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EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair
Mr MA Boothman MP
Mr N Dametto MP
Mr BL O'Rourke MP

Staff present:

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

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

TRANSCRIPT OF PROCEEDINGS

MONDAY, 29 NOVEMBER 2021

Brisbane

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The committee met at 10.35 am.

CHAIR: Good morning. I declare open this public briefing 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 that we are meeting on custodial land of the oldest living civilisation in the world. I pay my respects to the Jagera people and the Turrbal people and their elders past, present and emerging. With me here today from the committee are: Mr Mark Boothman, the member for Theodore; Mr Nick Dametto, the member for Hinchinbrook; and Mr Barry O'Rourke, the member for Rockhampton. I have apologies from the member for Stafford, Jimmy Sullivan; and the deputy chair, the member for Southern Downs, James Lister.

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 briefing today is an opportunity for departmental officers to respond to issues raised by witnesses at the committee's recent public hearings held in Cairns, Mossman, Mount Isa and Townsville and to answer questions from the committee to clarify specific provisions of the act and how they are administered by the department.

The committee's proceedings today are proceedings of the Queensland parliament and are subject to the parliament's standing orders. I note that we are in the Legislative Assembly chamber and that this is a first for our committee to conduct a hearing inside this chamber. Witnesses will not be required to give evidence under oath, but I remind everyone that intentionally misleading the committee is a serious offence.

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

SCHOSTAKOWSKI, Mr Tony, Acting Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education

CHAIR: Welcome. Would you like to make an opening statement before we ask questions?

Mr James: Thank you and good morning. Thanks very much for the invitation to come back and appear today. I note that I have made more comebacks to this committee than Johnny Farnham!

CHAIR: I will call you Whispering Jack!

Mr James: Mr Schostakowski and I acknowledge the traditional owners of the land on which we meet. We also pay our respects to elders past, present and emerging.

If I may, I would like to make some observations by way of an opening remark on the totality of the submissions made to the committee including the ones from your recent regional visits. I will make them as they relate to the terms of reference. Then Mr Schostakowski and I will provide whatever further assistance we can to the committee as you see fit.

As the committee is aware, the Trading (Allowable Hours) Act 1990 distinguishes between exempt and non-exempt shops in Queensland and primarily regulates the trading hours for non-exempt shops. The committee has been charged with inquiring into the effects of changes made in 2017 and the existing framework for the regulation of trading hours in Queensland. I am sure I do not have to tell you your terms of reference.

In 2017 the act was amended to consolidate a web of different trading hours orders for different hours across the state and to put those hours into the legislation. The amendments also place moratoriums on the operation of some sections of the act, being the operation of trading hours restrictions in Port Douglas and in Mossman and on the QIRC hearing application for further changes to the hours for non-exempt shops. The amendments also introduced a process for the QIRC to consider an application to relax trading hours restrictions when there are special events in particular areas. That is known as the section 5 applications.

The amendments also made independent retail shops a category of exempt shop. Independent retail shops are classified as such based on small business type criteria as set out in section 6 of the act. Independent shops are exempt from most, if not all, of the trading hours restrictions, but I will discuss that shortly. I believe there was some discussion about independent retail outlets in your travels, particularly in the Mossman-Port Douglas area.

I have had the opportunity to review all of the transcripts from your regional public hearings and I have also revisited the 26 written submissions from interested parties, which include employer and employee representatives, small business representatives, industry and regional bodies, local councils and other interested parties, as well as the transcripts from our previous public hearings and previous advices that OIR and I have provided to the committee.

By and large, witnesses' oral statements at the public hearings have tended to confirm or elaborate on their written submissions. I suggest that the submissions overall have not presented any particular unexpected information, with longstanding positions being adopted on most issues to do with extending or not extending trading hours. While the interested stakeholders have presented genuine arguments and their genuine positions for change or no change, it is my view that much of their positions have been made on assumptions which are difficult to test or prove or are more in the vein of aspirational statements. I do acknowledge the lived experience told by business owners and worker representatives to the committee. If the committee recalls, Queensland Treasury also had difficulty in definitively establishing some of the cause and effect of trading hours on economic indicators, economic data.

I have previously noted the merit of some of the observations in the McKell Institute submission about the nature of the debate between bricks and mortar and the internet. That for me was quite instructive.

John Mickel and the ARA, the Australian Retailers Association, have argued for complete deregulation of trading hours. I do note the ARA noted that this may not be achievable at this time and, instead, has recommended increased, although not total, deregulation.

The Shopping Centre Council of Australia did not specifically advocate for extending permitted hours of trade to allow Sunday trade in areas without it, but its submission recommends that the government should seek to harmonise permitted trading hours in all regional local government areas but the South-East Queensland area. By extension, they are seeking to move trading hours.

The National Retail Association did not specifically advocate for Sunday trading and did not seek any legislative amendments. However, it did support arrangements that would enable non-exempt shops access to greater trading hours. I am going to discuss all of that a little bit later.

Parties opposed to any relaxation of permitted trading hours include the Master Grocers Association, the Queensland IGA state board, the Shop, Distributive and Allied Employees Association—the shop assistants union—the Australian Workers' Union and Mr Robbie Katter, the member for Traeger.

The MGA saw that any further extension in trading hours will result in a detrimental effect on town centres, local communities, employment opportunities and competition with the grocery retail sector. The IGA recommends that in non-metro communities in South-East Queensland there is a good argument for the reintroduction of some further trading hours restrictions, noting that its position is based on the lived experience of IGA retailers in those communities, and it is sought so that jobs and economic contribution in those communities is supported. Mr Katter raised concerns with the viability of small and medium sized businesses in regional and rural areas.

While most of the submissions opposing the extension of trading hours tended to focus on the viability of businesses, I do note that the SDA submission addressed workers' concerns that increased trading hours would impact negatively on time with family, important events, caring, responding to sporting commitments and community activities. Other concerns in relation to any increase in permitted hours of work for workers include the availability of public transport, child care and safety.

The SDA also disputed the link between extended trading hours and employment growth. Based on a survey of its members, it suggested that where hours are extended or deregulated the existing retail workforce is spread more thinly across a broader spread of hours.

As I said, I have only repeated that to frame that there is diversity of opinion. A lot of the diversity of opinion is very difficult to nail down as 'that's right and that's wrong'. I am sure I am not telling the committee members anything they have not already experienced.

As I previously observed, except for a few matters, there is no real consensus on options for trading hours reform. However, I do note for the committee that the following matters were generally uncontested. In regard to the actual hours of trading, no claims were raised against existing hours

prescribed in the act for motor vehicle and caravan sales. That is section 16EA. In fact, the motor vehicle and caravan salespeople were very adamant that they wanted no change. The same applied to hardware stores. I know there was a reference to hardware stores from one of the submitters. By and large there was no real push for change for hardware stores—that is section 16E—nor was there any great agitation for change in the treatment of Christmas trading extended hours at sections 16F and 16G.

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No changes were called for 'exempt shops' as defined at section 5 and what type of shops were listed in schedule 1AA. These shops have no trading hours restrictions to speak of, and the 'no restrictions' also applies to independent retail shops predominantly selling food or groceries.

In regard to independent retail shops, I noted that there may have been confusion by some of the folk who addressed the committee during the regional visits on what restrictions actually apply to independent retail outlets. To be clear, independent retail outlets as defined at section 6 of the act, other than one that is predominantly selling food and groceries, are required to remain closed on only 2½ days per year: Good Friday, Christmas Day on 25 December and up to 1 pm on Anzac Day. That is all set out at section 17 of the act. I repeat: that restriction for those 2½ days does not apply to independent retail shops that predominantly sell food and groceries. They are exempt and they have no restrictions.

I previously provided the committee with some advice on the number and nature of trading hours inquiries received by my office. Whilst the stats do not indicate that there is any particular issue with the understanding of trading hours or the categories of exempt or independent retail shop, the committee may note that I am aware of the transcripts and the conversations that happened up north and around the traps. I have asked my people to have a look at the information as we present it on the OIR website to make sure it is clear and presented in the best and clearest possible way.

In my review, the chief matter raised is the regulation of trading hours for non-exempt shops around the state. There are other matters raised by stakeholders and interested parties that are also in the committee's terms of reference that I would care to comment on. I am not presenting a policy position for the government; however, I will observe where matters are consistent with government's known policy or policy intent as I understand it and the operational efficiency and efficacy of some of the matters raised in submissions and how they might work, for example, for the bureaucracy or for my agency.

The ones I wish to focus on are: the operation of section 5, which is the special events application; the moratorium on section 21 trading hours applications; and the moratorium for the Port Douglas and the Mossman area. I also want to make some general observations on the operation of the act and the role of the QIRC.

The section 5 special events allow for a relaxation from trading hours restrictions for special events. That is their function. I note that the SDA and the MGA have a base position to remove the facility of section 5 applications—in other words, pull out section 5(1)(c). However, both present a fallback position to ensure that such applications establish their necessity in future matters. It is fair to say that section 5 has had a pretty good working over since it was introduced in 2017, and we have reported 22 applications approved. I think that was in the first paper provided.

These approvals have ranged from the first one, which was the Commonwealth Games, right through to the Burdekin Annual Show and the annual Chinchilla Melon Festival. I have previously expressed to the committee that OIR and I consider that there is merit in revisiting what is a 'special event' such that it would warrant the relaxation of trading hours for non-exempt shops in the vicinity of the event and that matters could be raised for consideration by the QIRC when it is considering both receiving and determining such applications. To this end, I have previously mentioned that the SDA submission carries some reasonable suggestions in this regard. I note that the Queensland Small Business Commissioner also proposed that special event assessment criteria be reviewed and amended to more holistically assess whether special events economic benefits will flow throughout the local business community, not just to the major retailers.

I do consider also that there is merit in clarifying the legislation, whether it be at section 36B or a standalone provision, for employee protections for voluntary work that may be included in an order made by the QIRC under section 5. It has been my experience that, on applications, no-one in the hearings ever argues about the importance of the voluntary nature of asking workers to work but, clearly, the commission's position is not to include it in the orders. They maintain that section 36B provides for that, but I think for clarity it would be opportune to clarify that.

In regard to the moratoriums, I will talk to the Port Douglas and Mossman moratorium first. There are actually two moratoriums introduced by the 2017 amendments. Sometimes that gets lost in the conversation. The first moratorium was placed on the application of trading hours restrictions

on Mossman and the town of Port Douglas tourist area. It was a trial for that area. The moratorium provision is found at section 56 and has a five-year life, which will expire at the end of August 2022. That moratorium effectively releases traders in that area from any restrictions. In the main, while they could trade 24/7, they have not. My understanding is that they have not traded on hours outside what you would find in the tourist area section in which the town of Port Douglas would ordinarily or otherwise fall. I just make a side comment there. I note that, in the successful section 5 applications anywhere in the state, retailers have not taken up a 24/7 opening.

The main benefit mentioned for the Port Douglas and the Mossman area is that non-exempt shops and independent retail shops that do not sell food or groceries can trade on Good Friday, Christmas Day and prior to 1 pm on Anzac Day. The dress shops, which are genuine independent retail outlets, are able to trade on Good Friday. In fact, the bigger stores, the Woolworths and Coles, are able to trade on any public holiday; they are not confined to closing on the closed days. I am unable to determine whether they have actually taken up the arrangements for Good Friday trading, but you might recall that Good Friday trading was the trigger that had my inspectors in Port Douglas several years ago over trading hours concerns.

On the submissions presented to the committee by local traders, the council and other representatives in support of keeping the existing arrangements, I do not see any operational issue with extending the moratorium arrangements to Mossman and Port Douglas, but it is a matter for the committee.

In regard to the second area of moratorium—that is the one placed on the QIRC hearing applications for new trading hours orders under section 21 to extend trading hours for non-exempt shops—the moratorium was introduced to provide a period of certainty and stability for all traders following the 2017 changes to trading hours. In 2017 we rationalised 99 orders and put them into section 16 arrangements. Therefore, the moratorium was justified for reasons including that it would assist the users in understanding the applicable hours and lead to greater certainty for business and users. The moratorium on further changes allowed this to settle. The moratorium on the QIRC receiving and hearing applications for trading hours orders is at section 59, and it will operate until the end of August 2022. Unless it is otherwise extended, it will simply lapse and parties will be able to launch applications to the QIRC to change trading hours orders—in other words, seek new orders. The legislative machinery for the QIRC to again receive, hear and decide applications for changes in the trading hours is in the legislation. It always has been. Nothing further needs to happen; it will simply reactivate.

I know that the SCCA, the NRA and the ARA all supported lifting the moratorium that applies to section 21 orders of the QIRC and indicated that they would again pursue extensions of trade through this avenue. The MGA is seeking an extension of the moratorium for at least another 10 years to provide further time for Queensland independent food and grocery retailers to continue to develop their unique point of difference which it suggests is crucial to its survival and the viability of small retailers. The SDA and the Queensland IGA state board support the stability of the current system and request a further moratorium period of five years in which trading hours should not be changed. The member for Traeger, Mr Katter, also supports the moratorium.

OIR observes that the moratorium has been in place for just over four years and it has brought stability to the retail sector as far as keeping trading hours unchanged, with the exception of the valve of section 5 applications. What I have noted is that COVID has significantly impacted that sector since early 2019. It has impacted everybody but particularly in the retail area. The impacts of the upcoming changes of opening up the state may also have unexpected or unforeseen consequences. To this end—and I stress that this is not government policy—I see that there is merit in extending the moratorium into 2023 to allow any further COVID impacts to be better understood without the burden of retailers, particularly the smaller retailers, having to participate in further trading hours cases.

Interestingly, I do note that, in the stakeholder submissions on the extension or not of the moratorium for applications, there was a general level of consensus, but the QIRC is and remains the appropriate tribunal to determine trading hours upon applications being made by stakeholders. The SCCA supports the QIRC in that it should be permitted to provide an independent assessment of the merits of settling permitted hours outside the prescribed hours. The NRA submits that the state government should return to the previous system, which allowed a trusted independent arbiter to weigh up the varying competing interests, rather than coming down on one side or the other, and that this mechanism has served the state well since it was introduced in 1990.

While Mr Fotsch-Heatley was of the view that permitted hours should be deregulated in general, he did say that he was of the view that the QIRC, with its corporate knowledge and ability to hold hearings, is best placed to make decisions on permitted trading hours. The MGA was not

supportive of the QIRC setting hours outside the prescribed hours and submitted that this function should be done by government. The CCIQ regards the current processes as satisfactory for now but, like the MGA, the CCIQ raised concerns over what could be seen as a lack of resources by smaller stakeholders which may make it difficult for them to participate in the arbitration processes.

Considering the detail of the examination of facts and reasons that accompany applications for trading hours, OIR considers that, operationally, there is merit in retaining the QIRC to hear, test and decide on those applications, whenever they are permitted to be made. The QIRC has traditionally made site visits and interviewed interested parties to ensure there is the fullest ventilation of trading hours claims. That has been my experience, really, since they have been engaged in this practice.

This brings me to the most significant function of the act and for the consideration of the committee: the suitability of the permitted hours as currently prescribed in Queensland. If I may, I would like to walk through the legislation just quickly so that we all are clear on what it is in terms of the trading hours to different areas, what has been proposed and the operational merits of the proposals.

I have already indicated that there has been no call for trading hours for motor vehicles, caravans or hardware stores at Christmas. With regard to the remaining category of 'non-exempt shops', for the purposes of the determining permitted trading hours the act distinguishes among five categories. Permitted trading hours vary between each of these categories, and they are set out at section 16D of the act. I will go through the five categories in order of their breadth—from widest to most narrow.

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The first and the broadest is the tourist areas. Tourist areas can trade from 6 am to 10 pm, Monday to Friday, on Saturdays from 7 am to 10 pm, and on Sundays and public holidays 6 am to 9 pm, other than the closed days. The closed days are Good Friday, Christmas Day, Labour Day and Anzac Day. No non-exempt shop can open on closed days. The areas that are in the tourist area include: New Farm, inner-city Brisbane; Gold Coast tourist area; Hamilton North Shore; Cairns CBD—I know there was some conversation about Cairns; the Great Barrier Reef Wonderland Tourist Resort; Pacific Fair Shopping Centre; and of course the town of Port Douglas.

The next category is South-East Queensland hours. South-East Queensland has seven-day and public holiday trading, with late-night trading Monday to Saturday from 7 am to 9 pm and from 9 am to 6 pm on Sundays and public holidays, other than closed days.

The next category is what we call schedule 1AB. These are the areas that are listed in the schedule in the act. They are regional areas where Sunday trading has been permitted through an order of the QIRC before the act was amended in 2017. That order does not have a shelf life. That order will continue on. That order is there purely to determine who falls into schedule 1AB. I know there may have been conversation from some of the stakeholders. There was a concern about what would happen to the order after the moratorium ended. It is not affected; the order for schedule 1AB will remain. These areas can trade from 8 am to 9 pm Monday to Friday, from 8 am to 6 pm on Saturday, and from 9 am to 6 pm on Sunday. The difference between schedule 1A and South-East Queensland, for example, is an hour in the morning Monday to Saturday and three hours in the evening on Saturday night.

The next category is a rather odd little category—and I do not mean that in a derogatory way; I rather love these places—seaside resorts. Seaside resorts do not have Sunday trading but they do have public holiday trading. Tourist and seaside resorts include: Rainbow Beach, Tin Can Bay, Burrum Heads, Woodgate, Moore Park, Keppel Sands and all the islands off the south-east coast.

The remaining areas are those areas that have trading only Monday to Friday from 8 am to 9 pm and Saturday from 8 am to 6 pm, but they do not have Sunday or public holiday trading other than Easter Saturday. These include regional towns: Ayr, Blackwater, Bowen, Charters Towers, Charleville, Childers, Chinchilla, Cloncurry, Goondiwindi, Home Hill, Kingaroy, Longreach, Mission Beach, Mount Isa, Nanango, Oakey, Pittsworth, Proserpine, Roma and Weipa. There probably are other towns, but they are known as the larger major regional centres where Sunday trading does not apply. Sunday and public holiday trading is not permitted.

In accordance with section 16D, no non-exempt shop, regardless of its category, can open on Good Friday, Labour Day, Christmas Day or Anzac Day. I previously mentioned the independent retail outlets. They are only required to close on 2½ days unless they sell food and groceries predominantly, where they have no restrictions.

I observe there has not been a substantial push or flavour raised in the hearings for a change, either by extension or reduction, in the existing spread of trading hours in the tourist area category, the South-East Queensland category or the schedule 1AB category, but I accept that there has been

a discussion around moving hours in those categories. There was certainly contention about Sunday and public holiday trading in the towns that do not have it, although most was debated around Mount Isa. I note that ALDI has asked for Sunday trading for Kingaroy.

Operationally, if there was a view to consider extended hours in these areas I see merit in the relaxation of the moratorium at an appropriate juncture for the QIRC to receive and consider applications under section 21 relating to those areas that do not have Sunday and/or public holiday trading—in other words, the towns that we all know do not have Sunday trading and the seaside resorts.

To keep the integrity of the act following the amendments made in 2017, which was to stop a proliferation of orders and not allow for a proliferation of separate orders with various trading hours prescriptions, I think operationally has merit. In the making of an application the applicant may choose to seek the trading hours arrangement from either schedule 1AB, South-East Queensland, or the tourist area, given that with each one they move to they put a higher bar on themselves in order to run their case why they should have the hours that would otherwise apply to those. Those applications would only be limited to those areas that do not have Sunday or public holiday trading, which are the seaside resorts and those towns. There is much debate in those areas and it is really hard to determine where that should fall.

With the greatest respect to the committee and the wonderful job you have done, there are so many claims that should be thoroughly tested in each one of those areas that in our view the QIRC is operationally the appropriate body; also, to limit the amount of change the trading hours regulations would have by effectively enabling those who do not have the broader spread of hours to move through into those spread of hours. In making its order, if a change in hours is determined the QIRC may only actually make a new order for trading hours the same as in an existing category. In this way there should be no proliferation of a new range of different trading hours around the state.

That is basically the end of my opening. I realise I have taken a fair bit of time, but we would be very happy to run through any questions or clarifications.

CHAIR: Thank you very much, Mr James. That was an extraordinarily comprehensive response to a lot of queries that were in my mind. I am very grateful for that in-depth overview and response to issues that have been raised. It certainly provides me with a lot of clarity. In terms of whether the moratorium was extended or lapsed, you are suggesting that the mechanism allows consistency with the trading hours that have been locked in under the existing moratorium for those categories so that we do not have a proliferation of varying hours going forward, whether the moratorium is in place or expired?

Mr James: There would have to be an amendment to the legislation in order to indicate to the QIRC and applicants who were able to make an application the circumstances under in which the QIRC can receive an application and the type of remedy that could be sought. If the moratorium was to lapse as at August with no other change, we would fall back into what would be open slather. Anyone anywhere could make an application to extend hours and the commission would have full authority to make an order as it sees fit. If the position was taken to ensure we do not get that proliferation, and if the position was further taken that only those who do not have current Sunday and public holiday trading hours are in the frame for applications, there would have to be a legislative amendment to make that happen.

CHAIR: You talked us through CBDs, tourism destinations and seaside resorts. My question is around the difference between a tourism destination and a seaside destination. What are your thoughts on that as separate definitions?

Mr James: I am going back to the history of those.

CHAIR: Thank you; we would be grateful for that history.

Mr James: There is a gentleman on my right who would be able to give you a detailed history. If you have a look at what the tourism ones are, they really are the inner-city area of New Farm. I think they are different to Tin Can Bay or Burrum Heads. I agree that the seaside areas are a little bit of an outlier, but I think Mickel in his recommendations—and the government when it moved on this—recognised that there was a variation between what was happening in those areas and what was happening in the tourist areas which are quite significant. Cairns CBD is in that. I think that is a bit different to Burrum Heads. I would suggest that there is a difference there between the two. I do not quite see that you would merger up in one step, because you then would be opening up the trading hours in Keppel Sands, for example, if you went into the broader tourist zone and you would have a substantial change to those areas. I do not know if that answers your question, but those areas have grown via applications from various parties, particularly the broader tourist areas.

CHAIR: They have had that moratorium in place for five years in terms of the definitions of those geographical boundaries. You suggest that you fall into seaside, CBD or tourism areas, so there has not been the ability to consider a review?

Mr James: No, you are right. There has been no ability to consider any changes to the hours for tourism destinations or seaside resorts in that moratorium period.

CHAIR: Following on from the 2017 trading hours order that is used to reference schedule 1AA, could you talk a little bit about that order and its history, its age and relevance? I understand that initial order was made by the IC in November 1992; is that right?

Mr James: Parts of it were. Very quickly, the order itself can be found on the QIRC's website. There is a little opening page that talks about 99 orders, they were repealed and then this order was created and it wrapped up all the other orders. To capture them for the purposes of defining the areas, that fell into schedule 1AB.

CHAIR: You talked about the shelf life. What has the review process of that order been, if there has been any, over that period of time?

Mr James: This order, as it is made, was made on 24 July 2017, but really it just wrapped up orders that had been around for, I would suggest, various periods. I am loath to pick one, but you have orders here for the Yeppoon tourist area, the Moranbah area, the Cooloola Cove area, and they were all rather different, like, in the margins. Hamilton North Shore actually appears in this because it was a separate order for trading hours. I think the point I made earlier was that this order does not end with the expiration of the moratorium. In fact, there is nothing in the act that actually brings this to an end until such time as it is legislated to be brought to an end, as I see it. I will just look to my colleague, Mr Schostakowski, and see if he wishes to add anything.

Mr Schostakowski: The orders, as Tony said, have been added to over the years quite extensively and all have been applications and hearings to the commission. In the 2017 review there was an attempt to bring that into the various sections in the act in the core trading hours. One of the useful things with the order—I would say it is preserved—is that there are definitions that can be still used in terms of areas. There are some quite useful ones there. As Tony said, the document is up on the QIRC website.

CHAIR: I agree that the definitions are very useful in that document. My question is in terms of the currency of those definitions and the review process. We know that CBDs grow and tourist destinations vary. What does that look like for the QIRC in terms of ensuring that set of orders remains current and relevant to Queensland today?

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Mr James: Chair, the penny has dropped. You are right: the geographical boundaries have not been reviewed since the original order was made. I would have to check whether the commission, of its own volition, can have a look at the geographical boundaries. I would suggest that the boundaries for these orders and these areas is more a question for the applicants or the people who are in those areas to ask for them to be changed. Certainly OIR would not step in and review for an upgrade to the boundaries.

I have not gone chapter and verse into what is in the Moranbah area or in the Woolloongabba central business district. I would suggest that the parameters of the districts probably have not changed too much over the period. In terms of a review process, may I take that on notice? I will just look to my colleague here. It is always good to have my colleague on my shoulder. My colleague is right: whilst the order is there to capture the definitions, they are frozen in time—so they will not be amended. Upon the release of the application or the moratorium, it could be made that applications could be made to vary the geographical area—not so much vary it but to revisit the geographical locations.

The geographical boundaries that are set in this order are set and frozen, and that is confirmed by my colleague. If there were to be a reconsideration of those geographical boundaries, without any other process being introduced for that, it would be by application to the commission under the provisions of section 21.

CHAIR: Currently, expiry of the moratorium is the only lever available to the QIRC to review and update those set borders or that order.

Mr James: Yes, Chair, you are correct. The moratorium prevents anyone looking at both the geographical boundaries and the trading hours of the categories.

CHAIR: My next question is in regard to schedule 1AA, the description of the types of retailers that are exempt. Similarly to that set of orders, could you talk about the way they are described? As you mentioned, at the Mossman public hearing we had a dress shop owner in Port Douglas. If she
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had heard the response you have given, I think that would have provided clarity. It was also brought up that if you are on holidays a lot of people like to go and have a massage and that might fall outside of trading hours. Could you talk about the currency of schedule 1AA as it currently sits and where that was formed?

Mr James: I am going to look to Mr Schostakowski to deal with the massage question in a moment—we, too, read that in the transcripts—and also the notion of predominantly the categorisation between, say, an independent retail shop in one category and a souvenir shop in another. The description of the exempt shops is in the legislation. It is not a matter for the commission. If it were to be renovated, reviewed or revisited, it would be done through a legislative amendment to the schedule. By and large, I think Mr Mickel did go through and look at that when he did the review in 2017. We used to have video cassette sales in there, but that is no longer there.

CHAIR: That is a relief because you probably will not find very many around Queensland!

Mr James: They can trade any hours if they do.

Mr Schostakowski: I understand that massage shops came up as an inquiry throughout your visits. Massage shops are not listed as exempt shops in the schedule. However, beautician shops are listed there. These things really come down to, case by case, what service is provided. If massage was performed as a treatment offered by a beautician shop, the shop providing that massage may be considered exempt in accordance with the schedule. It depends on what service is provided. The act does not intend to regulate trading hours for providers of health services—so health services are out. As such, if the massage is of a remedial health related nature, it would not be regulated by the act in the same way that the act does not cover health related services such as optometrists or dentists or professionals. Other shops supplying massage services would need to be considered on a case-by-case basis. As a general comment, we do receive these sorts of inquiries generally in relation to Anzac Day. There are tight restrictions there. Other than that, there is very little by way of inquiry about that type of thing.

CHAIR: There is a little bit of interpretation in there. On the day of the public hearing in my mind beauty services are listed there.

Mr James: I would suggest that a massage place is not within the ambit of the trading hours if it is for health. If it is a service, it is just not contemplated in the act. It is just not there. Chair, just on that notion that the lady in Port Douglas raised about the dress shop versus the souvenir shop—

CHAIR: And jewellery too.

Mr James: The category of shop is determined by its predominant nature. I think most punters can pick that a souvenir shop is a souvenir shop. 'I love cassowaries'; as a T-shirt, it is a piece of clothing. 'I love cassowaries in Port Douglas'; that is more of a souvenir of the area rather than a fashion statement, although it probably is a fashion statement. For someone who is selling garments, even if they are designed by a local provider, that changes the nature of the shop from what would be a souvenir shop to a genuine dress shop. A genuine dress shop would be an independent retail shop. I would suggest that the lady in question is a genuine independent retail shopkeeper. I can understand when she looks at it and says, 'They have shirts,' but they probably have a lot of plates and cups and trinkets as well. I know that jewellery sometimes gets a mention. I think there is a difference between a jeweller selling jewellery and 'I love Port Douglas' or 'I love Mossman' on a chain. I think there is a difference. I think most people know the difference. I do not think it would ever come down to that. It is much more about: what do you predominantly do?

CHAIR: That clarifies that for me.

Mr BOOTHMAN: My question is around the notion of 24-hour trading in Cairns. Obviously some people are very passionate about that. If we go back to the Commonwealth Games, there was 24-hour trading on the Gold Coast. Does the department have any data or evidence to say that that was a success? For instance, supermarkets in my area were open 24 hours—certainly those at Westfield in Helensvale. I cannot imagine that is something that most of my locals would do. Does the department have any information from the major retailers to show that that was a success?

Mr Schostakowski: We did monitor the section 5 applications in terms of what websites showed were their opening hours. It is limited in that it is reflective of what the shops advertise they would open, not necessarily whether they did open or did not open extended hours. I think we covered off on the section 5 applications in detail in our initial briefing. Our general observation was that there was not a huge take-up of the extra hours right across the board. I think there was a submission from Rachel Nolan, and I remember her making a comment about the section 5 applications and what actually came to fruition was very minimal. That is a general observation. As I say, our data is limited in that it is just looking at websites of what the advertised hours were.

Mr James: I cannot say that shops did not trade. I take your advice, member, that you did have 24-hour trading. I would suggest that that was because of the Commonwealth Games. It was a substantial event that went late into the night—the swimming and the hockey played late. I think that is different to some of the other events we have seen. I do not in any way devalue the importance of the Chinchilla Melon Festival or the annual Burdekin Show. I think the question is reasonable to ask—and I think it has been asked by submitters—whether those events warrant shops opening up to trade. I think most people would understand that it may afford them to do so during the Commonwealth Games, for example, where there are a significant number of international visitors who have no idea about trading hours.

In answer to whether we have statistics, as Mr Schostakowski has said, we do monitor. I do not send inspectors out at two o'clock in the morning to see whether there is anything open. We do monitor websites to see whether they say they are open. Off the top of my head, I think there might be something in our first briefing note about that. We do not go and report that 'this shop stayed open'.

Mr BOOTHMAN: You mentioned in your opening remarks about South-East Queensland trading hours discussions. What were they? Was that to do with the Gold Coast region or the tourism strips to increase or relax trading hours? I am interested to hear what the discussions were around.

CHAIR: Are you talking about a general response around the success of the trading hours as defined under the moratorium?

Mr BOOTHMAN: Yes, the success of the trading hours. You mentioned that there were some discussions with businesses about trading hours.

Mr James: Almost every submitter, or the major submitters, postulated views on the trading hours and the section 5 applications. I know that the NRA has been active in seeking section 5 applications. I note that the SDA and the MGA did not want to have section 5 applications, but they also said that, if that was not going to fly, they recognised that there was a fallback position to put far more rigour around what determines a section 5 application. The other parties have variously supported section 5 applications. Operationally, I can see there is merit in a significant event of a very short-term nature, like a Commonwealth Games, having the opportunity to look at a variation to trading hours for a very short window of time rather than having to move a legislative amendment, for example.

Looking at the practical outcomes of those applications, yes, I think they have been used. I would never say that the NRA has been successful in getting an application and no-one took it up. I think the point I make is that the application is for a section 5. It is for an exemption—a holus-bolus exemption. I think what we have seen is, yes, they have been useful in some cases. There is probably some lack of clarity in what constitutes a significant event or when they might be prevailed upon. That is not a criticism of the QIRC. The QIRC has acted in accordance with the legislation. In terms of the notion that there is a very big appetite for long and extended trading in those things, I do not think commercially it has been brought to bear or it has been evidenced.

Mr DAMETTO: My question is in regard to some retailers being a little confused about whether they are exempt or not. Would you be able to give some feedback on what tools are available to the department to better educate retailers out there in that space on whether or not the moratorium is extended or abolished into the future?

Mr James: The primary means for us to get information out on trading hours is through our website. We also have an inquiry line. People can ring up. I also suggest that the major associations would have advisory services. I do know that the Motor Trades, for example, has advice for its members, as does the QCCI and the NRA. As I mentioned in my report, my reading of our website information is that it is fairly clear. I am probably not a good judge because I deal with it.

Mr DAMETTO: You are reading it all the time.

Mr James: Yes. In terms of our phone inquiry lines, we do not get a lot of questions of 'What am I?' I think most people intuitively know what is an exempt shop and what is non-exempt shop and what is an independent retail shop, mainly because they flock together with others of a like nature and they are advised. In terms of resources available to the department should further information be needed, it would lead, I would suggest, with our website. Depending on the outcome of the government's consideration of the report that you will make, there may well be some other form of promotion or education that we could do.

CHAIR: I think we experienced, particularly in the regions, that there was that uncertainty around where they fell because in the act there is not a definition of what is non-exempt. You are either exempt or independent retailers. I think they were reverting straight to the schedule rather than understanding the definition of an independent retailer.

Mr James: That is a good observation, Chair. That is probably the framework of the legislation. You go from section 5, which is the definition of an exempt shop. You then move to section 6, which is the definition of an independent retail shop. Then you go all the way to section 17, which says, 'If you are an independent retail shop, you have these trading hours requirements.' Then you move to the schedule. I would not want to proffer how to reformat the legislation.

CHAIR: Thank you for appearing before us today. It has been an extraordinarily comprehensive response by the department and the OIR. We are very grateful for that. That concludes our questions. Did we put anything on notice?

Mr James: Did we answer that question?

CHAIR: Yes, I think you answered that sufficiently. I am pretty sure that was answered in the process.

Mr James: I thought it was to do with the orders.

CHAIR: Yes, that is right. No, you have answered that. Thank you. There were no questions taken on notice. Thank you to departmental officers. Thank you to the Hansard reporters and to the parliamentary broadcast staff for your assistance. A transcript of these proceedings will be available on the committee's inquiry webpage in due course. Thank you very much for allowing departmental staff to attend the hearings. I think that was extraordinarily valuable. I declare this public briefing closed.

The committee adjourned at 11.32 am.