



# ***EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE***

**Members present:**

Ms KE Richards MP—Chair  
Mr N Dametto MP  
Mr J Lister MP  
Mr BL O'Rourke MP  
Mr JA Sullivan MP

**Staff present:**

Mr R Hansen—Committee Secretary  
Ms R Duncan—Assistant Committee Secretary

## **PUBLIC BRIEFING—INQUIRY INTO THE OPERATION OF THE TRADING (ALLOWABLE HOURS) ACT 1990**

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 1 NOVEMBER 2021**

**Brisbane**

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The committee met at 11.18 am.

**JAMES, Mr Tony, Acting Deputy Director-General, Office of Industrial Relations, Department of Education**

**MOXHAM, Mr Rhett, Acting Director, Strategic Policy, Office of Industrial Relations, Department of Education**

**CHAIR:** Good morning. I welcome representatives from the Department of Education. Welcome, officers. Tony, would you like to begin by responding to any of the points made by witnesses today?

**Mr James:** Yes; thank you, Chair. Once again, thanks to the committee for the opportunity to comment further on the submissions made to the inquiry. I note the time available and I will be brief with my opening remarks. I did watch some of the early testimony, and I think some of the major areas covered should be covered off through my earlier remarks. The department has also prepared a summary and comments on the issues raised in the written submissions in relation to terms of reference 1 and 2. We did 3 last week. The summary is now with the committee, as I understand. I do sincerely apologise for the delay in getting that across to the committee. It should have been there earlier. I also refer the committee back to the briefing paper that we did at the original departmental briefing. It also includes a bit more detailed information on some of the matters that have been traversed in the submissions to the inquiry.

As I have said previously, the regulation of retail trading hours raises significant debate and very strongly argued and contested views. The debate is often made upon firmly held assumptions and aspirational beliefs on the economic impacts of regulated trading hours, how these will grow employment, grow retail demand or not grow employment or reduce retail demand or lead to shifts in the structure of the retail sector or protect the existing structures of the retail sector. Through all of this, and while the positions are put forward in good faith, it is my experience that the debate is not well supported by economic analysis, particularly when considering the effect of an incremental change in trading hours on aggregate and economic indicators. I am not taking any issue with the sincerity expressed in the submissions made to the inquiry, but I do wish to highlight to the committee some observations on the submissions in the context of terms of reference 1 and 2 which relate to the amendments made in 2017 and the general performance of the act.

Most submissions focused on extending or ending the moratorium and on whether Sunday and public holiday trading should be extended to those parts of rural and regional Queensland that do not already have Sunday and public holiday trading. Submissions in support of the extended hours are mainly driven by claims of consumer expectations and complexity in the current arrangements and submissions against opening up trading hours generally go to the arguments around the protection of smaller retailers, work-life balance of employers and local community lifestyle, which I believe the member for Hinchinbrook mentioned earlier today. The committee is hearing from many stakeholders on these matters in the public hearings and I imagine you will hear more as you tour the state.

There were fewer issues raised directly regarding the operation of the legislation or the legislative framework. The ones that were raised—and it certainly captured my attention—were mainly around the operation of section 5, the provisions that were introduced in 2017 for exempting shops from trading hours restrictions during an event that was deemed to be unique or an infrequent event of local, state or national significance. The SDA raised whether section 5 special events declarations should remain at all and other submitters—and I note the Queensland Small Business Commissioner, the Master Grocers, the SDA—proposed that a more detailed range of considerations should be taken into account or set out for the QIRC in the legislation when considering section 5 applications. On this matter, the OIR background paper provided detail of all section 5 applications to date, including the QIRC's considerations or major comments, and that was in the original briefing paper. The SDA raised questions around the intersection of employee protections and special event declarations to ensure employees are protected from not working unless they voluntarily agree. This has been a consistent feature of appearances by the SDA to the QIRC.

The 2017 amendments also included the new section 36B, making it an offence to require an employee to work during extended hours unless the employee has freely elected to do so. Subsection 36B(3) provides that an employee's election to work is not free if the employee has been coerced, harassed, threatened or intimidated by the employer. I think it is clear that the policy position from the government is to support the position that workers are protected from being forced or coerced in working extended hours and that they do so voluntarily. I consider from my looking at the history of these applications, even before the 2017 amendments, that all parties agree to this policy. I note that up until around 2019 the commissioners had, on occasions, included in their orders voluntary working arrangements to that effect when they settled section 5 applications. However, from about 2019-20, the commission has expressed a view that, while it is comfortable the act provides adequate protections, section 36B does not provide a head of power to pre-emptively make such an order.

Finally, I note that some submitters have raised the bureaucratic burden regarding annual section 5 applications and I also note that a number of recurrent events have been declared as special events, and the example I look at there is the Mount Isa Mines Rodeo and the Brisbane Festival, so I do note those. Some submitters have suggested removing the distinctions between the clarifications of retail shops, the three categories—that is, doing away with the classifications of non-exempt, exempt and independent retail shop—and they say that this will either reduce complexity or it may be an avenue to wider deregulation. I am not providing a policy position, but as an officer of the department who has administered this act for a long time I can advise that there is little evidence that the classifications distinguishing the classes of shops for the purposes of trading hours regulation are in my view not causing that much confusion amongst either shopkeepers or consumers.

Chair, in the response that we have provided to the committee, we have also put in the stats of the inquiries that come across my desk and the number of inquiries we get are not particularly great. There was a bump this year, and I think that was mostly to do with Anzac Day falling on a Sunday which has some issues around when the actual public holiday is observed. I can tell you that most of the time Anzac Day does get a lot of attention because of the significance in particular of the day for the Queensland community. Most in the community, in my view, understand that there is a difference between a small grocery shop and Woolies or Coles or a small dress shop and Myer or David Jones.

Last week I provided the committee with the numbers of the trading hours—actually, I provided it this morning, Chair—related inquiries coming into the department. Those numbers do not indicate widespread confusion in the trading hours space under current arrangements nor any specific concern with the way shops are classified. That is only what I get as a bureaucrat. I am not talking to the lived experience of people in the community.

Another matter raised in the submissions is the need for flexibility around trading hours during natural disasters or the health pandemic. As I have mentioned previously, the Disaster Management Act gives power to the Disaster Management Coordinator and the Public Health Act gives power to the Chief Health Officer, and those arrangements have been utilised in the past and to the best of my knowledge they have not raised any concerns. Chair, I am mindful of the time so I will stop there and Rhett and I would be happy to answer any questions.

**CHAIR:** Lovely. Thank you very much.

**Mr LISTER:** Gentlemen, thanks very much for coming today. Mr James, you say you have been in this field for a great deal of time and I suppose you have been a constant observer of Queensland's journey of exploration in this issue. Would you say that the positions of the various stakeholders over time have remained the same and, if not, how would you say that there has been a change?

**Mr James:** I think that there has been a gradual movement by the larger retailers to more flexible or broader trading hours. Certainly, in terms of the centre managers—the people who run the shopping complex—I think they have run the same. I am conscious that the NRA has not said that they want total deregulation.

**CHAIR:** They were very clear about that.

**Mr James:** They really were clear and they have always been reasonably clear to that extent. I think most people have, in the main, been comfortable with the QIRC taking the role as an independent umpire. I also think though the Master Grocers have always been deeply concerned about the intrusion of the larger retailers into the space, particularly as it takes over the Sunday trading or the late-night trading. I think those positions are fairly entrenched. I think they have been that way for a long time and they are what I would call the deeply held assumptions and aspirational positions of those particular players. I think the union movement in the main has been very conscious, as you

would expect, of protecting its membership and its workforce, and even more so around the work-life balance. For the SDA I think—Mr Gazenbeek mentioned it this morning—the movement against penalty rates is of deep concern to the union movement.

**CHAIR:** Absolutely.

**Mr James:** That is what I would say. We have, over many years, seen a progression of opening up trading hours, but I make no policy position on the merits or otherwise of that.

**Mr LISTER:** Of course, yes.

**CHAIR:** The sector has been extraordinarily disrupted by the gig economy and what that offers consumers today.

**Mr DAMETTO:** Once again, I appreciate the department being able to brief us this morning. My question is around the position of the large retailers that have constantly pushed for the ending of the moratorium. Do you believe from their submissions—from your observations—that is because of their concern about how this affects consumers and employees, or do you believe from their submissions it is profit driven?

**Mr James:** I really would not make a comment on whether it is profit driven or otherwise.

**CHAIR:** That is pretty close to—

**Mr DAMETTO:** Like I said, it was from your observations of their submissions.

**Mr James:** I would say that there are occasions where—

**CHAIR:** You are dancing a fine line there, member for Hinchinbrook.

**Mr James:** I think it is reasonable that they have been frustrated they have not been able to make an application for a trading hours change in the period of the moratorium.

**Mr DAMETTO:** Thank you very much for your answer and thank you, Madam Chair, for your leniency.

**Mr SULLIVAN:** I will start by saying thank you for your written brief and your oral brief today. I also thank you for, as you pointed out in your opening statement, your pretty substantial briefing at the start of this process. I know it is bookended here today. One of the issues that was put to us by the SDA this morning was that information about agreements at a universal level in terms of what information is to be adhered to and what agreements are made does not always seep down to small and medium sized enterprises. Can you outline or take on notice what the department provides in terms of simple fact sheets of trading hours for businesses, whether it is online or whether there is readily accessible information coming up to various dates?

**Mr James:** Certainly the department has for a long period issued a schedule of trading hours for anywhere in the state. I am going to look across to my colleague Mark Hopgood. I will have my office have a look. I do know that we provide an extensive table of trading hours. It may have been included with the original briefing. If it is not, I am certainly happy to put that out, but it is on the website.

In going to the question about whether there is commentary in there about the protection for workers and voluntary, I would have to get my colleague to have a look on the site. I will make a couple of observations. One is regarding the 2017 amendments for 36B. Prior to that, employees had to give their consent in writing. That particular provision was not carried forward in the last one.

**Mr SULLIVAN:** For extended trading?

**Mr James:** That is right, in the extended trading hours provision.

**CHAIR:** They were signing to say that their employment for that particular time was voluntary?

**Mr James:** Previously there was a requirement—I cannot say it was well observed, but previously from 2002 and the earlier arrangement there was a requirement that employees be approached and provide their consent in writing.

**Mr SULLIVAN:** Even going back to when Sunday trading was introduced, for example?

**Mr James:** That is right.

**Mr SULLIVAN:** I will not say where I worked, but I am not sure that was done back in the day.

**Mr James:** It was a provision in the legislation; that is what I would say.

**Mr O'ROURKE:** I am wondering more about the regional centres where we do not have Sunday trading. Are there any mechanisms whereby either consumers or businesses can actually put in complaints about not being able to access Sunday trading or open on public holidays?

**Mr James:** Consumers, shop holders, interested parties can always write to their local member, the minister, the department or the chief industrial inspector raising this issue and periodically we do get issues. In fact, I would suggest that over the years I have had a number of inquiries where we often say to the people regarding the inquiry, 'The trading hours issue is currently not open for review. However, if it does become open for review, it is usually done in public.' I think in the correspondence we have sent over the last few years we have actually highlighted the legislative obligation for this review and encouraged people to watch this space.

**CHAIR:** We are certainly looking forward to hearing from regional Queensland in coming weeks. I have two questions. There have been really divergent views on section 5 with regards to those events, and you have noted that there is a recurrence now for the Mount Isa Mines Rodeo and the Brisbane Festival. Can you talk a little bit about the intent of section 5 in terms of scale of event? As I have said, we have heard varying views, some saying that it should be open to any special event, whether that be the melon festival or the Brisbane writers or a Commonwealth Games type of event. Was the intent for it to be of a larger scale or open to those special signature events for local communities?

**Mr James:** I would like to refer to the minister's speaking points when she introduced the bill and then when it was debated. However, I think it is generally safe to say that the examples given in the bill itself were for the Commonwealth Games. I think it was talking about events of state or national significance. Personally, I was a bit surprised when some of the annual show holidays were introduced. However, the legislation was crafted in such a way that gave the commission a capacity to assess. In fact, I think if you look at some of the decisions—and I know we refer to them in them—and I know Weipa fishing is there; it is a big event in Weipa. I know that the commission has on several occasions made the comment that it will assess these matters vigorously. The definition I think is in about section 5(3)—it is very early in section 5—about events of significant and infrequent nature. They are some of the criteria.

**CHAIR:** Has that criteria been reviewed? When was that criteria last reviewed? Was that part of the reforms in 2017?

**Mr James:** That was introduced in the reforms in 2017. Prior to that, that provision did not exist—this notion of allowing a non-exempt shop to effectively take on the cover of an exempt shop for the period of the thing. As you will see, there has been a number of submissions or applications made where the geographical location was quite large and through the investigations of the commission, they have shrunk it. There is one or two that have been knocked back. I know the BrisAsia Festival was declined. In simple answer to your question, I know that when we originally did the matter, certainly the Commonwealth Games was at the forefront of mind and I think that is a genuine issue of significance.

**Mr SULLIVAN:** This is a question I put to both employee and employer organisations, just a practical question around QIRC applications. Does the OIR join as a party to those hearings when there is an application or are you a neutral bystander? Can you talk us through the practicalities of that?

**Mr James:** I am happy to do that. When an application is lodged, the commission, by matter of course, notifies interested parties or parties who are said to be nominated parties. I always receive an application notification, as does the chief industrial inspector, Mr Schostakowski. Then there will be a number of others such as the AWU, the shop assistants union and any of the retailer associations. Usually the retail association have led most of the applications.

I will normally brief that I have received an application to the relevant minister. By and large, we do not take an active role in it. In the early days when this section 5 was first raised I appeared in the commission as a friend of the commission to assist them with the questions around what the intent was and what have you. By and large, no, we do not take an active role in the hearings; that is a matter for the parties. I am on call should the commission need some advice on something to do with the legislative intent. By and large the commission, though, is capable of interpreting the law as it sees fit.

**CHAIR:** We heard from our last lot of witnesses, the Australian Retailers Association, around core trading hours and its legislative framework—I think it was in South Australia—and the principles that applied. I was wondering if you could speak to that at all if you had any thoughts?

**Mr James:** Thank you for the question. That is not legislation that I administer. That is the Retail Shop Leases Act. It is done by the Office of Liquor and Gaming Regulation I think. I can make contact with them if you wish—

**Mr SULLIVAN:** It is with justice.

**Mr James:** I think the Office of Liquor and Gaming Regulation might sit inside there.

**Mr SULLIVAN:** They do, but the legislation sits with the department of justice.

**Mr James:** Yes. My colleague Mark and I spoke about this earlier. I am very reluctant to give you an analysis of that particular piece of legislation because I do not deal with it.

**CHAIR:** We might do our own little interrogation.

**Mr James:** This might be my last gig here. I must admit I have thoroughly enjoyed having the opportunity to play a small part in this review. I wish you all the best with it. I just want to put on record thanks to my staff, Mark Hopgood; Caroline O'Brien, one of my gun policy officers; Mr Moxham; and Mr Schostakowski, who have really helped me, assisted me and supported me. I stand on their shoulders to advise you.

**CHAIR:** Thank you very much for your advice and for the advice of your team. We are extraordinarily grateful. This is a very important issue to all Queenslanders. That concludes our time for questions today. There were no questions taken on notice. Thank you to the departmental officers. Thank you to Hansard, our parliamentary broadcast staff and our secretariat. A transcript of these proceedings will be available on the committee's inquiry webpage in due course. I declare this public briefing closed.

**The committee adjourned at 11.42 am.**