



EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair
Mr MA Boothman MP (virtual)
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 HEARING—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 9.01 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the operation of the Trading (Allowable Hours) Act 1990. My name is Kim Richards. I am the member for Redlands and chair of the Education, Employment and Training Committee. I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. We are very fortunate in this country to live with two of the world's oldest continuing living cultures in Aboriginal and Torres Strait Islander people. With me here today on the committee are: Mr James Lister, the member for Southern Downs and deputy chair; Mr Mark Boothman, the member for Theodore, via teleconference; Mr Nick Dametto, the member for Hinchinbrook; Mr Jimmy Sullivan, the member for Stafford; and Mr Barry O'Rourke, the member for Rockhampton.

On 14 September 2021 the Legislative Assembly agreed to the motion that the Education, Employment and Training Committee inquire into and report on the operation of the Trading (Allowable Hours) Act 1990. The committee is required to report its findings by 31 January 2022. The motion included detailed terms of reference which are available from the inquiry page on our website. The submissions to our inquiry as well as written briefs the committee received from the Department of Education, which administers the Trading (Allowable Hours) Act, are available from the inquiry website, including the department's response to issues raised in the submissions received by the committee.

Today we are considering point 1 of the terms of reference, which covers: the amendments to trading hours arrangements made in 2017, in particular the moratorium on trading hours orders and restriction on making applications; the moratorium applicable to shops in the Mossman and Port Douglas tourist area; applications made under section 5 of the act for the relaxation of provisions; the effectiveness of prescribing permitted hours in legislation; the suitability of permitted hours as currently prescribed; and the role of the Queensland Industrial Relations Commission in setting permitted hours outside the prescribed hours.

The committee's proceedings today are proceedings of the Queensland parliament and are subject to the parliament's standing orders. Witnesses will not be required to give evidence under oath, but I remind everyone that intentionally misleading the committee is a serious offence.

ARMSTRONG, Ms Laura, Industrial Officer, Shop, Distributive and Allied Employees' Association Queensland

GAZENBEEK, Mr Chris, Queensland Branch Secretary, Shop, Distributive and Allied Employees' Association Queensland

MCQUILLAN, Mr Terry, Industrial Advocate, Australian Workers' Union of Employees Queensland

WATSON, Mr Barry, Senior Industrial Advocate, Australian Workers' Union of Employees Queensland

CHAIR: Would you like to make a brief opening statement before we start our questions?

Mr Gazenbeek: Thank you very much, Chair and committee, for letting us make our oral submission to supplement our written submission. My name is Chris Gazenbeek. I am the state secretary/treasurer of the SDA, the union for retail, fast-food and warehousing workers. I am joined today by Laura Armstrong, who is our industrial officer with the SDA Queensland branch and assists with all trading hours matters on behalf of our members. Thank you for the opportunity to supplement our written submission to this inquiry, which has had a major impact on retail workers and their families throughout the state. This morning we will be speaking to two matters which fall within point 1 of the terms of reference: the effectiveness of the permitted hours and the deficiencies, in our view, of section 5 of the act.

We would like to begin by firstly acknowledging the contribution of retail workers in our state who, as essential workers during this pandemic, have worked tirelessly to support the needs of the community by providing safe access to food and other necessities of life. We fundamentally believe that the recognition of their work, particularly during the COVID-19 pandemic over the past 21 months, should be reflected in a consideration of any major changes to their employment conditions that may be given throughout this review.

As you may be aware, the SDA is the largest union covering retail, fast-food and warehousing workers. Our organisation has almost 35,000 members throughout the state. We have a strong understanding of our members' views on the matters being discussed and have sought to better understand those views through a survey we recently conducted throughout the month of October this year focusing on all of the relevant issues pertaining to this inquiry which saw responses from more than 1,370 retail workers. This is a comprehensive response. Normally you do not receive such significant response rates from members.

Over the course of the five-year moratorium period, the evidence of our members demonstrates the permitted hours they have served to support retail workers and their families in a number of ways. This is an industry where a large percentage of the workforce would fall within the category of vulnerable workers—young workers and single parents. Over the last decade we have seen an erosion of their working conditions through: the expansion of work into unsociable hours; a lower tolerance within our industrial framework for personal circumstances which might excuse their availability from including unsociable hours; and the decline in the penalty rates which once served as meaningful compensation for performing work at times where these workers are likely to be sacrificing time with family, attending important social events and taking opportunities to make a contribution to their community in other ways, whether that be through caring for a child or organised activities in the community. Our members report that the erosion of those working conditions has resulted in negative effects to their mental health, financial wellbeing through additional transport and childcare costs, and exposure to customer abuse in unsociable hours. We have all seen that throughout the pandemic.

With those permitted hours retail workers will undoubtedly face additional challenges in balancing their personal and professional responsibilities and, as a result, a further decline in their quality of life. We make this submission in the light of evidence from our members clearly demonstrating that, regardless of what promises or guarantees may be purported by employers publicly about a commitment to the voluntary nature of work, the in-store reality of the everyday relationships of these workers with their employers does not reflect that advertised commitment. Over 83 per cent of SDA members believe that without permitted hours they would be coerced into roster changes involving unsociable hours. For this reason, the protection of retail workers from pressure from unreasonable expectations to work in unsociable hours forms one of the many considerations which must be taken into account during this review.

It is our very strong position that the permitted hours must be continued on the basis that they uphold the value of a work-life balance; create a system which allows vulnerable workers to gain and maintain employment; and allow small retailers to stay competitive in the market. These are values we cannot afford to compromise because of assumptions by employer organisations based on insufficient evidence of potential benefits that may be derived from a system without permitted hours—a risk that is especially unnecessary where there are already more than 83 hours available for trade in stores.

The availability of 24/7 trade through online platforms has accelerated over the last 21 months during the pandemic. There is no convincing evidence of extended trade being required to meet consumer needs and no convincing evidence that extended trading creates jobs. These are also not values we can afford to compromise where there is no evidence the hypothetical advantages will outweigh the definite detrimental impacts and effects to workers who are affected in stores.

Turning to section 5(1)(c) in respect of this section and the subsequent applications that were made for non-exempt shops to be classified as exempt shops for the period of a declared special event, this section, in our view, has proven to contain significant deficiencies—the major deficiency being the inability of the Queensland Industrial Relations Commission when determining these matters to consider any factor other than the proposed significance of the relevant event. The legislation has not permitted the commission, when deciding these applications, to consider other essential issues such as: the impact of the order on the retail workers in the affected stores; whether the order will affect the revenue of the event or local restaurants and retailers; and whether there is a non-exempt retailer who intends to trade and what patron needs they expect to meet. The legislation also fails to indicate more precise factors that may determine whether an event is significant, such as

the size of the event and its contribution to the state's international reputation. Additionally, the applications have exposed a lack of clarity about whether the orders requested should be limited to the listed time of the event and what considerations are relevant to address in deciding the application.

The absence of more robust considerations before approval is given has resulted in only two of the 22 applications made by the National Retail Association being rejected—a rate of overwhelming approval which should be addressed in light of the original intention of the section as noted in the recommendations of the Office of Industrial Relations review in 2016. It is my and our organisation's very strong view that section 5 applications should have been contained to significant international events. Unfortunately, the legislation does not reflect that. In addition to the confusion surrounding the legislation's intention, in the last year the QIRC determined it did not have the jurisdictional ability to provide the protections found and afforded to employees in section 36(b) of the act, being voluntary work in extended hours, to orders made pursuant to section 5. This means that, although the legislation has the clear intention of protecting voluntary work and extended hours, orders made pursuant to section 5 put retail workers at risk of being placed in a situation where they can effectively be required to work unsociable hours.

Overall, the SDA submits that section 5 should be removed in light of the sufficiency and necessity of the permitted hours. If it were to be retained, amendments must be made to ensure the mechanism provides for voluntary work in any hours beyond the permitted hours and includes a broader range of considerations that must be taken into account when determining if an application should be granted or rejected.

Finally, to summarise our position regarding the first term of reference, the SDA lends its strong support to the provision of a central and stable set of permitted hours. We believe that those hours are essential for protecting workers in an industry with a large percentage of vulnerable workers and to support our current economic situation as a state. Whilst there is no necessity, in our view, for section 5, and we believe the review should result in its removal, if it were to be retained in the act it should be amended to support the original intention of the legislation. We also support a continued moratorium subject to legislative requirements.

Mr Watson: Firstly, I need to put in an apology for the secretary of the Australian Workers' Union, Steve Baker, who unfortunately cannot make it. Mr McQuillan and I are representing the union today. Secondly, we have put a submission in. In our submission we indicate that we have members who work in this sector in regional and rural Queensland. That is our coverage area. We certainly have members right across a lot of diverse areas in the state.

With respect to the review and terms of reference, we have a very strong view that there is no need to extend the current trading hours. We believe that the current system operates effectively in that there is a limit on hours that retail stores can be open and there is a process if anyone wants to have those extended for a special event. We think that system should not be disturbed. We think it does work. We have a very strong view that where there is an extension beyond those hours it should be voluntary.

We make no apologies for the fact that we are here representing employees who work in the retail sector. We, like my colleague Mr Gazenbeek, have concerns about whether some people do work on a genuinely voluntary basis. We think there should be some beefing up of those particular provisions in the legislation to ensure that employees are not coerced into working when they do not particularly want to. The extended hours do cut into that group of hours that are socially unacceptable hours, when people might be spending time with their families, and the extended hours obviously impact on people and their lives.

We say also that if people do volunteer to work they should receive the industrial entitlements that are prescribed in legislation—that is, their award or their enterprise or certified agreement. We do not want to see a situation where people are expected to work without the benefit of penalty rates. We are very strongly of the view that the penalty rates are paid to compensate employees for working socially unacceptable times. Once again I echo the comments of Mr Gazenbeek. We would say that the incomes of these people are not that great and they do rely on penalty rates to live. That is the nature of the industry. We say that it should be voluntary and industrial entitlements should apply.

In some of the submissions I read there was some commentary that extended hours allow employees to work more hours. In some cases that is correct. In other cases it could well be that employees still work the same number of hours; they just get moved from working Monday to Friday to working Saturday and Sunday night. We think those sorts of arrangements should not occur. We would be seeking that the legislation deal with that so that when the Queensland Industrial Relations Commission deals with these applications it is well aware that those provisions should be included in any decision it makes.

We also have a view that the moratorium on trading hours orders should be extended. Item (a) in the terms of reference list is examining the impact of the moratorium. We certainly have the view that that should be extended. With respect to applications under section 5, I think our submission has dealt with that. With respect to the suitability of the hours, which is (d) and (e), we believe that the hours that are in place are adequate and we support the Queensland Industrial Relations Commission having jurisdiction in this area to deal with applications.

In summary, we think the legislation is very important. It does provide protections for workers, but it also regulates an industry that can—I am sure there are parts of the industry that, if they had their way, would have retail stores open 24 hours a day, seven days a week including on Christmas Day and other such times. We would support the continuation of regulation of this sector.

CHAIR: I would like to place on record our deep gratitude to all of your members and retail workers and warehouse workers for the work they have done during the COVID pandemic. They have certainly been at the forefront of making sure that Queenslanders have had food on the table and been well looked after in pretty challenging times. Thank you to your members.

Mr LISTER: I do not have any questions, but I thank the AWU for your appearance and submissions.

Mr DAMETTO: I would like to extend that as well. Thank you very much for coming along this morning to give your evidence and your perspective on how this potential legislative change could affect workers across Queensland. Chris, if you do not mind me asking, would you be able to go into a little bit more detail? If this were to change and we were to go to a seven-day working week in the retail space, how could that adversely affect families in the financial space, especially around child care and its cost?

Mr Gazenbeek: Firstly, we already are in a seven-day trading space, unfortunately. Even in metropolitan areas there are public transport issues late into the evening. There is a whole range of issues. There are workplace health and safety issues and there are public transport issues in metropolitan areas. If you extend that to regional areas, there is almost non-existent public transport into the evening hours. Trading now can go up until 9 pm Monday to Friday in regional areas and 6 pm on Saturdays and Sundays.

I do not think there is any overwhelming consumer desire—I think that was evidenced in the McKell Institute submission—for further extensions. Certainly from a workplace health and safety and a transport perspective, there are significant issues that I do not think can be addressed quickly, which would be concerning if there were further extensions to trading hours. You cannot look at trading hours in isolation of looking at all those other public infrastructure issues, which would be a huge cost to the relevant regional councils and state government.

In terms of the financial issues, particularly in regional areas, as Barry alluded to in his remarks, the situation we find is that employers do not necessarily offer extra hours to people, which I think is evidenced in some other submissions and the McKell submission. They simply change the rosters and the hours so that people are working similar hours. If you look at it from a regional perspective, if someone is working in a far-flung area of regional Queensland—say it is a young person because there is a large demographic of young people working in the industry such as kids in secondary school—you have parents or relatives or someone who has to actually drive them, sometimes long distances, to drop them off for a shift and then pick them up again. On some occasions they might have to go back and do another shift on the same day. There are those financial detriments. There is the impost on the family and the broader community and then there is also the inability for people then to participate in the community, whether it is doing scouts or whatever they enjoy doing as a family. Certainly from our perspective it is a huge issue.

Mr DAMETTO: It is quite a cost, from what I understand. Thank you very much for your answer.

Mr SULLIVAN: Can I ask for a bit of history? I should state for the benefit of the witnesses that I have declared for the committee my membership of the AWU and my former membership of the SDA when I worked in retail at Stafford City Shopping Centre. Can I ask for a bit of history, pre moratorium, about how the QIRC applications worked? Did a particular retailer bring a motion and then your two organisations were called upon to give submissions on a case-by-case basis? My understanding is that it was a bit all over the shop in terms of those sorts of processes.

Mr Gazenbeek: Certainly. Generally speaking, most applications were made by a colleague, if I can call him that, David Stout, who will appear here as a witness from the NRA. Most applications were made by the National Retail Association or former small business associations. Applications were made to extend in certain regions or jurisdictions. It could have been an application up in North Brisbane

Queensland for a particular geographical area or location, or it could have been a broader application. Historically, applications are made and there is a normal commission type process where submissions are made, witnesses are called and evidence is presented. We write submissions. Some of them are before individual commissioners, so the QIRC. More significant applications or cases are before a full bench of the commission. They might actually go out and do inspections of the area. They would consider, in our view, larger issues in comparing it to the current section 5 application. They would consider the impact on the economy and they would seriously consider the views of the local council in those areas.

The thing that I think is fundamentally missing in all of this is one key stakeholder: the employees. The employees are the ones who work, who produce. There is productivity that is being imparted by these people, but there is not a real regard or consideration for the interests or the needs of the employees in all this. I think that is sadly lacking, both in the previous regime and under the section 5 application. Hopefully that answers your question.

Mr SULLIVAN: Mr Watson, do you have anything to add to that?

Mr Watson: I agree entirely with what Mr Gazenbeek has said. My recollection is that there were inspections undertaken in the regional centre and there was a significant interaction with the community about what impact there would be if there were extended hours. Over time the parties have been down this path so many times—and the commission as well—that the commission has decided there has not been such a significant need for those inspections. Things are very entrenched, I suppose, if I can put it that way.

Mr SULLIVAN: I want to go to the issue of being voluntary in terms of employees—the SDA submission dealt with it at page 2 and Mr Watson raised it in your submission today—both in terms of the vulnerability or the demographics of your workforce and also the nature of being shiftworkers reliant on a manager to put out the roster to get your hours. Is that the pressure that can be placed on people to work certain hours, a ‘you can take it or leave it’ sort of approach?

Mr Gazenbeek: Yes, certainly from our perspective. As is stated in our submission, 66 per cent of our members are female and 34 per cent male; and 37 per cent of membership is under 25 and 63 per cent is over 25, which has changed dramatically over the last decade. You could almost flip it on its head from 10 years ago. With any sort of major corporation—I am talking about the majors here—the commitments and the understandings that I receive at a senior level are genuine. However, like any massive conglomerate or organisation, with any employer organisation, as it filters down through the lower levels and the lower ranks of management, you are dealing with sometimes managers who are just 18 years of age. They have no real concept or understanding of industrial relations, of courteous professional conduct in some circumstances. They are driven by wages budgets and productivity gains.

We live in the world of technology and analytics. Everything is analysed down to the second as to output and productivity. There is a lot of pressure on these young people to manage people who, in my view, do not have the training or the skills to be put in those positions. It really comes down to the individual relationship that a young person develops with their direct line manager. All of the industrial legislative framework, the protections et cetera really go out the window. You rely on the relationship they have developed with the individual employee or the friendships they have with those people outside of work to provide protections for people. That really provides no protection at all, because if they have a disagreement the protections are no longer there. There is a lot of harassment, bullying and a whole range of other things that go to that.

Certainly the vulnerability that is there in this workforce is quite prevalent and severe. The legislative framework needs to be very strong. In my view, section 36B needs to be transitioned and allowed to be in section 5. Our firm view is that section 5 should be removed. We think there should be a consistent permissible set of trading hours. We note that some employers in their submission agree that they want just an agreed set of legislated trading hours across the state for consistency. We support that. If section 5 is to remain, there needs to be very strong protections from 36B, which means an employee has to freely elect—voluntarily—to work that shift. I would go further to say that under the Office of Industrial Relations there are some fact sheets and a whole range of educative things that can be done. It will cost the government money. We do what we can as a union, but there needs to be a greater emphasis on this to educate and train people about what their legal rights and entitlements are so that they can make sure they are adhered to.

Mr Watson: I would like to add one comment to those comments. Having to work at a different time can impact employees in different ways. Simply put, if you are required—‘coerced’ might be the right word to use—to work on a Sunday when you do not normally work on a Sunday, for example,

that interrupts your routine and it could have a devastating effect on your family life. Grandma might have to drive 100 kilometres to come and mind the child, take them to sport or whatever the case might be because you cannot do it. In other cases—and this is where I use the word ‘devastating’, and perhaps that is a bit of overkill—if you have to pay for childminding because you cannot mind your child on a day you are required to work, then the net financial gain for you might be zero. In fact, you might actually lose money due to having to pay for child care in order to simply attend work. That is the problem we see with the impact of these applications being successful and without the voluntary aspect.

Mr O’ROURKE: My question regards particularly regional Queensland. We have heard from different councils and tourism organisations that when we have people coming into town such as Mount Isa they get there on a Sunday and there are no major shopping centres there, so they are actually moving through town to the next location and not getting the benefit of the tourism dollars and so on. Should we have more standard hours of work across the whole state, do you think?

Mr Gazenbeek: It is a good question. There needs to be consistency and clarity for people so that people understand what the shopping hours are and when they can go et cetera. Regional Queensland, I think, is a little bit different in the sense that 10 or 20 years ago shops were shut on every public holiday. In my view, people survived and were okay with it. Then we saw the advent of Sunday trading. Prior to that, people managed their affairs. We now have 24/7, almost instantaneous click-and-collect and online shopping. There are some issues at the moment around supply, with container ships waiting to arrive on our shores, but you can pretty well buy something online now 24/7 and have it delivered fairly quickly—certainly your groceries. I am not absolutely certain of arrangements in regional centres, but I believe that up as far as Rockhampton they have click-and-collect and those sorts of operations, so it is fairly easy to obtain.

I think in the last review there was opposition from some sectors around having increased hours. I think it is worth noting here that the independent grocers—Metcash and the IGAs and some of the smaller operators, the little FoodWorks and the smaller operators in those regional centres; and you will have some other members of parliament who will have strong views on that as well—really use the opportunity of having tighter restrictions on hours to make a profit and provide jobs for their local community.

Having the larger employers such as Woolworths, Coles and Aldi moving into those areas—Costco has not gone there yet but may at some point—really squeezes and reduces the competition for those smaller operators. The independents can trade when they like. Predominantly they trade from 6 am until 10 at night. That gives them the opportunity to make a little bit of extra profit when the non-exempt shops such as Woolies and Coles can only trade until 9 pm. I think if we open the hours and have them consistent with the south-east in regional Queensland, you will find a lot of those regional jobs will be lost, particularly in those smaller businesses—the smaller FoodWorks and the smaller boutique retail shops and also the IGAs. A lot of the IGAs that are operating in the regional centres predominantly are operating on the basis that that is where their profit margins are currently.

That is a roundabout answer to your question. I think there is an argument that there should be reasonable consistency so that people understand generally what the trading hours are, but I think there are some differences in regional Queensland compared with the metropolitan areas.

CHAIR: The legislation is quite distinct in separating out 23 regional towns—the likes of Ayr, Chinchilla, Charters Towers and Mount Isa—as not being able to trade on a Sunday or a public holiday. We have certainly seen in some of the submissions the reverse issues contained around access and access to reasonably priced products. In the survey submitted by Commerce North West in Mount Isa, one submitter said that she had missed out on getting her laundry powder on the Saturday and therefore had to purchase on the Sunday at \$26 for the laundry liquid. There are certainly examples on the flip side of when there is not consistent hours of what that might mean to communities also. Do you have any commentary around that?

Mr Gazenbeek: It is an issue that has been raised. My response to that would be that if I went to a Woolworths Metro store, for example, just around the corner from my office in Fortitude Valley and I did a grocery shop there and then I went out to a suburban store, say, at Aspley, where I live, the price difference would be quite stark. Even in metropolitan areas—one shop compared to another shop in different suburbs and all on the Gold Coast et cetera—it really is geographically determined as to the pricing in those areas, similar to fuel and other things. My comments would be that it does not matter where you shop; pricing is always going to be different, depending on the suburb where you live, whether it is metropolitan or regional. I think there are strong arguments for Sunday trading opening up in some of those 23 remaining areas, but there is also very strong opposition from other sectors about keeping the traditional weekend and family time for people on a Sunday in those areas.

CHAIR: I note that in your opening contribution you mentioned a survey that you had undertaken in October with your membership. Is it possible for the committee to get some more detail, possibly a copy of that survey, and maybe you could talk a little bit more about the findings of the survey?

Mr Gazenbeek: We do not have a copy of the survey with us here today, but I am happy to provide it to you.

CHAIR: We would appreciate that.

Mr BOOTHMAN: I have been listening quite intently here. My question is to both union groups. Have any of your members complained about businesses operating outside of designated hours? How often is that or is it a rare event? What types of regions would that be more prevalent in?

Mr Gazenbeek: There have been some instances. I cannot state whether it is just confusion around what the permissible hours were when the changes occurred, but on occasions we do have some employers who I do not think try to maliciously breach the legislation but sometimes misinterpret the legislation and may advertise that they are going to open on certain days. I am talking specifically around, for example, Good Friday and the Easter weekend. There is some confusion sometimes about whether or not they can trade or what hours they are permitted to trade on those days, but we are alerted to that fairly quickly and I make some prompt inquiries or raise it with some senior people within those companies and they take steps to rectify it. I cannot point to any specific examples, but anecdotally there are potentially some breaches that occur, and I do not think there are adequate resources to really deal with that and pursue it, in my view.

Mr BOOTHMAN: Do you feel that the way the department puts forward this information is a bit confusing to the employers themselves, then?

Mr Gazenbeek: I am not suggesting that. I am just suggesting that you have to read the information quite intently to really clarify what trading hours are on a particular day of the year. There could be some further flyers or fact sheets that could be sent out to employers, certainly at critical times of the year, but, really, the onus is on employers to understand what the legislation is and to ask questions before they open for trade.

Mr BOOTHMAN: There has been a lot of discussion about online trading and online retail. I am curious to know what the union feels the future will be in terms of how this will impact on employees going forward, in the realm of work conditions et cetera? For instance, some of these major businesses could be operating 24 hours. How will this impact the more regional, smaller towns?

Mr Gazenbeek: As I mentioned in my oral submission this morning, online capabilities of employers, both small and large, have just expanded exponentially over the last 20 to 21 months during COVID. I would go to the point to say factually that some employers, particularly some of the larger ones—Myer, David Jones, companies like that—have been doing it very tough financially in that department store sector. In fact, when the first lockdown occurred in March of last year, 100,000 fashion retailer workers were stood down effective immediately and we had to move very quickly to try to push to get the JobKeeper wage subsidy to support those people. I am pleased that many thousands of jobs have been saved as a result of that, but online—

Mr SULLIVAN: Is that a national figure?

Mr Gazenbeek: Yes, that is correct. Certainly, online capabilities have expanded. We have been advised by many employer associations and organisations that they have effectively fast-tracked the technology by more than a decade in the space of six months, and many of those companies had to do it to be able to remain open and continue to function and provide employment for people. We are pleased that they have done it. It is advancing very quickly and, from a union perspective, we all know the problems associated with what we call the gig economy and online apps on people's phones et cetera. However, the online capabilities, in our view, have made it easy for people, probably more so in metropolitan areas, to purchase things in an instant and have them delivered within a few hours to their home. I cannot really comment on the impact of that in regional Queensland.

I believe Woolworths and others are starting click-and-collect. They are operating what we call e-stores or dark stores. On the Sunshine Coast there are two Woolworths stores that are operating very close to each other in Maroochydore. One of them has effectively closed down and become a closed supermarket store where, for all intents and purposes, it looks like a supermarket—the workers and jobs have been retained. They effectively pack orders and the trucks come and pick up the orders from that closed store and deliver to a geographical area around the Sunshine Coast. I think these are new systems that are being trialled.

I know in other states they have what we call dark stores, which is essentially the same concept. They are delivering to all of metropolitan Melbourne and New South Wales. The problem we have in Queensland is that it is just such a large state, so geographically isolated in so many areas.

There are a lot of new concepts and things that are being tried, but, in a roundabout way to answer your question, technology has advanced so far. The problem with technology is that the legislative frameworks move so slowly to catch up and I do not think they ever can because the technology is rapidly changing.

The impact on this in the long term, in my view, is that we are moving down the track of more automation. We have the Coles distribution centre closing sometime next year—1,500 jobs lost. There will be a new automated site that will operate by robots. They will have a small contingent of about 100 employees to operate that site. You see the shifting change. What will probably occur as a result of the productivity and efficiency gains is that over the long term there will be an expansion of the number of supermarkets that open and operate throughout those regional areas and, to my point, the concern for us is that when you have those larger employers squeezing out the smaller employers there will be new jobs created with the expansion of the larger companies but to the detriment of those small, family business operated independent grocery stores.

Mr Watson: If I could just add a couple of points in response. The rollout in the remote, rural and regional areas is not as quick as in perhaps the south-east corner, but it is only a matter of time before it catches up in that respect. The other concern is that if we see the bigger stores take over in the remote and regional areas, there is no guarantee that the existing employees of the current smaller retailers out there will be maintained. What I am trying to say is that they may not get employment with the new, bigger retailers, and that is a concern to us. Those existing people effectively could get thrown on the scrap heap and we do not think that is appropriate.

Mr SULLIVAN: I have a specific question in terms of your regional coverage. One of the areas we will be visiting is the Mossman/Port Douglas area. I know that your union covers a variety of industries across the tourism industry. In really high tourism areas like Mossman and Port Douglas, do you think job creation is across the spectrum when it comes to attracting people at odd hours, particularly as those cruise ships come in?

Mr Watson: I am not personally au fait with any particular issues in that area, but we would certainly have a strong view that if there is a need for extended hours then applications can be made under the current legislation. Provided the extended hours were operated on a voluntary basis and people were appropriately remunerated, that would be the way to go.

Mr SULLIVAN: Mr Gazenbeek, paragraph 2.6 on page 10 of the submission of the SDA goes to perhaps the elephant in the room, which is that there is a natural interface in the retail space with the Commonwealth legislation. Can you speak to that point at all?

Mr Gazenbeek: Yes, sure. Firstly, can I make one comment on the previous question to Mr Watson? I would just report that a little while ago there was a BIS Shrapnel report conducted in Western Australia with the advancement of a trial of Sunday trading over there. It was interesting to note that that report specifically stated that there were 43 new stores that opened up over the period of the time that the research was conducted. There were 43 new stores, a Sunday trading trial occurred from 10 until four for a period of time, and there was actually a decline in the number of hours in employees who worked.

Mr SULLIVAN: Over the week?

Mr Gazenbeek: Over the course of a week. Yes, there was a mining decline so there were other factors, but it is just quite interesting to note. The other point I would make is in relation to discernible increases in tourism and hours of work or jobs created. I just turn people's attention to the submission made by the McKell Institute. They have said that even with the section 5 applications in these areas where they have been granted there has been no discernible increase in hours being created or jobs being created, so our view is that it is a misnomer.

In relation to the second question you just raised, the difficulty we have is that this is the state jurisdiction. This inquiry and the legislative framework are within the state jurisdiction. Most of our members are covered under the federal legislation. Enterprise bargaining for our members is covered by the federal legislation. We are reliant on enterprise bargaining. It is probably no surprise to people here in this room that enterprise bargaining is going through a very difficult period at present. There are significant productivity increases, stagnation of wages and the COVID pandemic has had a major impact. If trading hours were to be extended as a result of this review and legislative changes, unfortunately the state cannot provide the protections that are required for employees because they

are covered by the federal jurisdiction. Things such as penalty rates, which we have gone to in our submission, have been eroded. It is not without merit for me to say that at the very same time that the National Retail Association continue to put in applications for extensions of trading hours, which in my view hurts regional Queensland employees and employers, they are making applications to reduce the penalty rates that people receive for working those unsociable hours. I think that is not a good place to be.

Mr SULLIVAN: I note the time. I just want to add my voice to thank members of both of your organisations for what they have done, especially in the south-east where we have had more lockdowns, to keep things running.

Mr Watson: If I could respond to Mr Sullivan's question, I will chase up Mossman and Port Douglas and if I have anything to report I will put that back through Mr Hansen.

CHAIR: Thank you very much for appearing before us today. They were very interesting submissions and responses to our questions. I note that we have taken on notice that you are going to provide us with the survey of the membership and some feedback with regard to the Mossman trading. Those answers are required by Monday, 8 November 2021.

CAMM, Mr Rod, Group Chief Executive Officer, Motor Trades Association of Queensland

DEWAR, Ms Kellie, Deputy Group Chief Executive Officer, Motor Trades Association of Queensland

PLANT, Mr Jason, Chief Executive Officer, Caravan Trade & Industries Association of Queensland (via teleconference)

VOORTMAN, Mr James, Chief Executive Officer, Australian Automotive Dealer Association (via videoconference)

CHAIR: Good morning. Mr Voortman, would you like to make a brief opening statement?

Mr Voortman: Thank you, Chair. I am representing the Australian Automotive Dealer Association. I would like to start by thanking the committee for the opportunity to give evidence today. Our association represents Australia's franchised new car dealers, so all of those dealers franchised to a major manufacturer and selling new cars. In Queensland there are around 675 such dealerships employing close to 12,000 people and generating significant economic activity. The overwhelming majority of our members in Queensland support the current approach to trading hours and are strongly opposed to any move that would bring about Sunday trading. We have set out those reasons in our submission and are happy to talk further to those if there are any questions.

CHAIR: Thank you, James. Mr Camm, would you like to make an opening statement?

Mr Camm: I think James has covered the key data in terms of our industry. We are very pleased to be here as well and look forward to participating in the discussion. Certainly the industry is changing fast. Every day you read new models. Certainly the internet and internet sales are impacting on the way motor vehicles are sold across the state. As there are new emerging models, which are described as agency models, which means less foot traffic in dealerships and therefore fewer calls, certainly members tell us there has been no request or pressure from consumers about wishing to have businesses open on Sundays. If anything, they like that as a free day to wander the yards and look at the yards without having to engage with salespeople.

For us there are a number of drivers. Certainly there are already increased consumer options, which we have just touched on, only very briefly. Our members would see an extension of trading hours as increasing costs but not increasing sales or employment. It would aggravate the skills shortage problems we are already experiencing. In summary, increased trading hours are not supported by industry or their employees so our recommendation would certainly be 'as is'.

CHAIR: Mr Plant, would you like to make a brief opening statement?

Mr Plant: I would like to thank the committee for the opportunity to appear today. I apologise for not appearing in person. We are currently wrapping up our caravan show at the showgrounds, hence why you cannot see me, but I am in high-vis at the moment so that is probably good. I heard the first gentleman speak. I did not hear the MTAQ so I apologise, but I think we share the same view.

We represent approximately 240 businesses across the state. They include recreational vehicle dealers, manufacturers, accessories suppliers and repair and service facilities. The majority of these businesses are private, family owned businesses and we overwhelmingly support the current framework. We do not support any introduction of Sunday trading for our industry. As has been well reported through the media, we have been fortunate to benefit from the pandemic in that everyone is travelling at home. Our recreational vehicle industry is experiencing a boom which we have not seen since the 1970s. Local manufacturing is up 68 per cent compared to July last year. It is up 37 per cent compared to 2019. Imports are up 87 per cent compared to 2021. There are over 750,000 recreational vehicles registered across the country and nearly 200,000 of those are registered in Queensland alone. We outsell and out-register the more populous states of New South Wales and Victoria when we have only six days trading and they have seven. We do not support an increase to the trading hours and are happy with the current format. Thank you.

CHAIR: Thank you very much. It sounds like things are going gangbusters in the caravanning space. Deputy Chair, do you have a question?

Mr LISTER: I thank everybody for appearing today and for your very thorough submissions. They have answered all of the questions I have at this stage. Thank you for your appearance.

Mr DAMETTO: I would like to echo the comments of the deputy chair. Thank you very much for coming along this morning and giving your evidence. To put it bluntly, I am of the same opinion as everyone that is appearing here this morning. I think extending the trading hours to your industry

would do two things. As Mr Camm noted earlier, we have a skills shortage and a trade shortage at the moment, but also, from talking to some of the dealers in my area, we have a product shortage. An extra day—Sunday trading—would only result in more of a backlog or a back order of vehicles, if that makes sense. Congratulations on how the industry, and the caravanning industry of course, has handled the increase in purchasing over the pandemic. Well done!

Mr SULLIVAN: I might ask Mr Camm specifically, because it was in his submission, to talk a bit more about the notion of optional or voluntary choice to open should things change. We have heard it in different circumstances from employee representatives in terms of whether wanting to work in non-social hours is actually optional or voluntary or not. I think when it comes to car dealerships there tends to be a bit of a congregation of them geographically. I represent Stafford, including the Gympie Road strip, for example. Do you want to talk to your notion that it might appear to be optional, as you put it, but if one opens the reality is that all do, in terms of perhaps even just human behaviour?

Mr Camm: Thank you for the question because it is absolutely a genuine reflection. Both Kellie and I have been travelling regional Queensland, as late as last week, talking to members about a range of issues including this one, and that is the issue for them. There are two parts to this. Yes, they might all say, 'We are going to protect our employees and we do not want to work Sundays,' for all the reasons in our submission, but as soon as one person opens the doors there is instant pressure. It is a competitive marketplace and even though, as I said, it will be increased costs rather than increased sales, they do not want the sales to appear in a dealership other than theirs. That is a key driver.

Also all of these dealers are largely family owned businesses, which means the car manufacturers have enormous influence over them. Some of them have franchise agreements that will require them to trade whatever the legal trading hours are but also, regardless, have enough power to say to them, 'Well, even if it is not in the agreement, you are going to open anyway.' Certainly the sense from the industry is that if the trading hours are changed they will end up trading, even though they think it puts their businesses more at risk in terms of financial viability because of that cost issue and because of the people issue.

All of the literature you are seeing from overseas is that there is a real risk, they are claiming, that people are going to all resign soon. They are just going to go and make lifestyle decisions. It is probably good for Jason in the caravan industry but less so for our employees. I have not seen evidence of that yet, but there is a risk that if people have to work Sundays, because on Sundays people like to be at home, that could exacerbate the skills shortages in our industry.

Mr O'ROURKE: I do not think I have a question. It is great to have you here today. It is very interesting to be looking through this. Where you have a franchise, would you not be able to ask the manufacturers to get an exemption from trading on a Sunday?

Mr Camm: I might refer that one to James. We probably have very similar views in this space.

Mr Voortman: That is a great question. There is a spectrum of franchisee-franchisor relationships in the automotive sector. You will get some that are based on mutual partnership principles, and every major decision affecting the business will be a negotiation. Unfortunately, it is not always the case. There are others that have terms in their franchise agreements which come very close to micromanaging your business. The problem we have here is that the minute the genie is out of the bottle, so to speak—and we have a case study in Sydney which did open for Sunday trading—certain manufacturers might compel their dealers to open and then other manufacturers or other dealers will be looking at that and thinking, 'Well, we cannot afford to close ourselves.' Yes, there is always the option to go to a manufacturer and try to negotiate an exemption from trading on that Sunday, but bear in mind that that manufacturer will be looking at the competitive environment foremost.

Mr Camm: That is our position as well.

Mr BOOTHMAN: I was just doing some research about online. I notice there is a website called cars24, which is an online service that allows an individual to purchase a vehicle within a pretty short time. What are your comments on these new services? Do you feel that this eventually will push car yards to go to Sunday trade, or do you think people would be more likely to want something tangible and see the vehicle in front of them?

Mr Camm: We think the reverse is true. We think with all of these online models—even local businesses now are offering their vehicles online through sites like the one mentioned; there is a range of sites—that if people on a Sunday want to look at cars, if they are exploring, they can do that online. They do virtual tours of the cars. They can build them online with all of the options. They can

certainly wander down to the yard and have a look at them in person if they want to, again, managing their own time. We think the significant growth of online sales is another reason you do not need to put the pressure on businesses to open for a seventh day, because consumers can buy the car on a Sunday if they want to. You can buy them online. We think the reverse is true.

Mr Voortman: I think you are 100 per cent correct. Cars24 is a fairly new player, but its model is online only. It is trying to capture those buyers who want to see the car sight unseen. There is a growing proportion of those. During the pandemic we have seen that car buyers now have more options than ever. They can conduct elements of the process online; they can conduct elements of the buying process remotely. More often than not they do want to conclude the buying process in the dealership, but because the process is often days, sometimes weeks and these days even months, it is not that critical that you need to be open on a Sunday. A motor vehicle is a very different kind of purchase.

Mr SULLIVAN: That is a perfect segue. Mr Voortman, in your submission you make the point around, as you just said, motor vehicles being a very different purchase to most things. It is not like going to your local Westfield to browse for a new tie. It usually involves, for working families anyway, loans, perhaps a trade-in, negotiations and so on. Do you want to talk to that in terms of why it is not, 'I will just pop down to my local car dealership on a Sunday and pick up a new car'?

Mr Voortman: First of all, it might be either the first or the second most expensive purchase the average consumer makes. It is something that they dedicate a lot of time to it. Back in the day, before we had the internet, people would go to four or five dealerships and look at the different cars. These days, a lot of that research is done online and they narrow their choices to one or two cars at the most and at that point they will go to the dealership. But that is not as simple as walking in, choosing your car and driving away. They might want to specify that vehicle with various options, which might mean that car needs to be ordered in. They might want to take out finance insurance, as you have mentioned. They might have an old vehicle they are seeking to trade-in. There are so many variables involved with the process and it is such an emotive process. We are seeing more and more that it does not just get done on the day in the dealership. Especially at the moment, with the number of stock shortages that we have, the buying journey is blowing out to a degree, particularly with all of those elements you just mentioned.

CHAIR: You mentioned the trial in New South Wales. Can you tell the committee a little bit more about how new car, boat and caravan dealers in other states, in your experience, are managing with deregulated trading hours and how they are dealing with opening on Sundays?

Mr Voortman: Unfortunately, I can only talk about car dealerships, because we have that very narrow representation, but I am happy to share the views of the car dealers in Sydney in particular. If they could, they would go back to an environment such as the one in Queensland, South Australia and Western Australia. They would love the government to make a decision which says, 'You are not allowed to trade on Sundays.' In fact, we have asked that question of the New South Wales government. A lot of the elements we put in our submission to this committee are based on some of their feedback. They believe that the costs of opening on Sunday are prohibitive. They do not believe that they have sold more cars because of that decision but they certainly have increased their cost base. They also have noticed that it is more difficult to attract good staff. They have to worry about burning out and not having that work-life balance. Again, it is quite frustrating for them in that they believe often that it simply is not a choice. Because someone next door is opening, they just feel compelled to do so and, if they are not inclined to, there might be a franchisor who puts that term in their dealer agreement. In summing up, the experience is that they have not seen an increase in sales but they have seen an increase in costs, and if they could they would reverse the decision to open up Sunday trading.

CHAIR: Mr Plant, did you have anything further to add in terms of the caravan industry in other states?

Mr Plant: I cannot speak on behalf of Sydney, but in northern New South Wales we have members based in areas like Lismore that would be one-dealer towns, and they have made the choice to close on the Sunday simply because it is cost prohibitive to remain open and they do not have the staff with the required skill sets to work that Sunday, which would force the dealer principal or the skilled person to then be working seven days, which impacts negatively on their work-life balance and their mental health. We do have evidence in jurisdictions like that where they have made the decision to close. If Sunday trading were in place in Queensland, the concern in some of the smaller regional towns where we have maybe a single caravan dealership is that if they make a choice to close on Sunday it would encourage those locals to then purchase from bigger city dealers who may open on that Sunday. There is that concern as well.

Mr LISTER: Mr Voortman, I am interested in what you said before about the Sydney experience. Do you happen to know where the impetus for Sunday trading originated? Was it from industry, government or some other source?

Mr Voortman: That is a good question and one I will not be able to answer accurately. I am happy to take it on notice and come back to you. I do understand that at the time there might have been a degree of industry support, but that certainly is not the case now. I will endeavour to make those inquiries and come back to the committee.

Mr SULLIVAN: I have a follow-on question from what Mr Plant just said in terms of the disproportionate impact on small or family owned businesses compared to those large organisations that may be able to cover Sunday trade. I do not want to verbal you, Mr Plant. I think that is a fair summary.

Mr Plant: Yes.

Mr SULLIVAN: Do you think that is reflected in the motor vehicle industry as well in terms of the various players in that space?

Mr Camm: I think so. Certainly small and medium family style businesses are a key feature of our industry. Even when you see the big, bold signs across dealerships, they are largely family owned businesses.

Mr Voortman: If you look at the position on this issue among publicly listed dealers in Queensland—and there are a number who operate in the state—the medium and then the smaller, everyone is in fierce agreement that they do not want this. There is no doubt that if Sunday trading were allowed, those larger, better resourced businesses would be able to better function in that kind of environment.

Ms Dewar: It is consistent across our membership base as well with motorcycles, independent used cars and our new car franchises. It is the same.

CHAIR: Thank you very much for appearing before us today. You have certainly made me think a bit differently about what trading looks like, particularly for motor vehicles. I think there is still an element of trading where you can come down and have a look at a vehicle in a car yard. It is very interesting without the pressure of sales. It is a very interesting concept.

Thank you for joining us here today. I note that there is one question on notice. Mr Voortman will endeavour to provide us with some further information regarding the drivers of the New South Wales experience. If you could endeavour to provide that to us before Monday, 8 November, we would be very grateful.

Mr Voortman: Of course.

CHAIR: Thank you Mr Voortman, Ms Dewar, Mr Camm and Mr Plant for joining us here today. We are very grateful for the information you have provided us.

Proceedings suspended from 10.13 am to 10.34 am.

BROWN, Ms Fleur, Chief Industry Affairs Officer, Australian Retailers Association (via videoconference)

COLE, Mr Malcolm, Director, External Relations, National Retail Association

LAMB, Ms Dominique, Chief Executive Officer, National Retail Association

NARDI, Mr Angus, Executive Director, Shopping Centre Council of Australia (via videoconference)

NEWTON, Mr James, Manager, Policy and Regulatory Affairs, Shopping Centre Council of Australia (via videoconference)

STOUT, Mr David, Director, Industry Policy, National Retail Association

ZAHRA, Mr Paul, Chief Executive Officer, Australian Retailers Association (via videoconference)

CHAIR: Good morning and welcome. We look forward to hearing from you. Who would like to make the first brief opening statement?

Ms Lamb: I am happy to do so. The National Retail Association has been the leading advocate for reform in Queensland's trading hours regime over many years. Our association has also been heavily involved in shaping the trading hours work in Queensland via the Queensland Industrial Relations Commission under provisions of the Trading (Allowable Hours) Act. We are the only organisation to bring section 5 applications under the 2017 reforms and we have brought more section 24 applications than any other. Therefore, we are uniquely placed to speak to the efficacy of the 2017 reforms and the impact of the section 21 moratorium.

In relation to section 5, the National Retail Association has worked effectively with the commission over five years to ensure regional centres were able to benefit from seven-day retail trading when major events occurred. These events included the Gold Coast 500 motor race, the Commonwealth Games, rodeos, shows and regional festivals. This element of the act has worked well to balance the needs of retailers, their employees, their regular customers and visitors to the town and regions in these events.

In relation to section 21 applications, the moratorium has prevented the commission from responding to a number of unforeseen issues during this period and forced reforms to pass through parliament. The most notable of these was related to COVID-19 when large retailers were initially prevented from opening early to meet the needs of vulnerable members of the community. However, this was cured and under the circumstances we were all able to work together incredibly well—even our union partners, who often disagree with what we have to say.

However, there were other anomalies around Christmas and Easter trading periods when the revised act did not faithfully replicate the terms and conditions of the trading hours order from before 2017. One of those issues, Easter Sunday shopping in Brisbane, required additional legislation to go to parliament. The other could not be dealt with, resulting in the loss of hundreds of hours of work. In both cases it would previously have been a minor matter for the commission to tidy up under a section 21 order.

The revised wording of section 21 in 2017 inserted new protections for employees and raised the bar in terms of consumer interests and overall interest of all businesses regardless of their size. These were sensible reforms which the NRA supported then and continues to support now. Indeed, we have worked closely with the unions and the commission to ensure that any extended hours were entirely voluntary for existing workers. We have also worked closely with the commission over many years to demonstrate the complex interrelationship between large and small businesses in this ecosystem, so we are supportive of these safeguards.

However, while matters relevant to section 26 orders were strengthened in 2017, those safeguards have never been operated. We therefore submit that no-one is able to comment on the operation of the revised section 21 as section 21 has never operated in front of the Queensland Industrial Relations Commission. If the committee and parliament are serious about testing the new laws, we submit that the moratorium should be allowed to lapse and the independent umpire once again be given power to make a ruling based on those extended considerations.

CHAIR: Does the Shopping Centre Council of Australia wish to make an opening statement?
Brisbane

Mr Nardi: I will make a brief statement given that Mr Newton appeared before the committee, from memory, last week.

CHAIR: Indeed.

Mr Nardi: We support the position put forward by the NRA. As outlined in our submission, our fundamental recommendation is that the existing moratorium lapses and applications be able to be taken to the commission. The NRA noted that they are the lead group of applications to the commission. We have partnered with them and provided evidence to the commission on a range of those applications over a very long period. There is nothing further to add from our point of view at this stage.

CHAIR: Does the Australian Retailers Association wish to make an opening statement?

Mr Zahra: The Australian Retailers Association is grateful for the opportunity to appear before the committee today. We are the oldest, largest and most diverse retail body, representing a \$360 million sector that employs about 1.2 million people. Australia's leading representative group for retailers, the ARA represents around 100,000 shopfronts across the spectrum of Australian retail community, from food to fashion to furniture, from hairdressing to hardware to homewares and from department stores to convenience stores. We represent Australia's largest international chains to the smallest family owned businesses with a single shopfront. In fact, 95 per cent of our members are small and medium-sized businesses.

With this holistic view of the sector, our position is that further deregulation of trading hours is desperately needed in Queensland with the aim of working towards full deregulation. Deregulation will give consumers greater choice about when, where and how they shop. It will reduce the risk of price gouging that thrives when monopolies are given the regulatory protections to flourish. Deregulation will allow greater flexibility for retailers to choose when they open their doors to meet changing consumer behaviour. It will create additional employment opportunities and increase economic activity in local communities, and deregulation will help keep the local spending power in the local community.

COVID has accelerated many trends that were already occurring in the industry. One of these has been online shopping, where consumers can shop anywhere and at any time. In fact, the latest ABS data has a record national spend of \$4.2 billion online in the month of August. Our position is that all Queenslanders should be able to shop every day of the year, understandably with the exception of Good Friday, Christmas Day and before 1 pm on Anzac Day. The best case scenario is that all restrictions on all retailers operating a physical store be lifted as soon as possible to have a level playing field given the rise of online global shopping, which has only intensified during the pandemic.

Whilst this transition to full deregulation may take some time, there are some immediate opportunities to create consistency for consumers and reduce cost and complexity for retailers. We believe the moratorium should be lifted. The moratorium has served its purpose as a transition mechanism, but we now need to focus on the benefits of opening the whole sector instead of giving a select number of businesses more time to prepare for competition.

We would like to see the regulatory barriers to trade lifted so that retailers are not prevented from opening on Sundays and public holidays should they choose to do so. We want to see regulations relaxed in time for Christmas Day and Boxing Day this year so that retailers in regional, rural and remote communities will not be forced to close for four consecutive days, as was the case last year.

We believe that the current policy settings that restrict click-and-collect orders outside of trading hours should be relaxed or moved. Finally, we believe that the goodwill between government and industry to support flexible trading hours throughout the pandemic should be maintained as the retail sector continues to emerge from lockdown.

The reforms introduced following the 2016 inquiry were a step in the right direction, but we need to continue working towards full deregulation. Our experience in other jurisdictions and parts of Queensland that have already been deregulated is that the retailers do not trade 24 hours a day because they are able to do so; however, it allows them to open when customers want to shop.

As we emerge out of COVID-19, it is important that any restrictions on trade in physical stores be removed so that retailers can start to rebuild their businesses on a level playing field. We do not see this as a trade-off between large national retailers and smaller local retailers. Around 95 per cent of our membership are small to medium-sized retailers, so we are sensitive to the views of small
Brisbane

business. Taking a holistic view of the sector, we know that the foot traffic in shopping centres is stronger when you have a large retailer anchoring the centre. This increased traffic is good for all retailers, small and large.

Contrary to the narrative that large retailers are not connected to local communities, the pandemic showed the critical role that retailers played supporting the local community. This support predates the pandemic. Our members provide youth and mature age apprentice programs behind their bakery and butchery counters, donate fruit to local schools, sponsor local sporting groups and events, and donate gift cards and goods to local community groups. This is in addition to national fundraising activities that raise large sums of money to support charities helping to solve big societal problems.

Finally, we acknowledge there are competing views about deregulation. Our view is that the best way to address these conflicting views is to fully deregulate trading hours across the state and let the market, in particular individual retailers, make the best decision for their business, employees, customers and community. Thank you again for the opportunity to present to the committee today. I look forward to answering any questions.

Mr LISTER: Thank you to everyone who has appeared and provided submissions. It has been very helpful. Mr Zahra, I note you spoke about level playing fields and rural and remote communities. I represent Southern Downs, which is a rural and remote area. What do you say to the owners of small retail businesses in my electorate who are concerned about deregulation and the effect it will have on their trade, given that foot traffic and large shopping centres are less of a feature in the market in Southern Downs compared to other places?

Mr Zahra: In a remote community my comment is going to be even stronger, because I would imagine a trip to the shops would be a day's planned event, and to go to the shopping centre and not have all retailers opening—I think all retailers benefit when they are all open. It is the same scenario in a shopping centre when you have anchor tenants. The whole idea is that the small businesses do benefit from the foot traffic. I would imagine more so, in a remote area where it requires travel to get there, everyone would benefit from stores being open.

Mr DAMETTO: I appreciate you all attending this morning's hearing, your submissions and your delivery this morning. Ms Lamb, have you quantified the cost to your industry of certain areas having to shut on the seventh day, the Sunday?

Ms Lamb: Mr Stout, you might have those details.

Mr Stout: Yes, certainly. Can I just clarify the question?

Mr DAMETTO: With the current moratorium in place, what is the cost to the industry right now? Has that been quantified?

CHAIR: Is that with regard to Sunday trading?

Mr DAMETTO: Yes, what is the economic benefit if you are able to open?

Mr Stout (Inaudible) closure of those particular stores, it just disables us from making any new applications. The stores that were proceeding in 2017—those stores that could trade Sunday can still trade Sunday. No new applications since 2017 have been allowed.

Ms Lamb: It would be very difficult to quantify the cost to other small businesses that potentially do not open their doors if an anchor tenant is not trading. Accessing that kind of data across a spectrum of various different categories, not just groceries, would be very difficult to do.

Mr Cole: There was some good economic modelling presented by the Mickel review that did quantify some of these numbers. I think that is probably the most definitive source still.

Mr SULLIVAN: Can I start by putting a question to the National Retail Association. Forgive me, I worked in Washington in the past so I cannot bring myself to use your acronym. It is a question I put to the employee organisations earlier this morning, which is a bit of a historic one. Can you talk to how you think the QIRC process worked pre moratorium?

Mr Cole: Mr Sullivan, I might field that because pre moratorium I ran the section 21 applications for the NRA. It was a very high bar. Some we succeeded in and some we did not. One thing we found was that at every occasion the commission really tested the evidence we brought in front of them. The people who appeared as witnesses, including, as was said earlier, the Shopping Centre Council, were really very strongly tested. One of the things we had to clearly demonstrate was the voluntary nature of work for those people who would be called in to work extended hours. We also had to demonstrate that there were benefits, as is required in section 26, for all types of businesses, large and small. We often had small businesses giving evidence on those matters. For example, I think in Brisbane

your electorate, Mr Lister, we had a chemist and a baker who were set up outside the Woolworths in Pittsworth who were supporting a seven-day application. That application was not successful, so they were not all successful. It was certainly not a free-for-all. One of the things that comes to my mind was that the IGA owner in Pittsworth presented data showing how his sales went up and down on days that Woolworths was open and Woolworths was not open. Ironically, his best sales days were the days that Woolworths was open. That information was given to the industrial commission in the Pittsworth matter.

Mr Sullivan, to your point, we had to demonstrate a benefit to consumers, we had to demonstrate a benefit to the community and we had to demonstrate that there would be no unwanted impact on workers. People who did not want to work did not have to work. As I said, sometimes the commission accepted our arguments and sometimes they did not, but it was quite a searing process.

Mr SULLIVAN: To that point, Mr Cole, and also to Ms Lamb's description, I think you described it as entirely voluntary when it comes to employees working in what could be seen as unsociable hours. Do you accept there is at least a power imbalance for people who rely on being rostered on a week-to-week or fortnight-to-fortnight basis in terms of a manager approaching them saying, 'You need to work on X, Y, Z day for X, Y, Z time,' when they are relying on, as I said, a change in roster every week for their take-home pay?

Ms Lamb: As I understand it, in practice in fact the extra hours are offered and people are able to volunteer as to whether or not they want to work. We have had undertakings in all of our applications that they can only be voluntary. I accept what you are saying about a power imbalance, but at the end of the day the Fair Work Act is pretty prescriptive about not being able to coerce people into various things. Additionally, in all of the matters we have ever run, whilst we accept our friends the SDA's evidence, they have never brought complaints. They have never raised any issues with us about any of these issues occurring as a result of any of our successful applications. We have a very good relationship with them. We speak quite regularly. None of these things are ever raised with actual individual examples of those things occurring, and of course if they did we would speak to our members about their obligations under those undertakings.

Mr Stout: Throughout the years there have been undertakings through a various range of businesses, predominantly the non-exempts. In most cases you will find that when these hours are offered to the existing employee base they—the employees—determine the suitability of those new hours to their particular lifestyle, and that is very important. It is very important that the employer offers those hours to the existing workforce first as an incentive for those people in recognition, and of course if they do not want the hours then new employment is sought, and the new employment is sought based on those opportunities.

In my experience, I would say in most cases there is at least 70 to 80 per cent broad adoption from the existing employment base. They are all looking for new opportunities and new work, remembering that Sunday predominantly and into the nights are predominantly penalty rates, so there is an incentive. On balance, I would say the majority of the people subscribe to these hours. There have been only one or two cases in my 15-year history where predominantly the existing employee base did not want to do it so they had to employ a suite of new staff to fill those particular roles.

Mr SULLIVAN: Mr Newton heard this last week, so forgive me for repeating myself. My electorate of Stafford includes a range of suburban retail strips, smaller to medium shopping centres like Newmarket and Stafford as well as the enormous Chermside Westfield, so I see the range of it. Do you think perhaps that when there are smaller to medium enterprises they do not have the workforce to expand briefly and that when there is that very personal relationship between employee and employer and you are asked to work at certain times it is not really a request?

Mr Cole: A section 21 order or even a section 5 order, Mr Sullivan, does not apply to a smaller workforce because you are dealing here with businesses that are considered under the act non-exempt. The stores that are looking for additional hours at this point are actually just the non-exempt stores that have more than 30 people on the floor, so that smaller category of business that you are talking about actually is not affected by a section 21 or section 5 order.

CHAIR: The intent of the moratorium that is in place currently was to provide some consistency, because I think it would be fair to say that what we have heard from previous submitters and what is contained within the Mickel report is that there had become a suite of very unwieldy hours operating across the breadth of Queensland. Would you agree that the moratorium has provided stability and consistency and some certainty for all of the members of your organisations, and would you suggest that the moratorium being in place has been successful in providing that certainty?

Ms Lamb: I think there has been a lot of uncertainty at this time. In fact, this is probably a very interesting time to test the moratorium simply by virtue of what has been occurring between lockdowns, issues in terms of supply and all of these things happening. I would say that, whilst the moratorium has served a purpose in the sense that there were a lot of different trading hours regimes, obviously it was cleaned up quite significantly. What it has not done is allow regions that perhaps would like to participate in longer trading hours to make those applications or participate in those applications with the independent umpire.

CHAIR: Specifically, is that the 23 regions that are currently excluded from Sunday trading and public holidays?

Ms Lamb: Yes, that is correct.

Mr Cole: Ms Richards, could you not argue that had the Mickel recommendations been fully implemented those regions would also have certainty?

CHAIR: I am not disputing those 23 regions; I was just clarifying that point.

Mr Cole: I guess the point in relation to whether the moratorium has brought certainty is that actually having legislated as Mr Mickel had recommended would also have brought certainty, I suppose.

CHAIR: Possibly. I was being more targeted. I think there were about 100 different sets of trading hours that had had multiple applications through the QIRC and that process of just a bit of an all-over-the-shop approach to what trading hours look like.

Mr Cole: The very large matter that we brought in South-East Queensland which sort of became the basis for what Mr Mickel recommended eventually for the state was to tidy up about 30 or so different parts of the order because—you are correct—it was half an hour different here and half an hour different over there, so often in applications that we brought we were trying to clean up some of those anomalies.

CHAIR: Possibly in deregulating hours it could open the field back up to that point. In our last session, Mr Newton, I think you spoke to that and you were going to come back to us. We know the influence that is wielded by the bigger anchor tenants and shopping centres, placing that requirement on smaller traders to trade at those same hours. You were going to come back to us in terms of where flexibility lay within your shopping centre members in terms of mandating hours for those smaller tenants versus what a larger anchor tenant is able to deliver in terms of workforce. I was wondering if you had any further information to provide.

Mr Newton: Yes, certainly. Our comments will come through to you in writing in the next couple of days. Essentially, the Retail Shop Leases Act and the Trading (Allowable Hours) Act enable shopping centres to set and require tenants to observe core trading hours and that is a condition of their lease, so there is no delineation between South-East Queensland and regional LGAs in that regard. In terms of the question that the committee posed last week in terms of flexibility in that regard, tenants do not have the flexibility to pick and choose trading hours. There is an expectation that core trading hours will be maintained. Where there are permitted hours outside of that, our experience is that they are in desirable periods of trading such as public holidays, Sundays and that (inaudible) significant take-up of support. In terms of the question that was asked last week about flexibility (inaudible) expand on that too.

CHAIR: Potentially, deregulation would run the risk of putting an extraordinary amount of pressure on those smaller tenants within shopping centres.

Mr Nardi: In short, no. We cannot force tenants to open generally during extended trading hours. Our submission refers to a participation rate of 80 per cent. What that means is that where we have seen extended hours around 80 per cent of tenants within a shopping centre choose to open to trade and the remaining 20 per cent choose not to trade, which itself highlights again that outside what we call core trading hours they actually cannot be forced to trade and we do not force them to trade.

CHAIR: Who determines core hours?

Mr Nardi: Core trading hours are a factor of the Retail Shop Leases Act in concert with the trading hours act. It is a longstanding principle. It stands in legislation in other jurisdictions. As an example, when Sunday trading was permitted in the early 2000s in South Australia, the provision was put in at that time which said that Sundays could not be enforced as core trading hours. It is a principle that stands in pretty much all jurisdictions, and we certainly apply that principle in Queensland.

Mr O'ROURKE: What is your thinking around the benefits of deregulating the trading hours for employees?

Ms Lamb: Can I just clarify that the National Retail Association does not support deregulation; we support the Mickel report. We do not want to see complete deregulation at all. You would think that we do, but we do not. In our experience, the benefit for employers has been that at the end of day this is much broader than groceries. This debate has been groceries for a very long time, but it is actually about other small businesses. What we have seen throughout this time and even prior to the pandemic is that small businesses want to trade in locations where anchor tenants are trading. If you see deregulation around non-exempt stores being able to trade, you will see small business select to trade and in effect put more money into their pockets, feed their families, create more jobs and do all of those things. That is what we want to see in the regions.

Mr Cole: Mr O'Rourke, could I add to that? It goes to the question from Mr Sullivan about how section 21 applications operated. In the South-East Queensland case that I mentioned a little earlier, Deputy President Swan required for us to get some large employers to produce job numbers—head counts and hours—for before and after some of the applications that we had brought previously. By doing that, we were able to demonstrate to the commission that there was a significant increase in employment in all of those places.

Mr DAMETTO: In the middle of my electorate, the Hinchinbrook electorate, we have the Hinchinbrook shire. We have had seven-day trading there for some time now. The problem we have seen—and this is my observation—is that culturally people move to regional centres for a lifestyle. We have a scenario playing out right now where we have businesses that cannot find staff to work on Sundays. For example, the lady who owns Subway in Ingham cannot find staff. The issue is that franchisors have put it on them that they have to have the ability to open up. We have people who have an issue with finding staff being forced by their retailer or, in this case, their franchisor to open. Can you speak to what would happen if the 23 regional areas across the state were forced to open? How do we manage that culturally in these small towns when they cannot find the staff?

Mr Cole: I think that is not a problem that is unique to the regions either. I think most small businesses, even in the city, would say the same thing. Perhaps there are other arguments around some of the policies that we have seen rolled out federally in relation to COVID, JobKeeper and that sort of thing that are playing into that as well. I think it comes back to the point that we made earlier that under the trading allowable hours act that we are talking about here there is no impact on a small business. Under the act those stores are exempt businesses so there is not really an impact of the act itself. In relation to employment, it is a story that is not unique to Hinchinbrook; it is across the board.

Ms Lamb: In effect, it sounds like what you are talking about is a franchisor forcing a franchisee to open. That is a very different legal mechanism and it would come down to their independent contract and franchisee and franchisor arrangement. I have not heard of that one before, but certainly they would not be forced to open from a centre perspective and they would not be forced to open under the act. It would be a matter of the individual leasing arrangement or even their individual arrangement with their franchisor and that is something that needs to be managed.

I think in terms of skills shortages, you are absolutely right. We know that our retailers across the country are saying that they are desperate to find staff. In saying that, though, we have seen amazing incentives out of the Queensland government, especially with Skilling Queenslanders for Work. It is really about connecting businesses with some of those grant facilities in order to connect them with the people who want to work and get them those jobs. That is something we are working on as well.

Mr DAMETTO: I think the problem we are seeing at the moment is that everyone who wants a job is working.

Ms Lamb: This is true.

Mr DAMETTO: For some of these 23 areas, if seven-day trading was opened up for them it would put extra pressure not only on their existing staff to cover those shifts but also on the employers to try to find those staff.

Mr Cole: Just to make the point again, those 23 areas are opened up for seven-day trading for the kinds of examples that you have already raised. Those kinds of small businesses can already trade.

CHAIR: With the exception of those 23 regional towns that do not currently trade Sundays and public holidays, is it fair to say that the current trading hours regime has been successful for your membership?

Ms Lamb: Yes, it has.

Mr SULLIVAN: I have a couple of questions for the National Retail Association. I would like to put to you a question I put to the employee organisations, which is the reality that changes in trading hours necessarily interact with the Commonwealth regime for industrial relations and that the benefits or otherwise of changes in our jurisdiction depend greatly on the enforcement of rights under the federal jurisdiction. I wanted to give you the opportunity to talk to that if you wanted to.

Ms Lamb: The Fair Work Act is very prescriptive around the protections for workers, particularly when it comes to anything like adverse actions. If you make a complaint or inquiry about your employment you cannot be adversely affected by your employer. It is a very low cost jurisdiction. It is quite an easy entrance level for an employee who would be experiencing anything that has been raised by our colleagues within the SDA. I am not aware of any of those applications being made. Certainly, they have not been made against our membership and we have not appeared in any of those matters.

As I said to you before, none of those issues were ever raised because there are undertakings around voluntary work. I accept the premise, and obviously you have had the evidence presented to you, but it certainly has not been our experience that our employers or our membership have been seeking to force people to work, because it goes against the grain of retail. We want happy customer service people. Forcing someone to work means it does not work that way.

In addition to that, we also compensate our employees. Most non-exempt employers have enterprise agreements. Those rates of pay, as Mr Stout has discussed, are considerably higher than what an ordinary hour would be. What we are seeing and hearing from our membership and from their workers at the moment is that, as a casualised workforce and a part-time workforce, they are seeking more hours because the cost of living is getting more expensive, particularly at certain times of the year like Christmas. Trading hours and the expansion of trading hours allow them to do that.

Mr SULLIVAN: This is a follow-on question from your answer to the member for Hinchinbrook in relation to Skilling Queenslanders for Work. Does the National Retail Association run those programs as a registered training organisation or in partnership?

Ms Lamb: We do.

Mr SULLIVAN: Across the state?

Ms Lamb: Yes, we do.

CHAIR: There being no further questions, thank you very much to all of our witnesses for appearing today. We are very grateful for the information that has been provided on the retail sector and the importance of allowable trading hours in Queensland. Thank you very much for your time today. I note that there were no questions taken on notice.

The committee adjourned at 11.09 am.