**Graph 2c: Packaged liquor stores - type of outlet by country/metro split**




*Source: LLV statistics, Office interpretation*

*Other: Vineyards (29), Tourist Parks (24), Delis (15), Internet (15), Wholesalers (14) and Other (24)*

## Employment

The NCP review of 1998 estimated that the liquor industry employed over 100,000 Victorians on a full-time or part-time basis (p.7). Safeway informed the Office that each liquor store employs approximately two to three full-time and five to six part-time employees. Liquorland stated in its submission (p.1) that it employs over 700 people in Victoria. If the Office assumes that each packaged liquor store in Victoria employs the equivalent of four full-time staff, then they would directly employ over five thousand people. Even without considering indirect employment effects, packaged liquor stores are an important source of jobs for Victorians.

Two unions generally cover staff in the packaged liquor market. The Shop, Distributors & Allied Union represents staff in retail stores and supermarkets. The Australian Liquor, Hospitality & Miscellaneous Workers Union represents employees in hospitality venues such as hotels, clubs and catering businesses.

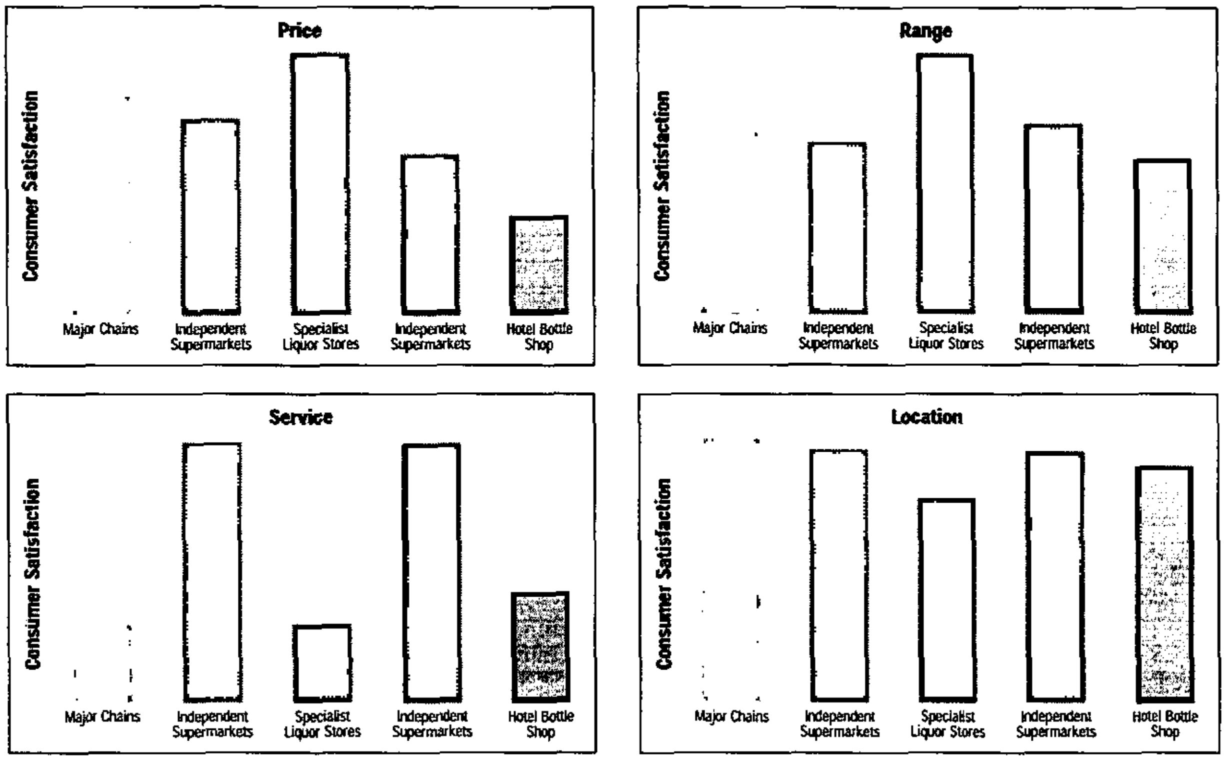
# 2.3 What are the key features of the Victorian packaged liquor market?

## Diversity of outlets catering for individual needs

As discussed in section 2.1, consumers differ greatly in how they prefer to make purchases of packaged liquor, although convenience is highly valued by most consumers. In order to operate a viable business, packaged liquor retailers need to partly satisfy consumer preferences. The nature of the particular outlet also assists it in meeting a particular type of consumer preference.

The Office's survey asked consumers to indicate how well their usual packaged liquor outlet met their satisfaction in relation to four factors: price, service, range and location. Graph 2d illustrates the findings from this survey. The survey found that the various categories of liquor stores offer their customers a different type of satisfaction. For instance, customers of independent liquor stores and independent supermarkets rate them very highly on client service, while customers of specialist liquor stores (such as Dan Murphy) rate their outlet highly on price competitiveness and range. Armadale Cellars is a good example of how an independent liquor store successfully provides a specialised service to its clients (see Box 2b for details).

**Graph 2d: Consumers' ranking of satisfaction by type of packaged liquor outlet**




*Source: Consumer survey commissioned by the Office*

**Box 2b: Case study - Armadale Cellars**

Armadale Cellars, located on High Street, competes in the market for fine wines by offering a wide range of fine wines and specialised service. This strategy has enabled it to attract customers from all over Melbourne.

Armadale Cellars does not sell standard wines stocked by the major chains. Instead it offers sought-after premium wines, often produced by local wineries.

Staff, who are all tertiary-trained in the workings of the wine industry, offer customers a wide range of services including: wine education courses, fine wine dinners, wine storage facilities, and professional advice on cellar contents and design.

There are a number of liquor retailers operating close to Armadale Cellars, yet it has managed to create a niche in the market for fine wines and associated services.

As convenience is a key factor in determining many consumers' consumption patterns, liquor stores often differentiate themselves on this basis. Many hotels are located on large corner allotments and are able to provide 'drive-in' facilities for packaged liquor sales. Drive-in liquor stores offer convenience to customers making large purchases of liquor, often cartons of beer.

Supermarkets distinguish themselves by offering the convenience of one-stop shopping and ample parking. These conveniences are particularly important to shoppers who have children and face time constraints. Safeway's submission (p.7) emphasised the importance of convenience:

> 'One-stop shopping is now a settled custom of those shopping at Safeway, and is especially enjoyed at those supermarkets that are licensed. The convenience of having liquor products available alongside food items has received wide recognition in the industry, and is borne out by internal Safeway figures that show 90% of liquor purchases are made at the same time as groceries are purchased.'

As can be seen, the Victorian market comprises a diverse range of outlets to suit diverse individual needs.

## Geographic diversity

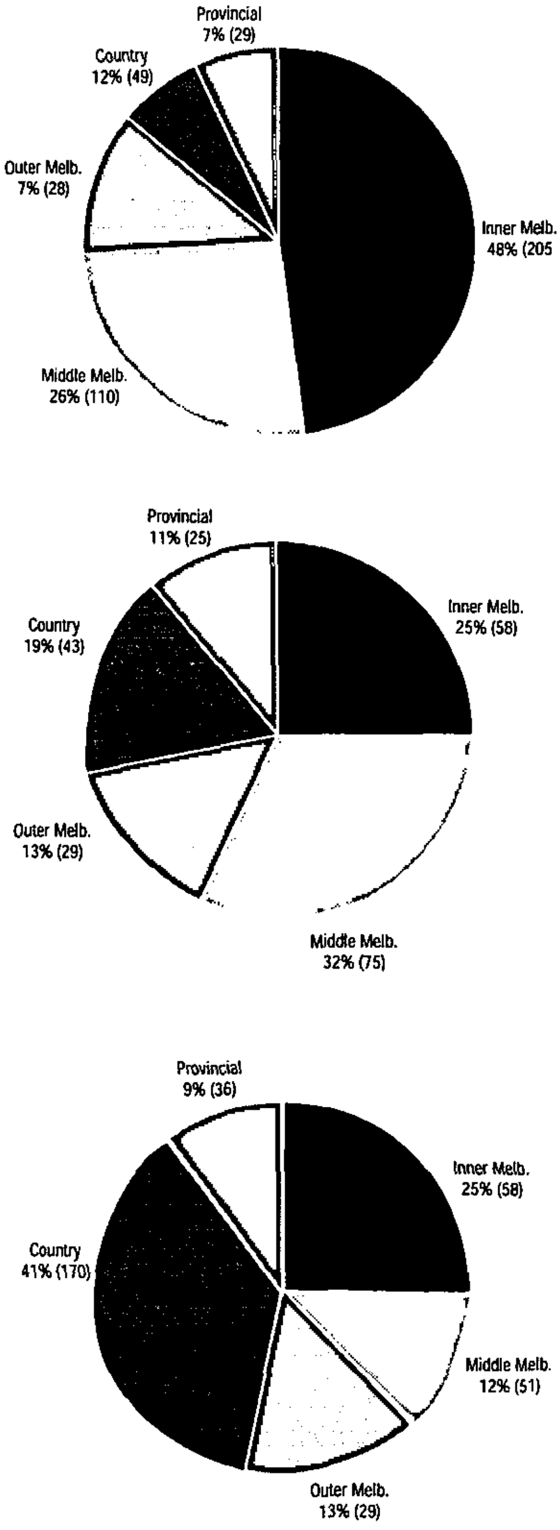
The Office's analysis also highlighted that, depending on where Victorians live, the diversity of their local liquor markets can vary considerably. For instance, residents of Armadale, Ballarat, Balwyn, Brighton, Geelong, Williamstown and Wodonga are able to access a wide cross-section of liquor outlets, including independent liquor stores and supermarkets, the major chains and hotels. In contrast, residents in areas such as Bacchus Marsh, Langwarrin, Leongatha, Rowville, Roxburgh Park and Wonthaggi have less diversity in the type of easily accessible liquor outlets.

A geographic analysis of where independent liquor stores are located also reveals that consumers are not offered a consistent mix of outlet types across Victoria. To further explore this issue, the Office divided Victoria into the following categories:

- Inner Melbourne (suburbs within 15km of the city, including Chadstone);
- Middle Melbourne (suburbs between 15km and 30km, including Dandenong);
- Outer Melbourne (suburbs further than 30km from the city);
- Provincial Victoria (cities with a population greater than 40,000 - Geelong, Ballarat, Bendigo, Wodonga, Mildura, Shepparton); and
- Country Victoria (smaller towns).

Graph 2d(i) categorises the 421 independent liquor stores into these geographic areas. As can be seen, approximately half are located within Inner Melbourne and three-quarters within 30km of the city. Only about one in ten independent liquor stores are located in small country towns. The major chains are well represented in each geographic location in Victoria, especially in Middle Melbourne (Graph 2d(ii)). In contrast, independent supermarkets are predominantly located in the country (Graph 2d(iii)).

**Graph 2d(i),(ii),(iii): Geographic distribution of primary packaged liquor outlets**




*Source: Liquor Licensing data interpreted by the Office of Regulation Reform*

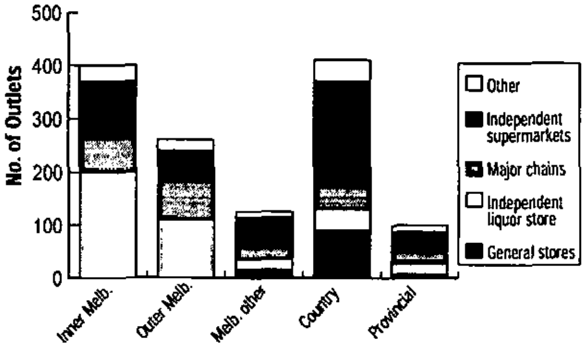
With its high population density, Inner Melbourne supports a wide cross-section of packaged liquor outlets - including hotels, specialist liquor stores such as Dan Murphy and the major chains. Independent liquor stores have a strong presence in this area, including several boutique outlets, such as Armadale Cellars, King and Godfrey (Carlton), Richmond Hill Cellars (Richmond), Prince Wine Cellars (St Kilda) and Rathdowne Cellars (Carlton).

Middle and Outer Melbourne have fewer local shopping strips and more major shopping centres. The major chains have a significant presence in these areas, as do independent supermarkets. The density of independent liquor stores is lower in Middle and Outer Melbourne than in Inner Melbourne. This is most likely due to a variety of reasons, including the differing population bases and demographics of these areas.

The large provincial cities have packaged liquor markets that offer consumers a similar choice of outlet as those living in Inner and Middle Melbourne. In rural Victoria, liquor consumers in these areas are most likely to be serviced by hotels, independent supermarkets and general stores, than by independent liquor stores or the major chains.

Therefore, while Victoria has a significant number and type of packaged liquor outlets, the choices readily available to consumers can vary considerably, depending on where they live. Graph 2e highlights this.

**Graph 2e: Composition of packaged liquor outlets, by region**




*Source: Liquor Licensing data interpreted by the Office*

**Box 2c: Case study - Warrnambool: a diverse liquor market in regional Victoria**

Warrnambool is located on Victoria's western coast, approximately 260 kilometres from Melbourne. Its population was 29,000 in June 1999 and its numbers swell with the visitors drawn to the city each year. The magnificent sight of Southern Right whales, the three-day Grand Annual Steeplechase racing carnival and the revelry of the Port Fairy folk festival are some of the key attractions of the region.

Warrnambool residents and visitors can buy their packaged liquor from a variety of outlets, all within an area of only a few square kilometres. A licensed independent supermarket, hotel bottle shops, drive-through bottle shops, Safeway and a specialist liquor store all operate in close proximity in the town centre. Drive-through bottle shops and independent liquor stores further service the surrounding residential area.

Product pricing is not seen to be a major point of distinction between the liquor sellers. Many of the business operators have a policy of matching the prices of their competitors. Instead, the businesses are distinguished by the service they provide, customer convenience or specialised products.

Safeway and Swintons IGA both provide liquor as a complement to their grocery lines with the convenience of one-stop shopping. The supermarkets take pride in their standard of customer service. However, while Safeway is the largest supermarket in town, the liquor manager acknowledges that, as their product line is determined by head office, they cannot source particular wines to suit a customer's individual taste. The manager of Swintons IGA says that his supermarket capitalises on this. He deals directly with sales representatives for wine producers, puts on wine tastings and, if they need a little extra help, carries the customers' purchases to their cars.

Wine enthusiasts go around the corner to Lynch's licensed grocers, which provides a range of fine wines to rival the best of Melbourne's stores. The vintages offered attest to the fact that the Lynch family has been in the wine business for generations. Knowledgable advice is a hallmark, and customers have the option of cellaring their purchase below the century-old bluestone building.

Outside the town centre, the North Point Liquor Barn provides personalised service and an extensive product range that caters to the tastes of customers. East along the highway at the Gateway Plaza shopping centre, the Franklins Liquor store is competitive on product range, service and price, particularly for bulk purchases. Franklins replaced a Coles Liquorland on the site two years ago.

While these businesses distinguish themselves and succeed in the same market, there seemed to be common agreement that it is difficult to beat the convenience and speed of the drive-through bottle shop of Mac's Hotel, which occupies a dominant position just outside the entrance to the Safeway car park. Other drive-through bottle shops operate west on the highway and within the town centre, ensuring that wherever you are in Warrnambool, you don't have to travel too far to pick up a drink.

## Wholesaling arrangements

Wholesaling arrangements have a significant impact on a retailer's capacity to compete. If a retailer is able to purchase stock at a lower wholesale price than its competitors, it will have a price advantage in the market.

The supply of liquor is concentrated in the hands of a few companies. Carlton & United Breweries dominates the Victorian beer market, while Southcorp, BRL Hardy, Mildara Blass and Orlando-Wyndham are the major wine producers. However, there are large numbers of small wine producers and some boutique breweries.

There are significant economies of scale in the production and distribution of liquor. The wholesale price for a product typically falls as the amount purchased increases. All retailers have access to the same price schedule. However, while the suppliers offer a transparent uniform price schedule for all clients, there are other benefits derived from purchasing in bulk. These can include rebates and advertising funding, and, as these benefits are negotiated privately, different players may be able to negotiate different deals.

Major chains are able to obtain low prices from suppliers because they place large quantities of orders with them. In addition, the major chains operate their own warehouse, which provides them with flexibility when negotiating quantities with suppliers. In contrast, most independent liquor retailers purchase comparatively small amounts and are likely to pay higher unit wholesale prices. Unlike the major chains, few independents would have warehousing capacity. As a result, if independent liquor retailers made their purchases individually, they would most likely face a significant wholesale cost disadvantage.

To overcome this situation, most independent retailers have become members of buying groups. By consolidating their purchasing power, a cohesive and strongly disciplined buying group has the ability to negotiate highly competitive prices with suppliers. The major buying groups include:

- Liquor Barrons-Cheers-Liquor for Less indicated in its submission (p.1) that it represented 278 independent liquor stores and hotels throughout Australia;
- Southern Independent Liquor (which operates under the Liquorstop, Duncans, Pubstop and Liquorworld banners) claimed in its submission (p.1) a membership of 300 independent liquor retailers, including hotels and liquor stores; and
- IGA supermarkets banner represents almost 300 licensed independent supermarkets in Victoria (Australian Liquor Marketers (liquor wholesalers) indicated this was 20-25% of their business).

Most of the buying groups make their purchases through Australian Liquor Marketers (ALM) wholesalers, a subsidiary of the David's group, which also services other licensed premises. Safeway also has a wholesaling subsidiary, Australian Independent Wholesalers (AIW), which services independent supermarkets.

Buying groups enable independent liquor retailers to purchase their stock at wholesale prices that are generally in line with those negotiated by the major chains. While the major chains perhaps obtain greater benefits from advertising funds and rebates, this advantage is offset to some extent by the costs associated in operating their own warehouses.

It should be noted that a concentrated retail market might reduce suppliers' bargaining power. For this reason, it may be in the suppliers' long-term commercial interest to ensure that independent liquor stores are able to purchase liquor at a wholesale price that is comparable to that offered to the major chains.

Boccaccio Cellars, Balwyn is an example where an independent liquor store is able to compete on price with Dan Murphy, which is generally recognised as a price leader in the market.

**Box 2d: Case study - Boccaccio Cellars**

Boccaccio Cellars is an independent discount liquor specialist that operates from Balwyn, a suburb in Melbourne's inner east. Although it is an independent supermarket, Boccaccio has focused a large proportion of its business on selling liquor. It offers price matching on nearly all advertised prices, with a commitment to ensuring that its customers go away satisfied because they are getting value for money.

While Boccaccio and Dan Murphy are competing for the same type of customer (even though they are not located nearby), the independent differentiates itself by offering customer-friendly and knowledgeable service.

With only one other store in Newmarket, this family owned and run liquor store does not have the same buying power as a major chain. However, it still manages to negotiate good deals with key suppliers through selling large amounts of wine and committing to large orders with suppliers. About 80% of its stock is purchased direct from suppliers such as Southcorp and Mildara, while the remainder is purchased from wholesalers.

Boccaccio is an innovative small business that is dispelling the notion that independents cannot compete with the major chains on price.

## Price competition

During discussions with various industry players, the Office was made aware that packaged liquor retailing is a 'high turnover, low margins' business. Anecdotal evidence suggests that the mark-up on beer and spirits is quite low. Gross margins (ie. the difference between the wholesale and retail price) for many liquor stores on a carton of VB beer is generally between 50 cents and $2. On certain weeks, some retailers are offering beer at a price lower than other stores' purchase cost. Victorian consumers have benefited from this competitive environment.

The intensity of price competition, despite the 8% rule, was highlighted by the MGAV in discussions with the Office:

> 'When you go into a high-volume low-margin business, you've got nowhere to move on price. Price will not sustain our industry in the long-term.'

However, it appears that the major chains are not the market leaders in terms of price. Liquorland indicated in its submission (p.3) that others were price leaders:

> 'In terms of pricing it could not be said that Liquorland is the price leader in the Victorian market. We seek only to be competitive with our pricing and generally only react to pricing by others. There are always other retailers who are cheaper than Liquorland eg. Harry's, Big Bomber and Dan Murphy (before and after being bought by Safeway).'

In discussions with the Office, many independent retailers confirmed the view that the major chains aim to be price-competitive, but not necessarily the cheapest in the market. Liquorland's internal market research indicates that even its customers do not consider the chain to be highly competitive on price. As outlined earlier, most Liquorland customers choose to shop at a particular store because they live nearby, rather than its price competitiveness.

Safeway, Liquorland and Franklins all have a uniform pricing policy on wines and spirits sold across their Victorian stores. All these chains apportion freight costs evenly across each product in each store. The result is that the standard price for, say, a bottle of Queen Adelaide Chardonnay should be the same in Melbourne as it is in Kerang. While the policy is uniform pricing, individual stores (on approval from head office) may have the discretion to match specials offered by competitors in their local area.

Price guarantees and price-matching policies by many liquor retailers also keep prices in check. If one retailer lowers its price on a certain item, this often flows on to other retailers in the area. Independents that have adopted this policy include Harry's, IGA supermarkets and Big Bomber.

According to T.J. Board & Sons hospitality brokers, this competitive environment has led to a trend of falling business values for packaged liquor stores. Whereas in the late 1980s retail liquor stores were selling at 3 - 4 times annual net profit, a liquor business in today's environment is generally sold for 1 - 1.5 times net profit. T.J. Board & Sons also consider that this trend in falling values is being experienced both in metropolitan Melbourne and regional Victoria.

The low margins in the liquor industry are indicative of margins in the retail sector overall. Access Economics' analysis for Liquorland (p.9) cited that, with profit margins of 2.7%, the retail trade industry had the lowest profit margins of all industries in Australia for the year 1996-97. The following year the retail trade industry performed marginally better, with profit margins of 3.4%.

# 3 How effective is the 8% rule?

- The 8% rule does not shield most independent liquor stores from competition by the major chains and other independent liquor retailers.
- Through the *Liquor Control Reform Act 1998*, the removal of the needs criteria has facilitated the entry of many new independent liquor retailers and promoted diversity. As a consequence of the relative nature of the 8% rule, the major chains have been able to obtain additional packaged liquor licences without breaching the cap.
- The 8% rule is an inappropriate means of assessing or controlling concentration in the packaged liquor market, because it is based on the proportion of licences held and not market share. This issue is further considered in the context of developing reform options.
- The anti-competitive effect of the 8% rule is significantly moderated by Victoria's liberal liquor licensing regime. An interstate comparison of liquor regulatory frameworks confirms that Victoria has the most progressive regime of any State, with low barriers to new entrants and significant scope for innovation.
- So long as a legislative cap on packaged liquor licence holdings exists, the Act should ensure that it is properly enforced. The Office recommends the closing of a loophole which potentially enables the major chains to circumvent the 8% rule by obtaining general licences and using these for selling packaged liquor.
- Concerns by independent liquor retailers regarding unfair market practices by the major chains will be more effectively dealt with by the Retail Grocery Industry Code of Conduct and Ombudsman scheme, rather than by the *Trade Practices Act*. The Victorian Government should seek to broaden the scope of the scheme to include packaged liquor retailing.

## 3.1 What is the regulatory framework for selling packaged liquor?

The *Liquor Control Reform Act 1998*, which came into effect on 17 February 1999, provides the regulatory framework for the sale and consumption of liquor in Victoria. Packaged liquor is defined under the Act as alcohol that is in sealed containers, bottles or cans. In order to retail packaged liquor, a person must obtain a licence from Liquor Licensing Victoria (LLV). The main licence category that provides for this activity is a packaged liquor licence. Other licence categories that also permit the sale of packaged liquor are outlined in Box 3a.

Some of the key regulatory provisions for packaged liquor licences are:

- petrol stations and drive-in cinemas are prohibited from obtaining a packaged liquor licence, while milk bars, convenience stores and mixed businesses can only be granted a licence in special circumstances;
- the 'predominant activity' of the licensed premises must be the sale of packaged liquor (LLV interprets predominant activity as packaged liquor sales constituting at least half the turnover); and
- the 8% rule.

The applicant must complete a questionnaire to enable the Police to determine their suitable person status, demonstrate rights to occupy the premises and receive planning approval for the proposed licensed premises.

The applicant is required to display a notice of the application on the premises for 28 days. People may object to the proposed licence, but only on amenity grounds. Objections are heard by the Liquor Licensing Panel, which makes a recommendation to the Director of LLV. The Director then approves or refuses the licence application. Appeals against the Director's decisions can be made through the Victorian Civil and Administrative Tribunal (VCAT). The application fee is $500 and an annual renewal fee of $150 also applies.

Retailers that hold packaged liquor licences include independent liquor stores, independent supermarkets, major chains, general stores delis, tourist parks, some vineyards and internet sales.

**Box 3a: Other types of liquor licences that permit the sale of packaged liquor**

*General licence*

A general licence authorises the licensee to supply liquor for consumption on and off the licensed premises. Operating a general licence is subject to planning constraints (under the *Planning and Environment Act 1987*), trading hour restrictions and other conditions. There is no limit to the number of general licences one entity can hold.

*Club licence*

Proprietors operating under a club licence are able to sell liquor for consumption on the licensed premises. They are also permitted to sell packaged liquor to their members. As with a general licence, conditions on the licence exist.

*Limited licence*

This type of licence provides for the sale of packaged liquor where the scale and scope is limited in nature, such as for special events and bed-and-breakfast establishments.

## What has resulted from the 1998 reforms?

### Key reforms

As outlined in Chapter 1, in 1998 the former Government conducted a NCP review of Victoria's liquor legislation. It subsequently implemented a series of reforms with the introduction of the *Liquor Control Reform Act 1998*. There were two key reforms in relation to the sale of packaged liquor.

Under the previous legislation, existing licensed businesses could object to an application by a potential new liquor business on the grounds that there was insufficient need or demand to justify a new licence (the 'needs criteria'). The new Act abolished the needs criteria, further liberalising Victoria's liquor market. The intent of this reform was that the market, rather than government, should determine the viability of a new entrant.

A second key reform was to provide liquor stores with greater flexibility to diversify into selling non-liquor goods and services. Under the previous legislation, liquor stores were required to tightly focus their licensed premises on selling packaged liquor (the so-called 'primary purpose' condition). This provision was replaced by the Act's 'predominant activity' provision, which enables liquor stores to diversify to the extent that packaged liquor sales constitute at least half of the turnover of the licensed premises.

### Growth in packaged liquor licences

With the on-going liberalisation of Victoria's liquor legislation and changes in consumer preferences, the number of packaged liquor licences in the ten years to June 1998 steadily grew by about one-third, from 831 to 1133 licences.

The new Act has spurred even stronger growth in packaged liquor licences. Since the commencement of the new arrangements on 17 February 1999, 156 new licences have been granted, a 13.7% increase in 15 months. Four of these new licences are now inactive.

A closer analysis in Table 3a of the data on active packaged liquor licences issued since the commencement of the new Act, indicates that the major chains and Franklins account for only 15 of the 152 active new licences.

**Table 3a: Packaged liquor licences granted since commencement of new Act**

| | *Safeway* | *Liquor-land* | *Franklins* | *Smaller retailers* | *TOTAL* |
|---|---|---|---|---|---|
| Metropolitan | - | 1 | 11 | 69 | 81 |
| Country | 1 | - | 2 | 68 | 71 |
| Total | 1 | 1 | 13 | 137 | 152 |

*Note: Active packaged liquor licences issued since the commencement of Liquor Control Reform Act 1998 include 24 which are the result of applications lodged before the new Act came into force from 17 February 1999.*

*Source: Liquor Licensing Victoria.*

Over 90% of new licensees are small businesses. These comprise independent supermarkets and general stores (56); independent liquor stores (29); and other businesses such as internet retailers, vineyards and caravan parks (52). Consumers have benefited from the entry of these businesses by having access to a greater number and variety of packaged liquor retailers.

Seventy-one licences (amounting to 47% of new active packaged liquor licences) are located throughout regional and rural Victoria. Of these new regional licensees, 96% are small businesses spread widely across 60 smaller towns. The major chains and Franklins have been granted only 3 licences in regional Victoria.

## How do Victoria's restrictions compare to other jurisdictions?

As seen from the preceding section, the 8% rule is not as restrictive as may appear at first glance. Despite the 8% rule, Victoria's market for packaged liquor is intensely competitive. The Office compared interstate regulatory arrangements of packaged liquor licences and concluded that Victoria's regulatory framework is clearly the most progressive in Australia, save perhaps that of the Australian Capital Territory (ACT). A detailed comparison is at Attachment E.

All jurisdictions have a licensing system in place. For packaged liquor sales, the relevant licence categories are normally referred to as 'general' or 'hotel' (for consumption either on or off the premises) and 'packaged' or 'off premises' (where the licence permits the sale of liquor for consumption off the premises). To varying degrees, all jurisdictions control the type of business that can sell packaged liquor and limit their trading hours. However there are several key differences to highlight.

Victoria and South Australia are the only jurisdictions to have undertaken NCP reviews and implemented the Government's response. Both States have been assessed by the NCC as not having fully satisfied NCP requirements and are undertaking a subsequent review (Victoria for the 8% requirement, South Australia for its needs criteria).

As indicated by the NCC in its second tranche assessment (see Chapter 1), Victoria is the only State or Territory that has a statutory limit on packaged liquor licence holdings. It may therefore appear that Victoria's regulatory framework is more anti-competitive than other jurisdictions. A proper comparison of the regulatory frameworks, however, assists in distinguishing the ostensible from the real.

For example, Victoria is one of only three jurisdictions that do not require an applicant to satisfy a needs criteria. The other jurisdictions are the ACT and Tasmania. As can been seen from section 3.2 above, the abolition of the needs criteria in Victoria in 1998 was a major reform that significantly lowered the barriers to entry into the market for packaged liquor and intensified competition.

It is also worth noting that in those jurisdictions such as Victoria that do not have a needs criteria, packaged liquor licences do not have an intrinsic value. This is because new licences are readily accessible. In comparison, a packaged liquor licence in New South Wales can cost more than $60,000, which acts as a major barrier to entry, particularly for small businesses.

Victoria's progressive approach to licensing packaged liquor outlets, as compared to other jurisdictions, is also highlighted by a study conducted by Access Economics (p.7) on behalf on Liquorland. This study indicates that Victoria has far more liquor stores and hotels on a per capita basis than the States of New South Wales, South

Australia and Western Australia.

Finally, while the major chains are aggrieved that their share of packaged liquor licences is restricted to 8%, in Queensland, South Australia and Tasmania, liquor stores are prohibited from being located within a supermarket. As a consequence, while Safeway/Woolworths holds 103 packaged liquor licences in Victoria, it does not hold any in Queensland. Likewise, Liquorland holds 93 packaged liquor licences in Victoria, but fewer than 15 in Queensland.

This interstate comparison indicates that despite the 8% rule, Victoria has one of the most progressive liquor control regulatory frameworks in Australia.

The LSAV proposed in its submission (p.8) a national framework that guarantees a fair and equitable market share of the packaged liquor market for small business. However, the interstate comparison highlights the diversity in regulatory arrangements across jurisdictions, which reflects quite different approaches to liquor policy. Therefore, it would be difficult to pursue a national agenda.

## 3.2 How effective is the 8% rule in protecting small businesses?

The stated purpose of the 8% rule when it was introduced was to restrict the expansion of the major chains and therefore offer significant protection to small businesses in the packaged liquor market. As part of its consultation process, the Office convened a half-day workshop of key stakeholders to discuss ways of promoting the intent underlying the 8% rule (see details at Attachment C).

There was a clear consensus at this workshop that the 8% rule is ineffective in promoting the viability of existing independent liquor stores (although, as will be seen in Chapter 5, there were differing views on alternative means). Stakeholders' submissions reflected this view.

The LSAV (p.30) claimed that 'Section 23 of the *Liquor Control Reform Act 1998*, in its present format, is clearly not achieving its intent.'

Liquorland's submission (p.6) contended that:

> 'In the current licensing system, there is no longer anything to stop any number of licences being established in the state or near an existing licence. In such a system which does not recognise anyone's right to protection from other competitors, the 8% rule is an anachronism.'

Safeway (p.8) claimed that:

> 'The restriction fails to meet the purported object of limiting market dominance by one or more retailers, because it does not impact upon participation in liquor buying groups.'

Australian Liquor Marketers, a wholesaler to independent retailers, submitted (p.1) that:

> 'It is our opinion that the 8% rule has become ineffective since the clause to prove need was removed...The fact that they no longer have to provide need, means that they are able to open a new licence in an area that more than likely, is already being catered for.'

The practical operation of the 8% rule brings into question whether it dampens the intensity of competition in the Victorian packaged liquor market.

### A relative cap

It is important to note that the 8% rule is a relative, and not an absolute, cap on licence holdings. It does not restrict the growth in the overall number of packaged licences that can be issued. The strong growth in new licences experienced since the 1998 reforms has led to existing independent liquor stores facing more competition from new entrants, most of which are other small businesses. However, it has also enabled the major chains to obtain additional licences without breaching the rising 8% ceiling. In effect, for every 13 new packaged liquor licences that are issued, a major chain can currently apply for another licence.

In Table 3b, the Office estimates that if new packaged liquor licences continue to grow at current levels, Safeway will be able to license all of its supermarkets within 5 years without breaching the 8% rule.

**Table 3b: Estimate of time it would take Safeway to license all of its supermarkets**

| | *Packaged Liquor Licences* | *New licences Safeway could be granted under 8% rule* | *Unlicensed Safeway Supermarkets* |
|---|---|---|---|
| Current | 1,291 | - | 47 |
| 1 year | 1,420 | 10 | 39 |
| 2 years | 1,562 | 11 | 30 |
| 3 years | 1,718 | 12 | 20 |
| 4 years | 1,890 | 13 | 9 |
| 5 years | 2,079 | 15 | Nil |

*Note: Assumes that new packaged liquor licences grow at 10% p.a. and new unlicensed supermarkets by 2 p.a.*

## Market share

The 8% rule does not impose a limit on the market share of the major chains. The business generated by a major chain's store is generally significantly greater than that of an independent liquor store. For instance, while an average independent liquor store may turn over $30,000 per week, a Dan Murphy store is likely to turn over ten times that amount. Yet each store is counted as holding one licence. According to Mr Erik Hopkinson, a former Liquor Licensing Commissioner and now consultant to the liquor and hospitality industry, the 8% rule is a crude limit that has no relation to the market share of the players.

The LSAV in its submission (p.31) cited a 1999 decision by Liquor Licensing Commissioner Horsfall which stated:

> 'Safeway on their own account will have at least 22.34%, and probably more up to 27% of the market for total packaged liquor sales in Victoria (excluding light beer), but only has 8% of the packaged liquor licences...Parliament in 1983 appears to have underestimated the current market power of a Safeway Supermarket, when it now appears that 1% of the packaged liquor licences held by them can hold over 3% of the market.'

On the basis that the major chains have market shares that are two to three times the percentage of packaged licences they hold, most industry players estimate that they account for approximately 40% of packaged liquor sales in Victoria.

Given that the 8% rule's original intent was to prevent market dominance by any one entity, the Office considers that the degree of concentration should be assessed in terms of the share of sales not licences.

This is a difficult task, as there are no longer official statistics on packaged liquor sales. The estimate of a 'one-to-two or three' ratio between the major chains' number of licences and their market share is based on data from business franchise fees. However, since the High Court ruled in 1997 that it is unconstitutional for States to levy such fees, the Commonwealth has assumed responsibility for collecting this revenue, and as a result, Victoria no longer has access to data on packaged liquor sales.

If Liquor Licensing Victoria was able to obtain market share data (from the Australian Taxation Office or the Australian Bureau of Statistics), the Government would be in a better position to assess whether the market is in danger of being dominated by the major chains. The Australian Competition and Consumer Commission (ACCC) has guidelines relating to anti-competitive mergers. These guidelines could be used in determining the level of market concentration in this industry. This issue is further examined in Chapter 5 in relation to possible reform options.

**Box 3b: Australian Competition and Consumer Commission merger guidelines**

The guidelines indicate that the ACCC is likely to investigate a merger on the grounds that it is likely to substantially lessen competition where:

- the market share of the merged firm is 15% or more and the share of the four (or fewer) largest firms is 75% or more; or
- the market share of the merged firm is greater than 40%.

## New major retailers

While the 8% rule constrains the major chains from expanding their network, other large companies are still free to enter the market and rapidly establish a chain of liquor stores. For instance, Franklins is rapidly moving to have its supermarkets licensed and has acquired 13 new packaged liquor licences in the past 15 months.

Likewise, Philip Murphy/Australian Liquor Group is also set to acquire many independent liquor stores to expand its network. Also, the multi-national Aldi supermarket chain is entering the Australian market and could enter packaged liquor retailing. The 8% rule does not counter any of these developments, all of which are placing greater competitive pressure on independent liquor retailers.

## Location and type of stores

As the 8% rule relates to the Victorian market as a whole, the major chains are able (subject to approval by LLV) to transfer their licences to the most lucrative locations. As Liquorland noted in its submission (p.8):

> 'It [the 8% rule] has no role to play in protecting small business when there is nothing to prevent any number of others from setting up near existing outlets...The ability to relocate licences means that even when we are at the limit we are able to relocate to another area and to set up in competition with an independent who may not have had a Liquorland store near them.'

Also, the 8% rule does not restrict the nature of liquor store that a major chain can open. If Woolworths considered it commercially advantageous, it could transfer some of its less profitable Safeway supermarket liquor stores into new Dan Murphy stores. It is the limited population base that places the greatest constraint on an expansion in Dan Murphy stores, rather than the 8% rule.

The 8% rule does not protect an independent liquor store that is in close proximity to an unlicensed major supermarket with certainty. The major chains could re-arrange their licences at any time and open a store nearby. Customer loyalty and the cost of store refurbishment prevents this from happening frequently.

## Packaged liquor sales by general licensees

As outlined in section 3.1, certain other licences also permit the sale of packaged liquor. In particular, there are 1,906 general licensees (mainly hotels) that compete with liquor stores for packaged liquor sales.

As a result, Liquorland argues that consideration of concentration of holdings should take into account the fact that the packaged liquor market is principally served by both packaged liquor licensees and general licensees.

On this basis, Liquorland submitted (p.2) that its licence holdings are insignificant:

> 'When considering the size of any one licensee, the relevant number should only be the share of the total number of licences which serve the same market. Liquorland has only 3.1% of these licences. By any standard, this is an insignificant figure and one which could never warrant the retention of such discriminatory and anti-competitive legislation as the 8% limit.'

**Re-introducing a legislative limit on general licence holdings**

The terms of reference to this review require the Office to examine the appropriateness of extending the coverage of legislative limits to other liquor licence categories. In practice, the only category that a legislative limit could conceivably be applied to is general licences. The ownership of licensed restaurants, cafes and clubs are so dispersed (there are over 6,000 licences on issue) that a legislative limit on holdings would have no impact.

When the 8% rule for packaged liquor licence holdings was introduced in 1983, it was also applied to holdings of general licences. As part of the 1998 reforms, the 8% rule on holdings of general licences was abolished.

The grounds on which the former Government removed the 8% rule for general licences still exists today, namely that it does not impact on any retailer, either now or in the foreseeable future. Australian Leisure & Hospitality Group, the largest holder of general licences, only has approximately 3% of such licences on issue.

The 1998 reforms do not seem to have had any effect in this regard. There also does not seem to be any demand among relevant stakeholders such as the AHA for a legislative limit on general licence holdings to be re-introduced.

Given these circumstances, the Office sees no need for re-introducing a legislative limit on general licence holdings.

## Buying groups

As seen in Chapter 2, many independent liquor retailers have formed themselves into buying groups in order to improve their bargaining position with suppliers relative to the major chains. Previous reviews of Victoria's liquor legislation have commented that the 8% rule is discriminatory because it captures the major chains but not buying groups that often represent a greater number of outlets. The major chains have continued this line of argument in this review. Liquorland's submission (p.2) stated that:

> 'The [buying] groups are in no way affected by the 8% limitation. They can continue to grow in numbers and buying power. When the limit is considered against these buying groups it can be seen that it is really just discrimination against a particular form of corporate structure.'

Also, the Access Economics paper commissioned by Liquorland indicated (p.5) that:

> 'There is nothing in the present Act to stop Liquorland expanding its market share by franchising its store format and effectively forming a buying/marketing group under the Liquorland banner.'

Similarly, Safeway submitted (p.10) that:

> 'Analysis of the total number of liquor licences in some Victorian liquor buying groups demonstrates that some groups have significantly more licences than Safeway or Liquorland. The figures illustrate the effective competition Safeway faces from buying groups. Assessment of market domination purely by consideration of the number of PLLs [packaged liquor licences] held restricts Safeway and Liquorland alone, when a number of buying groups could be considered to wield more power in relation to the total number of licences held.'

There are several large buying groups comprised of independent liquor stores. For instance, the Liquor Barons-Cheers-Liquor for Less buying group claims to have 278 members, which represents a larger number of licences than the major chains combined. (Refer to section 2.3 for more information).

However, judging from discussions with industry players, the Office considers that a major chain and a buying group are not comparable entities. While a buying group and a major chain may purchase similar amounts of liquor from suppliers, this is where the similarity ends. A buying group of individually owned stores does not have the same degree of discipline and resources as a network of major chain stores with managers that are responsible to head office. Whereas a major chain can guarantee its suppliers that a particular product will be promoted in-store in a uniform manner, buying groups rely on the cooperation of all of their members, which is often difficult to obtain.

Nonetheless, the Office considers that buying chains can be an effective means of 'levelling the playing field' between the major chains and independent liquor retailers. As the turnover of independent liquor retailers is generally lower than that for a major chain store, buying groups need to comprise a larger number of stores than the major chains in order to have a comparable buying power. For these reasons, the Office is of the view that the 8% rule should not apply to buying groups.

## Loopholes

The Office was also made aware of legal loopholes that may undermine the effectiveness of the 8% rule.

**Circumventing the 8% rule**

While a major chain's holdings of packaged liquor licences are limited to 8%, the Act does not prevent it from seeking a general licence, which also permits the sale of packaged liquor. This potential for circumventing the 8% rule has become more likely since the 1998 reforms, as there is no longer a requirement for the 'primary purpose' of a general licence to be the sale of liquor for consumption on the premises. As Liquorland's analysis by Access Economics stated (p.5):

> 'under the present terms of the Act, Liquorland could buy up general licensed premises and scale down the hotel activities until the premises effectively became packaged liquor retail outlets.'

An instance where it is commonly perceived that a major chain circumvented the 8% rule in this manner is Dan Murphy's Ascot Vale store, which operates under a general licence. At the time, Safeway/Dan Murphy would have been unable to obtain an additional packaged liquor licence due to the 8% rule. However, it was able to apply for a general licence, which was granted once planning approval was obtained.

It should be noted that the major chains have not extensively exploited this opportunity, as they collectively only hold a handful of general licences. As the AHA indicated in discussions with the Office: 'We suspected that the supermarkets would purchase general licences, but this has not really happened.'

The Office considers that, so long as a legislative cap on packaged liquor licences exists, the major chains should not be able to circumvent this provision by applying for a general licence to operate a premises that is essentially a packaged liquor store. In seeking to address this matter, the Office sought a measure that prevents the major chains from circumventing the 8% rule without imposing new constraints on all general licensees.

One approach would be to make it a condition of a general licence that the 'predominant purpose' of the proposed licensed premises cannot be the sale of packaged liquor. However, while addressing the problem, it would also impose a new constraint on the operation of all general licensees. This may limit diversity and innovation in the market and would signal a change in the approach adopted as part of the 1998 reforms when the primary purpose condition was abolished.

An alternative approach is to amend the Act to provide that general licences will not be granted to applicants who would be unable to obtain a packaged liquor licence at that point in time due to the Section 23 of the Act (ie. the 8% rule). Such a provision would be effective in preventing the major chains from circumventing the 8% rule, while not imposing constraints on all general licensees.

There are cases where the major chains have sought a general licence to operate a venue that is clearly not intended to circumvent the 8% rule. For instance, Liquorland was granted a general licence for its Let's Eat food hall at Prahran Market, where serving liquor for on-premises consumption is a genuine part of the business. Preventing a major chain that is at the 8% limit from obtaining a general licence may mean that it would also be unable to open, at a particular point in time, a venue such as Let's Eat that is clearly not solely a packaged liquor store. However, if this was the case, the major chain could surrender the necessary number of packaged liquor licences in order to become eligible to obtain a general licence. Such a provision could apply to new applications for a general licence from a certain date.

The proposed approach is consistent with the intent of the Government's policy commitment of ensuring that the 8% rule is not circumvented by the major chains. It also addresses the LSAV's call in its submission (p.8) to prohibit the use of general licences to bypass the 8% rule.

**Recommendation:**

The Act be amended to require the Director of Liquor Licensing to reject an application for a new general licence if the applicant would be unable to obtain a packaged liquor licence on the grounds of section 23 (ie. the 8% rule).

**Time of application**

Section 23 provides that a packaged liquor licence must not be granted if, at the time of the application, a person or company holds more than 8% of the total number of licences on issue. During 1998-99, there was some uncertainty regarding whether a major chain that held marginally less than 8% of packaged liquor licences at the time of application could be granted additional licences that would lead to their holdings being greater than 8%. However, as the Director of Liquor Licensing and the relevant Deputy President of VCAT have subsequently rejected this interpretation, this potential breach of the 8% rule has effectively been prevented.

The LSAV has argued in its submission that calculating the 8% limit at the time of application also means that the major chains are not forced to surrender licences if a fall in the total number of packaged liquor licences has the effect of increasing their holdings above the 8% limit. However, the Office does not consider this issue to be a concern. Firstly, the strong growth in packaged liquor licences, particularly since the 1998 reforms, makes it unlikely that the absolute number will fall significantly (out of 156 licences that have been issued since the commencement of the new Act, only four, or 2.6%, have become inactive). Secondly, even if total licences did fall and pushed the major chains above the 8% level, they would be prohibited from being granted additional licences until their holdings fell below this level.

# 3.3 What other protections exist for independent liquor stores?

## Unfair market practices

As discussed in section 3.2, the 8% rule is of limited effectiveness in protecting independent liquor stores from broader market forces. Safeway and Liquorland currently hold an estimated market share of the packaged liquor market of approximately 40%. A common perception in the industry is that, in the absence of the 8% rule, the major chains would 'swallow up' small businesses and effectively dominate the market.

The Victorian Wine Industry Association (VWIA) supports the view that the major chains would dominate the market. In its submission (p.1) the VWIA argued that:

> 'The delimiting of packaged liquor licences would accelerate the trend to a duopoly within the Victorian retail marketplace. Over time this trend will continue to squeeze the smaller independent liquor retailers out of business through the downward competitive pressure on retail margins, better able to be sustained by the major chains with their much greater financial resources and economies of scale.'

Likewise, WineSlashers argued in its submission (p.1):

> 'My observations are unfortunately that once a large corporation has taken control of a market place at the expense of small and medium business then competition and service suffers in the quest for market domination and profit taking. The local community no longer receive the quality and competitiveness of the goods and services that they experienced when small and medium businesses were able to compete in a fair and equal market place. The market place is controlled by the large corporations in such a way as to exclude small and medium business from re-entering that market place.'

The Office also heard of concerns that greater ownership concentration would increase the possibility for the major chains to engage in unfair trading practices, such as 'predatory pricing' and 'unconscionable conduct'. Predatory pricing refers to price-cutting by a business with market power with the purpose of damaging smaller businesses. Unconscionable conduct refers to harsh conduct by large business in its dealings with small business.

The view put by the Liquor Barons-Cheers-Liquor for Less buying group (p.1) is typical of this sentiment:

> 'It is obvious that if a chain opens up a store next to a smaller store it would try and put that store out of business. The simple way this would happen is that the new store would sell below cost on certain items thus forcing the consumer to buy from the new store as the smaller, community supporting store can't match the price. Loyalty in the community only goes so far. Once the large store has put the small store out of business - where is the competition[?]'

The LSAV submission also argued (p.31) that 'since the market is now dynamic, not stable, competitive and not price regulated, the dominant players are able, through pricing and other strategies, to exert overt pressure in the marketplace to force small businesses to the wall.'

While section 4.1 will examine the effect that the removal of the 8% rule would have on this type of activity, it is worth recalling from Chapter 2 that independent liquor retailers are often the price leaders in the market, while the major chains are more concerned with offering convenience to its customers. Also, the strong growth in new liquor stores (most of which are small businesses) that Victoria has experienced over the past decade, would not have been achievable if the major chains acted in the manner suggested.

## Trade Practices Act

The NCP review took the view that if monopolisation is a threat, it is better handled via the *Commonwealth Trade Practices Act 1974* (TPA) than through industry specific legislation. However, independent liquor stores question whether the current legislative protections are adequate to protect them in the event of anti-competitive or unfair behaviour by the major chains.

Also, the AHA, in its discussions with the Office and at the workshop, raised concerns that the current protections were ineffective in relation to dealing with allegations of predatory pricing by the major chains.

The TPA's objective is to enhance the welfare of Australians by promoting competition and fair trading, and providing appropriate safeguards for consumers. The TPA deals with anti-competitive and unfair market practices, consumer protection, mergers or acquisitions of companies, product safety/liability and third party access to facilities of national significance. It is administered by the ACCC. It covers virtually all businesses in Australia.

From a small business perspective, the TPA plays a key role in promoting a fair and competitive operating environment for small businesses. It prohibits anti-competitive mergers, outlaws cartels, market sharing and price fixing, and the misuse of market power - all of which frequently work to the detriment of small firms. Small businesses are also protected by the Act's prohibitions of misleading, deceptive and unconscionable conduct.

The key provisions for dealing with the concerns raised by independent liquor stores will now be outlined.

**Section 46: Misuse of Market Power**

Under this provision, a business that has a substantial degree of power in a market is prohibited from taking advantage of that power if the intention is to eliminate or substantially damage a competitor. Preventing the entry of a person into any market or preventing a person from engaging in competitive conduct in any market are also prohibited.

Predatory pricing is one type of conduct likely to attract examination by the ACCC under this section of the TPA. Predatory pricing occurs where a firm temporarily reduces its prices below the level justified by competitive conditions in order to force a competitor from the market, and having achieved this purpose, then expects to be able to raise prices above the competitive level.

**Section 50: Mergers and Acquisitions**

This section generally prohibits mergers or acquisitions, which would have the effect, or likely effect, of substantially lessening competition in a substantial market for goods or services.

The ACCC's Merger Guidelines explain that there are certain thresholds that act as a guide to determining whether a merger or acquisition is likely to breach section 50. As indicated in Box 3b above, the ACCC has outlined in its Guidelines that, where the post-merger market share of the merged firm is 15% or more and the share of the four (or fewer) largest firms is 75% or more, the ACCC will want to investigate the merger further. Similarly, if the share of the merged firm is greater than 40% no matter how fragmented or concentrated the remainder of the market may be, the ACCC will want to give the merger further consideration. The ability of new players to enter the market and the degree of import competition are some of the factors that the ACCC also considers in relation to section 50.

**Section 51: Unconscionable Conduct**

There have been recent changes to the TPA in relation to unconscionable conduct that gives small businesses the same strong legal protection that has been available for some time to consumers. A new provision (s51AC) prohibits a stronger party exploiting its bargaining advantage to impose contractual terms or engage in conduct that would be unreasonable, given the particular commercial relationship between the parties. The court may take into account a range of circumstances in determining whether a business has been subjected to unconscionable conduct. These include the parties' relative commercial strengths, whether undue influence was exerted, and whether there was evidence of disclosure, good faith and willingness to negotiate.

This provision initially applied to transactions of less than $1 million. However, this threshold has recently been increased to $3 million.

**Authorisation**

Another potential source of legislative protection for small businesses is 'authorisation' - a process available under sections 88-91 of the TPA to 'exempt' some otherwise anti-competitive behaviour on the basis of being in the public interest. While the misuse of market power cannot be authorised, authorisation is available for conduct such as anti-competitive agreements and mergers leading to a substantial lessening of competition. Essentially, the applicant must satisfy the ACCC that the public benefit resulting from the conduct in question outweighs any anti-competitive detriment.

**Effectiveness of the TPA**

There are a number of reasons to doubt whether the TPA is effective in addressing the concerns raised by small packaged liquor retailers. The ACCC submitted to a recent Joint Select Committee on the Retailing Sector that the present market structure of the grocery industry and the pressures on the retailers to cut costs may result in conduct which is anti-competitive. The ACCC acknowledged the possibility of the chains exercising their market power by engaging in predatory conduct. Illegal predatory conduct, however, can be difficult to prove under the current provisions of the TPA.

In relation to this, the ACCC (p.38) submitted to the Committee that:

> 'Section 46 explicitly requires proof that business behaviour is for the purpose of damaging competition. The chains may engage in conduct that adversely affects the competitiveness of the independents, but in order to breach section 46, it must also be for the purpose of driving out their competitors. Such purposes can be difficult to infer from the actual conduct, and evidence of purpose is often difficult to obtain.'

The ACCC has conducted cases in this area. The Chairman of the ACCC recently stated that 'at this time the Commission is already prosecuting in court four cases of predatory behaviour, whereas for the last 10 years, we haven't conducted any cases.' (ABC Television, "7:30 Report" transcript, 30 September 1999).

The level of concentration of ownership in the packaged liquor market would appear to be significantly below levels that would raise the attention of the ACCC. The four largest holdings of packaged liquor licences control about 250 licences, which may convert into approximately 50 per cent of market share. This is significantly below the levels in the ACCC's Merger Guidelines.

Moreover, the major chains are generally growing by expanding their own network and are also capturing market share by acquiring individual stores. Such acquisitions are unlikely to breach section 50 of the TPA because of the limited impact on the market caused by each individual transaction. Therefore, the major chains are unlikely to contravene section 50, apart from the improbable event that Safeway and Liquorland sought to merge their liquor stores.

With regard to the authorisation provisions of the TPA, the LSAV in its submission (p.14) made the point that through the authorisation of anti-competitive arrangements, the TPA recognises that competition is not always the best method for encouraging efficient markets and promoting the welfare of the community. To illustrate, the LSAV noted (p.29) that in 1997, the ACCC issued a determination granting authorisation to publishers for the distribution of newspapers and magazines in Victoria until February 2001.

However, the provision is not easily accessed, with authorisations only granted in special circumstances. For example, the ACCC has in certain circumstances allowed arrangements that prevent small rural producers from being exploited where they deal co-operatively with relatively large and powerful processors or retailers to enhance their bargaining position in the supply chain.

## Joint Select Committee on the Retailing Sector

In 1998, a Commonwealth Parliament Joint Select Committee was given the role of inquiring into and reporting on the degree of industry concentration within the retailing sector in Australia. A particular reference was the impact of that industry concentration on the ability of small independent retailers to compete fairly in the retail sector.

The inquiry raised many issues of relevance to those raised by small packaged liquor retailers. During the inquiry, the small independent grocery retailers called for the market share of each major chain to be capped at 25 per cent. In relation to this, the Committee's view was that the problems faced by those retailers could be effectively addressed by other means. The Committee rejected this proposal on several grounds, including the practical difficulties associated with defining and policing a market cap and the likelihood that avoidance schemes would arise.

The Commonwealth Government responded to the Committee's recommendations in December 1999. A key measure that was adopted by the Government is the establishment of a voluntary code of conduct for the retail industry and a broadly represented Code of Conduct Committee. The terms of reference set by the Government for the Code of Conduct Committee include establishing a Retail Grocery Industry Ombudsman scheme. The Code of Conduct Committee commenced its activities in February 2000. The Code of Conduct and the Ombudsman scheme is scheduled to operate from 1 July 2000.

The Ombudsman scheme and Code of Conduct will establish a mechanism for retail industry participants to lodge complaints of unfair practices for a speedy resolution. The Government indicated that the scheme would 'promote effective impartial dispute resolution and avoiding costly and lengthy litigation for both small and large businesses.'

However, there is currently no intent to include packaged liquor sales within the scope of the scheme. The Office considers that it would be sensible on a number of grounds for this scope to be broadened to include packaged liquor. The Ombudsman and Code of Conduct will be addressing similar issues in grocery retailing to those raised by packaged liquor retailers in this review. Also, there is a close complementarity between groceries and packaged liquor. Furthermore, the major chains in the Victorian packaged liquor market are already members of the Code of Conduct Committee, due to their national grocery interests.

If broadened to the packaged liquor industry, the scheme would provide an effective and low cost means of addressing the concerns raised by the LSAV, AHA and others. As the packaged liquor industries interstate are also concerned with these issues, it would be appropriate for this to be progressed nationally.

**Recommendation:**

The Minister for Small Business seeks the approval of the Commonwealth Minister for Employment, Workplace Relations & Small Business to expand the scope of the Retail Grocery Industry Code of Conduct and Ombudsman scheme to include packaged liquor retailing.

# 4 What are the likely socio-economic impacts of the 8% rule?

- Some consumers are denied the opportunity that is available elsewhere to purchase liquor and groceries from within the same outlet. By limiting the opportunities for consumers, the 8% rule imposes a burden on many consumers by making shopping for liquor more inconvenient and time consuming than it otherwise would be.
- It is unlikely that the 8% rule has a significant impact on the general price level for packaged liquor that consumers face.
- From an industry perspective, the 8% rule directly benefits a small number of independent liquor stores.
- The Office estimates that approximately 50 (one in ten of Victoria's independent packaged liquor retailers) are located in very close proximity to a major supermarket that is currently unlicensed.
- The net impact of the 8% rule on overall employment levels in Victoria is most likely marginal, as it promotes employment at independent liquor stores at the expense of job opportunities with the major chains within a mature market. The 8% rule probably has an overall negative impact on investment, as the major supermarkets are constrained from investing and fitting out new stores, although this effect is partly offset by investment in independent liquor stores that may not otherwise occur.
- In regional Victoria, there is at least one licensed outlet of a major chain represented in the provincial cities. However, there are seven smaller country towns that have an unlicensed major chain supermarket without competition from another licensed major chain store. They are Bacchus Marsh, Kangaroo Flat, Kyneton, Leongatha, Ocean Grove, Rye and Wonthaggi. In these cases, the addition of a liquor store by a major chain is likely to have a significant adverse impact on independent liquor stores in the town, which may have flow-on effects to grocery outlets and possibly some local suppliers.
- The 8% rule may have a negative impact on the Victorian Budget, as its retention could lead to the forfeit of competition payments from the Commonwealth of several millions of dollars per annum. This outcome would impose a significant burden on Victorians.
- There is no evidence to suggest that the 8% rule contributes to harm minimisation strategies, but it is uncertain whether its removal will have an adverse impact on those in the community that are most at risk.

In undertaking a socio-economic assessment of the 8% rule, the Office has considered the impacts from five perspectives: consumer, industry, broader economic, social welfare and regional. This approach is consistent with the requirements of the terms of reference. The Office has based its findings on the most likely outcomes given the evidence at hand. It is more relevant to focus on the direction of the impact rather than its precise magnitude to achieve the terms of reference requirements.

## 4.1 What are the likely consumer impacts?

The Office examined the impact of the 8% rule on consumers on the basis of the key determinants of liquor purchasing decisions that were outlined in Chapter 2 - price, convenience, range and service.

## Price

As part of its assessment of the 8% rule, the NCP review (p.78) concurred with the analysis it commissioned from KPMG consultants suggesting that prices for packaged liquor are higher than they otherwise would be:

> 'We would expect that if the 8% rule were removed it would lead to the achievement of greater economies of scale for supermarkets, the benefits of which is likely to be passed on to consumers. Relaxation of other licensing restrictions affecting new entry would be important to prevent undue concentration in the market.
>
> 'Since liquor retailing overall is likely to be more competitive in the absence of the 8% rule, it is expected cost savings would be passed onto consumers. A reduction in average costs then is likely to lead to a fall in the price of packaged liquor products. That is, the price of packaged liquor in the industry with the 8% rule would be higher relative to the price of packaged liquor without the 8% rule.'

However, analysis undertaken by Access Economics as part of Liquorland's submission to this review found that, contrary to conclusions by the NCP review and the NCC, the abolition of the 8% rule may not lead to price decreases.

The Office generally agrees with KPMG's assumption that an expansion in a business's retail network should generate a reduction in average cost that may be passed on to consumers. However, the Office considers that recent regulatory reforms and the particular features of the Victorian packaged liquor market make it unlikely that the 8% rule imposes a price burden on consumers.

Victoria's regulatory framework for the sale of packaged liquor already facilitates a highly competitive market, even with the 8% rule in place (see Chapter 3). The industry comprises a handful of large operators and hundreds of small businesses that are all competing in a mature market. Low entry barriers mean that incumbents face added competition from new entrants if they seek to make abnormally high profits. The 1998 reforms, that saw the abolition of the needs criteria and the primary purpose requirement, have contributed to this competitive environment.

Due to the relative nature of the 8% rule, the major chains are able to expand their network of stores without breaching the cap. The number of outlets held by the major chains has grown since the NCP review (for Safeway from 86 to 103 and Liquorland from 89 to 93).

Also, as described in section 2.3 above, a key feature of the Victorian market is the intense price competition. This exists despite the 8% rule being in place. In any case, it appears that the major chains are not the market leaders in terms of price.

The existing geographic spread of packaged liquor stores and hotels throughout Victoria suggests that there are unlikely to be many cases where a liquor store can afford to set its prices in isolation of market pressures.

Section 3.3 outlined concerns within the industry that removing the 8% rule would lead to the major chains engaging in predatory pricing to drive out their smaller competitors. The scenario proposes that the major chains would then raise their prices above what they previously were, with consumers worse off in the longer term.

However, the Office doubts whether this scenario would unfold. If the major chains were to engage in highly aggressive pricing strategies, one would have expected this to have already occurred while they have been expanding their network of stores and seeking higher market share. Yet, the major chains are generally not perceived as price leaders. A person that for many years owned an independent liquor store located in close proximity to the major chains was not the target of predatory pricing, indicating in his confidential submission (p.1) that:

> 'There is a general opinion that the chains undercut their competitors so that they can monopolise the area in which they trade. I find this to be untrue. Until 1998 I was the owner of a liquor store for over 30 years and in that time I had the two major chains

in opposition to me. Never at any time was I threatened by their pricing policy and on a regular checking of prices, I found that their prices were comparable to mine, except for their specials, which I was able to match with an alternative product.'

Furthermore, the high number of new packaged liquor licences that are being issued to small retailers in a competitive environment supports the view that they are able to compete effectively with the major chains. So long as the regulatory framework facilitates new entrants, it will be difficult for the major chains to raise prices to abnormally high levels.

On the basis of the evidence presented above, the Office considers that the impact of the 8% rule on the general price level for packaged liquor is unlikely to be significant, particularly given the intense competition that already exists in the market.

## Convenience

The notion of 'convenience' has several facets, which encompass:

- One-stop shopping (ie. allied goods and services are available at the one venue);
- the geographic location of the liquor store (eg. its proximity to home); and
- the attributes of the location (eg. availability of parking).

As covered in Chapter 2, with convenience a key factor in determining the outlet where consumers make their packaged liquor purchases, liquor stores often differentiate themselves on this basis. An important development in packaged liquor retailing is that it has become part of the one stop grocery shopping experience. Safeway, Franklins and many independent supermarkets have pursued this strategy.

According to Safeway, when one of its existing supermarkets opens a liquor department, the value in groceries sold increases by approximately the equivalent amount to the value of the liquor sales. Safeway has extended one stop shopping to petrol retailing, having established Woolworths Plus at some of its supermarkets.

A confidential submission (p.1) stated that:

> 'The people of Victoria have voted with their feet in accepting the changes to the Liquor Act by choosing to shop at one-stop outlets for all their groceries, fruit, meat, alcohol etc. They have done so obviously because of convenience and not necessarily price. People who are in areas not serviced by one-stop outlets are extremely disadvantaged in that they are unable to buy their liquor at those outlets because of the 8% rule.'

In contrast to Safeway and Franklins, Coles-Myer operates its supermarket and liquor store divisions as separate businesses, with Liquorland seeking to offer convenience in the sense of the location of its stores. As Liquorland stated in its submission (p.1):

> 'Neither business is used to attract customers to the other apart from by any natural attraction which arises by virtue of some of the stores being located together. This is something that is often misunderstood by those who claim that we market liquor and offer 'loss leaders' so as to attract customers to supermarkets. In fact, only 46 of the [93] licences are located in a Coles or BiLo supermarket. The remaining stores are found in as broad a range of locations as are independently owned stores.'

There are currently 100 Safeway and Coles/BiLo supermarkets that are unlicensed, 63 of which are in metropolitan Melbourne, 7 in provincial cities and 19 in rural Victoria. Those consumers who shop at these supermarkets for groceries could be inconvenienced in not being able to purchase liquor at the same venue.

The inconvenience that the 8% rule could be imposing on some consumers is reflected in the results of the consumer survey. Of those surveyed, 21% responded that their regular supermarket does not have a liquor outlet. Over half (56%) of these respondents indicated that they would change to such an outlet if it become available. Convenience - location (46%) and the availability of other products in the store, such as food (13%) - was the main reason (59%) given for considering a switch. Less significant factors were price (25%), range (9%) and service (7%).

In preventing the major chains from opening more liquor stores, the 8% rule could be seen as imposing a burden on consumers through lost convenience. In this regard, the Office agrees with the NCP review's argument that convenience may be the greatest benefit from abolishing the 8% rule. The value to the community of being able to conveniently do its shopping should not be underestimated. As people work longer hours, the time available to shop for groceries has been constrained. Today's society places a high value on family and leisure time. The 8% rule constrains the major chains from meeting some consumers' desire to shop for liquor in a convenient manner.

## Range

A liquor store's product range is another factor that influences where consumers shop. Range can mean either the quantity and breadth of the liquor products on offer or the nature of the liquor items that a store offers.

According to its submission (p.20), Safeway liquor stores carry one of three levels of range: standard (1,979 liquor items), extended (2,180) and premium (2,608). Also, 940 items can be added to a store's range, according to its needs and size. Many independent liquor stores find it difficult to offer as broad a range of stock as the major chains because of the costs associated with holding stock. For this reason, the 8% rule probably impedes the breadth in range of liquor products that consumers can conveniently access. If the major unlicensed supermarkets were able to open liquor departments, many consumers could have access to a broader range of liquor products, particularly those living in regional Victoria.

Franklins believe that most consumers are satisfied with quite a narrow range. According to Franklins, 98% of the market is satisfied with the approximately 1,000 liquor items it offers, which is a narrower range than what Safeway offers. ALM wholesalers have found that the top 200 selling products from its range of 4,500 liquor items make up 80% of its business.

Independent liquor stores have greater flexibility in tailoring their range to meet the specialised needs of their customers. For instance, some independent liquor stores are able to access specialist low-volume wines that the major supermarkets would not normally be able to access in the quantities they require. Others specialise in fine wines (eg. Nick's Wine Merchants), overseas liquor (eg. King & Godfrey) or boutique wines from certain local wineries (Ritchies). Their competitive advantage is servicing a niche market that would not be satisfied with the standard range offered by the major chains.

To some extent the major chains have already recognised this and both have entered the niche market in recent years, with Liquorland establishing its Vintage Cellars stores and Safeway purchasing the Dan Murphy chain.

If it is the case that the 8% rule is a key factor in specialist independent liquor stores being able to remain in business, then its removal would disadvantage those consumers of niche liquor products. Under such a scenario, the 8% rule benefits those consumers that value diversity in the range of liquor products on offer and its removal could lead to these consumers being less well served by the standard range offered by the major chains.

However, there are some indications that the removal of the 8% rule may not adversely affect consumers with specialised tastes. As described in Chapter 2, the Victorian market for packaged liquor is quite sophisticated in the manner in which it seeks to cater for the needs of consumers. Independent liquor stores often differentiate themselves from the major chains in order to pursue the niche consumers, in this way surviving in a competitive market. For this reason, many specialist independent liquor stores can successfully operate in proximity to a major chain store.

Also, as outlined in the 'Convenience' section above, the consumer survey indicated that, if a consumer's unlicensed supermarket was able to open a liquor store, the new outlet's range would not be a significant basis on which consumers would switch.

## Service

Service relates to the manner in which the customer is attended to at the store, such as staff offering product knowledge and a friendly demeanour, as well as the store providing ancillary services such as the free hire of glasses with party orders, or having wine tastings. Service is a means by which an independent liquor store can differentiate itself from a major chain.

The Office's research suggests that the major supermarkets find it difficult to offer the same level of personal service as a well-run independent liquor store. The major supermarkets acknowledge this. In discussions with the Office, Liquorland stated that 'an owner-operator will always have a better relationship with customers than Liquorland will ever have.' Likewise, Franklins acknowledged that, despite having training programs in place, it cannot offer the same product knowledge as an independent liquor store. This situation is reflected in the results of the consumer survey, which indicates that consumers ranked independent supermarkets and liquor stores higher on client service compared to the major chains.

The main reason for this is that a liquor store owner has a direct incentive to satisfy the customer compared to an employee of a major chain. Many liquor store owners have been in the industry for some time and have a strong understanding of the products they are selling.

In contrast, a higher proportion of staff at the major chains are younger and part-time/casuals. This is not to suggest that the major chains do not meet the needs of their customers, but rather that they tend to focus on offering service that satisfies customers who have lower service or product knowledge expectations from staff.

**Box 4a: Case study: Ritchies supermarkets Community Benefit scheme**

> Ritchies licensed supermarkets has adopted a service strategy that involves offering its customers the opportunity to make a contribution to the community in return for loyalty. It operates a Community Benefit scheme, whereby it donates 1% of its turnover to its customers' favourite community organisations, such as charities and schools. According to Ritchies' submission (p.1), Community Benefit donates approximately $1m per annum to over 900 charities that are nominated by the customers from its 18 stores.

The 8% rule may be benefiting consumers that value service by protecting some independent liquor stores that offer a higher level of personal service than the major chains. On the other hand, its removal may spur independent liquor stores to further develop their service in order to differentiate themselves from the major chains.

# 4.2 What are the likely industry impacts?

## The major chains' likely business strategies if the 8% rule was not in place

The key to assessing the industry impact of the 8% rule is to determine what the major chains' likely business strategies would be if the 8% rule did not exist. The starting point is their licensing profile, which is outlined in Table 4a.

A total of 101 (68%) of Safeway's supermarkets in Victoria are licensed. The remaining 47 are unlicensed. In the case of Coles/BiLo, there are 71 Liquorland stores (57%) adjacent or in close proximity of its supermarkets. This leaves 22 Liquorland stores not co-located with a supermarket, four of these are located in country Victoria.

It is also worth noting that Safeway and Coles/BiLo in total have 26 country supermarkets that are unlicensed. Most of these are located in provincial cities and medium-sized towns that already have a major chain liquor store.

**Opening liquor stores in the major chains' supermarkets that are currently unlicensed**

It is evident from the Office's discussions with the major chains and their submissions that their objective would be to provide all of their supermarkets with a packaged liquor licence. However, regulatory approval times and physical constraints suggest that this objective would take some time to achieve, even if the 8% rule was immediately removed.

The major chains are constrained in the short to medium term due to the need to satisfy other regulatory requirements, which may involve contesting objections to new packaged liquor licence applications. A business case would also need to be made to the head offices of the major chains when seeking the funding to open a liquor store. This should be easily satisfied in most cases, particularly given the improvement that a liquor store brings to a supermarket's grocery turnover.

There are also physical constraints, with some supermarkets not having the necessary floorspace available to house a standard liquor store. However, in most cases, floorspace constraints could be overcome over time. The supermarket can be re-formatted or the shopping centre management can make additional floorspace available.

For example, Liquorland, a key advocate of removing the 8% rule, currently holds 7.2% of all packaged liquor licenses, or ten packaged liquor licences fewer than it could hold without breaching section 23. Liquorland representatives explain that this is due to the time delays associated with planning and establishing a new liquor store.

The Office considers that, in virtually all cases, the major chains can overcome these hurdles in the medium term. Therefore, it would expect that, if the 8% rule was not in place, virtually all of the 47 Safeway supermarkets and 53 Coles supermarkets that are currently unlicensed would seek to open liquor stores in the medium term of three years.

Safeway indicated that it has no intention of opening liquor stores that are not co-located with its supermarkets, as this would be contrary to its one stop shopping business strategy. It also appears that the Woolworths-owned Dan Murphy chain is unlikely to open up a significant number of new stores. Mr Tony Leon, Managing Director of Dan Murphy, stated that given the nature of its current operational structure, there is a finite number of Dan Murphy stores that the market can support.

Mr Leon also noted that to be viable a Dan Murphy store generally needs to generate a turnover of $300,000 per week. Given the customer base and demographics required to generate such a turnover, its stores need to be geographically well spread and located in key population centres. Mr Leon considers that Dan

**Table 4a: Licensing status of Victorian Safeway and Coles/BiLo supermarkets**

| *Safeway* | | | | *Coles & BiLo* | | | | *Other Liquorland stores that that are not co-located* | |
|---|---|---|---|---|---|---|---|---|---|
| Licensed (101) | | Unlicensed (47) | | Licensed (71) | | Unlicensed (53) | | | |
| Metro | Country | Metro | Country | Metro | Country | Metro | Country | Metro | Country |
| 70 | 31 | 34 | 13 | 54 | 17 | 40 | 13 | 18 | 4 |

*Notes: Metro stores are located in the Melbourne metropolitan area. A Coles or BiLo store is considered licensed if a Liquorland store is either adjacent or in very close proximity. Safeway/Woolworths also holds packaged liquor licences for two Dan Murphy stores.*

*Source: Liquor Licensing Victoria's table of packaged liquor licences, Safeway and Liquorland's submissions.*

Murphy stores would not be established in non-metropolitan areas. Even within Melbourne, there are only a few areas that could support a new Dan Murphy store. The Office considers that Safeway is unlikely to open many liquor stores that are not co-located with its supermarkets, given its current strategy.

As Liquorland operates as a separate division to Coles/BiLo supermarkets within the Coles-Myer group, it cannot be assumed that all new Liquorland stores will locate at currently unlicensed supermarkets.

As outlined in Table 4a, there are 71 Liquorland stores either adjacent or in very close proximity to a Coles/BiLo. This leaves 22 (24%) Liquorland stores that are not co-located, only four of which are in country Victoria. However, Liquorland provided the Office with a list of sites for proposed new stores. Only four of the 46 proposed new Liquorland stores would not be in close proximity to a Coles/BiLo supermarket.

It is therefore reasonable to assume that, if the 8% rule was removed, the major supermarkets would seek to license virtually all of their stores, with only a few new liquor stores that are not co-located. However, it should also be borne in mind that, as demonstrated in Table 3b, the major chains will still be able to achieve their objective in the medium term even with the 8% rule in place.

### Expanding the major chains' network of supermarkets

Some have argued that there may be cases where the removal of the 8% rule may turn previously marginal business cases for the major chains to open a new supermarket into a positive proposition. If this occurred, further competitive pressure would be placed on independent liquor stores and supermarkets. According to discussions with Safeway, a liquor store can comprise up to 10% of a major supermarket's total turnover. In addition to this, due to the one stop shopping factor, a co-located liquor store can also increase grocery sales by an equal amount.

While it is difficult to estimate how many new supermarkets would open as a result of this impact, it is worth noting that the number of new supermarkets that the major chains open every year in Victoria is quite small. On average, Safeway opens three or four new supermarkets in Victoria every year. However it also closes one or two supermarkets per year. As a result, in net terms, Safeway expands its Victorian network of supermarkets by about two per year. The Coles network grows by a similar number.

Therefore, even if one assumes that the removal of the 8% rule increases the number of supermarkets that satisfy the major chains' business case by half, this would only result in two more supermarkets opening in the whole of Victoria. Assuming that, in the absence of the 8% rule, all of the major chains' new supermarkets would be licensed, the total impact would be two new liquor stores per year. It is not possible for the Office to identify where these additional supermarkets would be located, although they would most likely be in metropolitan Melbourne's growth corridors.

On this basis, the Office considers that removing the 8% rule is unlikely to act as a spur that impacts on the number of new major supermarkets.

## Independent liquor stores

Having assumed that the main effect on the major chains' business strategies from the removal of the 8% rule would be to open liquor stores in virtually all of their currently unlicensed supermarkets, what impact will this have on independent liquor stores?

The Office has examined, on a localised basis, the likely impact on independent liquor stores of the 100 currently unlicensed major supermarkets opening a liquor store. With convenience highly valued by consumers, a major chain store and an independent liquor store may only need to be a reasonably short distance apart, say 1km, in order to co-exist. They are more likely to co-exist in metropolitan Melbourne than in rural Victoria, where a local resident can conveniently commute between the various liquor stores in a small town.

The Office has found that there are approximately 50 independent liquor stores that are adjacent or in very close proximity to the 100 unlicensed major supermarkets. It would be very difficult for these independent liquor stores to co-exist with supermarkets, due to the convenience of one stop shopping and the resources of a major chain.

In these 50 cases, the 8% rule could lessen the chance of a major chain opening a liquor store near these independent stores - at least in the short to medium term. The removal of the 8% rule would probably bring this competition earlier for these independent liquor stores and adversely affect their business to a significant degree. This would be reflected in a fall in the goodwill value of the business.

In its submission (p.9), Safeway argued that the presence of a Safeway store in a shopping centre can create retailing opportunities for small businesses because it attracts more customers:

> 'Safeway can thus be seen to be responsible for creating significant new opportunities for existing and new small business operators. The ability of these small operators to survive and prosper in a community can be strengthened by proximity to a Safeway store, not threatened as the legislative protectionism afforded by the 8 per cent rule seems to suggest.'

While the Office considers that small businesses offering goods and services that are not in direct competition with the supermarket would benefit, it is not convinced it would also benefit independent liquor retailers. With two liquor stores being in close proximity, it is difficult for an independent liquor retailer to differentiate itself from a supermarket with a liquor department on the basis of convenience, particularly as the supermarket offers the convenience of one-stop shopping. It would need to be an exceptional independent liquor store in a community with the right demographics for it to be able to compete against a major supermarket in very close proximity on the basis of price, range and service. The Office did encounter several instances where an independent liquor store located in very close proximity to a licensed major supermarket was successfully competing. However this would appear to be an exception rather than the rule.

**What measures can independent liquor stores take to adjust to increased competition?**

A prominent liquor industry identity not associated with the major chains told the Office: 'I think the small guy in the industry is finished and I don't think the restriction in the Act will save it.' The Office totally disagrees with the view that there is no place left for the independent liquor store. This is supported by the fact that only a small minority of independent liquor stores are directly affected by the 8% rule. Independent liquor stores can develop a variety of business strategies to promote their businesses and survive alongside the major chains.

According to Erik Hopkinson (a former CEO and Commissioner with the Liquor Licensing Commission and now a consultant to the liquor industry), independent liquor stores that do not cater for today's consumer preferences need to re-position themselves if they are to survive. They need to diversify their businesses and offer something different to that offered by the major supermarkets.

Liquorland suggested (p.6) that there are several instances of independent operators (such as Philip Murphy, Nick's Wine Merchants and King & Godfrey) that are successfully competing by differentiating their business. This could mean specialising in premium wines or offering non-liquor products to customers. However, the MGAV notes that the costs associated with extending a liquor store's range and refurbishing the store can be between $50,000 and $100,000. The costs involved with pursuing this strategy may prevent some of the smaller independent liquor stores from taking these measures.

As outlined in section 3.2, the 1998 reforms have enabled packaged liquor stores to take advantage of the 'predominant activity' provision by diversifying their businesses into non-liquor goods and services. Through this provision, rather than directly competing on liquor with a major chain, an independent liquor store could also offer gourmet food. In some cases, the retail tenancy lease may prevent independent liquor stores from diversifying into other activities. Diversifying along these lines, however, may not be feasible in some locations, particularly in rural areas, where the population base is too small to pursue niche markets. One wine store that has succeeded in carving out a niche market is Jack's Wine & Spirit in Ballarat, a traditional beer drinking town (see Box 4b).

**Box 4b: Case study – Jack's Wine & Spirit – Ballarat**

With a population currently around 81,000, Ballarat is a major retail centre that provides shopping services to an area extending as far west as Horsham. Retail trade is one of the key industries and accounts for 21% of the resident labour force. Tourism also plays an important part in Ballarat's economy, and there is a wide variety of supporting services such as restaurants, cafes and pubs.

Ballarat has close to 20 packaged liquor licences. All the major chain supermarkets are represented including Safeway (three stores, only one currently licensed), Liquorland, Harry's and Franklins. The major supermarket outlets cater for the beer and bulk buying market and are therefore more aggressive with their pricing. Boutique liquor stores include Compana and Heritage Liquor and Larder. The latter sells delicatessen goods.

The market is characterised by its numerous small boutique liquor stores. In the early 1990s Jack Simic decided it was time to go into business for himself and he bought a small independent supermarket that he changed into a liquor store, **Jack's Wine and Spirit**. Within nine years Jack has turned the store into one of Ballarat's most successful specialist wine stores in the central business area.

Establishing a speciality and premium wine store is new to Ballarat which is known as a traditional beer drinking town. Jack says that 'It's a lot of hard work specialising in wines but at the same time we have many advantages over the large supermarket chains.' He believes the key to a successful business in liquor is hard work, good knowledge of the industry and close, hands-on relationships with suppliers and customers.

Consumers appear to be relatively price sensitive in Ballarat and are likely to travel all over Ballarat to chase specials on liquor. Despite this, Jack's has established very strong customer loyalty and Jack believes 'this is actually more important than price'. Events such as regular wine tastings help to build loyalty and attract a clientele of more discerning wine buyers.

Exclusivity is a strategy employed by the large supermarkets. This includes buying up entire vintages, which means that small business may be limited in the range of stock it can provide to customers. Jack is concerned that because of their purchasing power the large supermarkets are getting more exclusive stock and because of rebates and promotional dollars provided by suppliers are able to make higher margins out of the purchase.

Jack believes the removal of the 8% rule would see Safeway opening up liquor stores in its Wendouree and central business area stores. In order to cope with increased competition from the supermarkets Jack's will have to further concentrate on expanding its niche in specialty wines. Jack believes 'this is the only way to make a profit in the industry'.

One strategy that small businesses can employ to improve their market position is to work with other similar minded businesses. Buying groups could be strengthened so that they offer suppliers a similar level of discipline in terms of marketing a particular product, as the major chains do. Also, as with other areas of retailing, the brand of a store has an important impact of sales levels, due to customer recognition. The Office was told of cases where the take over of an independent supermarket by a major chain led to stronger sales, even though the price, service and range was not altered. Independent supermarkets have realised the importance of branding and have streamlined their various banners into 'IGA', which is strongly promoted.

This approach could be pursued further by establishing franchises, as occurred with Baker's Delight for bakeries. Such arrangements have the advantage of raising a store's profile and providing a consistent offer to customers, while still being independently owned.

The LSAV could have an important support role to play in improving the management skills of independent liquor stores. Safeway's submission (pp.34-37) cited figures from the Commonwealth Attorney-General's Department which indicate that nearly half of small business failures stem from problems related to prevailing economic conditions, a lack of business ability, oppressive loan repayments and lack of sufficient working capital. The Office notes that the LSAV is currently working with Small Business Victoria on developing a program for improving the management skills of its members.

## Independent supermarkets

Whereas most independent liquor stores derive virtually all of their turnover from liquor sales, licensed supermarkets operate a broader business. According to the MGAV, the significance of liquor sales to licensed independent supermarkets varies between 10% and 35% of their turnover. However, it considers the general rule to be that the smaller the store's turnover, the greater its dependence on liquor sales. To analyse the impact that the removal of the 8% rule would have on independent supermarkets, its impact on the non-liquor items, such as groceries, should also be considered.

It has been argued that the removal of the 8% rule may lead to further concentration in grocery retailing. The contention is that if large chains would be able to offer liquor from all their outlets, it would enable them to attract those consumers who now shop for liquor and groceries at independent outlets because their local major supermarket does not sell liquor. Therefore, removing the 8% rule would enable the large chains to attract more consumers to their store and lead to further concentration in grocery retailing. The removal of the 8% limit may also increase the risk of aggressive price competition between the major chains and possibly lead to market domination by several players. Such market behaviour would have the obvious spillover effects on independent supermarkets without effective mechanisms in place.

However, many independent supermarkets already have liquor departments and offer their customers the convenience of one stop shopping. The MGAV indicated in discussions with the Office that almost half of its 700 members are licensed. Since the new Act commenced, independent supermarkets and general stores have been granted 56 licences. This is more than any other type of liquor retailer. Graph 2a indicates that independent supermarkets account for 32% of total packaged liquor licences, whereas the major chains and Franklins account for 18%. Therefore, many consumers have the choice of shopping for groceries at either an independent supermarket or at a major supermarket - both of which are licensed. In such cases, the 8% rule does not affect their decision as to where to shop for groceries.

## Hotels and other hospitality venues

As holders of general licences, hotels are able to sell packaged liquor. Most hotels operate a bottle shop, although the size and significance of the business varies significantly.

Hotels' revenue comes from a variety of activities. These include: gaming machines (for approximately 230), live entertainment, a restaurant/café and liquor sales for on-premises consumption. For these reasons, few hotels rely on packaged liquor sales to the same degree that packaged liquor stores do. This would suggest the 8% rule has a greater impact on those liquor stores that are almost entirely focused on selling packaged liquor rather than hotels with a diversified revenue stream.

The Office also doubts that hotels located in small country towns are directly affected by the 8% rule because it is unlikely that a major supermarket will establish itself in those locations. However, in some small to medium-sized towns the opening of a new liquor store by the major chains may have a significant impact on those hotels. These regional impacts are examined further in section 4.5.

Licensed restaurants and cafes generally hold on-premises licences and are not permitted to sell packaged liquor. The Restaurant & Catering Association, in discussions with the Office, opposed the retention of the 8% rule on the basis that it is anti-competitive and gives protection to the packaged liquor industry that is not afforded to other industries. It considers that licensing arrangements for restaurants should be liberalised to also enable them to sell packaged liquor.

A few restaurants may purchase their liquor for on-premises consumption from retailers such as Dan Murphy, at a price lower than the wholesale price. However, most restaurants would buy from a wholesaler. Some Bed & Breakfasts (B&Bs) would purchase the small quantities of liquor they require from retail outlets, perhaps to offer guests on arrival. The 8% rule may disadvantage some restaurants that purchase through retail outlets, particularly from a convenience and price perspective. This would most likely occur in those regional areas that may face high freight costs and be underserviced by wholesalers. However, on the whole, the Office considers that the 8% rule does not have a significant impact on restaurants and B&Bs.

There are currently 2,470 licensed clubs in Victoria. The 1,662 clubs with restricted licences are required by the Act to purchase their liquor from general or packaged liquor licensees. The 808 clubs that hold full club licences are able to sell packaged liquor, but only to their members. As a result, clubs generally do not have commercially developed packaged liquor operations. In discussions with the Office, Clubs Victoria indicated that the 8% rule does not have a significant impact on the clubs industry. The Office concurs with this view.

## Wholesalers and producers

While the 8% rule is directed at the retail liquor market, it could also have flow-on effects to wholesalers and producers of liquor.

ALM, a division of the Davids group, may benefit from the 8% rule because its sales to independent liquor stores are higher than would otherwise be the case. Yet ALM also has a diversified customer base (eg. independent supermarkets, Franklins, hotels and restaurants) so that it can seek to offset any fall in sales from one segment of the market.

Toohey's informed the Office that the 8% rule has no direct effect on its business, but it indicated that the cost of servicing its clients may be lower if the major chains had a higher market share. Yet suppliers such as Carlton & United Breweries (CUB) and Toohey's have a direct interest in ensuring that independent liquor stores remain an important part of the packaged liquor industry, as a more concentrated retail market would lead to a loss in the suppliers' bargaining power with retailers. This was confirmed in discussions with CUB.

It may therefore be in the suppliers' long term commercial interests to ensure that independent liquor stores are able to purchase liquor at a wholesale price that is comparable to that faced by the major chains.

The VWIA's membership of small and large winemakers and winegrape growers accounts for about 90% of Victoria's wine production. It expressed support in its submission for the retention of the 8% rule on the grounds that the major chains are unlikely to stock local boutique wines to the same extent as independent liquor stores.

The VWIA argued in its submission (p.3) that the removal of the 8% rule would lead to the closure of many independent liquor stores. This would deprive small winemakers of an important avenue through which they retail their products. It would also accentuate shelf space constraints, as there is a physical limitation on the number of wines that can be displayed at any one store. The VWIA further argued that consumers would have less access to a diverse range of wine products than is currently the case:

> 'The VWIA contends that the lifting or removal of the 8% limit would result in the lessening of the diversity of products available to the consuming public, as the major chains progressively extend their number of stores and their percentage of the retail wine market - squeezing out of *(sic)* small independent liquor retailers.'

Major chain stores have some flexibility in selecting their range to cater for local tastes. Safeway indicated in its submission (p.20) that in addition to their standard store range of 1,979 items, a further 920 items are available according to individual store needs. However, a major chain is unlikely to stock an extensive range of boutique wines, as their customers are generally satisfied with mainstream products. Also, according to the VWIA's submission (p.2), over 80% of Victoria's winemakers produce small quantities (less than 5,000 dozen bottles of wine per year), generally of high value. These small wineries may not produce enough to meet the large quantities required by a major chain to service its stores.

Selling low volume wines is an opportunity for independent liquor stores to cater for a niche market. The public is increasingly able to make a well-informed choice as to which wine to consume and where to purchase it. Growing community interest has led to wines being profiled in newspaper inserts, magazines, the internet, television, guide books, appreciation societies and in-store promotions. Also, there are many wine 'buffs' searching for 'undiscovered' wines. A major chain liquor store that offers mainstream wines would generally not appeal to a wine consumer with specialised tastes.

The Office did not find evidence to support the VWIA's contention in its submission that the avenues to market boutique wines through independent liquor stores are shrinking due to the major chains increasing their licence holdings. The number of independent liquor stores in Victoria is actually increasing. Of the 156 new packaged liquor licences issued since the commencement of the new Act, 85 have been granted to independent liquor stores and supermarkets, while only two went to the major chains and 13 to Franklins (see Chapter 3).

Consumers can also access boutique wines through cellar door sales. These sales account for over half of a small winery's total sales. In addition, after having tasted the wine at the cellar door or at a restaurant, consumers can often purchase that wine from home by placing an order directly with the winery either via telephone or mail. The internet also provides exciting opportunities for small producers to market their wine.

It should also be noted that the VWIA's industry economic plan, Vintage 2003: The Industry Vision, June 1999, estimated that an extra 3,000 wine industry jobs would be created by 2003 in a boom that will raise the value of Victorian production from $700 million to $1 billion per annum. Most of this growth will be centred in regional areas. Wine exports are expected to double to $300 million over that time, while domestic retail sales will rise from $480 million to $580 million. The VWIA's plan did not mention that retail access constraints are limiting the industry's growth.

The Office is of the view that niche marketing offers independent liquor stores the opportunity to differentiate themselves from large chains. The Office also considers it unlikely that the 8% rule has an impact on the capacity for small wine producers to sell their product to the public.

## 4.3 What are the likely broader economic impacts?

### Budget

As outlined in Chapter 1, the NCC indicated in its second tranche assessment in June 1999 that it would consider an annual deduction from Victoria's NCP payments if it does not remove the 8% rule by 31 December 2000. The NCC's third tranche assessment in June 2001 will take into account the Victorian Government's action on the 8% rule. Payments for Victoria for the years 2001- 02 to 2005- 06 total approximately $900 million.

There are several reasons why the Office considers that retaining the 8% rule carries some budgetary risk. Firstly, there is a precedent for this action. In July 1999, $15 million of Queensland's competition payments were suspended due to insufficient progress on water reform. The funding was subsequently re-instated when remedial action was taken. Secondly, Victoria is one of the first jurisdictions to have undertaken an NCP review of its liquor legislation and implemented the Government's response. As such, it may serve as the benchmark by which the NCC will assess other jurisdictions. Thirdly, Victoria is the only jurisdiction that has a limit on liquor licence holdings.

However, the Office has identified sufficient evidence to support the view that the 8% rule is not a major restriction on competition in the Victorian market for packaged liquor. Furthermore, it has the most progressive liquor licensing arrangements of any State, as was demonstrated in Chapter 3. For instance, while the major chains feel aggrieved that their holdings in Victoria are limited by the 8% rule, Queensland prohibits supermarkets from opening liquor departments at all.

While the NCC did not indicate in its second tranche assessment the magnitude of the penalty that might be imposed, the Office understands that it would be in the order of several million dollars. Such an outcome would impose a significant burden on Victorians.

## Employment

There are two types of employment created when a new liquor store is established. There are ongoing retail positions and work from the construction and fit-out of new liquor stores.

Safeway employs a total of 25,126 people in Victoria, of which 6,660 are in regional areas, (submission p.15). Liquorland employs 708 people in Victoria (submission p.1). In discussions with the Office, Liquorland estimated that one of its typical stores employs four full time, four part-time and six casual employees.

The Office has roughly estimated the lost employment opportunities with the major supermarkets because of the 8% rule could be in the order of 600 ongoing direct jobs. This assumes that each unlicensed Coles and Safeway supermarket employs six people in their liquor department. In addition to the ongoing retail positions, work would also be generated from the construction and fit-out of new liquor departments or stores.

While the 8% rule restricts employment growth by major supermarkets, it also probably promotes job opportunities with independent liquor stores. It is likely that any negative employment impacts of the 8% are balanced by the positive employment growth by independent liquor stores.

In considering employment impacts, the Office also had discussions with the relevant unions. The Shop, Distributive & Allied Employees (SDA) Union membership includes employees of supermarkets and liquor stores. The SDA commented that its members have signed, or are in the process of signing, Enterprise Agreements with Liquorland and Safeway that contain above-award wages and conditions. It also welcomed the better training opportunities (especially regarding the responsible sale of alcohol) that the major supermarkets generally provide. The Australian Liquor, Hospitality & Miscellaneous Workers Union (which represents employees of hotels and other hospitality venues) expressed some concern at any measures that could lead to higher packaged liquor sales and lower on-premises consumption. The Office believes the 8% rule has a negligible impact on on-premises liquor consumption.

The net employment impact of the 8% rule is marginal, as it promotes opportunities at independent liquor stores at the expense of employment with the major chains. The Office is not convinced that reforms will lead to a growing market for packaged liquor that will create new jobs.

# 4.4 What are the likely social welfare impacts?

## Harm minimisation

As discussed in Chapter 1, the 8% rule was not introduced with a harm minimisation objective in mind. However, it has been argued that the constraint on the number of liquor licences that the major chains can hold limits the availability of alcohol and therefore moderates consumption levels.

The Office considers that there is no substantive evidence to support this argument. As examined in Chapter 3, the 8% rule only limits the proportion of packaged liquor licences that can be held by any one business, not the overall growth in packaged liquor licences. The Victorian, and some overseas experience, suggests that an increase in the number of packaged liquor stores does not have a significant impact on consumption levels. As noted by the NCP review (p.78):

> 'The survey of the research literature suggests that an increase in the general availability of liquor brought about by removing the 8% rule would be unlikely to have a significant impact on total consumption and harm.'

Likewise, the Australian Drug Foundation (ADF) stated in its submission (p.1) that:

> 'The ADF recognises that in the current environment of easy availability of alcohol, the resulting increase on *(sic)* liquor licences is unlikely to have an overall significant impact on consumption and drinking patterns.'

Turning Point's submission (p.1) accepted that the case for retaining the 8% rule on harm minimisation grounds is not strong. Nonetheless, it expressed some concern that an increase in the availability of licensed supermarkets may possibly result in an adverse change in consumption patterns among certain sub-groups, such as women. It argued that, in the absence of a sophisticated analysis of the factors that affect alcohol purchasing and consumption decisions, it is difficult to assess the impact of abolishing the 8% rule.

Turning Point also expressed concerns that the removal of the 8% rule might prompt a dramatic change in the liquor market. The ADF expressed similar concerns in its submission (p.1) regarding the public health impact of potential intense competition over market share in a local area following any abolition of the 8% rule:

> 'It is a resulting concentrated period of aggressive competition and the potential to increase binge drinking, especially among young people, which is of most concern to the ADF.'

On this basis, the ADF recommended that the 8% rule be retained. However it also recommended that, in the event that it is not retained, a minimum price of alcohol be introduced and guidelines on appropriate promotional exercises be developed. The ADF indicated in discussions that it was principally concerned with the short-term impact of any removal of the 8% rule, as it considered that in the long term it will not have an impact on levels of alcohol consumption.

Some independent liquor store owners also argued to the Office that the 8% rule discourages the incidence of liquor sales to minors, the implication being that the major supermarkets are less responsible in their selling practices than independent liquor stores. The Office did not find any evidence that this is the case.

The adverse consequences for the major supermarkets if found to be in breach of the Act are enormous. This ensures that there is a strong incentive for them to sell packaged liquor responsibly. As stated by the Victoria Police in its submission (p.1):

> 'Groups such as Liquorland and Safeway hold numerous licences. To place one in jeopardy by way of illegal operations puts all licences at risk. For this reason, compliance with the law and licence conditions has proven to be a high priority with these companies.'

The Victoria Police provided examples of where the major supermarkets have demonstrated responsible practices (eg. Liquorland and Safeway do not market food essences), even without being requested to by police. In the isolated instances where an employee of a major supermarket sold liquor to a minor, swift action was taken by senior management.

The Office considers that there is no substantive evidence to suggest that the 8% rule contributes to the prevention of alcohol-related harm. However, there is some degree of uncertainty as to what effect the removal of the 8% rule would have on the incidence of harm.

Monitoring its effects is difficult, particularly since data on the sale and consumption of alcohol in Victoria is no longer available as a result of the 1997 High Court decision that deemed the States' business franchise fees unconstitutional. Initial inquiries by the Department of Treasury and Finance suggest that obtaining disaggregated information from the Australian Taxation Office would prove difficult, at least without ministerial agreement.

Therefore, the impact of the possible replacement of the 8% rule on the incidence of alcohol-related harm should be considered and a monitoring strategy be developed. The Co-ordinating Council on the Control of Liquor Abuse, a ministerial advisory council established under the *Liquor Control Reform Act 1998* Act and comprising a broad range of industry and community representatives, would be an appropriate body for developing a strategy to monitor the harm minimisation impact.

**Recommendation:**

The Minister for Small Business instructs the Co-ordinating Council on the Control of Liquor Abuse to consider what impact a possible replacement of the 8% rule would have on the incidence of alcohol-related harm and to begin preparation of a strategy for monitoring that.

### Amenity

As outlined in Chapter 3, the *Liquor Control Reform Act 1998* Act provides that a person may object to the grant, variation or relocation of a licence on the grounds that it would detract from or be detrimental to the amenity of the area in which the licensed premises are situated. However a person cannot object on certain commercial grounds.

With the abolition of the needs criteria as part of the 1998 reforms, the amenity provision has become the focus for objections to a packaged liquor licence. Removing the 8% rule would most likely place further pressures on the amenity provision, as those in the community that strongly opposed the licensing of a major chain store would be likely to pursue this avenue of objection.

The Office is of the view that the removal of the 8% rule would not detract from the amenity of local areas, provided the amenity provision in the Act effectively meets its objective.

In this regard, the Office notes that there appears to be some uncertainty among stakeholders as to the operation of the amenity provision. However, it is difficult at this stage to provide definitive advice on what constitutes 'amenity', as the provision has only been in operation for a short time, the VCAT's case law is not well developed. While it may be pre-emptive at this stage for the Director of Liquor Licensing or VCAT to issue some guidance on this matter, this may be appropriate later, once the case law has further developed.

## 4.5 What are the likely regional impacts?

### Consumers

Safeway and Franklins, but not Liquorland, have had a 'one-price' policy on wine and spirits throughout Victoria for many years. They equally apportion freight costs over all their stores, so that liquor prices in their country stores are lower than what they would be if such a policy was not in place. Meanwhile, an independent liquor store located in regional Victoria must absorb the higher freight costs. Safeway claimed in its submission (p.8) that its one-price policy passes on a significant benefit to its customers in rural Victoria:

> 'Safeway has a policy of substantial price parity, and absorbs much of the extra cost involved in the service to rural areas in order to maintain an 'offer' that is comparable with that made to consumers in other areas. The provision of an 'offer' in rural areas that matches that in metropolitan areas, especially in terms of price and range, is one that few service providers in Australia can claim. The continued presence of Safeway in local communities is needed to ensure that customers are not forced to accept lower quality and ranges of products and services in addition to higher prices.'

The 8% rule may impose a burden on some consumers in smaller towns, as it may require them to travel further, in some cases to the nearest provincial city, to make their liquor purchases at a store that meets their needs. It appears from the case study at Box 4c, that this is the case in Castlemaine.

**Box 4c: Case study – Castlemaine's packaged liquor market**

Castlemaine is a township of approximately 8,000 residents, located about 120 kilometres north of Melbourne. The town has two independent liquor stores: Castlemaine Cellars, a family owned business employing four people; and Harry's Liquor Shop (owned by the West Australian Liberty Liquor chain) which is co-located with an IGA supermarket. There are several hotels in town that sell packaged liquor. At present, it does not have a major supermarket or a Liquorland store.

Castlemaine's population is characterised as a community with relatively large representations of alternative lifestyle and semi-retired residents. The Cellars, which carries a large range of wine, views this characteristic of the town as beneficial to its business in terms of creating a niche market of discerning liquor purchasers. The Castlemaine liquor stores consider customer loyalty, as well as knowledge of wine and service, as factors that underpin their business success - 'customers do not consider price only, but service as well.'

However, there are limits to this loyalty. A high proportion of the town's residents undertake weekly shopping in Bendigo (about 35 kilometres away), shopping may include purchases of liquor (often on special) at the major chain stores there. The Office was told that Castlemaine has an enormous 'out shopping' problem. One estimate was that 40% of all grocery purchases are sourced from Bendigo. Residents are strongly favouring lower prices over convenience. A resident estimated that 'on a $200 shopping basket of purchases in Bendigo, Castlemaine residents can save up to $16.'

Discussions with the major chains indicated that a supermarket would be unlikely to be situated in a township with the population base of Castlemaine. Nonetheless, even in such a township, independent liquor stores are still competing with the major chains located nearby in provincial cities.

## Industry

Safeway and Coles/BiLo hold a combined total of 49 licensed and 26 unlicensed supermarkets in regional Victoria (see Table 4a). At least one of the major chains is already represented in all of the large and medium-sized towns in regional Victoria, ie Bairnsdale, Ballarat, Benalla, Bendigo, Colac, Echuca, Geelong, Hamilton, Horsham, Kerang, Lakes Entrance, Mildura, Moe, Morwell, Portland, Sale, Swan Hill, Traralgon, Wangaratta, Warragul, Warrnambool and Wodonga.

There are only seven towns throughout Victoria that have an unlicensed Safeway or Coles/BiLo supermarket and where no other major chain liquor store is operating. These are: Bacchus Marsh, Kangaroo Flat, Kyneton, Leongatha, Ocean Grove, Rye and Wonthaggi. Liquorland has indicated to the Office that it is interested in opening stores in Bacchus Marsh, Kangaroo Flat and Ocean Grove. As Liquorland is currently well below the 8% limit, it is possible for them to open stores there. Safeway, which is currently at the 8% limit, has indicated that it would like to license its Leongatha and Rye supermarkets.

For the independent liquor stores of Kyneton and Wonthaggi, the 8% rule provides some protection, in the medium term, from the major chains opening a liquor store. In the case of Wonthaggi, the only two packaged liquor stores in the town are Ritchies Supermarkets and Coalfield Cellars. Ritchies argued in its submission (p.3) that the licensing of the nearby Safeway supermarket would have dire consequences for its supermarket and the town:

> 'We submit that if the Safeway Store was subsequently licensed, the Ritchies Store would be decimated. Employment would suffer, local suppliers

would be reduced. Competition would suffer as would the size of the Ritchies Store. We submit that two successful businesses would be reduced to one in the town.'

There is some concern that the major chains will eventually expand into towns where they currently have no presence. Safeway indicated in discussions that 'as a general statement, we are already in the country towns we want to be in.' It suggested that towns the size of Castlemaine (8000 residents) are too small to sustain a Safeway supermarket and being able to sell liquor will change their position. Contrary to this view, the MGAV informed the Office that it was sceptical that the major chains would not enter small towns, arguing that they are capable of tailoring the format of their stores accordingly. For instance, Coles has established supermarkets in Healesville and Woodend.

In any case, as illustrated by the case study on Castlemaine in Box 4b, a major chain does not necessarily need to be located in a smaller town in order to have an impact on the local retailers in terms of lost business.

The Office believes that the 8% rule appears to benefit (at least in the short to medium term) independent liquor stores that are located in the handful of small towns where there is a major supermarket that is yet to have opened a liquor store.

## Employment and investment

Safeway claimed in its submission (p.29) that opportunities for it to expand its liquor retailing operations will 'only serve to increase the beneficial impact the Company is having on employment in both metropolitan and regional/rural areas.'

Liquorland indicated in its submission (p.6) that most of the new stores that would be established if the 8% rule was removed would be located in metropolitan Melbourne.

IGA Supermarkets & Ritchies argued in its combined submission (p.1) that local communities would be disadvantaged by the removal of the 8% rule, as it would favour the major chains that do not use local suppliers, administration staff or transport companies:

> 'The Independent offers fair competition and services and all employs local suppliers for their operations - all the suppliers are local suppliers and local warehouses and their staff are local people. The major players in the 8% limited Liquor Licence Holders are larger operations networking all their suppliers and administration staff through Central Warehousing and Administration.'

IGA Supermarkets & Ritchies therefore contend that removing the 8% rule will have flow-on effects beyond liquor retailing, as the major supermarkets take a greater market share of the local market. Other types of businesses it argues would be affected include local bakeries, fruit and vegetable suppliers, butchers, milk vendors, transport companies and wine and spirit suppliers.

In the case of Ritchies, a downturn in business could also see local charities receiving lower proceeds from its Community Benefit system, which donates approximately $1 million per year to over 900 charities that have been nominated by customers (see the Ritchies case study in Chapter 4.1 - note that this funding is generated by grocery and liquor sales).

Safeway in its submission (p.30) argued that its growth in rural and regional areas would have beneficial flow-on effects to local industry:

> 'Safeway procures the majority of its contractors in rural and regional areas from local sources. Accordingly, local representatives of relevant construction, repair and maintenance trades, as well as businesses dealing with ancillary services such as locksmithing, gardening, cleaning, advertising, laundry, waste removal and security, have opportunities for growth directly attributable to the presence of a Safeway store in the community.'

Safeway estimates (p.31) that the development of a new supermarket results in an investment in local building contractors of between $2.45 million and $13.25 million, a significant amount for rural and regional areas. Furthermore the maintenance of Safeway stores provides on-going opportunity to local service providers. For instance, in 1998-99 Safeway spent $31million on repairs and maintenance and $3.8 million on laundry services.

The opening of a liquor department by Safeway can also lead to the refurbishment of the entire supermarket, as occurred in Drysdale, Warrnambool and Wodonga. According to Safeway (p.31), a refurbishment generates significant activity for local businesses:

> 'Approximately $400,000 is spent on local contractors and tradesmen (labour only) for an average $3.5 million refurbishment. An additional $400,000- $500,000 of materials may also be purchased from local suppliers.'

It estimates that between $150,000- $200,000 is required to establish a liquor store, most of which most of it will flow to local businesses. Likewise, Liquorland estimated that fitting out one of its stores costs approximately $200,000.

The Office acknowledges that the opening of a liquor store by a major chain should generate significant additional activity in local communities. However, this impact needs to be considered in light of the adverse impact this may have on existing regional independent liquor stores. Unlike the Melbourne metropolitan market, it may be difficult for such businesses to re-position themselves.

# 5 A way forward

**Regardless of any restrictive effect of the 8% rule, the Office has found that the Victorian market for packaged liquor is intensely competitive and offers consumers a diverse range of shopping experiences since the changes introduced by the *Liquor Control Reform Act 1998*. There is no significant barrier to entry for businesses to obtain a packaged liquor licence.**

In terms of competition and diversity, the 8% rule has had an uneven impact across Victoria. The diverse range of liquor retailers is well represented throughout inner Melbourne and regional centres. The 100 unlicensed Safeway and Coles supermarkets, if granted licences tomorrow, would not significantly add to competition and diversity, other than in a small number of locations in outer Melbourne and rural Victoria.

In the short-term, the 8% rule provides some protection to the 50 independently owned liquor stores that are co-located with unlicensed Safeway and Coles supermarkets. However, there is no technical impediment to Safeway or Coles transferring an existing licence to any of its unlicensed supermarkets adjacent to these independently owned liquor stores. Thus, the current protection could be lost at very short notice leaving small businesses little time to adjust their business strategies.

Given this, it would be in the public interest to retain the 8% limit until a suitable alternative is developed that meets the Government's objective of promoting the viability of small businesses and ensuring consumers have access to a diverse range of liquor outlets and products. This chapter explores some possible options for further consideration by the liquor industry and the community.

## 5.1 Approaches

The Office has identified three approaches that the Government could adopt to meet its objective of promoting the viability of small businesses in the packaged liquor market and, flowing from this, to facilitate diversity in the types of liquor stores that are available to consumers. These approaches are examined below.

### Approach A: Retain the 8% rule

This regulatory approach involves maintaining the 8% limit on packaged liquor licence holdings.

As discussed in the report, the 8% rule restricts some consumers from having access to grocery and liquor shopping at the one outlet. The retention of the 8% rule would continue to inconvenience some consumers by preventing them from being able to purchase liquor at their usual supermarket.

The 8% rule has little effect in promoting diversity in the industry or guaranteeing independent liquor stores protection from competition. Small business organisations such as the LSAV and the MGAV have also indicated that the 8% rule in its current form is not effective in promoting its objectives. Independent liquor stores already feel the effects of competition from other independent liquor retailers and from the major chains. Retaining the 8% rule is unlikely to significantly change the viability of these businesses.

There is a relatively small number of independent liquor stores (about 50, or one-in-ten of this type of retailer) that are located in very close proximity to a major chain, where the removal of the 8% rule is likely to have a direct impact on their business.

Retaining the 8% rule will increase the risk that Victoria is judged as not meeting its competition policy commitments, which would have budgetary implications.

Based on these considerations, the Office does not support this approach.

## Approach B: Leave the future development of the industry to the market

This approach involves the Government immediately abolishing the 8% rule on packaged liquor licences and relies on the market to promote its objectives.

Most independent liquor stores already operate in competitive local markets, comprising a variety of liquor stores, including major chain stores. These stores would not be affected by the removal of the 8% rule. Diversity would also not be compromised, as it is already being promoted by discerning consumers and innovative retailers interacting in the market. Consumers would benefit from having greater access to one stop shopping venues.

However, there are 50 independent liquor stores that are located in very close proximity to unlicensed major chain stores. The immediate removal of the 8% rule would give these stores little opportunity to adjust to the changing circumstances and remain a viable business. This impact would be accentuated in small towns. This outcome would not be consistent with the Government's objective of promoting a vibrant small business sector.

The Government can perform a constructive role in addressing the adverse impacts on independent liquor stores, particularly in rural areas, caused by the removal of the 8% rule. This need not require a regulatory approach. For instance, it could co-ordinate an industry-led assistance program and monitor developments in the industry in relation to market concentration and alcohol-related harm.

The Office considers that the Government can play a practical role in facilitating the industry's adjustment to a market that operates without the 8% rule.

Immediately abolishing the 8% rule on packaged liquor licences would give little opportunity for affected independent liquor stores to adjust to the changing circumstances and remain a viable business. It could also lead to a loss of diversity and increased market domination by the major chains. For this reason, the Office does not support this approach.

## Approach C: Promote the 8% rule's underlying intent through other means

The review demonstrates that the 8% rule does not strongly promote the viability of the small business segment of the packaged liquor market and, flowing from this, to facilitate diversity in the type of liquor stores that are available to consumers. The Office considers that alternative measures can be developed that more effectively promote these objectives. Some options for consideration are discussed in section 5.2. However, given the adverse impacts that some small businesses would face if the 8% rule is removed as well as concerns about the potential loss of diversity and increased market domination by the major chains, it should be retained until a suitable alternative is put in place.

An approach that lead to measures that are more effective in promoting the Government's policy objectives could result in a benefit to the public with increased vitality in the economy and greater choice for consumers.

**Recommendation:**

The 8% rule should not be removed unitl there is a mechanism in place to ensure diversity in the market place.

## 5.2 Reform options

The Office has developed three alternative models that could replace the existing arrangements. These are outlined for public consideration.

### C1 Phase-out of 8% rule linked to industry assistance program

**Phasing out the 8% rule**

With the 8% rule having been in place since 1983, it has affected the business strategies of many independent liquor stores, either in terms of where they are located or the type of consumer they seek. If the 8% rule was immediately removed, the affected independent liquor stores would have little time to take the necessary measures to adjust, such as re-positioning themselves to attract a niche market. For instance, an independent liquor store that wished to open a deli section would need to fit-out the store, hire staff with the necessary skills and, in some cases, re-examine its retail lease.

Public health organisations have also raised concerns that a sudden expansion by the major chains may lead to the industry engaging in activities that may increase the risk of alcohol-related harm in some sections of the community.

In light of these issues, it would be prudent for the 8% rule to be phased out over time. In considering a reasonable phase-out period, the Office was mindful that, because of the changes made to the liquor regulatory framework over the last two decades, the industry is already operating in a highly competitive environment and has already adjusted to these pressures. The removal of the 8% rule will not change the circumstances of most independent liquor stores. Therefore, a long-term phase-out period of, say, five years is not in proportion to the size of the industry's adjustment requirement.

The Office is also mindful that the National Competition Council has indicated in its submission (p.5) that it would consider a phased movement towards the removal of the 8% limit within a short period after 2000, on the basis that the Government has commenced action toward this objective, such as introducing legislation to the Parliament.

To remain viable in the market, those independent liquor stores that would be most adversely affected by the removal of the 8% rule require time to re-position themselves. Industry programs need to be developed and implemented in order to facilitate this change.

Considering the financial cost, management skills and time required for a store to re-position itself in the market, a three-year phasing out period would be appropriate.

The phasing-out period could be managed in a variety of ways. For instance, the limit could be:

- retained for up to three years; or
- relaxed by 1% per year for three years and then removed in 2004.

The merits of various phase-out options could be discussed during a period of public consultation.

**Industry assistance program**

Under this reform option, the phasing out of the 8% rule would be linked to the introduction of industry development measures aimed at improving the capacity of small liquor stores to compete in the market. The measures would target those stores most adversely affected by the phasing out of the 8% rule.

The Office is confident that the key industry stakeholders would support the development of an industry assistance program. The LSAV's submission (p.9) called for such a program to be developed 'A comprehensive industry assistance package should be established immediately to improve the commercial skills of small business, including management of IT systems and operations.'

Safeway commented in its submission (p.9) that:

> 'Effective assistance to small business should accordingly focus on addressing the causes of small business failures, and assisting the ability of small

businesses to compete in an open market. Assistance of this nature could be provided jointly through government and an appropriately representative industry body. Woolworths / Safeway would be prepared to assist with such an initiative in conjunction with the wider retail industry.'

Liquorland indicated in its submission (p.8) that:

'There are other more appropriate ways of providing assistance to small business such as through providing advice and training as has been done with the milkbar/convenience store sector.'

There was consensus at the half day stakeholder workshop for a phasing out of the 8% rule, tied to an industry assistance program. This indicated that such an approach would probably meet with industry approval.

This reform option benefits consumers by improving the range of liquor outlets that Victorians can conveniently access. It would also provide independent liquor stores with the time and support to adjust to changed market conditions. Certainty in the regulatory environment could lead to increased investment.

## C2 Retain a cap of liquor licence holdings in regional Victoria

The review has acknowledged that there may be limited opportunities for those independent liquor stores in regional Victoria that would be directly affected by the removal of the 8% rule to re-position themselves in the market. While Melbourne has a diverse economy and large population, the impact on a small town of a major chain opening a liquor store can have adverse impacts on small grocery and liquor retailers.

In order to minimise the burden in regional Victoria caused by the removal of the 8% rule, a legislative cap on liquor licence holdings in regional Victoria could be retained, while the cap in the Melbourne metropolitan area is removed. Of the 502 packaged liquor licences that are located outside the Melbourne metropolitan area, Safeway has 31 (6.2%) and Liquorland 21 (4.2%).

There are seven unlicensed major supermarkets in provincial Victoria and 19 in rural areas. This reform option would particularly benefit the 29 independent liquor stores in provincial Victoria and 49 stores in rural Victoria.

However, retaining a cap in regional Victoria may disadvantage those consumers in regional and rural Victoria who are unable to shop for groceries and liquor at the same venue.

There are also a number of practical difficulties with this option. The same design flaws that were outlined in Chapter 3 in relation to the 8% rule would also apply to a cap on liquor licence holdings in regional Victoria. Also, with Safeway and Liquorland having different levels of holdings in regional Victoria, it would be difficult to determine the appropriate rate at which the cap should be set to cover each company.

## C3 Market share

The Office has identified several operational aspects that undermine the effectiveness of 8% rule in meeting its objectives. One of the key reasons is that it seeks to constrain the growth of the major chains through limiting their licence holdings. However, while the major chains hold approximately 16% of packaged liquor licences, they hold approximately 40% of the market share.

A more effective means of addressing market concentration concerns would be to limit the market share of a single major chain and/or the combined share of three to four major chains.

However, there are several practical difficulties in adopting this reform option. For instance, would the market for packaged liquor be defined as including sales from hotel bottle shops? Furthermore, there may be difficulties in obtaining the necessary data to calculate the size of the market and determine the market share of each major chain.

# 5.3 Public consultation

The Government has already indicated that it wishes to consult with the public prior to developing its response to this review. The Office considers that a consultation period of at least 28 days is necessary to enable interested parties to have time to analyse and respond to this report's findings and recommendations.

## Attachment A

# List of organisations consulted

During the course of the review, the Office of Regulation Reform consulted with the following organisations:

- Australian Consumers Association
- Australian Drug Foundation
- Australian Hotels & Hospitality Association (Victoria)
- Australian Liquor, Hospitality & Miscellaneous Workers Union
- Australian Liquor Marketers
- Australian Retailers Association
- Carlton & United Breweries
- Clubs Victoria
- Co-ordinating Council on the Control of Liquor Abuse
- D McGrath & Associates
- Dan Murphy stores
- Distilled Spirits Industry Council of Australia
- Franklins
- Erik B Hopkinson & Associates
- 'Liquor Barons- Cheers- Liquor for Less' buying group
- Liquor Stores Association of Victoria
- Liquorland/Coles-Myer
- Master Grocers Association of Victoria
- National Competition Council
- Restaurant & Catering Association of Victoria
- Ritchies Stores
- Safeway/Woolworths
- Shop, Distributive & Allied Employees Union
- T J Board & Sons estate agents
- Tooheys Victoria
- Turning Point Alcohol & Drug Centre
- Victoria Police
- Victorian Wine Industry Association

The Office also spoke to numerous liquor business owners during the preparation of case studies.

## Attachment B

# Overview of Submissions

| Organisation | Who it represents | Effectiveness of the 8% rule | Recommendations |
|---|---|---|---|
| Victoria Police | Victorian police force. | • The major chains are responsible retailers of liquor.<br>• The 8% rule does not promote harm minimisation objectives. | • Supports the removal of the 8% limit. |
| National Competition Council | Commonwealth agency responsible for assessing progress by governments against the agreed competition policy commitments. | • The Council will look for removal of the 8% limit on packaged liquor licences by the end of 2000 unless the review provides a compelling case to show that it offers a net benefit to the community. | • If the review finds in favour of removing the 8% limit, appropriate mechanisms for assisting the industry to adjust to the new arrangements should be investigated.<br>• The Council would consider phased movement towards removal of the 8% limit within a short period after 2000, on the basis that the Government has commenced action toward this objective. |
| Australian Drug Foundation | Independent, non-profit organisation working to prevent and reduce alcohol and drug problems in the Australian community. | • If the 8% rule is removed there may be a concentrated period of aggressive competition and the potential to increase binge drinking, especially among young people. | • That the 8% limit be retained.<br>• If not, strategies introduced to minimise the damage that any period of aggressive competition between outlets may cause, eg. setting a minimum price of alcohol; setting a level below which discounting may not go below; and guidelines on what constitute appropriate and inappropriate promotional exercises. |
| Liquor Barons- Cheers- Liquor for Less buying group | Buying group that represents 278 independent liquor outlets throughout Victoria. | • Protects the role of community-orientated independent liquor stores in the market. | • If the limit is lifted the chains should be forced to buy existing licences from existing stores to ensure current licensees get a return on their investment. |
| Turning Point | Non-profit organisation that provides treatment, research services, training and support initiatives to reduce alcohol and drug related problems in our community. | • Concerned with public health consequences and likelihood of increased access of packaged liquor through supermarkets.<br>• Concerned with implications of likely promotion activities during a time of change in the market place. | • On balance, recommends that there is some benefit in retaining the limit.<br>• A more sophisticated analysis of data linking increased availability of alcohol to increased consumption is necessary. |
| Safeway | The Victorian Supermarkets Division of Woolworths Ltd. | • Inconveniences consumers, impedes investment, and does not promote the viability of small business. | • Supports removal of the 8% limit. |
| Victorian Wine Industry Association | Has over 130 members, who represent 90% of Victoria's wine making and winegrape growing sectors of the industry. | • Submits that the 8% rule is a reasonable measure to ensure the diversity of retail liquor enterprises, through which the Victorian wine industry can access the retail market. | • Maintain the 8% rule.<br>• Will only support the lifting of the 8% limit if other avenues that wine makers to retail their products could be identified and proven to be effective. |
| Confidential submission | Former owner of independent liquor store. | • Inconveniences consumers from one-stop shopping.<br>• Is not necessary to protect independent liquor stores from the major chains, as they do not seek to drive out competitors. | • If the 8% rule is removed, the Government should consider strategies to help small business survive and compete more effectively. |
| IGA & Ritchies | Ritchies has 18 independent supermarkets and IGA has several hundred licensed supermarkets. | • 8% rule protects the market from dominance by the major chains. This would stifle competition, have an adverse impact on regional economies and reduce the number of independent operators. | • Maintain the 8% rule.<br>• If the 8% rule is removed, it should be phased out in the following manner:<br>- A two year period of 'grace' to prepare the independent operators for the change.<br>- A phase-in period of five years for a gradual change, so as to minimise harm to all the retail liquor sector. |

| Organisation | Who it represents | Effectiveness of the 8% rule | Recommendations |
|---|---|---|---|
| Australian Liquor Marketers | Wholesales liquor to over 1500 licensed outlets within Victoria. | • 8% limit is ineffective in protecting small business. | • Retain the 8% limit on liquor licences and re-introduce the 'needs criteria'.<br>• Consideration for new licences should be based on population.<br>• Substantial values should be placed on liquor licences, similar to taxi licences. |
| Master Grocers Association of Victoria | The MGAV represents 700 independent retailers, 320 of who are licensed packaged liquor outlets. | • Submits that the 8% cap has become ineffective and no longer protects the industry or small business. | • Provide for an orderly transition to a deregulated market by phasing out the 8% rule over a five-year period.<br>• Introduce a population based cap on new licences.<br>• Provide a government-funded compensation package to current licensees who elect to surrender a current licence over the next five years.<br>• Develop a national liquor control model. |
| Porters Liquor, Hawthorn store | Independent liquor store. | • Highlights the large number of liquor outlets that already exist in the Hawthorn area. | • Supports the maintenance of the 8% limit. |
| Liquor Stores Association of Victoria | Represents approximately 200 independent liquor stores. | • Submits that for real diversity and true competition to exist there must be a fair and equitable share of the overall market guaranteed by legislation for small business. | • A national approach is required to achieve orderly industry development and fair involvement of small business in the packaged liquor industry.<br>• Until a national approach is implemented the LSAV insists that the 8% cap is retained and strengthened.<br>• Implementation of a range of industry support initiatives such as compensation, code of conduct and quality assurance programs. |
| Liquorland | Wholly owned subsidiary of Coles Myer Ltd. Holder of 93 packaged liquor licences that trade under the business names of Liquorland, Vintage Cellars and Quaffers. | • Submits that the 8% limit inconveniences consumers and is ineffective in protecting small business. | • Abolish the 8% limit and support small business through providing industry support including advice and training opportunities. |
| Southern Independent Liquor | Promotions, marketing and buying group for 300 independent liquor retailers across Victoria, such as Liquorstop, Duncans and Liquor World. | • Supports the maintenance of the 8% limit as a way of ensuring that major chains do not dominate the market. | • Reintroduce the 'needs criteria'.<br>• Provide that general licences cannot be used for the selling of packaged liquor.<br>• Issue new licences on a maximum per capita basis. |
| WineSlashers | Chain of liquor stores. | • Supports the maintenance of the 8% limit. Submits that large corporations with aggressive pricing and promotions activities control the liquor industry, which disadvantages small business. | • Will support any attempt to provide a fair and equal retail environment for small business. |

## Attachment C

# Stakeholder Half Day Workshop

As part of its consultation process, the Office convened a workshop of key stakeholders on Thursday 4 May 2000 to identify ways of maintaining diversity in the Victorian market for packaged liquor.

## Attendance

The workshop was attended by a wide range of organisations with an interest in the 8% rule. Five industry bodies that represent small businesses participated in the workshop: Liquor Stores Association of Victoria, Master Grocers Association of Victoria, Australian Hotels & Hospitality Association, Restaurant & Catering Association of Victoria and Ritchies Stores.

Major chains and producer groups, Safeway, Liquorland, Franklins and Distilled Spirits Industry Council of Australia, also participated in the workshop. Turning Point and the Victoria Police represented harm minimisation interests. Other participants included the Australian Retailers Association, the Australian Liquor Marketers and two industry consultants (Denis McGrath and Erik Hopkinson).

## Methodology

The workshop was introduced by the Minister for Small Business, the Hon. Marsha Thomson and facilitated by Mr Max Dumais, CEO De Bono Institute. The workshop dealt with the question, 'What would it take to maintain the original intent of the 8% limit in the current circumstances?' The process adopted for tackling this question and the issues surrounding it was based on Edward De Bono's *Six Hat Thinking* method.

## Outcomes

In bringing together all the key parties, the workshop provided a format for a frank discussion and exchange of views on the effectiveness of the 8% rule. Stakeholders were also given the opportunity to discuss how to attain the Government's main policy objective of diversity in the market place, with particular focus on recognising the needs of small business.

The main areas of consensus reached at the workshop were as follows:

- The 8% limit is not an effective way to meet the original intent of supporting and producing the sort of security small business is looking for;
- If the 8% rule was replaced, it should be phased out over time; and
- A comprehensive industry assistance package should be developed if the 8% rule was replaced.

The compensation issue was addressed but not resolved in the workshop.

These outcomes should not be taken as representing the official position of all the parties at the workshop, as several proposed additional measures in their submissions.

The workshop formed an integral part of the consultative process and proved to be an effective means of considering the operation of the 8% rule and the broader issues affecting the packaged liquor industry.

## Attachment D

# Consumer survey

The Office of Regulation Reform commissioned OzInfo to survey 1,000 people throughout Victoria who had purchased liquor in the last month. There were 545 female and 455 males respondents.

The survey assisted the Office in determining why consumers purchase where they do, factors that affect their consumption decisions and how important these factors are.

Consumers were initially asked what type of outlet they purchased liquor from. Stores were categorised as:

- Major chains (Liquorland, Safeway and Franklins)
- Specialist stores (Dan Murphy's, Quaffers)
- Independent liquor stores (including those operating under banners eg. Liquor Barons)
- Hotel bottle shop (drive-through bottle shops or bottle shops attached to hotels)
- Independent Supermarkets (IGA, Ritchies etc).

Consumers were asked to determine their satisfaction with their usual liquor outlet based on certain store characteristics. The store characteristics were: price competitiveness; range in product; client service; location; and availability of other products. Consumers were then asked how important each of these store characteristics were.

Also, respondents who did not have liquor at their regular supermarket were asked whether they would use such an outlet if it became available. The likely reason for switching their purchases to prospective new outlets in their supermarkets was then examined.

Lastly, consumers were asked whether, in the last three years, they had increased or decreased the liquor they had purchased from certain outlets. The reasons for changing were then explored. The results are summarised in Chapters 2.1 and 4.1.

Attachment E

# Interstate Benchmarking of Regulatory Framework for Businesses Selling Packaged Liquor

| | VIC | NSW | QLD | SA | WA | TAS | ACT | NT |
|---|---|---|---|---|---|---|---|---|
| **What types of businesses are generally prohibited?** | Petrol stations Drive-in cinemas (Restrictions on milk bars, mixed bus. and convenience stores). | At Authority's discretion. (Milk bars, petrol stations, convenience stores rarely licensed). | Convenience stores Petrol stations (Govt policy prohibits liquor shops within supermarkets). | Convenience stores Petrol stations Liquor shops within supermarkets. | At Authority's discretion. (Petrol stations and convenience stores rarely licensed). | Supermarkets (Restrictions on convenience stores and petrol stations). | **Restrictions on petrol stations.** | At Commission's discretion. (One service station is licensed. Restrictions in certain remote areas). |
| **What are the main licence categories that permit packaged liquor sales and what is their standard trading hours?** | **General** (on & off) 7am - 11pm (from 10am on Sun) **Packaged** (off) 9am - 11pm (from 10am on Sun) | **Hotelier** (on & off) 5am - 12am (Sun: 10am - 10pm) **Off licence** 5am - 12am (Sun 10am - 10pm) | **General** (on & off) 10am - 12am | **Hotel** (on & off) On: 5am - 12am 11am - 8pm (Sun) Off: 8am - 9pm **Retail merchant** (off) 8am - 9pm everyday | **Hotel/Tavern** (on & off) 6am - 12am **Liquor store** (off) 8am - 10pm | **General** (on & off) 5am - 12am **Off licence** 8am - 6pm Mon -Sat | **General** (on & off) 12am - 5am & 8am -12am **Off licence** 7 am - 11pm | **On-licence** 10am - 12am **Off licence** 10am - 10pm (from 9am on Sat) |
| **How many active licences are there, as at 30 June 1999?** | **General** (Cl.1) 1607 **Packaged** 1158 (as at Feb 1999) | **Hotelier** 2,035 **Off** 1,433 | **General** 1210 | **Hotel** 672 **Retail** 192 | **Hotel/Tavern** 619 **Liquor Store** 457 | **General** 300 **Off-Licence** 20 | **General** 13 **Off** 159 | **On** 251 **Off** 94 |
| **Are new applicants required to satisfy a 'needs' criteria?** | No | Yes | Yes | Yes | Yes | No (But Board has some discretion) | No | Yes |
| **On what bases can objections against an application be lodged?** | Residents can apply on *amenity* grounds | Persons can object due to *not being in the public interest* and the *needs* of the public are already adequately met by existing facilities. | *Amenity* grounds - any adult can object on basis that it would unduly inconvenience them in living, working or doing business. | Any person can object due to licence not necessary for the *needs of public*; no public *demand* for liquor; fit & proper person; *amenity*. | A resident or licence-holder in the affected area can object due to *public interest; harm* or ill-health to people; *unnecessary; amenity*. | No legislative provision, but the Authority will consider submissions either *for or against a proposal*. | No provision for objections. | A person may object, but *not on the grounds of adversely affecting the business* carried on at another premises |
| **Are there limits on licence holdings?** | Yes - 8% limit for packaged licences. | No. | No. | No. | No. | No. | No. | No. |
| **How many packaged liquor licences (and % of total) do the chains hold? *(est.)*** <br>• Coles-Myer <br>• Woolworths | <br><br>93 (7.2%) <br>103 (7.98%) | <br><br>210 (15%) <br>118 (8%) | <br><br>5 (0.4%) <br>None (0%) | <br><br>15% combined (est) | <br><br>70 (15%) <br>35 (8%) | <br><br>N/A <br>N/A | <br><br>8 (5%) <br>13 (8%) | <br><br>3 (3%) <br>6 (6%) |
| **Can a liquor store diversify into non-liquor products?** | Yes, but 'predominant activity' (ie. 50% of turnover) must be liquor sales. | No | No | No | Yes, but some products (eg milk) may need to be sold in a separate area. | Yes | Yes | Yes, but need approval of the Commission. |
| **What are the fees for obtaining a packaged liquor licence?** | $500 | $500 | $1,689.50 (min), plus a variable 'premium' (eg. $60,000 in Brisbane) NB. Premiums to be abolished by Oct 2001. | $352.25 | $355 | $1,000 | $1,312 | $200 |
| **Does the licence itself have a market value?** | No | Yes (Up to approx. $60,000). | Yes (reflects the premium). | Yes But difficult to estimate | Yes But difficult to estimate | No | No | Yes But difficult to estimate. |
| **What is the status of the NCP review?** | Completed and reforms implemented. | Review currently being undertaken. | Completed - legislation to be passed in Spring. | Completed, but 'needs' criteria to be reviewed. | Review currently being undertaken. | Has not yet commenced. | Review currently being undertaken. | Review currently being undertaken. |

**NB: This comparison has been prepared on the basis of information provided by each jurisdiction's liquor licensing body**

## Attachment F

## Government of Victoria

# Review of 8% Limit on Liquor Licence Holdings: Terms of Reference

This review of legislative limits on holdings by the same or related persons of certain categories of liquor licences has been jointly commissioned by the Treasurer and Minister for Small Business in order to further examine its socio-economic consequences and to develop a range of feasible reform options. The review will have regard to the findings of the 1998 National Competition Policy (NCP) review of liquor legislation and the Report of the Commonwealth Parliament's Joint Select Committee on the Retailing Sector.

## Scope of the review

The review is required to examine the case for retaining and/or extending legislative limits on holdings by the same or related persons of packaged liquor licences under Section 23 of the *Liquor Control Reform Act 1998*. The appropriateness of extending the coverage of legislative limits to other liquor licence categories will also be examined. The review will take into account any impact that the new legislation has had on the practical effect of the 8% limit.

The review will develop and consider the merits of a range of innovative and feasible reform options to ensure the consistency of liquor legislation with NCP principles. Explicit consideration should be given to any likely significant structural adjustment costs that would be borne by particular classes of businesses.

## Methodology

The review will be undertaken in accordance with the methodological guidance contained in the Council of Australian Government's (CoAG) *Competition Principles Agreement* and the Victorian Government's *Guidelines for the Review of Legislative Restrictions on Competition.*

When considering costs and benefits to Victoria of reform, the review will have particular regard to:

- the interests of consumers;
- the effectiveness of protections under the *Trade Practices Act 1974*;
- social welfare considerations;
- economic and regional development effects; and
- employment and investment impacts.

## Review arrangements

The review is to be undertaken by the Office of Regulation Reform and will be oversighted by a Reference Group to ensure its consistency with NCP principles and these terms of reference. The Reference Group will be comprised of Associate Professor David Johnson, Mr John Sweetman AM and Dr Chee-Wah Cheah, Assistant Director (Policy) from the Department of Treasury & Finance.

## Consultation

Targeted consultation will be undertaken with key interest groups.

## Completion date

The review will report its findings and recommendations to the Treasurer and Minister for Small Business by 31 May 2000 (later extended to 30 June 2000).

## Attachment G

# Checklist of report against terms of reference

| | Section in Report |
|---|---|
| This review of legislative limits on holdings by the same or related persons of certain categories of liquor licences has been jointly commissioned by the Treasurer and Minister for Small Business in order to further examine its socio-economic consequences and to develop a range of feasible reform options. The review will have regard to the **findings of the 1998 National Competition Policy (NCP) review of liquor legislation...** | 3 |
| ...and the **Report of the Commonwealth Parliament's Joint Select Committee on the Retailing Sector.** | 3.3 |

## Scope of the review

| | Section in Report |
|---|---|
| The review is required to examine the case for retaining and/or extending legislative limits on holdings by the same or related persons of packaged liquor licences under Section 23 of the *Liquor Control Reform Act 1998*. **The appropriateness of extending the coverage of legislative limits to other liquor licence categories** will also be examined. | 3.3 |
| The review will take into account **any impact that the new legislation has had** on the practical effect of the 8% limit. | 3.1 |
| The review will **develop and consider the merits of a range of innovative and feasible reform options** to ensure the consistency of liquor legislation with NCP principles. | 5.2 |
| Explicit consideration should be given to **any likely significant structural adjustment costs** that would be borne by particular classes of businesses. | 4.2 |

## Methodology

| | Section in Report |
|---|---|
| The review will be undertaken in accordance with the methodological guidance contained in the Council of Australian Government's (CoAG) *Competition Principles Agreement* and the Victorian Government's *Guidelines for the Review of Legislative Restrictions on Competition.* | 3 |
| When considering costs and benefits to Victoria of reform, the review will have particular regard to: | |
| • **the interests of consumers;** | 4.1 |
| • **the effectiveness of protections under the *Trade Practices Act 1974*;** | 3.3 |
| • **social welfare considerations;** | 4.3 |
| • **economic and regional development effects; and** | 4.5 |
| • **employment and investment impacts.** | 4.3 |

## Review arrangements

The review is to be undertaken by the Office of Regulation Reform and will be oversighted by a Reference Group to ensure its consistency with NCP principles and these terms of reference.
The Reference Group will be comprised of Associate Professor David Johnson, Mr John Sweetman AM and Dr Chee-Wah Cheah, Assistant Director (Policy) from the Department of Treasury & Finance.

## Consultation

| | Section in Report |
|---|---|
| Targeted consultation will be undertaken with key interest groups. | Att. A, B, C |

## Completion date

The review will report its findings and recommendations to the Treasurer and Minister for Small Business by 31 May 2000 **(extended to 30 June 2000)**