



Title: Trading (Allowable Hours) Act 1990

Submission from: Master Grocers Australia Ltd.
Trading as:
MGA Independent Retailers

Submission to: Education, Employment and Training Committee
Queensland Parliament

No. of pages: 28

Date of submission: 21st October 2021

Contact person: Jos de Bruin, CEO
[REDACTED]

I. Introduction

1. The Queensland Parliament has appointed the Education, Employment and Training Committee (**the Committee**) to inquire into the operation of the *Trading (Allowable Hours) Act 1990* (**the Act**). The Committee is required to report to the Parliament by 31 January 2022.
2. The Committee has called for submissions in respect of its terms of reference for the inquiry. Master Grocers Australia (**MGA**) strongly opposes permitting the moratorium on trading hours to expire without extension and sets out these objections in this submission.
3. In this submission, MGA also proposes a number of changes to the current framework for the regulation of trading hours in Queensland. The proposed changes are made in consideration of the terms of reference of the inquiry and in light of the unique insight MGA offers into the independent retail sector across Queensland.
4. MGA was involved in the Queensland Government's Trading Hours Review Reference Group as part of the Queensland Government's 2016 review of the trading hours' regulatory framework (**2016 Review**). MGA made submissions to the Reference Group highlighting the concerns of small and independently owned businesses, including the impact of the previous trading hours' framework on employment and business growth in Queensland and the current declining market share of small and medium-sized independent food and grocery businesses and their struggle to remain sustainable. MGA continues to advocate for the interests of family and privately owned food and grocery businesses in this submission.

II. About Master Grocers Australia

5. MGA is a national registered employer industry association representing independent grocery and liquor supermarkets in all States and Territories of Australia.
6. Nationally independently owned and operated grocery and liquor supermarkets play a major role in the retail industry and make a substantial contribution to the communities in which they trade. This is not only demonstrated in the forged relationships between independent food and grocery businesses and their local communities but also in the strong commitment of independent food and grocery stores to support their local communities, through local fundraising initiatives that support schools, kindergartens, hospitals, clubs and so on. Independent food and grocery stores also support the businesses of local suppliers and service providers as well as provide employment. Many of their employees include working mothers, tertiary students, trainees, and apprentices.
7. In Queensland, many MGA members are small family businesses, employing 30 or fewer staff. These community businesses account for the employment of more than **21,000** full time, part time and casual employees, who are employed to work across a seven-day working week. MGA members generate retail sales in excess of **\$2.8 billion**, comprising **156 million** customer transactions per annum or **3 million** customer transactions per week.

8. In Queensland alone, there are **760** independent community food and grocery stores that trade under brand names such as Drakes, FoodWorks, Friendly Grocers, IGA, Ritchies and SPAR. These food and grocery stores range in size from small to medium or large businesses. All Drakes, FoodWorks, Friendly Grocers, IGA, Ritchies and SPAR stores across Queensland are independently owned and operated, and generally form the major investment for family or personal enterprises and form a large part of an individual's or group's investment and/or superannuation strategy. Each of the branded stores are small businesses independently owned and operated as sole traders or family-run businesses, and some are partnerships where more than one family has a financial interest in the business. Many member stores are handed down to the next generation as a legacy to continue as a form of family enterprise or asset.
9. Our Queensland members' stores range in size from 100m² to 3,000m² and vary in service type from food and grocery convenience up to full-offer food and grocery stores with all fresh departments. These stores make a major contribution to the local economy and employment. These stores along with the other non-corporate retailers are part of the fabric of the communities in which they serve, contributing to local clubs, schools, and charities, and supporting local trades, vendors, and services.
10. Queensland MGA members are comparatively much smaller when compared with the large national supermarket chains of Coles, Woolworths, and Aldi (**the 'Chains'**), which combined represent approximately 85 per cent of the national retail supermarket and liquor industries.



11. MGA, as advocate for Queensland independent food and grocery retailers, continues to support the Entrepreneurial Pipeline Project initiated by Minister Leeanne Enoch when Small Business Minister in 2017. The Entrepreneurial Pipeline Project focuses on local Queensland owned food and beverage businesses creating an eco-system of local food and beverage commercial activities. MGA supports providing motivation for family and privately owned food and grocery retailers to offer Queensland customers and tourists a unique 'point of difference' differentiated from the major chains by providing a 'whole of meal' solution made up of Queensland-produced fresh and artisanal gourmet foods, including cheeses, as well as Queensland-produced artisanal alcoholic and non-alcoholic beverages.

III. Trading (Allowable Hours) Act 1990 (the Act)

12. The Act regulates the trading hours of shops in Queensland. The Queensland Industrial Relations Commission (**QIRC**) may also make orders to permit trading hours for certain shops in accordance with the provisions of the Act.
13. The Act distinguishes between three classes of shops and imposes restrictions on permitted trading hours accordingly:
 - a. Exempt shops;
 - b. Independent retail shops, which are a category of exempt shops; and
 - c. Non-exempt shops.
14. The *Trading (Allowable Hours) Amendment Act 2017 (the Amendment Act)* inserted a five-year moratorium on the power of the QIRC to adjudicate applications made by non-exempt shops in respect of allowable trading hours outside hours permitted by the Act.
15. The Amendment Act also requires a review of the Act to be finalised before the end of the moratorium period, which is 31 August 2022.
16. Following erosion of permitted trading hours in South East Queensland to the detriment of exempt retailers, MGA strongly advocated for the five-year moratorium in its 2016 submissions to the Office of Industrial Relations and to the Honourable Grace Grace, then Minister for Employment and Industrial Relations. MGA submitted that the 5-year moratorium will allow for the Queensland Government to review and monitor circumstances in South East Queensland following the decisions to extend trading hours in South East Queensland and conduct an on-going and conclusive study as to whether claims and projections made in hearings before the QIRC were true and correct. Such claims concerned purported job creation and economic growth following expansion of trading hours for non-exempt stores.
17. MGA previously submitted that such claims of job creation and economic growth were spurious and while 'job creation' appeared to be a primary consideration for the QIRC when previously considering the extension of trading hours to non-exempt stores, such stores continue to develop a trading model that is increasingly less reliant on employing staff. Customers to any supermarket belonging to the 'Chains' will note the widespread and continued use of self-serve checkouts where a number of customers are now served by an automated system instead of an employee. It is self-evident that such automated systems decrease employment opportunities. The moratorium was intended to provide the Queensland Government with an opportunity to ascertain whether claims concerning the creation of new revenue are in fact correct, or whether they are simply self-serving false promises made by non-exempt stores to promote the extension of trading hours.
18. It was also intended that the moratorium should provide opportunity for exempt shops to work towards creating a more 'level playing field' to better compete with the 'Chains', which may involve developing a unique point of difference. This 'point of difference' is in the form of family and privately owned food and grocery businesses being able to stock and sell artisan Queensland fresh and gourmet foods alongside various Queensland-produced local and artisan beverages, similar to the Tasmanian model, to create an eco-

system of business and employment growth. The Queensland Government has since demonstrated its commitment to assisting small businesses to develop local ecosystems, to create a point of difference to grow small businesses, grow jobs and to grow the prosperity of local communities, however, there have been many obstacles, and progress has come to a stand still.

19. MGA also previously submitted that the moratorium was required in order to permit exempt shops and independent community shops an opportunity to adjust to the amended trading hours and provide greater business certainty to community grocers and other independent shops. MGA submitted that this greater security was required in order to permit community food and grocery retailers time to recoup losses and reinvest in their businesses. As discussed in our submission below, community food and grocery retailers have been unable to realise this 'certainty' to the intended degree due to the ongoing impact of COVID-19. Progress for Queensland community grocers in particular has also been impeded by loss of tourist-driven trade and continued inability to develop a unique point of difference in the form of an ecosystem of local artisan fresh and gourmet food and particular beverages to be able to compete with the dominant chains stores and Aldi.

20.

IV. Terms of Reference

21. The Committee's terms of reference for its inquiry are:

1. To consider the impact of amendments made by the *Trading (Allowable Hours) Amendment Act 2017*, with particular regard to:
 - a) examining the impact of the moratorium on trading hours orders and restriction on making applications (section 59 of the Act) and recommendations following its expiry;
 - b) examining the impact of the moratorium applicable to shops in Mossman and Port Douglas Tourist Area (section 56 of the Act) and recommendations following its expiry;
 - c) examination of applications made, and consequences, for relaxation of provisions under section 5 of the Act and recommendations for improvement;
 - d) the effectiveness of prescribing permitted hours in legislation;
 - e) the suitability of the permitted hours as currently prescribed; and
 - f) the role of the Queensland Industrial Relations Commission in setting permitted hours outside the prescribed hours.
2. The operation and performance of the provisions of the Act and how, in practice, different provisions are contributing to the objects of the Act and consider the impact of the existing framework for the regulation of trading hours in Queensland.
3. The effects of trading hours regulation on the Queensland economy and on regional Queensland.

V. Impact of the moratorium on trading hours orders and restriction on making applications and recommendations following its expiry

22. Paragraph 1a) of the Committee's terms of reference requires examination of the impact of the moratorium on trading hours and restriction on making applications. 1a) also invites recommendations following the expiry of the moratorium.

Impact of the moratorium on trading hours and restriction on making applications

23. The moratorium outlined in section 59 of the Act provides that the IRC must not make an order on trading hours for non-exempt shops, and those applications made by non-exempt shops under section 21 of the Act is of no effect during the five-year period.
24. MGA members face a highly competitive environment in Queensland with a significant number of our members operating within 5 kilometre of a non-exempt store such as Woolworths, Coles, or Aldi. The opportunity to trade when the Chains are closed is of particular importance to our members with most stores endeavouring to open before their nearest chain store opens and remain open until after their nearest chain store has closed.
25. Independent retailers in Queensland have only a small window of opportunity to compete with the bigger 'Chains', by holding the status of being exempt under the Act. As a result of the moratorium, this status is further protected by ensuring for a time that independent retailers are allowed to trade at times when all "non-exempt shops" or larger stores are not permitted to trade.
26. To retain their status as "independent shops" these stores are not allowed to have any more than 30 employees on the shop floor at any one time, including the owner, or 100 employees where a number of shops are operated throughout the state. As some independent stores grow this has presented difficulties. However, this is only a small consideration in comparison to the potential damage that will be wrought as a consequence of the moratorium's expiry.
27. In Queensland, unlike other states, independent food and grocery retail stores are excluded from participation in sales of particular beverages and this presents a further reason that many member stores remain highly reliant on sales that they make when non-exempt stores are closed due to current trading hours regulations and the current moratorium. Countless independent food and grocery retail stores experience a peak in trade early in the morning and later in the day and this forms a significant part of their sales. In regional areas, stores often turn a profit only as a result of the opportunity to trade on Sunday and/or public holidays when non-exempt stores are required to remain closed. In addition, early morning trade on Saturday and Sunday is also important with shoppers at these times usually interested in everyday consumption items.
28. Several of the proponents for permitting the expiry of the moratorium without extension remain staunch defenders of regulations that exclude independent food and grocery stores from participating in retail sale of particular beverages. In several other states, independent food and grocery stores have the option of mitigating or overcoming lost

sales resulting from competition with the 'Chains' through such sales, however this option remains unavailable in Queensland.

29. MGA has consistently advocated for independent community food and grocery stores to be able to participate in the retail sales of particular Qld artisanal beverages, in order to offer a 'whole of meal' solution to customers and overcome the 'Chains' distinct anti-competitive trading disadvantage.
30. To assist MGA's members in Queensland to develop a point of difference that allows robust competition to occur with the two giant 'Chains', MGA supports the unique "vision for survival", with an initiative to allow family and privately owned food and grocery stores the opportunity to stock and sell locally grown and produced fresh and gourmet foods and various Queensland-produced beverages. This would create a unique point of difference and a commercial eco-system of local businesses assisting each other to grow, prosper and create local employment opportunities. Many community food and grocery stores already differentiate themselves by developing a range of locally produced fresh and gourmet foods, and an ability to sell locally produced packaged artisanal beverages that will avail customers greater choice when shopping for a 'whole of meal' option. This persisting inability to offer a 'whole of meal' option to consumers contributes to independent retailers' dependence on the trading hours moratorium as a safeguard to existing revenue levels.
31. The 'Chains' possess significant resources and retained profits to invest in ventures, such as hotels and stand-alone packaged liquor stores, that independent retailers cannot access. Independent family-owned food and grocery stores do not possess similar market power or resources to purchase or set up businesses to participate in the retail sales of alcoholic beverages to bolster profits and hence have become increasingly dependent on the trading hours moratorium and restrictions on trading hours for non-exempt stores.
32. It is not just members that are 'independent retail stores' within meaning of the Act that benefit from the moratorium. A significant number of independent community stores that are nonetheless small locally-owned family businesses and that do not meet the definition of an 'independent retail shop' because of their size and number of employees also benefit from the moratorium as the 'Chains' are also prevented from obtaining expanded trading hours to further increase an unfair competitive edge. Should the moratorium be permitted to expire without extension, these independent family-owned community stores are likely to not have the means to engage professionals or legal assistance to make an application under section 21 of the Act, whereas the 'Chains' are amply resourced with HR and legal teams.
33. Should the moratorium be permitted to expire without extension, the expansion of trading hours for non-exempt stores will lead to decreasing profit margins for independent store owners. This is likely to result in these store owners having little option but to terminate staff that they can no longer afford or reduce employee hours and work longer hours themselves as profit margins decrease. Permitting applications to expand of trading hours for non-exempt stores further harms our members as it impacts their family

lives as they work longer hours, harms their superannuation nest egg through the devaluation of their business and often results in ensuing health problems.

34. The impact of the moratorium extends far beyond permitted trading hours for exempt and non-exempt shops. The moratorium also contributes to the significant multiplier effect on local businesses through independent food and grocery stores as the focal point of the communities in which they exist. Independent food and grocery stores are often long-standing centres and hubs of the community. They contribute to the schools, the local sports clubs and local charities and are recognised as an essential part of the community. Even more importantly, they are major contributors to the local economies. They invariably have strong relationships with local fresh and food growers and many other local industries and make a massive contribution to the economic vitality of the areas in which they operate. Permitting the moratorium to expire without extension will ultimately irreparably damage the existing multiplier effect that independent businesses have on the economy of Queensland. MGA submits that the Queensland Government must not ignore the responsibility it has to the hundreds of small family run businesses that rely on a few hours of trading that are sacrosanct to them for their survival. The Government must understand that they will be ultimately taking away the livelihoods of hundreds of Queensland battlers if they fail to recognise it is not just the shop owners themselves that will suffer but there will be others too that will be seriously affected.
35. Queensland community and family-operated businesses require support from the Queensland Government in order to continue their contributions as the hubs and drivers of prosperity within their communities. Where community and family-operated businesses thrive, the local community supplies the requisite employment, profits are retained within the community, efficiencies are developed when local businesses interact, and young people and juniors are engaged as employees and learn valuable life skills as a result. Small businesses are important to the fabric of Queensland's local communities as demonstrated in their people-focused personalised approach to business and in the many local fundraising activities they support which only serves to assist local beneficiaries such as schools, hospitals, and clubs.

Recommendations

36. MGA opposes permitting the moratorium to expire without extension. The reason for this is because MGA members are independent food and grocery retailers, and the majority of whom are small and rely heavily for business survival on the current trading hours and the protection of their ability to trade when the 'Chains' are unable.
37. The moratorium has provided a short-lived certainty for MGA members in ensuring that members can remain competitive and make up for the lost sales during the hours when the 'Chains' are open. If the moratorium is permitted to expire without extension the difficulties currently faced by the independent retail shops will worsen further. If the Queensland Government is serious about helping small business to survive and maintaining a healthy economy, they must not allow the moratorium to expire.
38. Should the moratorium be permitted to expire without extension, this will allow exempt stores to "opt in" to extended trading hours by making an application to the QIRC. This

will simply allow the 'Chains' to make expensive and time-consuming applications and the litigious system will be no different to the way in which it has been operating for decades. The additional financial burden on small retailers of having to contest these applications is significant, particularly considering that these small retailers often lack the financial and human resources to do so effectively. Despite this, small retailers are likely to incur the expense of contesting these applications at the cost of already razor-thin margins as they are desperate to retain a few additional hours of trading.

39. The current inequity in ability to sell particular beverages, is a significant impediment to the growth of Queensland independent and family-owned businesses. Considering that family-owned local food and grocery retailers do not operate on a 'level playing field', these small businesses tend to rely on the modest competitive advantage afforded by the current trading hours moratorium. Extension of the trading hours moratorium will contribute towards lasting economic growth for Queensland, in the form of increased employment opportunities, benefits for tourism and new business opportunities for small businesses.
40. MGA submits that there the five-year moratorium should be extended for at least a **further 10 years** to limit the further expansion of trading hours for non-exempt stores and provide community stores with continued business certainty. Extension of the moratorium on any application for expanded trading hours for non-exempt stores anywhere in Queensland is essential. There is ample evidence to show that small businesses will fall by the wayside if the extension of trading hours continues. Permitting non-exempt stores to apply for extended trading hours will result in the expansion of the power of Coles and Woolworths, because they will be the main benefactors of extended trading hours, not Queensland. The Government overlooks the fact that a great deal of the wealth derived from extended trading hours will find its way interstate.
41. Extending the trading hours moratorium would also provide further time for Queensland independent food and grocery retailers to continue developing their unique 'point of difference' through sales of locally-produced fresh and gourmet foods and various locally-produced beverages. Developing such a point of difference is crucial to the survival and viability of these small retailers.
42. Any certainty provided by the five-year moratorium has been eroded by the impact of COVID-19, which has been detrimental to many community grocers and independent retailers for at least two years – nearly half of the five-year period. Tourist-driven revenue appears unlikely to recover in the near to intermediate future. By the time the five-year moratorium is due to expire, it is likely that more than half of that five-year period will be marred by the financial impact of COVID-19. As such, community grocers and independent retailers, particularly in regional Queensland, will be unlikely to enjoy the full 'certainty' of the five-year moratorium for the remainder of the five years.
43. The financial costs of COVID-19 are felt acutely throughout Australia, and no less by exempt and non-exempt shops in Queensland. The impact of COVID-19 has been particularly harsh on small business operators in tourist regions of Queensland. The period to study, monitor and review circumstances in South-East Queensland following the

previous decision to extend trading hours has been hampered by the disruptions caused by COVID-19. Small retailers in particular have suffered the brunt in decline of economic activity as they do not possess the economies of scale nor have the luxury of significant retained earnings from previous years to 'cushion' the blow of COVID-19. This presents another reason why the moratorium should be extended. Further time is needed to permit the time required to ascertain the impact of previously extended trading hours, review claims purporting increased job creation and economic growth as a result of expansion of trading hours for non-exempt stores and to adjust for more 'normalised' trading than what COVID-19 has permitted.

VI. Impact of the moratorium applicable to shops in Mossman and Port Douglas Tourist Area and recommendations following its expiry

44. Paragraph 1b) of the Committee's terms of reference requires examination of the impact of the moratorium applicable to shops in Mossman and Port Douglas Tourist Area. 1b) also invites recommendations following the expiry of the moratorium.

Impact of the moratorium on shops in Mossman and Port Douglas Tourist Area

45. Section 56 of the Act provides that non-exempt shops in Mossman and Port Douglas Tourist Area are considered exempt shops.
46. This means that non-exempt shops in Mossman and Port Douglas Tourist Area are given preferential treatment in comparison to other non-exempt shops in other recognised tourist areas. This treatment was intended to be a 'trial period' of five years and was justified on the basis that this 'will allow shops in this area to open without restriction to service the needs of cruise ship arrivals and the tourist industry and provide information on the effects of deregulated trading for the post moratorium review of the legislation'.¹
47. As such, the experiences of exempt and non-exempt shops in Mossman and Port Douglas Tourist Area may assist the Committee's inquiry as a five-year exemption on trading hours restrictions has applied to all shops in these regions since August 2017.
48. The deregulation of trading hours for non-exempt businesses in Mossman and Port Douglas has been detrimental for smaller retailers in these areas, particularly in the more recent years of the five-year exemption. Challenges wrought by COVID-19 have compounded with exempt retailers' inability to trade at times where the 'Chains' would otherwise not be permitted to trade. Smaller community food and grocery businesses have not been able to compete in Mossman and Port Douglas, hence, MGA only has one active member trading in the Port Douglas area. In past years small food and grocery businesses in this area have faced identical restrictions on the sale of particular beverages and hence were unable to promote a 'whole of meal' solution. This is precisely similar to that of other small food and grocery stores in Queensland which have been unable to mitigate lost sales within the five-year trading hours moratorium period through revenue from the sale of particular beverages.

¹ A Review of Queensland's Trading (Allowable Hours) Act 1990, A Report by Mr John Mickel Chair – Trading Hours reference Group December 2016, page 29.

49. MGA's single member located in Mossman and the Port Douglas Tourist Area, which is an independent food and grocery store located on the outskirts of Port Douglas, is merely surviving due to having to compete with nearby 'Chain' supermarkets which are permitted to open within the same hours as the member. Apart from this member, the nearest other independent food and grocery outlets in both areas are more than 60 kilometres away. This demonstrates that independently owned food and grocery entrants have been "crowded out" and are prevented from entering the region due to an inability to access a point of difference through differential trading hours, given the dominance of the 'Chains' in the area.

Recommendations

50. MGA supports permitting the five-year exemption on trading hours restrictions for shops in Mossman and Port Douglas Tourist Area to expire without extension, and for trading hours for non-exempt shops in Mossman and Port Douglas to revert to,

- Monday to Friday 8am to 9pm
- Saturday 8am to 6pm
- Sunday and most public holidays 9m to 6pm.

This will bring non-exempt stores in Mossman and Port Douglas back in line with other non-exempt stores in Schedule 1AB of the Act and permit the MGA member and other independent retailers in the area to avoid the detriment of having to 'play on the same playing field' as the 'Chains' despite their size, limited means and inability to participate in sale of particular beverages to create a 'point of difference' from the major chains.

51. The financial costs of COVID-19 were felt most acutely by Queensland retailers in areas previously frequented by tourists and visitors. The impact of COVID-19 has been particularly harsh on small business operators in tourist regions of Queensland, including those in Mossman and Port Douglas. This presents another reason why the five-year exemption on trading hours restrictions for shops in Mossman and Port Douglas Tourist Area should be permitted to expire without extension, in order to provide small community retailers in Mossman and Port Douglas with a further means to recover from the detrimental effects of COVID-19.

VII. Applications made, and consequences for relaxation of provisions under section 5 of the Act and recommendations for improvement

52. Paragraph 1c) of the Committee's terms of reference requires examination of applications made under section 5 of the Act for to relaxing its provision and the consequences of such relaxation. 1c) also invites recommendations for improving the effect of section 5 of the Act.

Impact of applications to relax provisions under section 5 of the Act and the consequences of such relaxation

53. Section 5 of the Act prescribes 'exempt shops' as being:
 - a. an independent retail shop; or
 - b. a shop operating in a stated area for an event that is a unique or infrequent event of local, State, or national significance and declared by the QIRC to be a 'special event'.
54. Section 5 also permits an organisation or person to apply to the QIRC for a declaration that an event is a 'special event'. The QIRC is required to consider the significance of the event and may consider any submission made by a local government.
55. The moratorium on applications to extend trading hours does not apply to applications made under section 5 of the Act.
56. Since the Amending Act took effect the 23 applications to the QIRC have been made for the declaration of a special event. 21 of the 23 applications were granted and only two were not granted by the QIRC. The NRA has made the overwhelming majority of these applications and have relied on statistics regarding the influx of tourists, arguments that increased spending that benefits the economy and supporting media statements by local, state, and federal political representatives as supports for their applications. The QIRC has accepted all but two of these applications by determining that the information provided by the NRA sufficiently satisfies the criteria to declare a special event.
57. A special event declaration by the QIRC has the effect of permitting non-exempt shops, such as the 'Chains', to trade as exempt shops without restrictions on opening hours for a prescribed area and period. The Act does not permit limitation of opening hours by a special event declaration and non-exempt shops in the declared area are not compelled to open but may open at hours of their choosing.
58. The greatest impact of a special event declaration is in regional areas where non-exempt retail stores are not permitted to trade on Sundays and public holidays. As such, it is larger stores like the 'Chains' who benefit most from a special event declaration to the detriment of exempt stores like community family-operated businesses. As established above, these smaller community businesses often rely on the opportunity to trade on Sunday or public holidays when the 'Chains' are otherwise required to remain closed. This opportunity can be described as a competitive edge required by smaller community grocery stores and supermarkets who lack the economies of scale and resources that the 'Chains' possess, all while playing on an uneven playing field due to the inability to participate in the retail sale of particular artisanal and locally-produced beverages.
59. Although the legislation provides that consideration may be given to submissions made by a local government for an area likely to be impacted by a special event declaration, it is demonstrated that this has not been greatly utilised. Where utilised, the relevant government councils have expressed their full support, maintained a neutral attitude, or have not provided detailed submissions on the significance on the particular event. As such, MGA submits that local government councils have failed to support exempt businesses such as community family-operated businesses in the context of applications for special event declarations.

60. The SDA as an interested party in previous applications to the QIRC has previously submitted that the NRA applications do not satisfy the section 5 criteria for extending trading hours for non-exempt shops for special events, that require the consideration of the uniqueness or infrequency of an event and its significance to its locality, State, or the nation. MGA supports that the QIRC should assess such considerations 'vigorously' and that applications under section 5 of the Act should not become a procedural step to permit non-exempt stores to 'opt in' to extended trading hours.
61. Further, section 5 of the Act prescribes only very few criteria for the QIRC to assess in making a special event declaration. Section 5 of the Act does not require the QIRC to consider the necessity of non-exempt shops to trade within extended hours nor the impact of a special event declaration, the impact on local small businesses including the impact of any loss of competitive advantage as a result, the impact of affected workers and the necessity to limit trading hours despite there being a special event.

Recommendations

62. MGA submits that the 'special event' category be removed from section 5 of the Act due to the demonstrated ability of exempt shops to use applications for a special event declaration to 'opt in' to extended trading hours to the detriment of local community family-operated businesses that rely on an ability to trade during hours that exempt stores such as the 'Chains' are not permitted to.
63. In the alternative, MGA submits that the following should be inserted into section 5(3)(a) of the Act, so that the QIRC would be required to consider the following in making a special event declaration:
 - a. the impact on exempt stores in the applicable area, include the impact of loss of trade and loss of competitive advantage;
 - b. the necessity of non-exempt shops to trade within hours otherwise applicable to exempt shops;
 - c. the necessity to limit trading hours during a special event; and
 - d. the impact on workers of having to work additional hours as a result of a special event declaration.

VIII. Effectiveness of prescribing permitted hours in legislation

64. Paragraph 1d) of the Committee's terms of reference requires consideration of the effectiveness of prescribing permitted hours in the legislation.
65. MGA continues to oppose any deregulated model of trading hours for Queensland. MGA submits that prescribing in legislation permitted hours of trade for Queensland retailers is effective and required. The grocery retail sector in Queensland remains uniquely distinct from other states across Australia and therefore MGA maintains that any deregulated model would harm independent community food and grocery businesses in Queensland even though similar trading patterns in other states are less problematic for independent

food and grocery retailers. The simplistic approach of mirroring other states, such as New South Wales, Victoria, and Tasmania, fails to recognise the unique nature of the Queensland retail environment and fails to allow for the intricacies unique solely to the Queensland retail sector.

66. As outlined in our submission above, independent food and grocery retail stores in Queensland have been excluded from participation in the retail sale of particular beverages, unlike in other states. Although examination of legislative constraints which prevent independent supermarkets in Queensland from participating in retail sales of certain beverages is not required by the inquiry, such constraints are a contributing factor to the effectiveness of prescribing permitted hours in the Act. Queensland food and grocery retail in its current form cannot simply be compared to food and grocery retail in other states such as Victoria, Tasmania or New South Wales and any proposal for 'like for like' trading hours in Queensland as seen in other states would not be in the best interests of Queensland consumers, Queensland employees or Queensland retailers. Any further changes or liberalisation of trading hours for non-exempt stores, including permitting the section 21 moratorium to expire without extension, without permitting independent local food and grocery retailers to develop a unique 'point of difference' through participation in the sale of particular artisan beverages, would cause irreparable harm to independent community grocery retailers. Development of such a 'point of difference' should occur before any further expansion of non-exempt store's trading hours is considered.
67. Due to the inability to participate in retail sale of particular beverages and the inability to access the same efficiencies of scale enjoyed by the 'Chains', many stores therefore remain highly reliant on sales made when non-exempt stores are closed due to currently prescribed restrictions on trading hours. Countless community food and grocery stores experience a peak in trade in the early morning and later in the day and this forms a significant part of their sales. This is keenly felt in regional areas in particular, with many stores being profitable as a result of the opportunity to trade on Sunday and public holidays when non-exempt stores are required to remain closed.
68. MGA is mindful that there are several other factors that need to be considered in regard to retail sale of artisanal locally-produced beverages and we would be happy to work with the Queensland Government to overcome any challenges. However, as we have found in Tasmania, the ACT, NSW, Victoria, the NT and WA there are clear workable solutions that would allow independent food and grocery retailers to participate in the retail sale of particular beverages and subsequently maintain operational viability as trading hours were further deregulated for non-exempt stores. Beyond the benefits to the consumer and the Queensland economy, such participation would serve two clear and primary benefits. The first is that it would increase employment and stabilise the market share of small and medium grocery retail businesses and secondly it would allow independent retailers ample opportunity and the capacity to better adjust to any future increase in non-exempt stores' trading hours.
69. Under the guise of easing consumer confusion or improving workplace efficiencies, non-exempt stores and organisations advocating for their interests have regularly pressed for the harmonisation of trading hours across the state or basic allowable hours for trading

throughout Queensland. The concept of 'basic allowable hours for trading throughout Queensland' reflects the desire by non-exempt stores to operate a significantly larger number of hours in regional Queensland where previous applications before the QIRC have been unsuccessful. Of importance is that the concept of 'harmonisation' is always only characterised as achievable by increasing trading hours for non-exempt stores and never by non-exempt stores suggesting a reduction in their operating hours.

70. MGA questions the validity of any argument from non-exempt stores for the 'harmonisation of hours' in Queensland. The variability in the hours for large non-exempt retail chains in Queensland can be exemplified through the standard deviation of 2.4 for Big W trading hours across Brisbane, which is repeated in samples of other regions in the state (that is, the variation is fairly uniform across the state).² There was much more variability in store-to-store hours in Sydney (6.8hrs) and Melbourne (8.7hrs). This suggests that trading hours driven by market forces will lead to less 'harmonisation' of shopping hours and not solve the complexity and confusion for consumers who purportedly mistakenly travel to shops that shut at different times.
71. MGA further notes that any further extension of trading hours for non-exempt stores would undermine the 2015 decisions by the QIRC concerning Mt Isa³ and Goondiwindi,⁴ and the 2011 decision concerning Warwick.⁵ Importantly these decisions support that a state-wide approach to expanding trading hours for non-exempt stores will not advance the interests of the regional communities, particularly with any extension to Sunday trading hours. MGA submits that this should be pertinent to the inquiry, in particular findings that regional areas have unique retail expectations and do not require any extension to trading hours for non-exempt stores. MGA further submits that support for extended hours tends to be weaker in smaller regional and rural communities, where adverse impacts on local businesses are most likely to be strongly felt.
72. Prescribing trading hours in legislation is effective and required as any deregulation of trading hours for non-exempt stores will result in a decrease in employment opportunities in the retail sector. This occurs as consumers are redistributed away from the independent food and grocery sector and increased market share shifts towards the larger retail chains. Professor Fabrizio Carmignani of Griffith University in his paper 'The Effects of Deregulating Retail Trading Hours in Queensland' found that where in a community of 40,000 people, where four IGA branded family owned stores operate together with seven National Chains, if trading hours were deregulated this would result in a 10% reduction in IGA family business market share with a loss of approximately \$16,000 per shop, loss of 8.2 jobs with a total loss of 10.7 jobs in the community.⁶ Professor Carmignani notes that should this regulation occur state-wide, there would be a resulting \$185 million loss to the Queensland economy. Professor Carmignani's findings are consistent with widespread understanding in the retail sector that the National Chains' average weekly wages percentage is roughly six per cent whilst Aldi is roughly four to five per cent. In contrast,

² Master Grocers Australia, 'Witness statement of Dr Robert Baker', Submission for matter TH/2014/23, 31 August 2015, page 5.

³ National Retail Association Limited, Union of Employers [2015] QIRC 044, TH/2014/9.

⁴ National Retail Association Limited, Union of Employers [2015] QIRC 204, TH/2015/1.

⁵ National Retail Association Limited, Union of Employers and Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others, TH/2010/3.

⁶ Fabrizio Carmignani, *The Effects of Deregulating Retail Trading Hours in Queensland* (Report, 4 February 2017).

independent community food and grocery stores operate anywhere from nine per cent to thirteen percent of sales.

73. As any deregulation of trading hours will invariably result in some redistribution of sales away from the independent food and grocery sector and towards the National Chains, the ensuing shift of in store profits will inevitably cause a reduction in overall employment or at best, no increase to employment. This was most noted by Industrial Commissioner Thompson after hearing evidence in the Goondiwindi matter in 2015.⁷ Commissioner Thompson's findings reaffirm that the extension of trading hours for non-exempt stores fails to increase employment levels which were continually projected by non-exempt stores when seeking an extension to trading hours.
74. As such, MGA submits that prescribing permitted hours in legislation is effective and required to limit the market share of the 'duopoly' created by Coles and Woolworths and reduce detriment to independent food and grocery stores and other small businesses. Should the legislated permitted hours for non-exempt shops be relaxed, or trading hours legislation deregulated, this would result in significant detrimental effect on town centres, local communities, employment opportunities and competition within the grocery retail sector.

IX. Suitability of the permitted hours as currently prescribed

75. Paragraph 1e) of the Committee's terms of reference requires consideration of the suitability of permitted hours as currently prescribed in the Act.
76. The Amending Act prescribed for the following changes in permitted hours:
 - a. All non-exempt shops in the south-east Queensland area permitted to open:
 - i. 7am – 9pm Monday to Saturday; and
 - ii. 9am – 6pm Sundays and most public holidays.
 - b. Outside south-east Queensland, trading hours for non-exempt shops in a Schedule 1AB area are permitted to trade Monday to Friday 8am to 9pm, Saturday 8am to 6pm, Sunday and most public holidays 9am to 6pm (Townsville Tourist Area retained its 7am opening time on Monday to Friday).
 - c. Non-exempt shops in regional towns outside of Schedule 1AB areas are permitted to trade Monday to Friday 8am to 9pm, Saturday 8am to 6pm and closed on Sundays and public holidays (except Easter Saturday).
 - d. In special and tourist areas non-exempt shops may open:
 - i. 6am – 10pm Monday to Friday;
 - ii. 7am – 10pm Saturday; and
 - iii. 7am – 9pm Sunday and most public holidays.

⁷ National Retail Association Limited, Union of Employers [2015] QIRC 204, TH/2015/1, [177, 182, 187].

- e. In all areas of the State non-exempt stores that supply hardware and builders' material may open from 6am Monday to Sunday and most public holidays with a closing time the same as other non-exempt shops in their area.
 - f. The public holidays on which all non-exempt shops must be closed (closed days) are to be the same in all areas of Queensland. These are Good Friday, ANZAC Day, Labour Day and Christmas Day.
 - g. Extended trading will apply in the period prior to Christmas Day by allowing non-exempt shops in all areas of the state to open:
 - i. 8am - 6pm on the three Sundays prior to 18 December each year, and
 - ii. until midnight Monday-Sunday in the period from 18-23 December.
 All non-exempt shops to be closed from 6pm on 24 December.
 The 24-hour shopping arrangements currently in place for Westfield Chermside and Garden City will continue.
77. The permitted hours outlined in paragraph 64a above resulted in extensions of trading hours during the week and at weekends which previously did not exist. This resulted in a significant loss of sales for independent food and grocery stores.
78. The permitted hours outlined in paragraph 64b and c above have resulted in financial losses for many family owned small independent businesses in the impacted areas as many of these small businesses open at 7am or earlier.
79. The permitted hours outlined in paragraph 64e above has resulted in smaller hardware stores operating at a competitive disadvantage to larger hardware retailers as trading hours are virtually identical while incurring proportionately higher operating costs as a result of not possessing the same economies of scale.
80. The permitted hours outlined in paragraph 64g above has resulted in significant losses for independent retailers in the lead up to Christmas. There is little understanding of the cost to small retailers of allowing extended trading at this busy time of the year. Permitting non-exempt retailers to trade on the three Sundays before Christmas means that many independent food and grocery stores have lost massive trading opportunities when the 'Chains' are open.

South East Queensland Trading Hours were deregulated in 2016 prior to the release of the Review of Queensland's Trading (Allowable Hours) Act 1990 conducted by John Mickel and released in December 2016 – Data in the table below shows that the decision to extend trading hours in South East Queensland by the QIRC caused a severe adverse impact on independent food and grocery retailers directly after the new liberalised trading hours for SEQ came into effect.

QNN Trading Hours Impact		
<u>First SEQ Change across 200 stores</u>		
Average lost wholesale sales per week	-\$	800,000
Converted to lost retail scan sales	-\$	968,000
Annualised Retail Sales	-\$	50,336,000
<u>Lost Employment</u>		
Direct Employment Lost @ 12% employment ratio to sales	-\$	6,040,320
Lost employment hours @\$22.00 per hour		-274560 Hours
FTE based on 37.5 hour week		-7322 FTE employee weeks
FTE Employees		-141
<u>Next tranche of proposed changes to Sunday trade in regional meetings</u>		
Average lost wholesale sales per week	-\$	385,000
Converted to retail sales	-\$	465,850
Annualised Retail Sales	-\$	24,224,200
<u>Lost Employment</u>		
Direct Employment Lost @ 12% employment ratio to sales	-\$	2,906,904
Lost employment hours @\$22.00 per hour		-132132 Additional hours
FTE based on 37.5 hour week		-3524 FTE employee weeks
FTE Employees		-68
Total Independent Employment Losses		-10845 FTE employee weeks
Projected Economic Impact	-\$	8,947,224.00 Lost employee wage dollars.

In 2016 the Qld Government appeared to have misunderstood the fact that just because trading hours are extended that there will necessarily be more money spent in the State. Changes to trading hours in other States have proven that there is not necessarily any growth in revenue just because the shops open longer hours. People will still spend the same amount of money but at different times and in different places, the money spent just goes into different coffers.

Brisbane Courier Mail quote

By Cameron Atfield

February 12, 2017

Palaszczuk government backs extended trading hours

The retail trade industry in Queensland employs 255,000 Queenslanders, or 11 per cent of jobs across the state, paying \$9.9 billion in wages and accounting for \$76 billion in sales.

The National Retailers' Association estimated substantial deregulation would deliver a \$440 million boost to Queensland's economy and add the equivalent of 3109 full time jobs.

Premier Annastacia Palaszczuk said it was about giving people a choice when it came to spending their money.

"By giving people a choice, that means thousands of jobs for Queenslanders," she said.

Ms Palaszczuk said there were too many inconsistencies in trading hours across the state.

"Well, my government is determined to fix that.

MGA refutes these false claims of sales and jobs growth as a consequence of the deregulation of trading hours - and requests that these statements are ratified – where is the source of truth? This is simply not true – not an additional over and above sale was generated as a consequence and no additional jobs were generated.

The sales were simply supplanted from independent family and privately owned food and grocery businesses across to the Coles, Woolworths, and Aldi.

81. The unsuitability of permitted hours as currently prescribed can be further demonstrated through the 2016 survey conducted by Factuality, an independent research and survey provider, of adult consumers across Queensland with the exception of Brisbane City Council LGA. 996 residents were surveyed and quotas for age, gender and location were applied alongside a small weight to ensure that the sample matches the ABS census profile across the survey area. Results of the survey are as follows:

- a. More than half (53 percent) of respondents support extended trading hours for large retailers in Queensland. However, of these respondents almost two thirds (64 percent) indicate that this support is conditional on the extension of trading hours not resulting in reduced competition and higher food prices;
- b. Almost three quarters (71 percent) of respondents agreed with the statement that "Allowing large nationally operated retail businesses the ability to determine their own trading hours will harm independently owned community stores and reduce consumer choice";
- c. The survey also found that in "local communities" (i.e outside of the Brisbane City Council LGA), shopping hours are not seen as a significant issue, which reflects that the pre-amended trading hours already met their lifestyle and working hour needs;
- d. Significantly, the second most important priority that people had for the 2017 review was ensuring that the market dominance of the National Chains will not increase because of changes in allowable shop trading hours. Impact on jobs or labour market was the biggest priority to respondents; and
- e. Further, the lowest priorities for respondents were standardising opening hours for large retailers across Queensland and making trading hours the same for Saturday and Sunday for large retailers.

Some 31 Independent Food and Grocery stores have closed since 2017

Oxley	Sumner	Loganholme	Isle of Capri	Birtinya
Tully	Graceville	Milton	Fortitude Valley	Buderim
Bray Park	Mermaid Beach	Heathwood	Salisbury	Toowoomba - Northlands
Dimbulah	Rockhampton - Nth Glenmore	McKay x 2	Mission Beach	Sunnybank Hills
Slade Point	Upper Mt Gravatt	Maroochydore	Port Douglas	Mount Isa – Sunset
Yarrabilba	Augustine Heights	Flagstone	Airlie Beach	Toowoomba

Australian United Retailers - Foodworks Food and Grocery Group (Qld) - Perspective on Trading Hours

Family and privately owned food and grocery stores are a major contributor to the economic growth and stability of Queensland. The industry supports a significant number of allied industries such as freight, food, and beverage manufacturing (which ranks fifth of total manufacturing in Australia), transport companies, commercial refrigeration, storage, and other fast moving consumer goods service providers such as wholesalers, distributors, and manufacturers.

The total Gross Value Added of the food and grocery sector is over 11% of GDP ^[1]. Revenue generated by the supermarket industry is over \$74 billion SMEs represent over 20% of the overall wealth generated ^[1].

The concentration of the food and grocery sector (as well as packaged liquor) in Australia makes supermarket retailing one of the most competitive markets in the world and as a result the three major chain store retailers (Woolworths, Coles, and Aldi) continue to increase their market share at the expense of family and privately owned food and grocery businesses, this substantially lessens competition and is bluntly said, “anticompetitive”.

Independently owned community food and grocery businesses play an important role in maintaining strong competition. The continuous erosion of the independents market share will have far reaching economic impacts for all of Queensland.

Small businesses represent around 96.8% of the total retail trade nationally and tends to be independently and locally owned which generates economic wealth for communities and community based allied industries. SMEs are an important stimulus to local economies. They source a significant amount of goods and services from local providers producers and suppliers which keeps wealth circulating within the community. This also has a very positive impact on local employment stability and growth.

The Queensland food and grocery industry is significantly different from all other markets as it is dominated by 2 major chains stores plus a German discounter which command almost 90% market share in Qld. This is not a level playing field and is not in the best interest of consumers or the commercial and social health of communities.

The major chain retailers not only have greater economies of scale which they use to increase market share, they also benefit from extended trading hours deregulation whilst at the same protecting their packaged Liquor interests (80% market share in Qld). If the major chain retailers want further trading hours deregulation, it should be on the basis independent food and grocery stores being able to compete on a level playing field.

Giving major retailers further trading hours will decrease competition at the expense of small business which is recognised as a major contributor to state and national wealth.

In the past five years multiple Foodworks food and grocery stores have closed often as a result of significant competition and the use of chain store market power.

Two such examples are, Foodworks Fortitude Valley, Brisbane which closed in favour of a Woolworths store taking the leasing from the resident independent, and a Coles store doing the same at Baroona Road Milton taking the site from a strong independent operator.

Over the past eighteen “Covid Pandemic” months Independent food and grocery operators have strongly supported their communities by providing a safe and more “local” place to shop. Should independent food and grocery stores not be protected by allowing them to compete on a level playing field with the chains they will continue to lose market share. This will have a significant detrimental effect on regional communities and rural economies. Foodworks supports MGA as our representative body in asking for the current trading hours moratorium to continue so there is some limit on the uncontrolled growth of major retailers who see Qld small businesses as a target.

AUR FoodWorks Queensland

Chain stores dominate the Queensland Food and grocery retailing landscape stifling fair competition and limiting consumer choice.

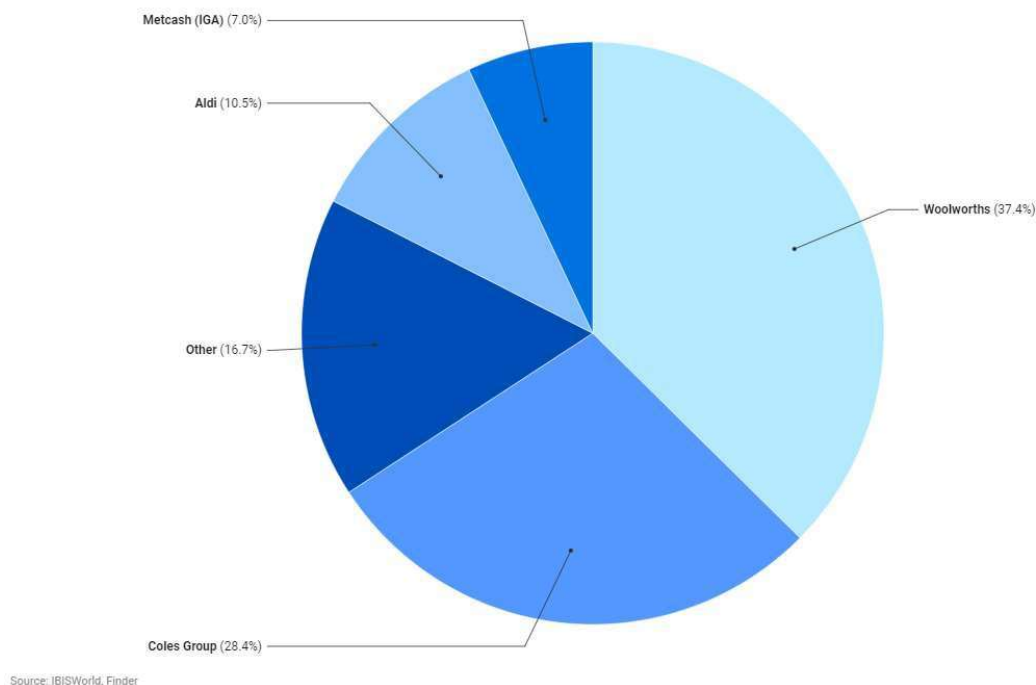
The Family and privately owned food and grocery sector holds 8% market share in Qld. The past 30 years has seen the independent sector decline as the 2 supermarket chains and Aldi have been able to embark upon a program of unfettered growth and dominance

The Market share of independent food and grocery businesses in Queensland is approximately 8%.

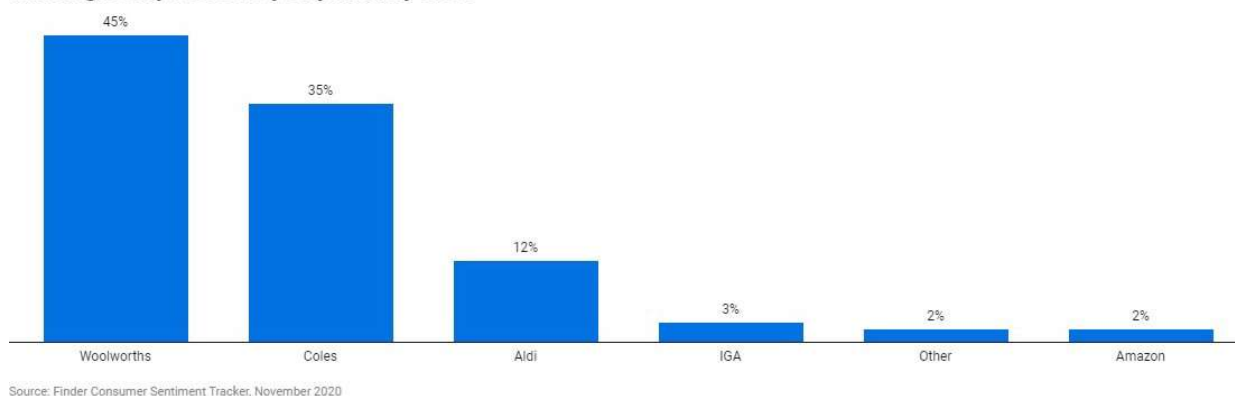
Woolworths dominates the grocery sector in Australia, with a 37% market share. Coles comes in second place, holding 28% of the market. While Aldi has a smaller market share (11%), it's been rapidly growing, up from just 4% in 2009.

Queensland Independent food and grocery stores, trading as Drakes, FoodWorks, Friendly Grocers, IGA and SPAR come in fourth place, with **approx. 8.5% market share**.

Market share of supermarkets in Australia



Which grocery store do you primarily use?



Nearly half of all Australians shop primarily at Woolworths followed by Coles – choice for Qld consumers is very limited.

Independent food and grocery businesses have been severely impacted around Australia, including Queensland, by the market dominance of the 2 supermarket chains and Aldi.

The only way Queensland Independent food and grocery outlets can survive and compete with the dominant and powerful supermarket chains and Aldi is for the Queensland Government to have the will to enable independent food and grocery businesses to capitalise on their local community strengths and be able to develop a point of difference by allowing them to develop their own local eco system by stocking

and selling Queensland locally grown and produced fresh and gourmet artisan foods along with artisan beverages – similar to the Tasmanian model.

X. Role of the QIRC in setting permitted hours outside the prescribed hours

82. Paragraph 1f) of the Committee's terms of reference requires consideration of the role to the QIRC in setting permitted hours outside the prescribed hours.
83. MGA submits that any future changes to trading hours legislation should be undertaken by the Queensland Government and not the QIRC, as the Government has a holistic responsibility to ensure that any changes to trading hours are in the best interests of Queensland and the Government would be accountable for any changes that may occur.
84. Further to this point, any future Government has the capacity to investigate matters beyond the evidence that is presented to them by a limited number of parties and is not constrained by making a decision following the concise presentation of selective evidence in an application to extend trading hours. Any future Government would have capacity and resources exceeding that of the QIRC to investigate claims surrounding the expansion of trading hours for non-exempt stores and make informed decisions when considering changes to trading hours for non-exempt stores without the limitations of time or scope in authority.
85. Under the model proposed by MGA, the Government could initiate trial periods of extended trading hours whereby independent forensic accountants could be relied upon to consider actual increases to economic value against actual decreases in the independent food and grocery sector. As MGA has stated in previous submissions on the matter, the discretionary spend of customers remains the same following any increase to trading hours, any increase to the 'Chains' hours simply result in a decrease in sales within the independent food and grocery sector.
86. In the event that the moratorium is permitted to expire without extension, the QIRC will be presented with applications whereby the Applicants have a wealth of resources to draw upon. Although MGA members are able to rely on MGA for representation and support and MGA has previously enjoyed demonstrable success in responding to these applications, other independent food and grocery retailers and consumers who are not represented by industry bodies are excluded from the process because of lack of resources and capacity to participate. Such an inequity would be alleviated by any Government that was willing to consider the position of its constituents and make genuine efforts to consult with affected communities.
87. Prior to the moratorium, applications before the QIRC to alter trading hours were predominantly characterised by evidence representing the retail duopoly of Woolworths and Coles, which includes Bunnings, Kmart and Target under the Wesfarmers banner, and Big W as a division of Woolworths Limited (excluding decisions concerning special events). It is indisputable that Queensland's patchwork of convoluted trading hours were partly the result of the numerous applications from a limited number of interested parties (represented by the NRA), as compared to the fault of any previous government decision.

Those same parties then complained about the patchwork of variable trading hours across Queensland which they allege creates confusion for non-exempt stores.

88. In light of ongoing costs and resources required from non-member exempt stores such as small community shops to attain representation in contesting applications MGA believes the independent tribunal model in its current form and approach is no longer fit for purpose. We recommend new avenues be adopted to resolve these matters and eliminate the burden of costs and resources associated with altering trading hours. Modifications must address the needs of the community, expedite job growth, meet consumer demands and create diverse economic prosperity.
89. The Queensland Government could put a quick, concise, and tidy end to the waste of resources and inequality in the application process by ensuring that any future changes to trading hours are solely undertaken by Government and not the QIRC. Should the matter of setting permitted hours outside the prescribed trading hours rest with future governments, the government of the time could take into consideration the net effect of altering trading hours for the State as opposed to the specific area of concern in an application.
90. Unquestionably a departure away from the QIRC would also alleviate the significant amount of money and resources that are invested into the QIRC and the high cost to those parties that are forced to participate in the trading hours matters.
91. A further advantage of changes being made to prescribed hours by government enacted legislation is that it will likely lead to a reduction in the level of variation in trading hours across the State. This would enhance business certainty for investors and allow family and private owners to advance their community businesses without fear of a sudden devaluation of their investment.
92. Should the moratorium be permitted to expire without extension, an application can be made to the QIRC to alter trading hours for non-exempt stores and on most occasions with little notice or preparation time, the QIRC will then grant an order which results in the devaluation of a family investment. This devaluation would occur as the store's weekly turnover drops, costs increase (due to yearly increases in national minimum wages) and staffing needs to be cut resulting in redundancies. Already razor-thin margins may be further reduced often requiring more capital and the business is significantly devalued.
93. While concerns have been raised as to the time it may take for the Queensland Government to make decisions concerning alterations to permitted trading hours, MGA submits that it is more important that the 'right trading hours decisions' are made rather than 'quick decisions' with dire consequences. As such, MGA submits that setting permitted hours outside the hours prescribed by the Act should be a role performed by the Queensland Government instead of the QIRC.

XI. Operation and performance of the Act and how, in practice, different provisions are contributing to the objects of the Act and the impact of the existing framework for the regulation of trading hours in Queensland

94. Paragraph 2 of the Committee's terms of reference requires consideration of the operation and performance of the Act and how its provisions have contributed to the objects of the Act. Paragraph 2 of the terms of reference also requires consideration of the impact of the existing framework for the regulation of trading hours in Queensland.
95. The Amending Act inserted amendments to Section 5 of the Act which provides the meaning of an 'exempt shop', limiting this to:
 - a. shops of a particular description noted in schedule 1AA of the Act;
 - b. **independent retail shops**; or
 - c. shops operating in an area where a special event is held.
96. MGA members are mostly independent retail shops within meaning of the Act. The definition of 'independent retail shop' is outlined in section 6 of the Act, and the Amending Act expanded the requisite threshold from 20 employees to 30 on the shop floor at any one time, and from 60 employees to 100 where a number of shops are operated throughout the state.
97. There is a clear legislative intent that an independent retail shop be small, freestanding, "mum & dad"-type business and corner stores, not associated (by common ownership) with any other than a very small number of similarly sized businesses. Although there was modest expansion of the requisite threshold for number of employees, this 'relaxation' has only captured a very limited additional amount of community-focused small family businesses.
98. A difficulty has arisen in recent years that the businesses which have for some years been defined as 'independent retail stores' have in a number of occasions been restricted by that definition (which imposes a restriction on the size of those businesses related to the number of employees engaged therein), which has become unnecessarily limiting in relation to the development of those stores to meet community needs. To meet the evolving needs of consumers, Independent retail or 'exempt stores' as defined in the Act must be able to employ more people to meet the evolving needs of customers. However, they are stifled by the current framework.
99. The ownership criteria are such that expansion of a successful business model, even a relatively small community family business, by building or acquiring new stores, is discouraged, if not actually forbidden.
100. The evident purpose of the definition of an independent retail store is to distinguish smaller community stores from larger stores like the 'Chains' in a manner so that different trading hours can be imposed on the varying groups. This would allow independent community food and grocery stores to remain viable without the saturation of the stores like the 'Chains' across Queensland at the expense of family and community businesses.

As a result, under the current legislation, larger retailers including the 'Chains' have been defined as "non-exempt stores" for which trading hours are restricted by the Act.

101. Much has changed in the food and grocery market since 1990, 1997 and 2017 in relation to the retail sale of groceries in the community. While family and privately owned stores remain prominent in regional areas, community stores located in regional hubs are looking to grasp the opportunities provided by Queensland's rapid population growth and develop into modern community food and grocery stores providing local owners with business opportunities, local residents with jobs, and the local public with a full-service community option at convenient hours.
102. An important change in modern business practices is the onset of prudent practices in maintaining a separation of ownership between particular critical assets of the business and the operating and/or employing entity. If a community grocery business were to adopt the very common corporate structure whereby the real property, buildings, plant and corporate debt and leases are owned by one company, whereas the operation of the business and employment of staff is conducted by a related entity, such a structure would prevent the business being an independent retail store, as it would offend the requirement in section 6(1)(a) of the Act that the business, if owned by a company, must not be owned by a related body corporate.
103. Further, pressures and demand for community food and grocery stores to have a strong emphasis on fresh food, including fruit and vegetables and delicatessen items, have only grown stronger in the past 5 years. Carrying this kind of stock necessitates regular rotation of food and display stock throughout the day and the replenishment of shelves on a far more regular basis. The number of floor staff required today to operate a community supermarket successfully would be substantially more in 2022 than five years ago. The requirement to not exceed 30 persons engaged at any one time in the shop or 100 persons where a number of shops is operated throughout the state is therefore much harder to meet in the same size business whilst maintaining the level of service now demanded and expected by the public.
104. The imposition of a limit of 30 persons per store also does not allow sufficiently for peaks in the business. The public continues to shop more frequently for fresh food after school and after the main daytime working hours. If an operator seeks to maximise the service to their customers during ordinary hours by engaging 30 persons to work in the store, there is then simply no capacity to increase that number at all during peak hours. This presents a significant impediment on the community food and grocery store operator providing an appropriate service to its customers in order to be competitive in the marketplace and is a substantial limitation on the employment of staff including part time and casual staff, who might otherwise be able to be utilised in such premises, particularly in rural and regional areas.
105. Continuing to hold independent food and grocery retail stores to a particular outdated size requirements and preventing the sale of alcoholic beverages in those stores, which is quite impractical for the operation of many such stores in the modern era, simply invites

the expansion of the major 'Chains' into areas where independent retail stores are heavily constrained in the nature and variety of services which they can provide.

106. MGA submits that the Queensland Government should seriously consider ensuring that family community businesses that wish to expand their businesses and increase their employment of local persons are not hindered by local trading hours regulations imposed on businesses with more than 30 employees on the shop floor at any one time, or 100 employees where a number of shops are operated throughout the state. This will assist in the maximisation of retail employment in rural and regional areas beyond the capacity of the large National Chains and assist those independent stores in servicing their communities.
107. A new framework should be pursued that meets employment needs within the sector as defining independently owned stores simply by their number of employees is no longer an appropriate criterion fit for purpose. MGA proposes that redefining the framework to identify business enterprise by organisational structure is required.
108. In the alternative, MGA supports further increasing the threshold of 30 employees on the shop floor at any one time, or 100 employees where a number of shops are operated throughout the state to 40 and 200 respectively. This will better align the meaning of 'independent retail store' with the practical realities of facing many community family-operated grocery stores as outlined above.

XII. Effects of trading hours regulation on the Queensland economy and regional Queensland

109. MGA supports the regulation of trading hours in Queensland, a clear demarcation between exempt and non-exempt shops, and the moratorium on applications by non-exempt stores to expand permitted trading hours. MGA submits that trading hours in Queensland should not be 'deregulated' to the extent seen in other Australian States as there are valid reasons for having trading hours regulation that protect the interests of small businesses that make a massive contribution to the Queensland economy.
110. MGA submits that it is an illusion that there will be greater competition in Queensland if trading hours are altered or 'deregulated'. In fact, there will be little to no competition because the Government is simply handing two organisations (the 'Chains') the ability to control the retail supermarket industry in Queensland and this will result in the elimination of smaller retailers – particular community family-owned grocery stores and supermarkets. Hence there will be no competition and prices will rise not decline. Additionally, Queensland has a unique retail environment that sets it apart from the rest of Australia. We submit there will not be lower prices in Queensland because that only happens where you have competition and small businesses will simply close down and disappear in the event that trading hours are further deregulated.
111. Many MGA members in Queensland have relied upon existing regulations on trading hours in the form of the moratorium to survive in the past 5 years, particularly in light of the hardships created by COVID-19. Permitting extensions of trading hours even for one

additional hour in the morning or one to two additional hours in the evenings will have a devastating effect on the ability of small businesses to survive. The windows of opportunity that currently exist will, if taken away in the proposed amendments, deprive independent family and privately owned food and grocery stores of a small but vital business advantage.

XIII. Conclusion

112. MGA concludes with the position that the moratorium on applications pursuant to section 21 of the Act cannot be permitted to expire without extension, in order to continue providing rectification of the imbalance in market dominance of the 'Chains' in Queensland and to avoid the widespread devaluation of independent community food and grocery stores across Queensland.
113. While the current legislative framework and previous decisions of the QIRC have significantly harmed the independent retail sector and provided the 'Chains' with capacity to harm the retail industry, MGA maintains that by implementing the recommendations proposed in this submission, the independent retail sector can thrive across the state. These changes include:
 - a. Extension of the moratorium on section 21 applications by non-exempt stores for extended trading hours for an additional 10 years to 2032;
 - b. Altering the definition of independent retail shops to instead identify small business enterprises by organisational structure, or further increasing the threshold of 30 employees on the shop floor at any one time, or 100 employees where a number of shops are operated throughout the state to 40 and 200 respectively; and
 - c. Only allowing the Queensland Government and not the QIRC to alter or set permitted retail trading hours across the state.
114. Although unrelated to the current trading hours moratorium and the legislative framework surrounding Queensland trading hours and the moratorium, MGA continues to commit to the survival of its members, independent food and grocery stores, by working with the Queensland Government to develop a unique 'point of difference' for Queensland independent food and grocery retail businesses, by creating and developing a commercial ecosystem of locally grown, produced and manufactured food and beverages, together with local food and grocery retailers. This will enable small businesses to better compete on a "level playing field" with the giant chains and Aldi.
115. MGA thanks the Education, Employment and Training Committee and the Queensland Parliament for the opportunity to make this submission.



Jos de Bruin
CEO
Master Grocers Australia
15 October 2021



Angeline Lee
Workplace Relations Associate
Master Grocers Australia
15 October 2021