EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:
Ms KE Richards MP—Chair
Mr MA Boothman MP
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, 15 NOVEMBER 2021

Brisbane

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The committee met at 9.32 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, firstly, 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 living cultures in Aboriginal and Torres Strait Islander people. With me here today from the committee are: James Lister, the member for Southern Downs and deputy chair; Mark Boothman, the member for Theodore; Nick Dametto, the member for Hinchinbrook; Jimmy Sullivan, the member for Stafford, who will be back with us shortly; and Barry O'Rourke, the member for Rockhampton.

On 14 September 2021, the Legislative Assembly agreed to a 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 has 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 focusing on point 2 from the terms of reference which covers: the operation of the provisions of the Trading (Allowable Hours) Act; how, in practice, different provisions are contributing to the objects of the act; and the impacts of the existing framework for the regulation of trading hours in Queensland. We thank all of the submitters who addressed this aspect of the terms of reference in their submissions. The committee's proceedings today are proceedings of the Queensland parliament and 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

CHAIR: I now welcome witnesses from the Shop, Distributive and Allied Employees' Association. Mr Gazenbeek, would you like to make a brief opening statement before we ask questions?

Mr Gazenbeek: Thank you for the opportunity to present to the committee again. Our comments relate specifically to the interactions between the sections of the act primarily which revolve around the protection of voluntary work in extended trading hours afforded in section 36B(1) but determined by the Fair Work Commission to be inapplicable to section 5 applications on the basis of jurisdictional issues. Section 36B(1) of the act enshrines the principle of voluntary work with extended hours. Although section 5(1)(c) applications are not an application for extended trading hours, the reclassification of non-exempt shops to exempt shops has the same practical effect. This is because the impacted shops are given the ability to trade 24/7 if required, which is effectively the ability to extend their trading hours for that designated festival or event.

It is our position that section 36B(1) protections of the act should have been applied to declarations made pursuant to section 5 to keep the intention of the legislation consistent. We have argued strongly and made representations to the minister, to the government and to the Office of Industrial Relations throughout the last five-year period where the moratorium has occurred. Whilst we do not see the necessity of section 5—that is our fundamental position—and lend our support to a further moratorium for five years, if section 5 were to be amended we would strongly press the protection of voluntary work in extended hours be a mandatory inclusion in any order made by the Queensland Industrial Relations Commission.

The issue of voluntary work is of particular importance to our members. This was reflected in the results of a survey—which we have not tabled yet but we are happy to table—which saw almost 1,400 responses from our members. Out of the members who are impacted by section 5 orders specifically, 14.36 per cent report not being advised that they could elect to work during extended hours, almost 55 per cent felt pressured or forced to work outside their normal span of hours and 89.74 per cent did not agree to work those hours in writing.

Unfortunately, despite the promises made by the National Retail Association on behalf of their members and the importance of the voluntary work being generally communicated to by the commission, this did not go far enough to protect the workers in the stores in which this impacts them. It is clear that employees require and deserve a mechanism within the section to provide them with legislative protections against being pressured, coerced or forced to work within the extended hours. The protections in the legislation are an irreplaceable layer of protection for employees and work together with other more insecure guarantees of combatting the relational pressure many employees face to comply with a request to work the unsociable hours.

CHAIR: Deputy Chair, would you like to ask the first question?

Mr LISTER: I do not have any questions but I thank Mr Gazenbeek and Ms Armstrong for coming and for the thoroughness of their submission.

Mr DAMETTO: Thank you for coming this morning to give evidence and for your submission. Can you describe in practical terms what it would mean for your member base if section 5 was amended?

Mr Gazenbeek: Amended or removed?

Mr DAMETTO: Removed.

Mr Gazenbeek: We support the removal of it. Historically, as I mentioned at the last hearing, the QIRC has always had the purview of hearing matters. Most of the applications are made by the National Retail Association to extend trading hours. It is dealt through that process. Our preference now would be for the government, considering the five-year moratorium period and now considering this inquiry, to actually legislate consistent trading hours across the state.

Our concern is that, if it goes back into the purview of the QIRC, if the adequate protections are not there, if the legislative framework is not there to have a strong fundamental protective measure for employees' interests—which we do not think is in the legislation currently—then the people who are working in those stores which this has a major impact on really do not have a voice. The commission has to deal with applications on the basis of certain criteria and if the employees' genuine interests are not taken into consideration then they can be forced into working those hours.

The voluntary protections obviously are really important. Rather than just thinking about the economic impact and whether it is going to create more jobs or more hours, I think the impact on the employees of things such as unsociable hours, penalty rates, child-care arrangements, transport and all of those things that we have articulated in our submission is important. If section 5 were removed, I think it would provide some consistency for the workers over that period of time and an understanding for employers of what the legislative trading hours are. The effort from the Office of Industrial Relations can be an educative one, ensuring that small employers and large employers understand what the parameters are, what the legislation is and what the hours of trading are, and ensuring that they are complying with all of the functions of the act.

Mr DAMETTO: From my understanding, by shoring that up through legislation, you would actually have better protections and I guess a legislative lever to pull when it comes to this, rather than going through the process of assessing everything case by case as it seems to be done at the moment.

Mr Gazenbeek: Correct. Our view, and I think evidence strongly indicates this in the Queensland Industrial Relations Commission hearing applications, is that some of them we are successful in ensuring the trading hours are not extended but over the course of, say, the last two decades we have seen a slippery slope where trading hours are slowly starting to open up. Clearly, from our survey results, members do not want to work the extended hours, particularly in unsociable times.

Mr SULLIVAN: This is a question I put to the National Retail Association in our previous hearing so I will put it to you. Can you talk in some practical sense as to the human dynamics and the natural imbalance between employees and managers in scheduling shifts, rosters and those things when it comes to whether signing up for unsociable hours is in fact voluntary or otherwise?

Mr Gazenbeek: In practical terms, we have federal enterprise agreements that provide protections for employees more around the federal legislative requirements of family responsibilities. Sometimes we have provisions in there that relate to sporting commitments or other commitments they have outside of work. In our practical experience and from the feedback we get all the time from members, most of the disputes we have relate to rostering and relate to noncompliance. It is not generally malicious intent. There are some managers who have become a new manager and try to throw their weight around a bit, but generally speaking it is more around the commitments and the agreements that are reached at a high level of enterprise bargaining filtering down to a large corporation.

I always use the big players and I will use the big two companies—Woolworths and Coles. They are very professional organisations and their intentions are very clear: they want to look after their staff and provide decent work and decent hours and they are considerate of their responsibilities. However, when you get down to the lower echelons of lower level management, it is all about ensuring the day-to-day operations function effectively and they sometimes do not genuinely take into consideration the needs of the individuals.

Even though we have clear protections under enterprise agreements and legislation, we are finding that subtle pressure and sometimes not so subtle coercion is applied. Given the insecure nature and the low-income nature of the industry we are representing people in, they do not have the strength and courage to actually put their hand up and say, 'I can't work the proposed changes to the hours that you're seeking.' They have young children. Their husband or partner works elsewhere and it conflicts with their work and he cannot change his hours. It is a real day-to-day struggle for people to actually try to use informal care because child-care is a huge problem in this country in our view.

We recently launched a report called *Who cares?,* which is a comprehensive survey and study. If it is of interest to the committee, I am happy to table that report as well. It talks about child care in Australia and the significant problems associated with particularly regional areas of Australia. Over 6,500 of our members were surveyed. It was a research paper conducted by the University of New South Wales and there are really significant issues. The child-care system in Australia is not fit for purpose in our view, and it needs urgent review because it is placing significant pressure on people.

If trading hours are changed and people are given very short notice of the change, if they are not aware of what their legal rights and entitlements are and there is no mechanism for them to prosecute the case it is really difficult for people in those circumstances to work the hours that are required. We have had some disputes—Laura has to run some of these disputes through the commission—where employers will just give the relevant notice under the enterprise agreement, which is generally seven days—14 days if a dispute or grievance arises—and in some instances they do not have status quo provisions where their existing roster patterns remain unchanged until the dispute is resolved. So they are left in the situation where basically the employer gives them advice that, 'You need to work this roster on this date. If not, stay home on unpaid leave until you can make arrangements,' which puts huge financial pressure on them and their families.

Ms Armstrong: If I can add to that. This is something we are experiencing more and more in terms of the relational aspect and the stores. In this age where everything is analysed in terms of how things should rostered and what sort of costings should come along with that, those decisions are being made quite high up by people who do not have that relational connection to the employees on the ground level as well, so the managers who are in between there are coming under pressure from above in terms of what that costing and rostering should look like. That is then being passed on to the employees who do not have that connection to where those decisions are being made. We think that protection within the legislation provides the accountability that will be listened to by the people who are making those decisions.

Mr Gazenbeek: We live in the world of analytics, so the analytics and the technology—particularly of these large employers—can determine how many hours of work they need for every minute of the day based on sales, peak flows and peak trading patterns throughout any given day of the week. I have become a bit cynical with these sorts of things. If they can analyse and get the analytics to determine all of their technology around supply chain delivery to stores, volume of product going to stores, why can't they use analytics to verify how many staff they need at any given time of the day to provide consistency and security of the hours of work they require? That is an interesting question.

Mr SULLIVAN: Laura, you made the point that, in terms of the squish between where the decision is made and on the ground, sometimes there could be a 22- or 23-year-old manager who has been told what to fill and what boxes to tick, so it can be a difficult scenario for those people who are being told in a black and white way what needs to be filled while putting the human nature side over the top of that. It is a difficult puzzle.

Mr O'ROURKE: I just want to go back to child care. Do some of our larger retailers and shopping centres provide any childcare services on weekends or after six o'clock in the evening or anything like that?

Mr Gazenbeek: Not that we are aware of, no. I do not believe that occurs.

Mr O'ROURKE: The impact on our workers around child care must be huge. Can you talk a little bit about that?

Mr Gazenbeek: Yes, sure. I have quite a significant—

CHAIR: Would you be happy to table that?

Mr Gazenbeek: I would be happy to table that report. There is a lot of information. If I can just very briefly quote something from the executive summary of the report. There were 6,469 people who completed this survey on informal care and formal care arrangements and impacts on retail workers. The report states:

The data shows that:

- SDA members lack genuine choice about their working times and childcare arrangements and require better support structures, including access to responsive childcare services that recognise their needs, to ensure they have meaningful opportunities to shape their working and caring lives.
- Industrial relations settings and employer practices are limiting the choices and opportunities available to SDA members. Rostering and pay are shaped too strongly around employers' agendas of profitability and cost minimisation.
- The ways work is organised exacerbates difficulties faced by workers needing to organise their work and family lives, and find time for care. This impacts on the children of retail workers, many of whom cannot access early education and have constrained opportunities to fully participate in other aspects of social and community life.

Changes are needed at the level of industrial relations policy, and within employing organisations and local workplaces. Policy and regulatory changes should be aimed at promoting decent pay, job security, predictability of shifts, employees' control over work times, access to reasonable shift lengths, genuine choices about work days and times, and to ensure workers can make schedule adjustments without fear of repercussions—

—from management. It continues—

Changes are also needed in Australia's childcare system, to improve the affordability, accessibility and suitability of care for low-income workers.

That is just an anecdote and a quote from the report which I think is quite instructive and really concerning. From my perspective, this is some of the best work the SDA has commissioned. It will be very interesting to see how we pursue that over the coming years ahead.

CHAIR: I was just wondering if you could talk a little bit just about on what the process looks like on the ground to obtain written voluntary consent from employers, particularly the large retailers. What does that look like? Is that within agreements? Is it a separate adjunct to those employment agreements? What does that look like?

Mr Gazenbeek: I would honestly say that when the last review occurred and the legislation was passed—I know the Office of Industrial Relations is here this morning—I think there would have been work done when all of this evolved at the commencement. I am not sure what inquiries the Office of Industrial Relations received. From our perspective, certainly whenever there are changes as a result of individual events under section 5 applications we do up a comprehensive overview of the decision, our position in it and ultimately what the decision was and inform them of what their informal rights are.

You will note from our submission that a number of the decisions talk about providing protections from 36B, but a number of commissioners have indicated they do not have the ability to order it. There is a commitment from the National Retail Association to provide it. To answer your question, I do not think—other than initially when the legislation was passed and it was fresh and employees were asking questions—there was a genuine interest from employers as to what they were required to do and what that looked like. The reality is the employee is required to provide some evidence in writing of their free choice to elect to do that. In the current society in which we live we are not opposed to some electronic means for that to occur as long as there is visible evidence of it. It could be impractical in some senses for people to have to write it out et cetera, particularly with short notice. We are not really concerned about that, but anecdotally we do not think there is a lot of effort that goes to it. In fact, now that we are five years down the track I would probably suggest there are a lot of employees who do not even know they are required or have to do that.

CHAIR: Particularly at that lower management level—

Mr Gazenbeek: Correct. Absolutely.

CHAIR:—where they are developing their shift rosters, whether that is a phone call or a face-to-face conversation about, 'Are you okay to work these hours?' whether it be an email or whatever it looks like. Do you think that is not the wide practice at the moment?

Mr Gazenbeek: No, that is correct. In fact, I do not want to suggest to the committee what they should be asking, but I would be very interested to know whether the Office of Industrial Relations has actually prosecuted any employers as a result of that provision in the legislation.

CHAIR: Has the SDA reported any noncompliance on behalf of its members to the department?

Mr Gazenbeek: From memory, I think not in a formal sense. In an informal sense I think we have made inquiries to the Office of Industrial Relations, but that would have been back around 2017 just post the legislation changing.

CHAIR: It makes it difficult to enforce if there is no awareness there is a noncompliance occurring in the first place.

Mr Gazenbeek: There certainly needs to be, in my view, a large education piece around this.

CHAIR: Were there any other questions? No? Would you like to seek leave to table those two documents?

Mr Gazenbeek: Yes.

CHAIR: Leave is granted.

Mr Gazenbeek: These have my written notes on them so I will send a copy as soon as I get back to the office.

CHAIR: We cannot table that straightaway, but when you send it through then we will do that filing process. That brings our time for this hearing to a close. Thank you, Mr Gazenbeek and Ms Armstrong, for submitting today. We are very appreciative. I declare this public hearing closed.

The committee adjourned at 9.54 am.