



PUBLIC SUBMISSION

TRADING (ALLOWABLE HOURS ACT) 1992

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Introduction

The National Retail Association (NRA) welcomes the opportunity to provide this submission to Queensland Parliament for the Inquiry into the operation of the Trading (Allowable Hours) Act 1990.

The National Retail Association has been the leading advocate for reform of Queensland's Trading Hours regime over many years. The Association has also been heavily involved in shaping trading hours by working with the Queensland Industrial Relations Commission under the provisions of the Trading (Allowable Hours) Act. The NRA worked very closely with the State Government and the Hon. John Mickel on the review of the Act undertaken in 2016. In considering the future shape of retail trade, both the Government and the review drew heavily from economic modelling and research conducted by the NRA.

1. Mickel Review

The NRA supported the vast majority of the Mickel Review recommendations and was strongly supportive of the original reform Bill presented to the State Parliament. However, due to resistance from the Opposition and minor parties, the Government was not able to implement all the reforms recommended by the Mickel Review, particularly as they applied to regional Queensland. As a result of this, a watered-down version of the proposed reforms was passed through the Parliament, which meant that consumers in a small number of regional centres continue to be denied access to Sunday and public holiday shopping, and the employment and economic benefits that have repeatedly been demonstrated to flow from that.

The compromise legislation also placed a five-year moratorium on applications to the QIRC under Section 21 of the Act, although some applications continued to be allowed under the new provisions of Section 5. The NRA has worked effectively with the Commission over the last five years to ensure regional centres were able to benefit from seven-day retail trading when major events were occurring. These events have included the Gold Coast 500 motor race, the Commonwealth Games, rodeos, shows and regional festivals. This element of the Act has worked well to balance the needs of retailers, their employees, their regular customers and visitors to the town or region for the event.

On the downside, the moratorium has prevented the NRA or other organisations from applying to the Commission to respond to conditions in retail trading that were possibly unforeseen when the laws were drafted. These conditions have included the need for major stores to work extended hours during the early part of the COVID crisis, particularly in regional Queensland, and an anomaly that would have forced Brisbane retailers to close on Easter Sunday for the first time in many years. These matters required legislation or regulation to deal with them, and we applaud the State Government for its willingness to respond to requests from retailers.

However, in the past, these issues would simply have been a matter for an S.21 application to the QIRC, which would have taken into account the interests of all businesses, workers and consumers in making



a decision. Other anomalies which previously were dealt with in the Commission – such as the timing of 24-hour pre-Christmas trading in two Brisbane retail centres – could not be resolved through an S.21 application during the last five years. As a result, one of those centres did not trade as it normally would, and many hundreds of hours of employment were lost to the casual workers who normally benefit from the Christmas boom.

2. The Independent Umpire and Section 21

When the Goss Government initially entrusted the QIRC with decision making over retail trading hours for non-exempt stores, it wisely foresaw both the need for the system to be nimble enough to deal with issues suddenly arising, and also for it to be at arm's length from the political process. The nobbling, by the Opposition and cross bench, of the State Government's proposed reforms in 2016 demonstrates the value of the QIRC in assessing applications and balancing the needs of various parties – retailers, consumers and tourists, with – as a result of the 2016 reforms – stronger safeguards for retail workers as well.

The wording of S.21 also requires the Commission to balance the needs and interests of various types of retail businesses. The NRA submits that the COVID era has seen unprecedented cooperation between large and small retailers, as well as Landlords and the Small Business Commissioner, to ensure as many industry members have survived and as many jobs have been preserved as possible. This very public cooperation confirms the view that has been expressed by the QIRC over many years, that the vast majority of small retailers rely on large anchor tenants in shopping centres or town centres to be open to attract customers from which they also benefit. This is a complex and nuanced issue, which often falls victim to populist and superficial commentary. But as the retail advocacy group with the most diverse membership, the NRA understands better than any other how different types and sizes of retailers rely on each other to attract customers. This is a relationship the QIRC has also recognised historically when making trading hours orders.

While the NRA's preferred position is that the State Government would revisit the Mickel reforms and implement them in full as it originally intended, we understand that the political reality is that the Government must balance the competing interests of various parties in this matter. Therefore, we believe the best option for the State Government at this point is to leave the Trading (Allowance Hours) Act as it is, with no amendment. We argue that the provisions and safeguards enacted in 2016 have never been tested as a result of the S.21 moratorium. We believe the 2016 reforms should be used and fully tested before the Act is further revised or amended. By simply allowing the moratorium to lapse, the State Government would once again empower the QIRC to make independent, non-political decisions based on the best interests of all parties in the retail trade sector. This is a mechanism that has served the state well since it was first introduced in 1990.

By giving trading hours decisions once again to the independent umpire – with the additional worker safeguards introduced in 2016 – the Government would again be in alignment with the foresight of the Goss Government. The trading hours system would again have the flexibility to respond quickly to



changed or unforeseen conditions, while taking into account the considerations of all players in the retail trading sector. We commend the State Government for following through on its commitment to review the Act. Based on the above considerations, we recommend no changes at this time.

In the alternative, if the State Government were minded to extend the Moratorium (which we primarily do not support) then we would recommend that Section 5 is expanded to include disasters and calendar

anomalies where business is required to close for 2 or more days (traditionally around the Easter and Christmas period). We also believe that any extension of the moratorium that relies on COVID-19 as its justification should be limited to a period of no more than six months. When the current moratorium expires in the middle of 2021, we should expect the economy and retail to be on the path to rebuilding. In this case, we argue that there is no COVID-related justification for extending the moratorium any further. As outlined above, COVID has clearly demonstrated the need for a modern regulatory system that responds to sudden changes in the business environment. Queensland needs to ability for the QIRC to make independent, balanced decisions in the interests of all parties when confronted with sudden changes in circumstance. We submit that the State Government should return to the previous system which allowed a trusted independent arbiter to weigh up the various competing interests, rather than coming down on one side or the other.

3. Concerns raised by other organisations

The NRA has, for a very long time, understood the concerns of other advocacy bodies in relation to Trading Hours in Queensland including with respect to the current legislation. It is our view that these concerns are not valid. We address these concerns below.

a) Communities "do not support the current system"

In our experience, no representative of a local government, or a chamber of commerce has ever objected to an application under the current drafting. Shopping centres, local councils and the Australian Worker's Union (AWU) have supported special event applications made by the NRA.

For example, in Applications:

- a) TH/2017/26, Acting City of Gold Coast Mayor Donna Gates submitted a letter of support for a relaxation of restrictive trading hours during the 2018 Gold Coast Commonwealth Games:

"It is vital that Gold Coast demonstrate its credentials as a cosmopolitan, global city offering all the amenities and services available in similar cities around the world. Tourist and media commentary that we offer antiquated experiences would be very damaging to our image, reputation, and economy. The Games' period will – even more than usual – see the city come alive way beyond customary hours. Both locals and tourists will seek to shop outside normal trading periods, and we must meet that demand. It is pertinent that the demand for extended trading hours will apply for at least a week either side of the actual Games period."

City of Gold Coast fully supports the National Retail Association in its application for a relaxation of current restrictive trading hours."



- b) TH/2021/1, Brisbane City Council Lord Mayor Adrian Schrinner submitted:

"Council supports liberalising trading hours generally and supports this application specifically. We believe that increased access to trading hours during major events and celebrations is critical to helping businesses recover from the recent economic downturn and enhances Brisbane's reputation as a liveable and prosperous city."

- c) TH/2021/1, QueensPlaza Centre Manager Pamela Wakeford submitted a letter of support stating:

"There has been a significant impact to CBD retail as visitors and city workers stayed home, which is why our team at Vicinity Centres would like to request an opportunity to extend our trading hours at QueensPlaza during Lunar New Year 2021. Lunar New Year is an international cultural event strongly supported by our customers, retailers, and the broader CBD community. Extending our trading hours during Lunar New Year's celebrations would help provide additional support to our retail partners and potentially reconnecting customers with the city's much-loved brands and stores."

We request an opportunity to extend trading hours on Friday 12, Saturday 13, and Sunday 14 February to accommodate customers as they venture into the CBD to enjoy the cultural celebrations. QueensPlaza is also launching a campaign to coincide with Lunar New Year, which is supported by our retailers and Vicinity Centres."

- d) TH/2021/10, Industrial Advocate of the Australian Worker's Union of Employees, Queensland (AWU) Terry McQuillan submitted that they represent members in the affected area but had no reason to oppose the application agreeing that the Weipa Fishing Classic should be a special event.

Additionally, it is well understood in the retail industry that customers vote with their feet. Over the Mount Isa Show weekend, one retailer reported 455 transactions on the Sunday and their weekly sales finished 18.1% up on the previous year.

Another retailer reported being up 10% in sales. On the Chinchilla Show public holiday, one retailer traded 10 am to 4 pm, 45% of normal opening hours, and made 42% of sales for a normal Friday. During the Whitsunday Show public holiday, one retailer made 50% of sales for a normal Friday. These results under the current system provided retailers with the flexibility they needed to provide access to goods to consumers and also to assist their community with additional hours.

b) Workers don't want to work extended hours

Retailers recognise the necessary contribution of retail workers to trade any additional hours and respect the voluntary nature of work, regardless of a special event application. This has been the case for many years under Enterprise Bargaining Agreements, and in the last five years has routinely been enshrined in trading hours orders issued by the QIRC.

From each approved special event application, store managers offer their part-time or casual employees additional shifts. Store managers have noted some employees are eager for as much work as they can get, some are motivated by penalty rates when available, and others wish to prioritise time with families and friends, or their own participation in sporting, cultural or religious activities over the weekend. Importantly, each retail worker can make their own decision about whether to accept any additional hours that may be offered to them over the special event period.



For the Townsville 400, one retailer was reportedly overwhelmed with requests from staff to work additional hours, exceeding the number of shifts available. Over the Mount Isa Show long weekend, one store manager reported not enough staff volunteered so they chose not to open the store, fundamentally respecting the voluntary nature of work over taking advantage of Sunday trade available under the successful application. Another store reported that all but one team member gratefully accepting the additional hours with penalty rates, the other team member declining due to a previous commitment.

One major retailer alone delivers between 90 to 150 additional working hours for employees during each special event – all on a voluntary basis offered first to existing part-time or casual staff.

c) Small businesses are disadvantaged by liberated trading hours

In making an S.21 order, the QIRC must take into account the impact of its decision on businesses of all sizes. On multiple times the NRA has presented evidence, subsequently cited by the Commission in its decisions – demonstrating the symbiotic nature of the relationship between various business types. For example, a small coffee shop, butcher or fruit shop in a strip shopping centre relies on the anchor supermarket tenant to generate the foot traffic that makes the small business viable. That's why you so often see these kinds of businesses clustered near the entrance to supermarkets. While at first glance they may appear to be in competition with supermarkets, in fact these small businesses rely on the anchor tenants to bring in customers.

The relationship is even stronger in a shopping centre. Not only do smaller businesses need the foot traffic that is generated by larger ones, but they also need the large retailers to be open and operating in order to make it economically viable for them to trade. Without the larger stores, all the costs of operating the centre – lights, air conditioning, security and so on – fall upon the smaller businesses if they choose to open. As a result, they generally do not, even though the Act allows them to trade generally whenever they wish.

4. Recommendation

At one end of the spectrum, the Committee will be urged by some groups to legislate for extended trading, including Sundays, across the state. At the other end, there will be parties calling for the current restrictions on s.21 orders to be continued.

The NRA calls for a sensible middle ground – allow the moratorium on s.21 applications to expire as it was scheduled to do five years ago, and allow the independent QIRC to assess any further applications for extended hours based on the interests of all parties. This would allow the Act in its current form, including the additional s.21 safeguards introduced five years ago to be properly tested. This course of action would not preclude the Government revisiting the matter in future should it see the need.

Alternatively, should the Government be minded to extend the s.21 moratorium, it should do so only for a very limited period, and with additional safeguards to allow urgent applications when circumstances warrant.



5. About the submitter

The National Retail Association is the voice of modern Australian retail. From its national headquarters in Queensland, the NRA represents more than 45,000 shop fronts across Australia. The NRA has been serving the interests of the retail and hospitality sectors for more than 100 years.

Our members range from small, family-owned and operated businesses to leading national brands; and span nearly every retail category including fashion, groceries, department stores, household goods, hardware, fast food, cafes and services. Unlike other associations, the NRA is the only retail industry association to deliver practical legal advice through its wholly-owned and incorporated legal practice, NRA Legal. We are also a national RTO (Registered Training Organization), meaning we can deliver a wide range of accredited and non-accredited courses upon request. These range from certificate and diploma qualifications and pre-employment programs right through to customer service training, retail traineeships and mystery shopping services.

A handwritten signature in black ink, appearing to read 'Dominique Lamb', is positioned above the printed name.

Dominique Lamb
Chief Executive Officer

