



**SUBMISSION TO THE QLD GOVERNMENT REVIEW  
TRADING (ALLOWABLE HOURS) AMENDMENT BILL 2017**

**Prepared by the National Retail Association**

**24 March 2017**

## About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The Queensland-based NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

The NRA's membership is comprised of members from all sub-categories of retail including fashion, groceries, department stores, homewares, hardware, recreational goods, newsagents, fast food, cafes and personal services like hairdressing and beauty. It also includes both large and small businesses, including the majority of national retail chains, as well as independent retailers and franchisees, and other service sector employers. The NRA has represented the interests of retailers and the broader service sector for almost 100 years. The NRA's aim is to help Australian retail businesses grow.

As part of its services to members, the NRA has been heavily involved in making applications to the Queensland Industrial Relations Commission under the provisions of the Trading (Allowable Hours) Act 1990. Indeed, no other organisation has been involved in as many applications before the Commission in relation to trading hours. For this reason, the NRA believes it is uniquely positioned to advise the Review Panel on the complexity of the current trading hours regime and to recommend changes to a more inclusive and efficient system.

## Review of the Trading (Allowable Hours) Amendment Bill 2017

The NRA has provided a previous submission to the State Government which it will include as a separate attachment to this review. This review specifically addresses the *Trading (Allowable Hours) Amendment Bill 2017* and the alteration to the *Trading Hours Act 1990*.

Whilst the NRA has been a part of the review process conducted by John Mickel, the recommendations of the group as drafted in December 2016 had fundamental changes made to them when released publicly in the new year.

The detail supporting the review process on which future applications need to be handled has only been made available upon the release of the *Trading Hours Bill 2017*. We consider there are elements of the Bill that either do not reflect the spirit of the initial review, are light on detail or were silent in the review process. These have been outlined below.

### Clause 4

Periodically, the National Retail Association been asked by customers and local governments to open non-exempt stores in natural disaster events to get supplies to the community.

Whilst these events are uncommon, a process needs to be in place to allow the applicant this provision. These matters need to be acted on as a matter of urgency, as the nature of the event has an immediate impact on the community.

We suggest that "Natural Disaster" is inserted into 5(1)(c) or reference to the State Emergency Services Act.

### Clause 5

As previously mentioned, the NRA has never opposed sensible and necessary protections for genuine, independent retail stores. However, we believe that under the current system, certain protections have been exploited. Any protections that exist should be in place to assist mum-and-dad small businesses and not to enable large retailers to exploit the system by restructuring their businesses and disguise themselves as small retailers.

The NRA firmly rejects this move in s 6(1)(b) and 6(1)(c) as businesses of this size are not genuine “mum and dad” operations.

### Clause 7

#### Subdivision 2 Core Trading Hours

##### 16D

#### Trading Hours schedule

In the schedule, “*In any other area*” is meant to deal with stores that can trade Sundays, and those areas where an “opt in” is still required.

Placing non-exempt that either do and don’t trade Sundays in one category will cause confusion as there is no distinguishable difference between them in the table provided. The table does not address non-Sunday traders in such a way to provide clarity on standard trade and public holidays.

#### Closed Days

The NRA supports the standardisation of public holidays in Queensland. We understand that all non-exempt stores listed in applicable tables 16D can trade all public holidays other than those listed as closed days in 16A.

This includes all stores listed in the new categories:

- South-East Queensland area
- Tourist area
- In any other area
- Current six day traders<sup>1</sup>

### Tourist Area

#### 16A Definitions

The NRA is concerned that the Cairns CBD as it currently stands in the Order is not included in this *Tourist Area* list. The Cairns CBD has hours serving a tourist function and we request that the area be included in the Tourist Area definition.

The definition of *Tourist Area* has the following listed:

- (a) Area of New Farm of Inner City of Brisbane;
- (b) Hamilton North Shore Area;
- (c) Gold Coast Coastal Tourist Area;

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<sup>1</sup> Those areas that do not currently trade Sunday i.e. Mt Isa

- (d) The Great Barrier Reef Wonderland Tourist Complex;
- (e) the town of Port Douglas.

Whilst this matter was discussed during the Mickel review process, the intension was to include all areas with current trade in excess of SEQ and *"In any other area"*. The most recent publication of the review in December 2016 indicates in recommendation 3, that *"In special and tourist areas (i.e. the following areas as currently defined in the trading orders...."*

We consider that all the tourist areas which meet the criteria would be included and that using the term "i.e." in our view is not a comprehensive list.

We also would consider that the Townsville Tourist precinct be better served by the inclusion of the Townsville Tourist Area as a substitute for The Great Barrier Reef Wonderland Tourist Complex.

#### Clause 16D

The NRA seeks to confirm the hours of trade for those stores that do not trade Sunday. For those stores (six day traders) in the category of *'In any other area'*, we consider the hours of trade for non-exempts are those listed Monday to Friday and Saturday in 16D.

#### Clause 16F

##### *Christmas Sunday trade*

The NRA understands that all non-exempt stores across the state (as per Schedule 16D, and six day traders) can trade the three Sundays prior to Christmas, this was previously two. The hours of trade for all stores across the state will be 8.00 am to 6.00 pm.

##### *Christmas Midnight trade*

The NRA understands that all non-exempt stores across the state (as per 16D, and six day traders) can trade until midnight 18 to 23 December regardless of the day of the week that these days fall on.

#### Clause 19

The addition of another provision to s26 has not previously been brought to the attention of the NRA. We acknowledge that the impact on the employee is worthy of consideration. However, to best construct an argument we consider if the additional consideration is to be added it needs to be more concise. We would suggest that (ga) is amended to read *"the likely impact of the order on current employees"*, as it would be problematic to argue to the impact of employees who may be employed because of additional jobs.

#### Clause 31

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It was always our understanding, in our good faith participation in the review process, that the proposed moratorium period was to commence at the date of proclamation, with an end five years from that date. The definition of the moratorium period contained within this clause significantly changes the intent of the Government's announcement. We are, in effect, now unable to make an application to vary trading hours. The NRA recommends that this is changed to 5 years from proclamation date, otherwise the effect will be a moratorium of 5 years and 6 months. We understand that the intent of this definition may have been to prevent a sudden rush of new

applications to the QIRC designed to circumvent the moratorium. There has been no such flood of applications, indicating that the NRA and other organisations are acting in the spirit of the Government's response to the Mickel review and of the proposed legislation. However, this moratorium does produce an unintended consequence which amounts to retrospective legislation in relation to a matter the NRA lodged with the QIRC in 2015, and which is yet to be determined.

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The NRA currently has an outstanding application which has not been dealt with by the Commission. The commission is aware of *TH2015/2 Gold Coast Coastal Tourism* which was heard in January 2016, over 12 months ago. This application sought to include non-supermarkets in Pacific Fair shopping centre in the Gold Coast Coastal Tourism area as well as all non-exempt stores in the Robina Town Centre shopping centre.

Late last year, the Commission indicated to the NRA – and other parties involved in TH2015/2 – that the Full Bench would reserve its decision until after the Mickel Review had completed its work. The clear implication and understanding was that this matter would be dealt with by the Commission once the review was completed and legislation had been put to the Parliament. Further, we were assured in our good faith negotiations during and after the Mickel Review that matters currently afoot before the QIRC would be allowed to run their due course.

The effect of the moratorium being introduced from the date of introduction is that the outcome of TH2015/2 will now not be able to be incorporated into the new legislation, regardless of the Commission's findings.

Advice to the NRA from the Department is that the Commission will have no choice now but to reject the application. Moreover, having gone through the extensive and expensive process of making the application back in 2015 – and considering we are to be prevented from making that application again for five years – we are very keen to ensure that the decision will be able to be implemented if the application is granted.

We would find it extraordinary that the Parliament would shift the goal posts retrospectively on an issue such as this. The NRA strongly urges the Parliament not to legislate against an application that was made back in 2015. We believe this matter could be dealt with very simply, by excluding from the moratorium duly made applications that were afoot at the time of the moratorium coming into force.

### *Recommendation 10*

In recommendation 10, allowances have been made for:

*“An application for special event or local festival status and the designated area will be made to the QIRC for determination”.*

We consider the intension of this provision is to allow for quick and effective decisions to be made by the QIRC on matters of significant interest. However, we consider that the QIRC has no option than to hold hearings and call for interred parties which will inevitably cause long delays and higher costs than can be practicable for a short local festival or event. We seek a simple and cost effective framework in which to ensure these applications are not frustrated and held up unnecessarily.

### Clause 32

The NRA agrees with the list of inclusions for an Exempts Shop, and we agree with the inclusions and deletions made as a result of the review.

### Conclusion

As mentioned previously, Saturday and Sunday trade represents the busiest trading days for the majority of non-exempt retail stores. From a customer's perspective, extended trading hours provide greater choice and better reflect contemporary shopping habits. Queensland's trading hours laws should reflect this commercial and consumer reality.

Non-exempt Sunday trade currently serves 97% of the state's population. The newly introduced process of opting in will have the effect of further isolating regional parts of Queensland from the goods and services enjoyed throughout the state.

All retail businesses, whether they be small, medium or large, are cost sensitive. When a retail business looks into ways it can innovate and acquire an edge over its competitors, they are required to factor in a range of costs such as labour, tenancy, overheads and the myriad of regulations that they are forced to comply with.

If a retail business is able to operate under longer trading hours than at present, it can achieve a greater turnover, which in turn can be spent on exploring ways in which it can innovate.

### Contact information

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**JOBS, CHOICE AND A 21<sup>ST</sup> CENTURY WORLD VIEW  
SUBMISSION TO THE QUEENSLAND GOVERNMENT'S  
REVIEW OF TRADING HOURS**

*Prepared by the National Retail Association*

*14 November 2016*

## 1.0 About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The Queensland-based NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

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As part of its services to members, the NRA has been heavily involved in making applications to the Queensland Industrial Relations Commission, under the provisions of the Trading (Allowable Hours) Act 1990. Indeed, no other organisation has been involved in as many applications before the Commission in relation to trading hours. For this reason, the NRA believes it is uniquely positioned to advise the Review Panel on the complexity of the current trading hours regime, and to recommend changes to a more inclusive and efficient system.

## 2.0 Overview

Queensland has Australia's most restrictive retail trading hours regime. The Queensland Parliament passed the Trading (Allowable Hours) Act in 1990. Since that time, the Australian retail landscape has changed dramatically, and consumers now have different expectations of when and how they will be able to shop.

Consumers now also have greater choice than ever before, including the ability to shop from the comfort of their own lounge room or kitchen table. And yet, legislation that is now more than a quarter of a century old constrains both the choices of Queensland shoppers, and the ability of local businesses to generate economic activity and jobs. These 20<sup>th</sup> century restrictions also constrain Queensland's ability to grow as a global destination for business and tourism.

The NRA believes the time has come to bring Queensland's trading hours regulations into the 21<sup>st</sup> century, and to ensure that it continues to meet the needs of businesses, customers and employees in our fast-changing world. The NRA believes that this must occur in order to ensure that:

- business owners are not unreasonably restrained from being able to trade;
- customers are not unreasonably restrained in being able to shop as they want to;
- the needs of Queensland's growing population continue to be met; and
- retailers are able to rise to the challenges of digital disruption and globalisation.

This proposal outlines how removing trading hours restrictions would deliver a **\$440 million** boost to the state, and add the equivalent of **3,109 full time jobs**. The proposal also provides evidence of demand from the Queensland public for greater flexibility around when and where they are able to shop. And most of all, the proposal will argue that the time has come to ensure that Queensland's business environment is suited to the 21<sup>st</sup> century.



## 3.0 The link between trading hours and productivity

### 3.1 The Ergas Report

In 2014, the NRA engaged economic consultants Green Square Associates, under the guidance of highly respected economist Henry Ergas, to undertake a study of the impacts of trading hours restrictions in Queensland, and the potential benefits of liberalising the existing regime. The resulting report has come to be known as the Ergas Report. A copy of this document is attached to this submission.

The Ergas Report found that removing the existing trading hours restrictions would boost Gross State Product by \$253 million, as a result of additional economic activity, greater competition and consumers being able to access lower prices. The Report also found there would be a further \$187 million in benefits to consumers from convenience and time saving – making a total benefit of \$440 million (in 2014 figures) from removing the current restrictions.

The Ergas Report did not consider the added benefits of reduced business red tape in complying with the existing trading hours laws, as these were considered difficult to quantify. However, based on our experience in advising members and operating in the trading hours regulatory space, the NRA believes removing the regulation would bring very significant benefits to businesses – reducing compliance costs and lowering the risk of operating illegally due to confusion over the laws.

The Ergas Report (p3) recommended complete removal of trading hours restrictions, saying this would be the least-cost option, and would provide the greatest net benefits to the Queensland community. However it also found that the economic gains from extending trading hours are not evenly weighted across the 24 hours of a day, but rather most heavily favour the next few additional opening hours adjacent to existing trading hours.

*For instance, based on current shopping patterns, it is likely that three-quarters of the economic and welfare gains are achievable by extending trading hours by just two hours per day. However, by extending trading hours, shopping patterns will adjust so that further benefits would be achievable by further deregulation.*

If the review is not disposed to complete removal of the existing trading hours restrictions, a large proportion of the economic gain could be achieved by extending normal trading times by one hour at the start and end of each day. That is, while the Ergas Report recommends complete removal of trading hours restrictions, **most of the gain could be achieved with a state-wide trading hours of 7am to 10pm.**

### 3.2 Relative Costs of Doing Business in Australia: Retail Trade

In September 2014, the Productivity Commission released a research report entitled *Relative Costs of Doing Business in Australia: Retail Trade*. The Report comprehensively reviewed the impact of trading hours legislation in all Australian jurisdictions, in particular examining the effects of restrictions on the local economy.

In their final recommendations, the Commission highlighted the following findings in relation to retail trading hours:

FINDING 5.1

*Trading hours restrictions arose in response to cultural and social expectations that are decades, and in some cases centuries, old. They are increasingly out of step with changing patterns of work, leisure and shopping as shown by the widespread take-up of extended shopping hours, and technological developments that allow consumers to shop online 24 hours a day, seven days a week.*

FINDING 5.2

*The deregulation of trading hours is expected to increase economic activity and lower retailers' cost of doing business. It would also increase choice and convenience for consumers. Further, it could enhance employment opportunities particularly for younger and older workers and those working part-time or on a casual basis.*

FINDING 5.3

*The arbitrary boundaries and exemptions which are a feature of retail trading hours particularly in Queensland, Western Australia and South Australia lead to unintended consequences and anomalies which can disadvantage businesses of all sizes. For example, artificial restrictions on product lines, which in many cases are anachronistic and have no apparent rationale, can impose additional costs on retailers from lost revenue and the diversion of resources to compliance.*

FINDING 5.4

*Despite the partial changes since 2011 in South Australia and Western Australia, retail trading hours restrictions continue to impose costs on retailers and reduce consumer welfare. There is evidence of the benefits of reform from state regulatory review agencies. The main impediment to deregulation appears to be a lack of political commitment, a significant driver of regulatory policy reform.*

In addition, the Federal Government's Competition Policy Review released their final report in March 2015. This report, commonly known as the "Harper Review" also examined the impact on restricted retail trading hours and concluded that the *"deregulation of retail trading hours is overdue and that remaining restrictions should be removed as soon as possible. To the extent that jurisdictions choose to retain restrictions, these should be strictly limited to Christmas Day, Good Friday and the morning of ANZAC Day. Any public holiday trading restrictions should be applied as broadly as possible to avoid discriminating among different types of retailers."*

The Federal Government supported this recommendation, noting it is an area of state responsibility. In its response, the Government encouraged *"state and territory governments with remaining restrictions on retail trading hours to consider whether these restrictions are impeding competition and the ability of retailers to meet customer demand for flexibility and choice, and whether they can be removed without imposing undue pressure on retailers to remain open when it is uneconomical to do so."*

## 4.0 Consumer Preferences

The National Retail Association conducted a survey of shoppers in relation to the South East Queensland trading hours application, which found strong support for more liberal trading hours. This application sought standard trading hours of 7am to 9pm Monday to Saturday for the south-east corner of the state. This exercise revealed that 65 per cent of those people surveyed were in favour of the proposed trading hours on weekdays, and 61 per cent supported the proposed Saturday hours. In comparison, just 16 per cent and 23 per cent respectively were opposed. The results of this survey are summarised below.

Time	Support	Neutral	Oppose
7am – 9pm weekdays	65%	19%	16%
7am – 9pm Saturday	61%	16%	23%

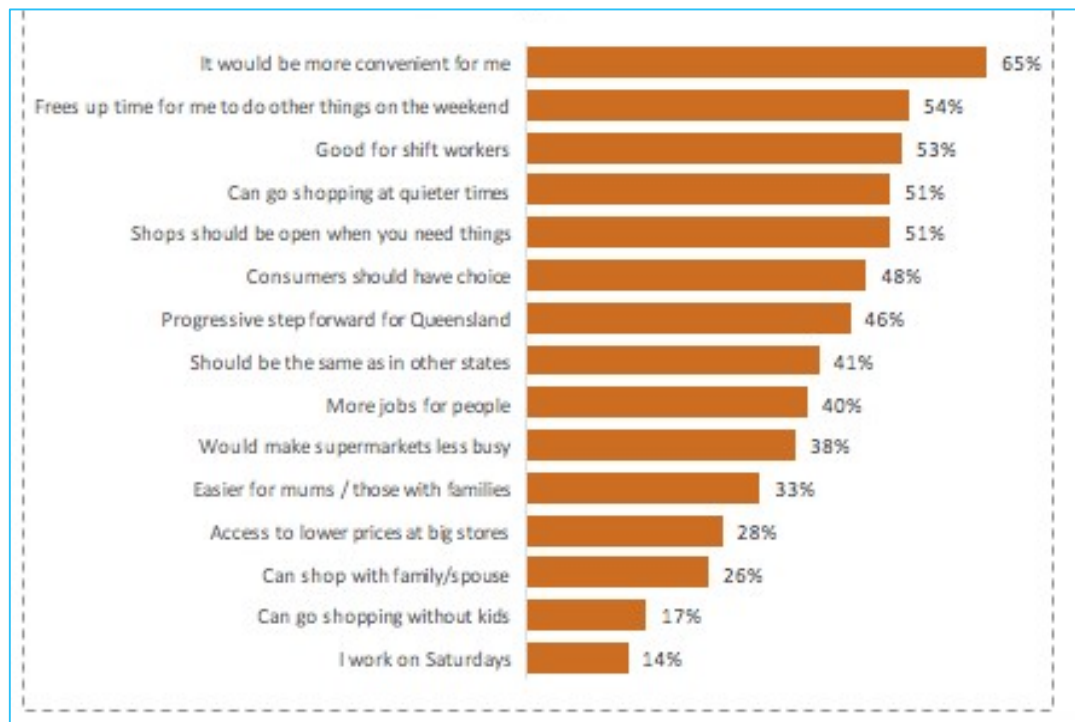
The most common reasons cited for supporting longer trading hours included greater convenience, freeing up time for other activities on the weekend, benefits for shift workers, ease of access and freedom of choice.

The majority of customers indicated that the change in trading hours would not change which supermarket retailer they shop at, but would provide them with greater flexibility about when they shop. A copy of this research is attached to this submission.

The NRA believes that the existing trading hours restrict a fundamental right of Queensland consumers in the modern era – that is, the ability within reason to shop when and where they wish to. For some shoppers this amounts to little more than an inconvenience, either through being forced to wait for their preferred store to open or to buy a specific product that is only carried by a specific retailer. For others however, lack of competition and inability to access non-exempt stores can be a significant economic burden. Take, for example, a shift worker who finishes working in a mine at 9pm, and is limited to performing grocery shopping at convenience or independent stores rather than major supermarkets. Or a nurse who finishes night duty at 7am, but must wait for one hour before being able to shop at a supermarket. For these workers and many others, being denied access to non-exempt stores represents at best, a limit to their freedom to choose where they shop, and potentially imposes an economic penalty on them.

Restricted trading hours also impose the same limitations on tourists and business visitors to the Sunshine State. The Ergas Report found that Queenslanders travelling overseas were likely to encounter much more liberal trading hours than exist at home, while around 90 per cent of the people who come to Queensland from elsewhere are accustomed to more liberal trading hours.

## Reasons for support – weekends

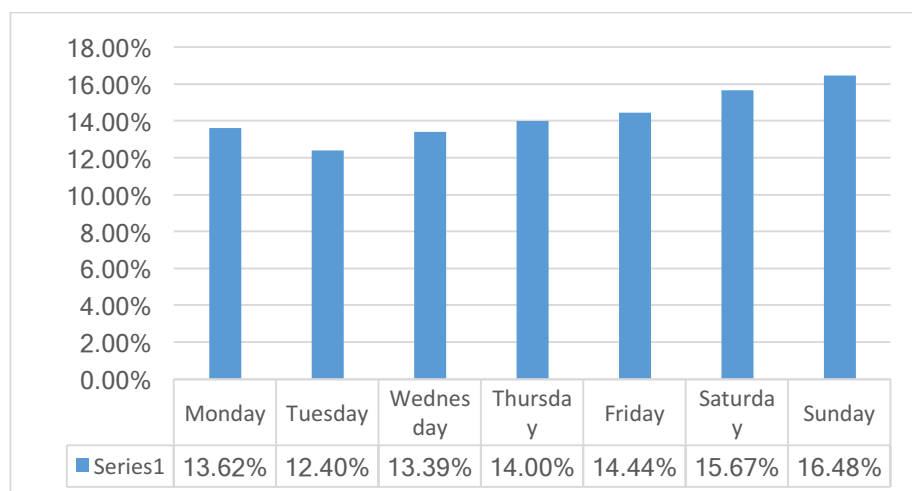


These limitations restrict the ability of major stores to meet the needs of tourists and visitors. In the NRA's experience, this leads to a situation where travellers bypass regional towns because major stores aren't open, causing harm to the entire local economy. The restrictions also damage Queensland's ability to present itself as a modern, vibrant and worldly destination for interstate and overseas visitors.

The NRA argues that both visitors and locals have a reasonable expectation that the shops should be open when they want to access them.

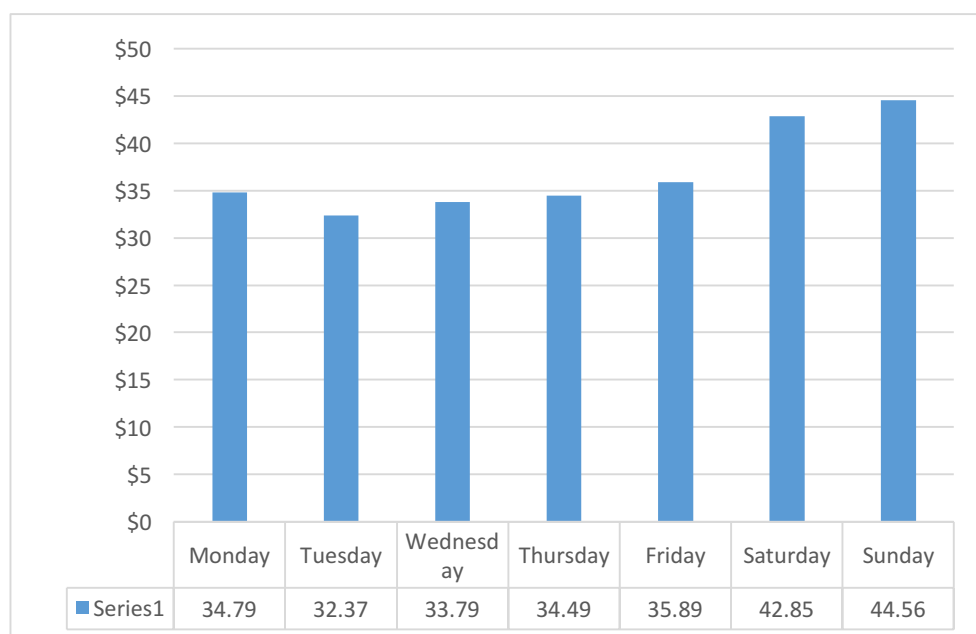
## 4.1 Consumers vote with their feet

### Average Sales by Day



For the majority of non-exempt stores across all brands, the Saturday / Sunday trade represents the busiest days of the week. The table above shows combined average sales per day across South East Queensland stores. It clearly shows that customers have a preference to shop on the weekend when they have time to make informed decisions. Many of the arguments currently advanced against extending trading hours were used when weekend trading was introduced. But as this table shows, weekend trading has now become an important option for almost one third of shoppers.

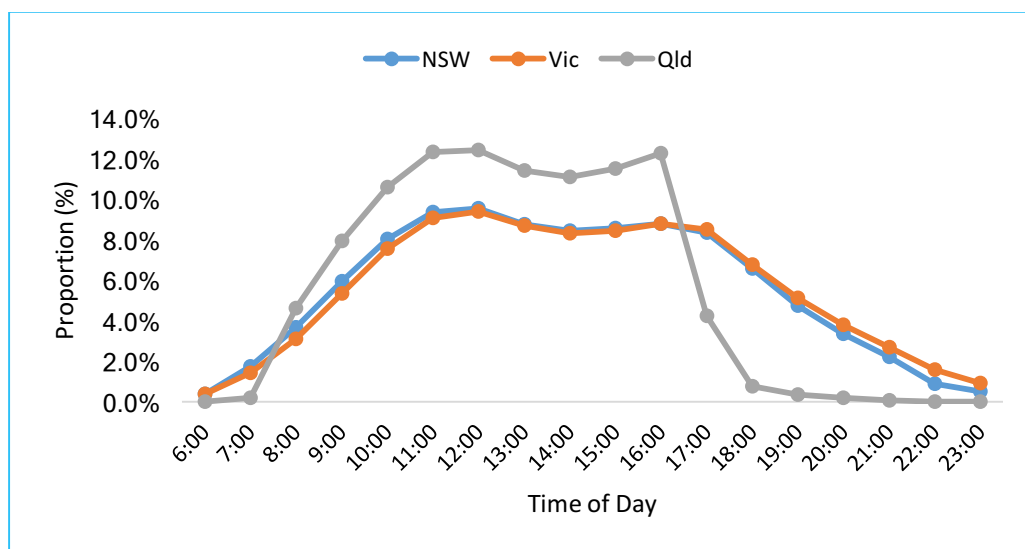
### Average Basket Size



The NRA has also collected data on the average daily basket size or spend per day in South-East Queensland for the weeks commencing 26 January 2015 and ending 22 February 2015. This

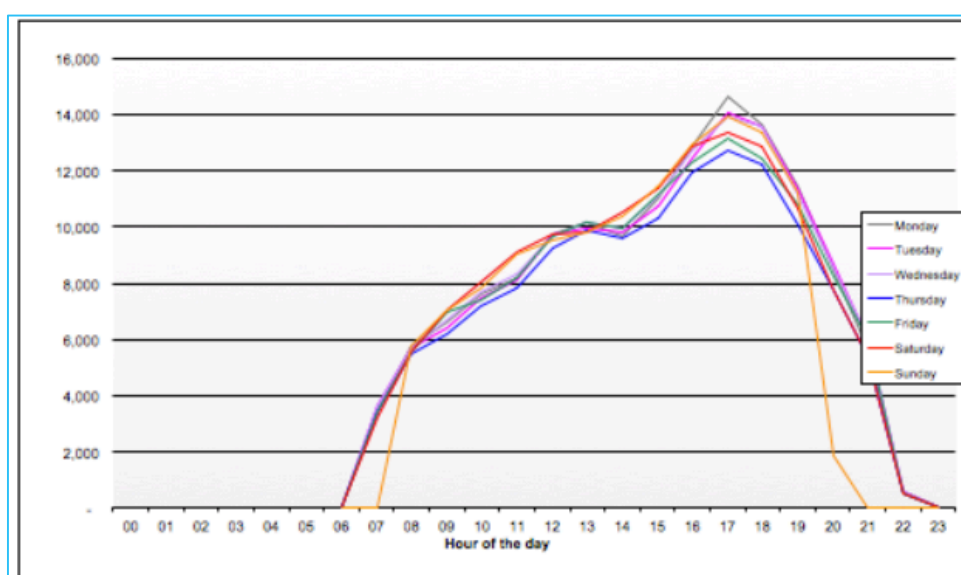
measure of consumer activity also demonstrates a clear consumer preference for weekend shopping, with the average basket being \$42.85 and \$44.56 on Saturday and Sunday respectively. Essentially, the average basket spend is 27.6% higher (\$9.44) on the weekend.

### Proportion of Transactions, by Time of Day - Saturday



The table above compares the proportion of transactions on Saturdays in supermarkets in New South Wales (blue line) and Victoria (orange line) with Queensland (grey line). The longer trading hours in the southern states have clearly been embraced by consumers. In Victoria, for example, close to 30 per cent of the day's trade takes place after 5pm on a Saturday. Queensland, by contract, experiences a congestion peak in the hour before closing on Saturdays. Extending trading hours on Saturday nights will not only meet the needs of people who wish to shop later, it will also ease the congestion for those who shop earlier in the day.

### Surfers Paradise Supermarkets – Weekly Transactions with wider spread of hours.



Queensland consumers who have been granted access to extended trading across all days of the week have embraced the concept – as the graph above clearly shows. This data is drawn from a Surfers Paradise supermarket which is permitted to trade from 7am until 10pm on Monday to

Saturday, and 8am to 8pm on Sundays. In this location, trading patterns are identical on the six days of the week – indicating a clear consumer preference to be able to shop late on Saturday nights. The pattern is similar on Sundays, although compressed to due to later opening and earlier closing. These figures clearly show that consumers are quick to take advantage of additional shopping hours when they become available.

## 4.2 Greater competition means lower prices for shoppers

Given that expenditure on food and groceries accounts for approximately 45 per cent of all retail expenditure by households, lower prices for groceries provides a benefit for the community by significantly reducing the cost of living of households. However, forcing the price setters (major supermarkets) to close their doors at times when consumers wish to shop clearly reduces price competition in the market. While some independent stores claim to match the prices of major chains on some items, this is a poor alternative to genuine competition because:

- not all items are price matched;
- not all stores in the relevant independent chains participate in the program;
- this kind of competition still relies on the large chains setting the competitive prices to be “matched”; and
- it does not take into account the lower prices available to consumers if they choose supermarket chains’ own domestic product ranges.

Woolworths, for example, has a wide variety of Select and Woolworths branded goods that are comparable in quality to branded goods. On a basic range of grocery goods, the savings customers can make is almost 50 per cent, compared with the better known national brands. Importantly, these items are designed to satisfy more discerning customers who are not willing to settle for lower quality products such as the Black and Gold range which Woolworths discontinued several years ago.

The table below shows the cost comparisons between national “brand name” products and the equivalent item from the Woolworths “Select” range.

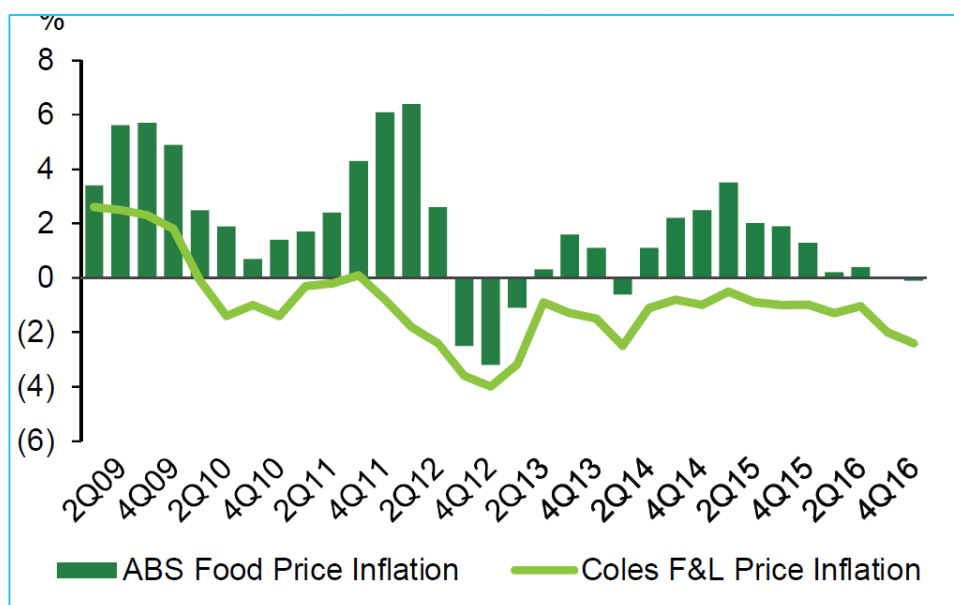
### Woolworths Online “Select” range brand comparison

Grocery Only Items June 22, 2016	Select / Woolworths	Brand name
Coffee 100g	3.99	9.99
Tea 100	3.50	3.50
Toilet 6pk	2.89	4.50
Milk 2lt	2.00	2.99
Bread 680g	85c	2.80
White Flour 1kg	75c	3.00
Soda Water	75c	1.60
Lemonade	75c	1.60
Margarine 1kg	1.60	4.99
<b>Total / Saving \$17.89</b>	<b>17.08</b>	<b>34.97</b>

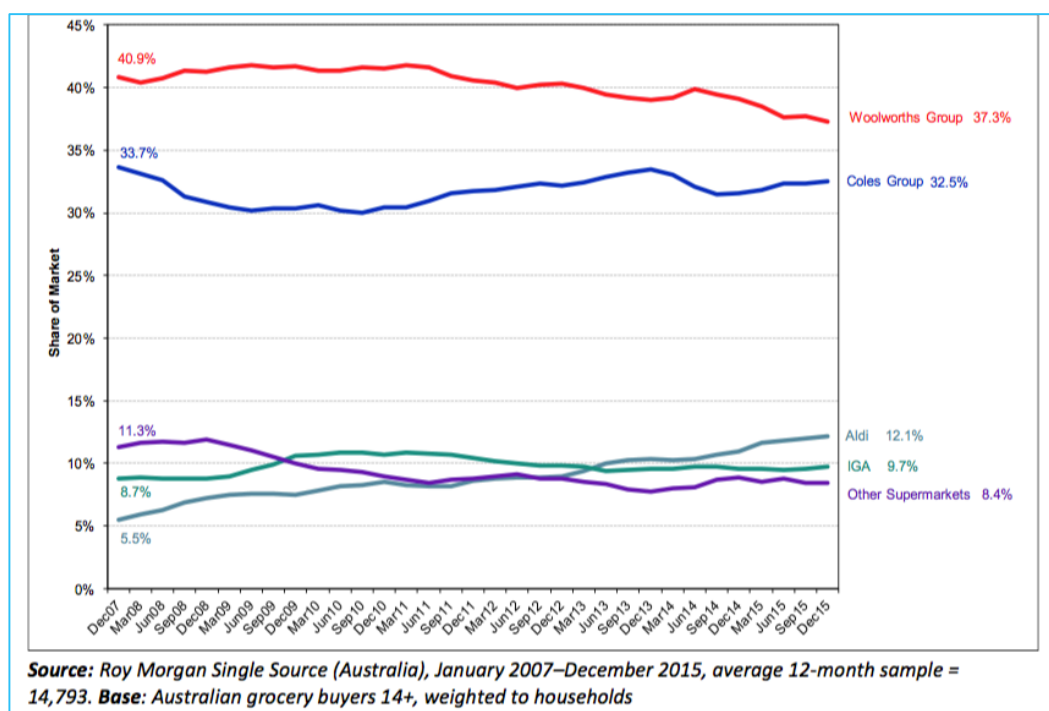
It stands to reason that when major supermarkets are closed by government regulation and customers are forced to shop for their grocery items elsewhere, these lower prices are not available to them. It can be said therefore, that restrictions on trading hours create a cost impost for Queensland consumers.

By contrast, competition in the grocery market across Australia in recent years has resulted in lower prices for many goods. This phenomenon of price deflation can be attributed solely to competition between the major supermarket chains. This is shown in the graph below, covering 2009 to 2014.

**Food Price deflation 2009 – 2016 - Lowering Prices for seven years and counting - Wesfarmers**



**Market share over time (dollar value) : Australian supermarket grocery share**





This graph clearly indicates that the market share of both Coles and Woolworths has declined over 10 years, while Aldi and, to a lesser extent the IGA chain, have increased their market share in the same period. This vigorous competition has driven price benefits for consumers across Australia, although in Queensland they are limited by the fact that Aldi, Coles, Woolworths and some IGA stores are not permitted to trade at certain times.

## 5.0 Simpler rules for everyone

The Goss Government, in handing power to the Commission to vary its prescribed trading hours, clearly understood that the retail landscape would continue to evolve, that consumer expectations would change, and that retailers would need to move with the times. That's why the Government of the day developed a mechanism for considering and implementing proposed changes.

However, a large number of geographically specific changes to the Trading Hours Order over the past 25 years has now created a trading hours order that runs to some 32 pages, containing 32 clauses and around 50 different trading hours zones around the state.

In the NRA's experience this results in confusion for both shoppers and business owners, as well as for interstate and international visitors. It has also resulted in a number of curious anomalies in the allowable hours for different stores and areas. For example:

- In some areas of inner Brisbane, non-exempt stores may open from 7am to 7pm on a Saturday, while other (nearby) areas of the city heart may only trade from 8am to 5.30pm;
- While major stores may trade on Easter Sunday in regional areas of Queensland such as Bundaberg and Toowoomba, they are required to remain closed in most parts of the South East;
- While supermarkets in the City Heart of Brisbane may trade until 7pm on a Saturday night, department stores must close their doors at 5.30pm; and
- Although supermarkets in the Gold Coast Coastal Tourist Area may trade until 10pm on a weeknight to service the needs of the tourist industry, department stores must shut at 9pm, with the exception of department stores in the Australia Fair Shopping Centre at Southport, which may also trade until 10pm.

In many cases, the right to trade is defined by the proportion of floor space given over to particular types of stock, the maximum number of employees on the floor, and even whether a store is located within or just outside the boundary of the area. In the latter case, a non-exempt store only one block from a competitor may be forced to close while the competitor is free to trade.

The complete removal of the regulations recommended in the Ergas Report would, naturally, also remove the confusion and contradiction that has become the norm in Queensland's trading hours laws. However, the fall-back position suggested by the NRA of 7am to 10pm state-wide would do away with almost all of the regulation currently embedded in the Trading Hours Order. The notable exception to this would be the various allowances made for non-exempt stores in some areas to trade on extended hours leading up to Christmas.

We strongly support any measure aimed at reducing the significant compliance and regulatory burden imposed on retailers by a range of inconsistent and unnecessary regulations at all levels of government. This red tape imposes significant costs on national retailers that operate across multiple state and territory jurisdictions.

## 6.0 Supporting small business

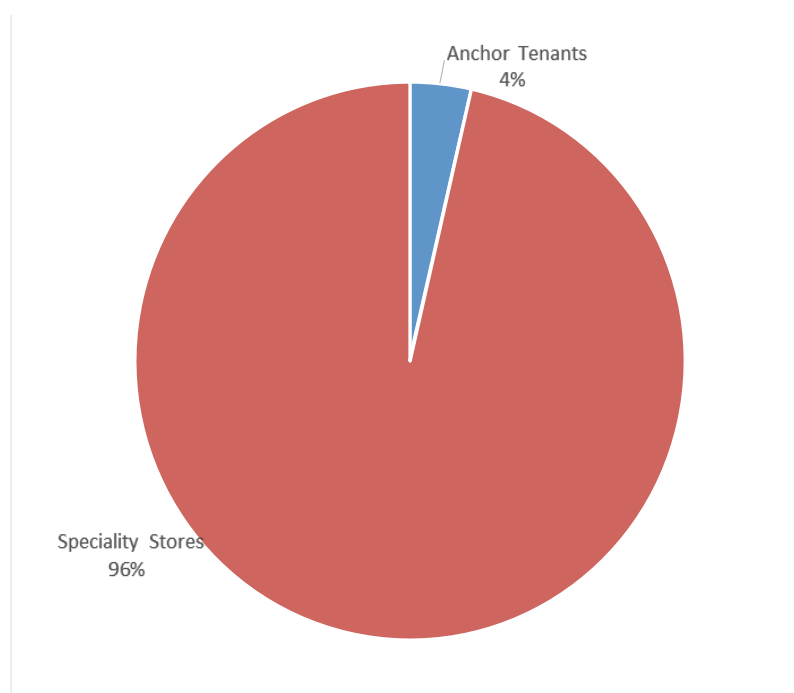
The importance to small businesses of reducing restrictions on trading hours for large businesses is a theme explored in the Ergas Report. It found there is an important relationship between large and small retailers, "especially in relation to the suburban shopping mall where most store-based retail shopping takes place".

*Large grocery stores act as 'anchor tenants' in suburban shopping malls because they generate positive externalities (or benefits) for other stores. Shopping centre owners "internalise" and organise these externalities, reflecting them in the rents they charge to tenants. Thus, speciality stores are commonly found in the same shopping centre as major supermarket chains. Far from being potentially 'smashed' by the large retailers gorging on extended trading hours, the speciality store benefits from the increased foot traffic caused by the presence of the anchor tenant. Thus, speciality retail stores are likely to locate close to major supermarkets. **Ergas P23***

When non-exempt retailers draw customers to a location, it can have significant flow-on benefits for nearby retailers. These additional visits enhance the overall vitality and performance of a centre, and there are a range of examples where a failing or underperforming centre has been resurrected following the addition of a non-exempt store.

In the NRA's trading hours application for South East Queensland in 2015, the CEO of the Shopping Centre Council, Angus Nardi, gave evidence that, in his experience, "smaller stores located in shopping centres very often would prefer to trade longer hours but due to the drop in foot traffic when the major stores have to close, choose not to continue trading".

### Shopping Centre tenant constitution



In his evidence to the Commission, Mr Nardi indicated that there were 277 shopping centres within the South-East Queensland trading hour boundaries, with 405 anchor tenants (major stores) and

some 10,903 specialty stores, many of them small businesses and “mum and dad” retail operations.

These small businesses are not generally in direct in competition with the anchor tenants in their centres. On the contrary, they rely heavily on major stores to attract shoppers to the centre. If the non-exempt stores are closed, traffic volumes fall. At the same time, smaller tenants are forced to absorb 100 per cent of the operating costs of the shopping centre, should they choose to remain open. The net result is that these small businesses cannot profitably trade, even if they want to. **As a result, there is a significant small business community suffering financial harm as a result of laws supposedly in place to protect them.**

The QIRC heard evidence in the South East Queensland matter from a Master Grocers Association witness, Mr Robert Sayle, who testified that he had made a strategic business decision to relocate his fruit and vegetable store to be closer to a Woolworths store. While remaining in the same shopping centre, Mr Sayle's business moved from up to 300 metres away from Woolworths to "about 20 metres away".

*And it's given us the opportunity to trade to the maximum, utilising our competitor's traffic flow. And – and it's shown us, really, what the trading is capable and what the – what the dollar turnover per hour. Like, we're completely computerised, so we can see exactly what money we take, when, where and how. And in the old shop, 250 metres away from Woolworths, we used to close store at 6 o'clock. We ceased trading basically at 5.30, half an hour, 40 minutes to clean up, etcetera. We'd open when the shopping centre opened at 8.15 and would be there from 6 o'clock, preparing the shop. The same thing happens with the new shop, we're there early. The first hour in the old shop away from Woolworths, we would take \$50. What we found is in the new location, we do get a lot more flow off from Woolworths...*

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MGA witness Leonard Catalano expressed a similar view of the benefits for his fruit and vegetable store (at Garden City, Mt Gravatt) to be co-located with a major supermarket.

*Well, I always have operated around supermarkets because supermarkets have a draw to bring customers to the centre. And in doing so, we get the spill off from that. People to buy their groceries and then they can their – they can buy their fruit and veggies at – at the supermarkets if they choose. But we're there to offer – to offer a different quality. So in – in doing that, we can – we can source more clientele. So we basically need to be with them – well, the whole step of the way to – to get the maximum out of our business.*

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Like many MGA witnesses in the SEQ matter, Mr Sayle expressed concern in his evidence that he was not able to compete with major supermarket chains, and that his business would not be viable should this application be granted. However, his calculated decision to be closer to his rival – indeed, right outside its door – and his evidence that that co-location made it more profitable for him to trade longer indicate that such competition is not only possible, but it is beneficial for small businesses such as his.

## 7.0 More jobs and more hours for existing workers

The Ergas Report predicts that full deregulation of the retail trading landscape in Queensland would lead to the creation of 3109 full-time equivalent jobs (p45). While the NRA is not proposing total deregulation, we have also indicated elsewhere that the hours recommended in this submission would achieve the vast majority of the economic benefits of total deregulation. For this reason, we confidently state that relaxation of the existing rules would lead to a significant jobs bonanza in Queensland. Given the nature of retail work, these jobs would typically go to lower-skilled workers.

During the South East Queensland trading hours application, the Full Bench of the QIRC asked for specific statistical data relating to employment outcomes. The Full Bench specified the applications and locations from which it wished to receive data. The material supplied overwhelmingly demonstrated the job-creating nature of extended trading hours.

In Toowong, for example, the Coles store manager indicated that the decision to extend shopping hours in November 2014 had resulted in an extra 47 team members and 996 additional labour hours every week. On a full-time equivalent measure, this represented 26 full-time positions.

At the Commission's request, the NRA sourced statistics demonstrating the impact on employment hours resulting from four recent extensions to trading hours. These were:

- the extension of hours for non-supermarkets in the Cairns CBD, which took force on 12 November 2014;
- Sunday trading in the Marian region (outside Mackay) which took force on 22 August 2014;
- extended hours in the Ipswich CBD, effective 13 October 2014; and
- extended hours in the Toowong area, effective from 3 November 2014.

The information provided to the Full Bench by the NRA showed that weekly work hours in the store increased from a total of 1832 per week to 1953 per week. This is an increase of 121 work hours per week. Further, the "headcount" in the store rose from 71 to 84 between October 2014 and October 2015 – an additional 13 staff members.

Across three Coles stores, total employment hours rose from 39,174 per month to 47,767. This is an increase of almost 22 per cent, or 8593 hours. This equates to 103,116 hours per year, or 1983 labour hours per week – 52.18 full-time equivalent jobs. If 52 new direct jobs are generated by extended hours in just three Coles stores, there is clearly a case that extending hours across the entire state will generate at least the numbers estimated by the Ergas Report. These direct figures do not take account of any associated jobs such as cleaning, security, transport and logistics.

Woolworths had four stores in the zones where the Commission requested additional employment data. Using the same formula employed above for Coles, total work hours for Woolworths have increased from 5630 per month to 6004 per month, across the four stores. This represents an additional 374 employment hours per month – a 6.6 per cent increase. This is a further 2.27 direct full time equivalent positions in these stores, without accounting for the associated jobs.

In a recent QIRC hearing, a post-employment review was conducted into the impacts of Sunday trade in the town of Dalby. The impacts of trade from non-exempt stores significantly outweighed the loss to a signal independent store. Even when reported reductions in employment among independent retailers were factored in, Dalby experienced a net gain of 214 work hours per week as a result of Sunday trading. This result for the town equates not only more jobs, but additional employment hours and increased job security for employees of a number of businesses.

## 7.1 Protecting the work-life balance

Some retail employees are eager for as much work as they can get, while others jealously guard their family and leisure time. In recent years the QIRC has sought to accommodate both of these principles when making its determinations in trading hours applications.,

Most large employers in retail have a policy of offering additional hours to existing part-time or casual employees first, and then seeking additional workers if they cannot fill all rostered positions. The Commission has recognised and encouraged this practise in its determinations.

Witnesses for non-exempt stores have also given undertakings to the QIRC that employees would not be forced to work during extended trading hours if they prefer not to do so. In most cases, employers have indicated that they have little trouble filling additional hours when roster spots become available, and the Commission has simply noted the commitment to voluntary work.

In two recent matters however, including the South East Queensland case, the Commission has added the following words to its order allowing extended trade:

*And further, that non-exempt stores may trade as described above provided that employees must freely elect to work the extended hours without any coercion, harassment, threat or intimidation by or on behalf of the shop owner, or occupier of the business.*

*The Commission or Industrial Magistrates Court may, at its discretion, require employers to produce written evidence that employees have actively indicated their willingness and availability to work these hours as a result of the extension of allowable hours.*

The NRA supports the concept of voluntary rostering, and supports the inclusion of similar protections for workers in any recommendations made by the Review Panel.

## 8.0 Which businesses should be regulated?

To the extent that there is resistance to extended trading, such resistance tends to be focused on the activities of major supermarkets. This is largely due to the organised and well-funded opposition by supermarket brands supplied by the Metcash Corporation. Metcash's website boasts that it supplies 2400 stores across Australia – a network greater than Coles and Woolworths combined. Many witnesses from Metcash brands, such as Super IGA – have indicated to QIRC hearings in recent years that their stores are comparable in size to a Coles or Woolworths supermarket, and competitive in terms of range and price. Yet these same witnesses were before the Commission arguing for protection from competition, under the “independent grocery store” classification.

The NRA supports protections for genuine independent grocery retailers. However, we are firmly of the view that this provision is being abused by some very large corporations in order to take advantage of the protections that were intended for “mum and dad” retail businesses.

A business is currently considered to be an “independent retail shop” in the Act if it meets all the following criteria:

- The business is run by an individual, partnership or a proprietary company (does not include a public company or related corporation).
- There are no more than 20 people, including the owner, engaged in the shop at any one time.

- There are no more than 60 people engaged by the owner in all shops throughout Queensland at any one time.
- The business is not conducted within a non-exempt shop or part thereof.

In our experience there are a number of large corporations which have established corporate structures specifically designed to circumvent the provisions of the Act that would otherwise see them classified as non-exempt businesses. These include the use of subsidiary and related entities, and the use of labour-hire firms to avoid the direct employment of more than 60 people.

For example, in the South East Queensland Trading Hours application, the QIRC heard evidence from a witness who described himself as “the Managing Director of the group of companies which, in total, own and operate seven IGA supermarkets throughout Queensland”. **This witness indicated that his business employed approximately 600 people across its seven sites. And yet the group of businesses traded its various locations as independent grocery stores.** This was clearly not the intention of the legislation when it was established to protect small business operators.

The NRA suggests the review panel examines the definition of a small business recently introduced in the New South Wales jurisdiction. In that state, a small shop is identified as follows:

*If the number of people that own the shop does not exceed 2, or one corporation, and the owner or owners of the shop take the profits from the business.*

*The total number of employees engaged by a small shop must not exceed a total of 4 regular employees, whether working at the same time or different times.*

*The number of persons engaged in a small shop does not include:*

*The occupier or occupiers. If the occupier is a corporation, then 2 natural persons who are shareholders of the corporation; or*

*Any person engaged in an emergency during the absence from the shop for part of a day of a person who is engaged in the shop on that day; or*

*Any person engaged outside the normal working hours of any person engaged on a full-time basis.*

*If the owner of a shop is a corporation, or a Director of a corporation and is engaged in another business, then it fails to comply with the definition of a small shop.*

The NRA believes these definitions could form the basis for a revision of the Queensland “independent” retail store classification. Alternatively, the review panel should consider lowering the employee threshold to ten, including owners, and implement provisions to ensure that the limit applies also to associated entities.

## 8.1 Exempt retailers

The Act makes provisions for a range of business types to be exempt from trading hours regulations. These exempt stores include a number of logical and sensible categories, such as chemist shops, bakeries, restaurants and service stations. However, there are some listed categories of exempt retail that are clearly not relevant any more, while there are other categories of businesses, such as motor vehicle retailers and hardware stores, that should be able to trade more freely – particularly on weekends – to meet the needs of consumers.

The NRA recommends the Review Panel undertake a thorough examination of the list of exempt businesses, to satisfy itself that the list continues to reflect modern business and consumer trends.



## 9.0 A modern trading hours regime

Based on the recommendations of the Ergas Report discussed above, the Productivity Commission (Harper) Review, and previous reviews by the Productivity Commission which have already recommended substantial lessening of regulation over retail trading hours, the NRA recommends the following allowable trading hours for the entire state:

**All days of the week: 7am until 10pm**

### 9.1 Public Holidays

We recommend removing restrictions relating to public holidays, with the exception of ANZAC Day, Good Friday and Christmas Day. We recommend that all non-exempt retailers be required to close on those days. The limitations on otherwise exempt retail businesses that currently apply on ANZAC Day should be retained.

### 9.2 Meeting the needs of tourists

Some areas of Queensland have been specifically designated as tourist areas in determinations of the QIRC over many years. In these areas, the Commission has recognised that tourists have needs that are different to residents. For example, in the Gold Coast Tourist Area, supermarkets and some non-exempt stores are permitted to trade until 10pm, in recognition of the needs of visitors to the area. Similarly, stores in the area of Hamilton in Brisbane are permitted to trade from 6am to service visitors to the nearby cruise ship terminal.

The difficulty with the existing tourist designations is that the allowable hours vary from area to area, and often even among areas in close proximity to one another. In order to simplify these arrangements, the NRA recommends that areas designated as tourist areas have the following allowable hours for non-exempt stores:

**All days of the week: 6am until midnight**

We believe the 6am start is important in some tourist areas, not only in areas directly servicing inbound visitors (such as cruise terminals and major airports), but also close to the border where daylight saving in NSW adds a further layer of complexity to the trading hours argument.

We recommend that initially the Parliament legislate definitions of tourist areas, based on the existing determinations of the QIRC. We recommend that the QIRC retain the power to designate an area as a tourist area in future. However, for simplicity, we recommend that the Commission only have the authority to determine whether an area is a tourist area. If it is deemed to be a tourist area, then it would be permitted to trade the set hours for tourist areas. In making this determination, the QIRC would need to consider:

- The size or significance of the tourism industry in the area
- The retail needs of tourists in the area
- The impact on businesses of all sizes
- The impact on employment
- The impact on employees
- And other factors considered relevant by the QIRC

### 9.3 Regional areas

If the Review panel forms the view that a single set of allowable hours is not socially or politically acceptable in some areas of Queensland, then it may consider applying the hours recommended above in section 4.0 to the area currently defined as South East Queensland, and applying a different set of rules for the rest of the state. If there is resistance in regional areas to extending trading hours, it is likely to centre on the issue of weekend trading. For this reason, the review may consider the following alternative hours for non-exempt stores in regional Queensland:

**Monday to Friday: 7am to 10pm**

**Saturdays, Sundays and Public Holidays: 8am to 6pm**

### 9.4 Christmas shopping

We recommend that all stores state-wide be permitted to trade until Midnight in the week prior to (but not including) Christmas Eve. We recommend that normal operating hours apply on Christmas Eve.

Currently, two major shopping centres in Brisbane have been granted permission to trade non-stop throughout the evening of December 22 and the morning of December 23. We recommend that these two centres continue to be allowed to trade these hours, which have proven very popular with shoppers. Further, we recommend that the QIRC be permitted to expand these hours to other centres on application. Such a determination by the Commission would need to take account of factors such as:

- Consumer demand
- Traffic congestion
- The impact on businesses of all sizes
- The impact on employment
- The impact on employees
- And other factors considered relevant by the QIRC

### 9.5 Special events

While the recommendations above would permit non-exempt stores to trade largely unfettered by regulation in the hours and locations generally expected by their customers, it is possible that special circumstances may arise in which there is a need for temporary or one-off changes to trading hours regulations. These examples may include major international events such as the upcoming Commonwealth Games or the G20 meeting held in Brisbane in 2014. They may also include trade shows or special exhibitions which, for whatever reason, do not fit within the prescribed hours.

We therefore recommend that the QIRC retain power to hear and determine requests for variations to the standard hours determined by the Parliament. In making such considerations, the QIRC would regard variations to the default trading hours position as the exemption, and would require a strong rationale and evidence to support the request.



## 10.0 Reform of Section 26 of the *Trading (Allowable Hours) Act 1990*

The NRA urges the review panel also to consider the mechanism by which the Trading Hours Order is modified from time to time. In our view, the subsections of Section 26 of the Trading (Allowable Hours) Act 1990 do not adequately reflect the reality of modern retail businesses. For example, Section 26 gives weight to the interests of tourism in two of the subsections, but fails to give any consideration to the needs of shift workers in other industries.

There is no justification, in our view, for local government to have effectively a power of veto over businesses that are otherwise governed by state and federal laws.

Section 26 of the Act gives no consideration to the needs of shopping centre owners and investors, specifically the need to achieve a fair return on capital. Considering that more and more shopping centres are owned by Australian superannuation funds, this is an increasingly important consideration for all Queenslanders.

And – unsurprisingly, given the age of the Act – there is no consideration of the impact of e-commerce and internet shopping, and the flexibility needed by modern retail businesses in order to survive in a globalised and increasingly competitive world.

The NRA supports the ongoing involvement of the QIRC in reviewing and modifying trading hours where appropriate. We believe that the number of applications would fall significantly if there was a state-wide liberalisation of trading hours such as is proposed in this document. However, there would no doubt continue to be a need for one-off applications, and special circumstances for individual localities or industries.

For all of these reasons, the NRA believes that it is time to update the criteria the QIRC is required to consider when it makes a decision on whether or not to change the trading hours. Categories that should be considered in future applications may include:

- Population considerations
- The needs of the tourist industry and other local industries
- The needs and preferences of local consumers
- Competitive pressure on businesses, including 'disruptive' trends and technology
- Maximising efficiency of retail assets
- The impact on employment
- The impact on employees

We believe it is no longer sensible that the views of local government continue to be a distinct category for the QIRC's consideration. The views of local government should be considered as part of the overall consideration of the needs and preferences of the local community. But given that local government has very little role in regulating retail, and in generating economic activity, we do not believe local government should remain an individual Section 26 criteria. Similarly, we believe the issue of traffic congestion is a factor for consideration under the needs of the local community, rather than as a distinct category. And finally, we feel the two sub-sections in Section 26 referring to tourism are tautological and should be combined.

## 11.0 Contact information

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Jobs, Choice and a 21<sup>st</sup> Century world view

Submission to the Qld Government's Review of Trading Hours



Prepared by the National Retail Association

November 30 2016 David Stout

## 1.0 About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The Queensland-based NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

The NRA's membership is comprised of members from all the sub-categories of retail including fashion, groceries, department stores, home wares, hardware, recreational goods, newsagents, fast food, cafes and personal services like hairdressing and beauty. It also includes both large and small businesses, including the majority of national retail chains, as well as independent retailers and franchisees, and other service sector employers. The NRA has represented the interests of retailers and the broader service sector for almost 100 years. The NRA's aim is to help Australian retail businesses grow.

As part of its services to members, the NRA has been heavily involved in making applications to the Queensland Industrial Relations Commission, under the provisions of the Trading (Allowable Hours) Act 1990. Indeed, no other organisation has been involved in as many applications before the Commission in relation to trading hours. For this reason, the NRA believes it is uniquely positioned to advise the Review Panel on the complexity of the current trading hours regime, and to recommend changes to a more inclusive and efficient system.

## 2.0 Follow on submission

### Customer

Several of the opposing arguments put forward to the Queensland Government's review of Trading Hours have been made in previous evaluations of Queensland's retail trading laws. History records that the doom saying about the impact of extended trading on businesses, employment, families and the fabric of society has been proved wrong time and again.

As mentioned previously, Saturday and Sunday trade represents the busiest trading days for the majority of non-exempt retail stores. From a customer's perspective, extended trading hours provide greater choice to the consumer and better reflect contemporary shopping habits. Queensland's trading hours laws should reflect this commercial and consumer reality.

### Employees / Employment

Any extension to weekend trading hours, such as the recent decision on Saturday trade for South-East Queensland retailers, will increase demand. The retail industry is driven by consumer demand, consequently, retailers need to be able to meet the needs of shoppers by having their doors open for trade when customers require their services.

Of equal importance to the customer service side of retail is the work that is performed outside of trading hours. Large retailers generally will have a team of people performing duties such as stocking shelves, cleaning and ensuring that the store is in immaculate condition for the following day's trade.

It is argued that these employees work 'unsociable' hours and that any weekend shifts they do should be on a voluntary basis. The NRA is of the view that these employees are hired to work during these hours and therefore none of their work can be of a voluntary nature.

### Public Holidays

The NRA has reservations over any move to introduce part-public holidays, particularly during busy trade period such as Christmas and New Year. An unintended consequence of any introduction will be to have more work conducted by fewer employees and at a higher wage cost to the business.

### Innovation

All retail businesses – whether they be small, medium or large – are cost sensitive. When a retail business looks into ways it can innovate and acquire an edge over its competitors, they are required to factor in a range of costs such as labour, tenancy, overheads and the myriad of regulations that they are forced to comply with.

If a retail business is able to operate under longer trading hours than at present, it can enable them obtain a greater turnover, which in turn can be spent on exploring ways in which it can innovate. The NRA requests that the Review Committee Chair consider the restraints that restricted trading hours can place on a retail business and how it can stifle innovation.

### Moratorium

The NRA firmly believes that recent applications for extended retail trading hours are a symptom of the laws not keeping pace with the evolving needs of customers. The current laws were appropriate for the 1980s, however, they have since become out-dated, archaic and unable to meet the demands of consumers in 2016.

The NRA therefore opposes any move to set a moratorium on trading hours applications, as it may prevent necessary reviews of Queensland's retail trading laws from taking place in the future.

### Independent Stores

The NRA has never opposed sensible and necessary protections for genuine, independent retail stores. However, we believe that under the current system, certain protections have been exploited. Any protections should be in place to assist mum-and-dad small businesses and not to enable large retailers to exploit the system by restructuring their businesses to disguise themselves as small retailers.

The NRA firmly rejects any one-size-fits-all proposal when it comes to implementing appropriate arrangements for independent stores.

## Public Opinion

There has been a range of public opinion polls conducted on the topic of extended trading, with overwhelming and consistent results in favour of further choice. Historically in Queensland, all extended trade for non-exempt stores has been embraced by the consumer. The NRA urges the chair of the review committee to consider all the research provided in total, combined with the demonstrated success of extensions granted by the QIRC.

## 3.0 Contact information

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