



Timeline of events – Shopper docket investigation

The following table outlines in chronological order the sequence of events relating to the shopper docket investigation undertaken by the Office of Liquor, Gaming and Racing (OLGR) in 2013. Under some of the activities, quotes have been extracted from the documents to demonstrate the nature of correspondence.

Date	Details	Doc
31 January 2013	Dr John Kaye writes to the Director General, NSW Trade and Investment outlining his concern about Woolworths shopper dockets.	1
1 March 2013	A complaint was made by a member of the community about shopper dockets to OLGR.	2
25 March 2013	OLGR's Director of Compliance writes to Woolworths asking them to show cause by 15 April 2013, as to why OLGR should not restrict or prohibit shopper dockets.	3
25 March 2013	OLGR's Director of Compliance writes to Coles asking them to show cause by 15 April 2013, as to why OLGR should not restrict or prohibit shopper dockets.	31
27 March 2013	OLGR's Compliance Officer emails Woolworths' lawyer confirming a phone conversation (25 March 2013) about the request to 'show cause'. <i>"Your client is considering taking no action in response to the show cause notice and appealing the matter if a s102A decision is made."</i> <i>"Your client is concerned that the show cause letter was "issued without thought" and "attacks the fundamental concept of discount liquor."</i>	4
27 March 2013	Woolworths' lawyer responds to an email acknowledging receipt of email sent on 27 March 2013.	5
28 March 2013	An internal brief was sent to the Director General on "Compliant regarding liquor promotions offered by Coles and Woolworths". <i>"Compliance Branch was contacted by Mr Tony Schwartz on Monday 25 March 2013 who advised he was acting for Woolworths and indicated his client instructed it was of a mind to ignore the notice as it was "issued without thought" and "attacked the fundamental concept of discount liquor". The statements represented by Mr Schwartz attributed to Woolworths indicate it considers it has a right to discount liquor with limited regard to obligations to secure the objects of the Act or community concern and around the availability of cheap alcohol at packaged liquor outlets."</i>	50

Date	Details	Doc
2 April 2013	Newcastle Herald journalist Ms Alison Branley emails NSW Department of Trade and Investment Media Manager requesting comments on takeaway alcohol promotional practices and in particular the practices of issuing shopper dockets. OLGR's Media Manager provides comments as requested.	6
8 April 2013	Woolworths' lawyer emails OLGR's Compliance Officer indicating that Woolworths will provide a submission to 'show cause'. Further information was also requested from Woolworths about the "reviewed material" which OLGR mentioned in their letter on 25 March 2013.	7
9 April 2013	Coles Licensing and Regulatory Affairs Manager responds to OLGR's request to 'show cause'. The submission outlines Coles' position on shopper dockets stating that there is no evidence that the activities of shopper dockets are harmful.	32
10 April 2013	OLGR's Compliance Officer responds to Woolworths' request for more.	8
12 April 2013	Woolworths' lawyer emails OLGR's Compliance Officer requesting an extension for a submission to 'show cause'.	9
15 April 2013	OLGR's Compliance Officer grants an extension to Woolworths' until 18 April 2013.	10
18 April 2013	Woolworths' lawyer provides submission to OLGR in response to a 'show cause'. The submission outlines Woolworths position on Shopper dockets stating that there is no evidence that the activities of shopper dockets are harmful.	11
23 April 2013	Ms Branley (Newcastle Herald) emails NSW Department of Trade and Investment Media Manager asking for an update on the outcome of the investigation into shopper dockets.	12
30 April 2013	Woolworths, Public Affairs Manager writes to Minister Souris requesting his involvement in OLGR's process. <i>"I write to request your involvement in reviewing the processes within the NSW Office of Liquor, Gaming and Racing (OLGR) regarding the disclosure of confidential information."</i> <i>"We consider it inappropriate that the issue of the show cause notice and the matter under review was disclosed to the Newcastle Herald's Ms Branley. We were not advised that the matter was to be made public nor were we given the opportunity to appeal this decision."</i> <i>"The commitment of the Government and its officials to this stated goal would be worth measuring against the example from</i>	13

Date	Details	Doc
	<i>OLGR and the considerable time, energy and expense that has been incurred by our company in dealing with this matter.”</i>	
3 May 2013	Director General of the NSW Department of Trade and Investment writes to complainant updating them on the investigation into shopper dockets.	14
3 May 2013	Director General writes to Dr John Kaye updating him on the investigation into shopper dockets.	15
13 May 2013	OLGR’s Director of Compliance, writes to Professor Sandra Jones requesting expert advice on ten questions relating to alcohol consumption and promotions.	16
21 May 2013	OLGR’s Director of Compliance, writes to Woolworths’ lawyer providing Woolworths with an opportunity to respond to Professor Jones report and also an opportunity to respond to OLGR’s Compliance Officer report. <i>“The officer who attended the BWS store on 2 April 2013 was able to purchase 6 bottles of the wine and receive 18 bonus bottles of the cider in production on a single receipt. This limited testing throws doubt on the effectiveness of controls implemented by individual stores and provides an indication of poor compliance culture.”</i>	17
21 May 2013	OLGR’s Director of Compliance, writes to Coles providing them with an opportunity to respond to Professor Jones report.	33
24 May 2013	Coles, Licensing and Regulatory Affairs Manager writes to OLGR’s Director of Compliance requesting an extension to respond to Professor Jones report.	34
28 May 2013	OLGR’s Director of Compliance writes to Coles, Licensing and Regulatory Affairs Manager granting an extension to 11 June 2013.	35
29 May 2013	Woolworths’ lawyer responds to OLGR’s letter dated 21 May 2013. <i>“We also confirm that representatives of Woolworths Liquor Group request the opportunity to attend and meet with you to discuss this matter in order to resolve your concerns, taking into account the matters that have now been raised. Indeed, they wish to do so in light of the potential seriousness of the letters raised, especially in the event that the assumptions set out above are incorrect.”</i>	18
31 May 2013	An internal brief was sent to the Director General on “Disclosure of information in respect to section 102A <i>Liquor Act 2007</i> proceedings”. <i>“The release of information in this instance was not proactive but in response to a media enquiry. It did not involve a disclosure of confidential, commercially sensitive information, but rather provided a general summation of the status of OLGR’s regulatory</i>	43

Date	Details	Doc
	<i>activities.”</i>	
31 May 2013	<p>Director General responds to Woolworths’s on behalf of Minister Souris and the Deputy Premier re: Disclosure of information in the media</p> <p><i>“I am advised that the Office of Liquor, Gaming and Racing considers that the controlled release of information into the public domain in the exercise of function under liquor legislation is entirely appropriate and an important regulatory tool, consistent with the objects of the Act, including to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspiration of the community.</i></p> <p><i>The Office of Liquor, Gaming and Racing advises it rejects the assertion that the decision-making process could be affected by disclosure of a general summation of the status of its regulatory activities. I am advised that there has not been any suggestion by the Office of Liquor, Gaming and Racing that a decision has been made in respect of the show cause notice.”</i></p>	19
3 June 2013	Coles writes to OLGR’s Director of Compliance requesting a further extension until 25 June 2013.	36
3 June 2013	OLGR’s Compliance Officer emails Coles granting an extension to 25 June 2013.	37
4 June 2013	<p>Woolworths’s lawyer email OLGR’s Compliance Officer requesting a response to their letter dated 29 May 2013.</p> <p><i>“Would you kindly let me know when the Director General will be in a position to instruct you to reply, in particular to our request to meet to discuss the issues raised?</i></p> <p><i>Our concern is fitting within your time table requiring the response to your letter of 21 May 2013 and the Jones report.</i></p> <p><i>Depending on your reply (to the attached letter) we may need additional time to respond, or I may receive instructions to approach the Federal Court because of potential Competition issues and processes to date.”</i></p>	Doc in 47
6 June 2013	OLGR’s Director of Compliance writes to Woolworths’ lawyers in response to the 29 May 2013 letter and requests further information from Woolworths to support their submission to date.	20
6 June 2013	OLGR’s Director of Compliance writes to Coles requesting further information to support their submission to date.	38
13 June 2013	<p>Woolworths, Public Affairs Manager responds to the Director General letter on Disclosure of information in respect to section 102A <i>Liquor Act 2007</i> proceedings.</p> <p><i>“In fact, the initial story itself appears to have been an opportunistic media “leak” rather than information for which the Regulator wished to take responsibility of ownership.”</i></p>	21

Date	Details	Doc
20 June 2013	<p>Coles' lawyer emails OLGR's Compliance Officer requesting a further extension due to the fact the expert critiquing Professor Jones' report being unwell.</p> <p>An extension as sought for 2 July 2013.</p>	39
21 June 2013	OLGR's Acting Manager Investigations grants Coles an extension to 2 July 2013.	40
21 June 2013	Woolworths' lawyers request an extension to respond to Professor Jones report.	22
21 June 2013	OLGR's Acting Manager Investigations, grants Woolworths an extension to 5 July 2013.	23
24 June 2013	<p>An internal brief was sent to the Director General re: Woolworths media allegations</p> <p><i>"Woolworths' concern about this matter could have been addressed with contact from Manager, Public Affairs to the Department's Media & Communications Unit (contact details are on the OLGR website). The Media & Communications Unit would have provided the relevant advice that information was released to the Newcastle Herald in response to a specific media enquiry in accordance with normal practices. The Media & Communications Unit has not had any contact with Woolworths' Manager, Public Affairs."</i></p> <p><i>"The correspondence from Woolworths alleging improper release of information appears to be an attempt to intimidate and disrupt OLGR's regulatory intervention and interfere with the controlled release of regulatory information in the public interest. There is a significant public interest in ensuring the community is aware of and informed about regulatory action, including efforts by OLGR to address alcohol-related harm. While each matter must be assessed on its merits, fair, balanced and accurate reporting of regulatory activity, that does not carry defamatory imputations or prejudice the conduct of inquiries, is appropriate and good practice."</i></p> <p><i>"The Woolworths correspondence appears to be a calculated attempt to undermine ongoing regulatory inquiries and quash OLGR's capacity to ventilate regulatory activities of public interest."</i></p>	44
2 July 2013	<p>Director General responds to Woolworths' letter dated 13 June 2013 on Disclosure of information in respect to section 102A Liquor Act 2007 proceedings</p> <p><i>"I am satisfied these protocols were adhered to in this instance and the disclosure of information was judicious, factual in nature and accurately represented the status of OLGR's inquiries."</i></p>	24
2 July 2013	<p>Coles' lawyers provide a submission to OLGR responding to Professor Jones' expert advice.</p> <p>The submission provides a critique from a company Social Impact Strategies.</p>	41

Date	Details	Doc
4 July 2013	Woolworths' lawyers provide submission to OLGR responding to Professor Jones' expert advice. The submission provides two critiques from two international Professors.	25
26 July 2013	An internal brief was sent to the Director General on "Intervention in 'shopper docket' promotions – Coles Liquor" <i>"On review of the activity and submissions, there is sufficient evidence to support a preliminary view that the activity is likely to encourage the misuse and abuse of liquor as contemplated by section 102A of the Act. A consideration of the available material provides a sound basis to notify Coles Liquor of the proposed decision to exercise the section 102A power to restrict the activity while providing a final opportunity for further submissions to inform a final determination."</i> <i>"The proposed decision seeks to restrict a subset of "shopper dockets" distributed through Coles Supermarkets, the Liquorland "docket deals", due to the nature of risk associated with the distribution channel and failure to demonstrate adequate risk assessment or mitigation measures which present and unacceptable risk of encouraging the misuse or abuse of alcohol."</i>	45
29 July 2013	Director General hand writes a note on brief provided to him on 26 July 2013. <i>"Not satisfied that case made out that likely to encourage misuse or abuse of liquor. Evidence of redemption does not support risk group redemption nor distinguish this activity from other marketing forms. The shopper dockets are issued by a company not governed by the licensing regime. Could not control issuing, only redemption. Action would make one offs incapable of marketing and promotional offers from a very wide range of businesses and business models. Misuse and abuse not linked to shopper docket in the analysis in direct way."</i>	45
7 August 2013	A community member emails the former Premier, the Hon Barry O'Farrell expressing their concern about shopper dockets.	26
27 August 2013	An internal brief was sent to the Director General on "Intervention in 'shopper docket' promotions – Coles Liquor". <i>"In response to that brief the Director General has advised that he is not satisfied the case was made out that the activity was likely to encourage the misuse of or abuse of liquor."</i>	46
27 August 2013	An internal brief was sent to the Director General on "Intervention in 'shopper docket' promotions – Woolworths Limited". This brief also contains an OLGR Compliance report. The OLGR Compliance report stated: <i>"The compliance officer was able to purchase 6 bottles of the wine and receive 18 bonus bottles of the cider on production of a single receipt."</i> <i>"On 4 June 2013, as Mr Schwartz had yet to receive correspondence from OLGR, he sent an email seeking a response and advising that depending on the reply, Woolworths Limited may need additional time to respond or may approach the Federal</i>	47

Date	Details	Doc
30 August 2013	<p><i>Court due to the “potential competition issues and process to date.”</i></p> <p>Director General writes to the Woolworths’ lawyer informing them that shopper dockets will not be restricted.</p> <p><i>“In the context of the specific “shopper docket” offer undertaken by Woolworths Limited which was the subject of the investigation and based on the material provided to me I cannot, after careful consideration be satisfied that the requirements of section 102A of the Liquor Act 2007 have been met empowering me to restrict or prohibit those activities.”</i></p> <p><i>“Notwithstanding my decision on this occasion, it is apparent that “shopper docket” activities present potential risks which require careful and ongoing risk management.”</i></p>	27
30 August 2013	The Director General writes to the community member who submitted the original complaint (25 March 2013) informing them that shopper dockets will not be restricted.	28
30 August 2013	The Director General writes to Dr John Kaye informing him that shopper dockets will not be restricted.	29
30 August 2013	The Director General writes to Coles’ lawyer informing them that shopper dockets will not be restricted.	42
No date	Unsigned letter from the then Minister Souris to the community member who emailed the Premier on 7 August 2013 regarding their concern with shopper dockets	30