

Trading (Allowable Hours) and Other Legislation Amendment Bill 2022

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Committee Secretary
Education, Employment and Training Committee
Parliament House
BRISBANE QLD 4000

Via email: EETC@parliament.qld.gov.au

Inquiry into the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022

The Shopping Centre Council of Australia (SCCA) welcomes this opportunity to provide a submission to the Education, Employment and Training Committee (the Committee) to inform its *Inquiry into the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022* (the Inquiry; the Bill).

As the Committee will recall, we made two submissions to the *Inquiry into the Operation of the Trading (Allowable Hours) Act 1990* (the Act) and appeared before the Committee at two public hearings. Throughout this preceding Inquiry the SCCA recommended that the Government should:

1. amend the Act to harmonise prescribed Sunday and public holiday trading hours, effectively bringing all regional local government areas in line with South-East Queensland, and/or
2. allow the moratorium on trading hours orders (s.59 of the Act) to lapse on 31 August 2022.

While we are disappointed that the Committee's consideration of evidence (and subsequent recommendations to the Government) favoured the perspective of other stakeholder groups, we note that the Bill may in part address our concerns if the moratorium on trading hours orders is allowed to lapse and the Queensland Industrial Relations Commission's (QIRC) remit is restored, without unreasonable limitations or restrictions.

On behalf of our membership, and the wider sector, we provide the following feedback with respect to the Bill:

Streamlining and simplifying trading hours for non-exempt shops

The SCCA supports the amendments to streamline and simplify core trading hours arrangements for non-exempt shops at Part 4 of the Act.

In particular, we note changes to s.16D, which amends core trading hours for non-exempt shops and reduces the number of trading areas from five to four. This sees the previous 'in any other area' category now classified as a Type 4 trading area, increasing trading hours by allowing all shops to open on public holidays (9am to 6pm).

While this is welcome, we note the inequity of access that delineates those areas servicing tourists (reflected in the addition of the 'Mossman and Port Douglas Tourist Area' in Type 1 trading areas with similar tourist areas) as distinct from Type 4 trading areas, which also service local communities and shift workers who would also stand to benefit from extended trading hours, in particular Sunday trading.

Part 4 (Clauses 6-14) of the Bill is supported.

Trading area orders

It is our industry position that Government should deregulate trading hours for non-exempt shops, except for maintaining restrictions on culturally significant days (e.g. Anzac Day and Good Friday). The reintroduction of s.21 of the Act (Clause 16 of the Bill), now allowing the QIRC to make an order to declare a Type 1, 2, or 3 trading area, is a positive and welcome step.

We note s.22 of the Bill (Clause 17) outlines criteria for making a trading area order, including that the QIRC must have regard to 'the needs of industry in the area, the effect of the order on the core trading hours of non-exempt shops in the area, public interest, the interests of business and consumers, and the likely impact of the order on employees and employment', which we consider reasonable.

We also support measures to ensure that the process is transparent and modernised by amending s.23 (Clause 19), which outlines that the QIRC must give written notice of meetings to 'industrial organisations, other organisations and local governments the commission considers appropriate' and that a copy of the notice be published on the QIRC website.

It is pleasing and appropriate that the retail sector should be reenabled to present applications for additional permitted hours and that the QIRC be allowed to resume its function to consider all new applications within this context and to provide an independent assessment of the merits of setting permitted hours outside of prescribed hours including evaluating evidence.

Part 5 (Clauses 15-20 only) of the Bill is supported.

Special event declarations

We understand that the policy intent of s.31B of the Bill is to implement the Committee's recommendation to refine the process for the QIRC's consideration of special event applications, including through introducing criteria that the QIRC must consider.

While we support the criteria outlined at s.31B(1)(A-C), we are concerned that s.31B(1)(D), which states 'whether there is a need for a non-exempt shop, or a class of non-exempt shops, to trade for hours greater than the core trading hours...' is overly prescriptive. Introducing criteria for an assumed 'need' fails to take into consideration the broader range of businesses who would benefit from the unique trading conditions provided for by a special event.

As our previous submissions described to the Committee, prescribed trading hours for non-exempt shops have a significant flow on effect for exempt shops in shopping centres, in that these shops typically do not open unless an anchor-tenant does (i.e. a non-exempt supermarket, discount or department store). As such extended hours are only beneficial if applied to exempt and non-exempt shops equally within shopping centres.

It is our view that the QIRC should be enabled to make an independent assessment of applications, including regarding special events, without overdue constraint. As such, while we support the retention of s.31B we recommend that s.31B(1)(D) be deleted as it fails to consider the positive flow on impacts for exempt shops when non-exempt shops are given additional trading hours.

Recommendation: Delete s.31B(1)(D).

s.31A and s.31B(1)(A-C) and s.31B(2) of the Bill are supported.

While we support additional protections for employees if the QIRC makes a special event declaration, we reiterate comments made in our previous submission to the Committee that retailers (and their staff) cannot be forced to trade outside core hours.

We support the transitional arrangements outlined in the Bill that provide clarity about how applications will be considered with respect to existing special event declarations before the commencement of the new provisions (s.67, s.68, s.69).

s.36BA and s.67, s.68 and s.69 of the Bill are supported.

Consistent voluntary work protections for employees from working extended hours

The SCCA supports amendments that variously clarify and/or strengthen voluntary work protections for employees in s.36A, s.36AA and s.36B of the Act. The SCCA has previously engaged with governments with respect to applying the general principle of employee safeguards, including legislative safeguards and penalties.

It is our expectation that employees can and do freely elect to work extended hours. The reinforcement of these principles via the proposed amendments is accepted industry practice.

s.36A, s.36AA and s.36B of the Bill are supported.

Extending moratoriums to ensure ongoing stability for the retail industry and community

The SCCA notes that the Bill would extend the moratorium that has restricted the QIRC's ability to make orders under s.21 of the Act for an additional 12 months on the basis that it would 'ensure ongoing stability and certainty for the retail sector and community'. Evidence submitted to the Committee during its previous Inquiry does not provide for an evidence-based policy recommendation that could draw this conclusion.

Rather, arguments in support of the moratorium have become dominated by a focus on the grocery sector and distorted the moratorium's original purpose, which was to provide certainty with respect to new trading hours arrangements, not broader retail or economic trends. These arguments introduce an insufficient rationale for extending the moratorium that overlook its purpose.

Mr John Mickel, Chair of the Trading Hours Review Reference Group that conducted the 2016 Review of the Act and recommended the moratorium, spoke to this at his appearance before the Committee on 25 October 2021 stating, 'IGA have a point of difference in that they will stock selected items that the supermarkets do not sell and as long as they have that selected difference they are offering consumers a choice. There is no need, however, to offer IGA a monopoly. Why should they have that?'

The moratorium has been in place since 2017 (5 years) and we question the benefit of an additional 12 months, which should be recognised as serving to maintain market share and protections afforded by the moratorium. The moratorium does not protect small business, it is denying consumers choice, often resulting in having to pay higher prices.

For reference, Australian Bureau of Statistics data shows that the Consumer Price Index rose 2.1 percent in the first quarter of 2022, and 5.1 percent in the preceding 12 months. This is the largest quarterly and annual increase in two decades.

By focusing the argument on the grocery sector, the Committee risks failing to evaluate the benefits of additional trading hours opportunities for other retailers and segments of the population, including consumers who will benefit from increased competition by way of lower prices and additional choice.

Again, we reference comments made by Mr John Mickel to the Committee, 'No, you are not [protecting small business]; you are denying consumers a choice, and oftentimes they are left at the tender mercies of one store that is open. Wherever you have monopolies, you are going to get price gouging.'

Businesses have had 5 years to prepare for the moratorium to end. As such, s.64, s.65 and s.66 of the Bill should be deleted and the moratorium allowed to lapse on 31 August 2022.

Recommendation: Delete s.64, s.65 and s.66 of the Bill.

We thank the Committee again for its time and consideration.

The SCCA would welcome an opportunity to participate in the public hearing on 20 June 2022 to expand on this submission further. Please do not hesitate to contact me on [REDACTED] or at [REDACTED] as required.

Yours sincerely,

James Newton
Manager – Policy and Regulatory Affairs