

Trading (Allowable Hours) and Other Legislation Amendment Bill 2022

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

THIS IS A PUBLIC SUBMISSION

13 June 2022

The National Retail Association (NRA) welcomes the opportunity to provide this submission to Queensland Parliament for the Inquiry into the *Trading (Allowable Hours) and Other Legislation Amendment Bill 2022*. The omnibus Bill covers a number of topics. This submission deals only with proposed changes to 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.

2. The Independent Umpire and Section 2.1

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. We welcome the



intent of this legislation to retain trading hours decisions within the purview of the QIRC. We also welcome the streamlining of the state's trading hours regime into four zones. We believe these zones are sensible and workable, and the proposed hours for each will strike a balance between the needs of different retailers, their staff and their customers.

3. Future reviews of allowable hours

The proposed legislation removes from the QIRC the power to set trading hours for non-exempt stores in each zone. The NRA understands the Government's desire for uniformity and simplicity, and support this aim. Our landmark South East Queensland trading hours case was designed, in part, to eliminate a number of small trading hours zones and "tidy up" the regime. We see no need in the near future for any changes to the hours set out in the legislation for each zone.

However, it may be prescient to create a standing mechanism for the allowable hours in each zone to be reviewed and revised from time to time. This would take account of unforeseen changes to the nature of business or trading conditions in the years ahead. For example, the current act in 1990 would never have imagined the advent of online shopping, or changes to work and family routines that have driven the popularity of longer trading hours.

We believe there should be a mechanism for future reviews of trading hours in each zone, without the need to return to the Parliament. This would be in line with the Goss Government's decision to take these matters away from political decision making and put them in the hands of the independent umpire. We believe the QIRC remains the most appropriate body to conduct such a review. Over some 30 years, the QIRC has shown itself to be an impartial, sympathetic and prescient arbiter of the needs of the various parties involved in trading hours matters. We also believe it would be appropriate to place a limit on the frequency of such reviews. Although this has not been codified, traditionally the Commission has been unwilling to hear a trading hours application within "a reasonable period" of handing down a decision for the same area. This period has generally been around three years, and the NRA suggests that three years is a reasonable period for "locking out" any review of the allowable hours for a zone that has been the subject of an Order by the Commission (even if the Commission's Order is to maintain the status quo).

4. Extending the QIRC moratorium

We do not support the extension of the moratorium on applications to the QIRC for a further 12 months. There has been no evidence presented to the Parliament to suggest that the previous moratorium was a positive concept for the retail sector or for its various stakeholders. The Mickel review adduced no data to support the concept, and the previous five-year period has not revealed any empirical evidence of benefits to business or consumers. We urge the Parliament to end the moratorium in line with the original five-year sunset.



5. Additional evidential requirements for QIRC applicants

Both the current legislation and the previous review of the Act in 2017 have lifted the bar in terms of evidential proof required for applications to the QIRC. These include added protections to ensure workers cannot be forced to work, and further requirements to satisfy the test for special events. The NRA believes these additions form part of a suite of reforms contained within the Bill. We are prepared to support the Bill in toto, because we believe all the changes made in the last two reviews make the Act fairer and more balanced for all parties. However, removing other aspects of the proposed laws would upset this balance, and would risk industry support for these additional evidential tests.

6. Recommendation

Queensland's trading hours laws have been reviewed ad nauseum over the last five years. The current legislation has successfully distilled the views of a range of stakeholders and – with the exception of the baffling extended moratorium on s.21 applications – achieved a set of reforms that will make the trading hours regime simpler and fairer for all stakeholders. Any further changes to what is proposed would simply complicate the laws and have the opposite effect to the one intended when this long-running review process was started by Mr Mickel. The NRA recommends that the Committee approve this Bill as it stands, and that the Parliament passes it without delay.

7. 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 60,000 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.

A handwritten signature in black ink, appearing to read 'Dominique Lamb', is written in a cursive style.

Dominique Lamb
Chief Executive Officer

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