



Trading (Allowable Hours) Amendment Bill 2017

Report No. 37, 55th Parliament
Finance and Administration Committee
April 2017

Finance and Administration Committee

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Abbreviations

Act	<i>Trading (Allowable Hours) Act 1990</i>
Bill	Trading (Allowable Hours) Amendment Bill 2017
CCIQ	Chamber of Commerce and Industry Queensland
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles
MTAQ	Motor Trades Association Queensland
NRA	National Retail Association
OIR	Office of Industrial Relations, Queensland Treasury
OQPC	Office of the Queensland Parliamentary Counsel
QIRC	Queensland Industrial Relations Commission

Chair's foreword

The objective of the Trading (Allowable Hours) Amendment Bill is to simplify and standardise trading hours across Queensland. It is no longer appropriate nor adequate for around 100 variations to trading hours across our state. This has led to confusion for our businesses and will be remedied by this Bill.

Trading hours for Sunday and public holiday trading will be standardised across Queensland from 9 am to 6 pm. Special tourist areas, such as Port Douglas, will have access to extended trading hours that meet the needs of domestic and international visitors. There will also be provision for special trading hours' applications to be made for extended trading around international events, such as the Commonwealth Games. I believe that the Bill achieves those objectives and it should be passed.

The situation for those areas currently without Sunday or public holiday trading in regional Queensland will remain the same, though I note the opportunity for those areas to opt-in to the proposed trading hours. This can be achieved with an order by the Queensland Industrial Relations Commission (QIRC) and regulation following careful consideration of the issues specific to that community. I urge community members to get involved to ensure that they have their say during these processes. I also note that these changes will be given effect through a regulation. This will ensure that extended hours orders are recorded in one place and ensure that we do not return to the current confusing state of multiple QIRC orders and variations.

The committee has considered evidence from a wide range of stakeholders and I thank them for their time and effort in writing submissions and in appearing before the committee. Several stakeholders consider the de-regulation of trading hours will have a negative impact upon small business. I disagree.

In this regard I look to evidence in other jurisdictions where there has been a relaxation or total deregulation of trading hours. Those jurisdictions show that there is a continuing and thriving small business presence. Essentially, the changes to trading hours in other Australian jurisdictions did not reduce the participation of small business.

The committee heard that businesses want a period of stability – the five-year moratorium will provide stability and certainty for all businesses while these changes take effect. A review of these trading hours before the moratorium ends will allow us to take stock of the impacts of these changes.

The changes proposed in the Bill are overdue. This is particularly so, given the changing dynamics of our society and requirements of average consumers. We also need to rise up to address the challenges faced by digital disruption, particularly with the pending arrival of online stores such as Amazon.

The committee made three recommendations. Two relate to corrections required and acknowledged by the Department. The third relates to motor vehicle and caravan retailers; there was an overwhelming call from these retailers for the current status quo to apply to their trading hours. Following careful consideration of the issues, the committee made a recommendation that the Bill be amended to exclude the application of the changes to motor vehicle or caravan retailers.

I thank my fellow committee members for their considered approach to this inquiry. While we may disagree on whether the Bill should pass, all members worked in a bipartisan and diligent manner to ensure the committee received evidence and fully considered the issues raised in this inquiry.

Finally, I thank the secretariat and other parliamentary service officers who assisted the committee.

I commend this Report to the House.



Peter Russo MP

Chair

Recommendations

Recommendation 1 10

That the Trading (Allowable Hours) Amendment Bill 2017 be amended to include the Cairns CBD in the defined tourist area.

Recommendation 2 16

The committee recommends that the Bill be amended, as per the Queensland Treasury's advice, to refer to an appropriate address for the Westfield Chermside and Westfield Garden City shopping centres.

Recommendation 3 22

The committee recommends that the Bill be amended to exclude the application of the changes to motor vehicle or caravan retailers.

1. Introduction

1.1 Role of the committee

The Finance and Administration Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Premier, Cabinet and the Arts
- Treasury, Trade and Investment, and
- Employment, Industrial Relations, Racing and Multicultural Affairs.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas and is to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 The Bill referral

On 1 March 2017, the Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, Hon Grace Grace MP, introduced the Trading (Allowable Hours) Amendment Bill 2017 ('the Bill') into the Legislative Assembly.² In accordance with Standing Order 131, the Bill was referred to the Finance and Administration Committee for consideration.³

The Minister advised the House of the key reforms proposed in the Bill:⁴

- Allowable trading hours for non-exempt shops under the Act will be extended in South-East Queensland from 7am to 9pm Monday to Saturday, in line with the decision by the QIRC in late 2016, and in regional Queensland from 7am to 9pm Monday to Friday and 7am to 6pm on Saturday. Trading hours for Sunday and public holiday trading will be standardised across Queensland from 9am to 6pm. Those regional towns that currently do not have Sunday and public holiday trading will be able to opt in to these trading hours through an application to the Queensland Industrial Relations Commission. That situation does not change.
- Special tourist areas such as Port Douglas will have access to extended trading hours that meet the needs of domestic and international visitors. There will be provision for special trading hours' applications to be made for extended trading around international events, such as the Commonwealth Games. Trading hours restrictions will be removed for butcher shops, special exhibitions and trade shows. All hardware stores can open on Sundays from 6am. Extended trading hours will apply in the period leading up to Christmas for non-exempt shops in all areas of the state, with trading to close from 6pm on Christmas Eve to allow retail workers to go home and be with their friends and family.

¹ *Parliament of Queensland Act 2001*, section 88 and Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, 131.

² Queensland Parliament, Record of Proceedings, 1 September 2016, pp 3327-3330.

³ Queensland Parliament, Record of Proceedings, 1 September 2016, p 3330.

⁴ Hon Grace MP, Queensland Parliament Record of Proceedings, 1 March 2017, p 384.

- The employment thresholds at which independent retail shops become subject to the same trading restrictions as larger non-exempt shops will be lifted, from 20 to 30 employees on the floor in any one shop and from 60 to 100 employees where a number of related shops are operated.
- Protections for retail workers will make it an offence for an employer to require an employee to work the extended trading hours that are being introduced unless the employee has freely elected to work those hours. This agreement to work must be made in writing and applies to all hours which are being extended by this amendment to the Act, not to Sundays and public holidays only.
- The impact on employees will be a new criterion for the QIRC to consider in deciding trading hours applications. With the exception of applications in relation to international events and any opt-in applications for Sunday and public holiday trading, there will be a five-year moratorium on further trading hours applications to extend the allowable trading hours for non-exempt shops. The moratorium will provide a period of stability and certainty for all parties and put an end to the ongoing process and costs involved with retail organisations applying to the QIRC for trading hours orders. A review of the new trading hours arrangements will be held prior to the end of the moratorium period.

The committee was required to report to the Legislative Assembly by 28 April 2017.

1.3 Inquiry process

The committee announced the inquiry by advertising the terms of reference on its website.⁵ The committee also wrote to stakeholders and to subscribers to inform them of the inquiry and invite written submissions.

Following a request for assistance on the Bill, the Queensland Treasury Office of Industrial Relations (OIR) provided the committee with a written briefing and, on 22 March 2017, attended a public briefing on the Bill.

The closing date for submissions was 24 March 2017. The committee received a total of 21 submissions, a number of which were provided confidentially. A list of submitters is provided at **Appendix A**.

The committee held a public hearing in Brisbane and a regional hearing on the Gold Coast. Additionally, the committee held videoconference hearings with witnesses in Ipswich and Emerald and teleconference hearings with witnesses in Hong Kong, Rockhampton, Townsville, Mt Isa, Cairns, and Toowoomba.

A number of hearings were postponed due to the impacts of ex-tropical cyclone Debbie. The committee thanks witnesses for making time to attend the rescheduled hearings. Witness lists are at **Appendix B**.

Copies of material published in relation to the inquiry, including written advice, transcripts of the committee's public briefing and public hearings, and all published submissions, are available on the committee's inquiry webpage.⁶

1.4 Structure of the report

Chapter 2 provides a brief overview of the current trading hours in Queensland.

⁵ <http://www.parliament.qld.gov.au/work-of-committees/committees/FAC/inquiries/current-inquiries/Tradinghoursbill2017>

⁶ <http://www.parliament.qld.gov.au/work-of-committees/committees/FAC/inquiries/current-inquiries/Tradinghoursbill2017>

Chapter 3 details the committee's examination of the Bill, and provides a summary of the issues considered by the committee during the course of the inquiry.

Chapter 4 highlights clauses within the Bill that may contain issues with regards to fundamental legislative principles.

1.5 Outcome of committee deliberations

Standing Order 132(1)(a), requires that the committee examine the Bill and determine whether to recommend that the Bill be passed.

In this instance, the committee was not able to reach a majority decision on whether to recommend that the Bill pass or not and therefore, in accordance with section 91C(7) of the *Parliament of Queensland Act 2001*, the question on the motion failed.

2. Background - Overview of trading hours regulation in Queensland

2.1 Current legislation

Types of retailer

There are 3 types of retail shops in the *Trading (Allowable Hours) Amendment Act 1990* (the Act):⁷

- exempt shops – have unrestricted trading hours and are specifically listed in the Act
- independent retail shops – defined by the number of employees and have unrestricted trading hours
- non-exempt shops – large retailers including supermarkets and department stores.

Exempt shops

Exempt shops (see s5 of the Act) have no restrictions on trading hours or employee numbers.

Independent retailers

‘Independent retailers’ are businesses:⁸

- run by an individual, partnership or a proprietary company (does not include a public company or related corporation)
- with no more than 20 people, including the owner, engaged in the shop at any one time
- with no more than 60 people employed in all shops in Queensland if there are several shops
- not conducted within a non-exempt shop or part thereof.

Independent retail shops can open at any time, including most public holidays. However, independent retailers (except those which are predominantly food and/or grocery stores) must close on Good Friday and Christmas Day, and until 1pm on Anzac Day.

Non-exempt shops

Non-exempt shops are not exempt shops or independent retail shops and include:

- shops selling wholly or partly wholesale products
- shops selling motor vehicles or caravans
- large retailers including supermarkets and department stores.

Non-exempt shops can trade 8am to 9pm Monday to Friday and 8am to 5pm on Saturday (extended hours may apply in certain areas). They must close on Good Friday, Anzac Day, Labour Day, and Christmas Day, unless the Queensland Industrial Relations Commission (QIRC) orders otherwise. Easter Sunday was recently removed as a closed trading day.⁹

The Queensland Industrial Relations Commission

The QIRC can make orders to extend trading hours, conditions for special displays and exhibitions, such as home shows, electronics shows, and expos, based on applications from retail organisations and other interested parties. In making a decision or order, the QIRC considers:

- the needs of the tourism industry
- the public interest
- consumer interests

⁷ Other Acts may regulate shops’ trading hours e.g. licensed premises must comply with the *Liquor Act 1992* and the *Wine Industry Act 1994*.

⁸ Independent shops which exceed the employee limits will be classified as a non-exempt shop

⁹ See *Trading (Allowable Hours) Amendment Act 1990*, ss. 31B, 31BA, 36A, 36AA, 54 and Queensland Parliament, *Record of Proceedings*, 2 March 2017, pp 545 – 547.

- the interests of small, medium and large businesses
- economic factors such as impacts on employment.

Sunday trading hours

The QIRC has approved trading on Sundays and certain public holidays in a number of areas in Queensland. Accordingly, Sunday trading hours vary across the state.¹⁰

2.2 Queensland Industrial Relations Commission trading hours order – December 2016

From 1 December 2016, the QIRC extended trading hours for non-exempt retail shops.¹¹ The order lists the trading hours as 8am to 9pm on Monday to Friday and 8am to 5pm on Saturdays, except as otherwise provided by the order.

It then goes on to list 29 further different trading hours:

- 7am to 9pm Monday to Saturday and from 9am to 6pm on Sundays in south-east Queensland
- a range of different trading hours for areas in Brisbane such as New Farm and Hamilton North Shore area in Brisbane
- tourist and seaside areas as defined
- specified tourist areas of the Gold Coast Coastal Tourist area, Cairns Tourist area, Townsville Tourist area, Mossman and Port Douglas tourism area, Whitsunday Tourist area, Great Barrier Reef Wonderland Tourist complex, Yeppoon Tourist area and Emu Park Tourist area
- 17 further areas outside south-east Queensland:
 - Fraser Coast
 - Townsville and Thuringowa
 - Moranbah
 - Cooloola Cove
 - City of Rockhampton
 - Mackay
 - Innisfail
 - Emerald
 - Tablelands
 - Gladstone
 - Bundaberg
 - Gympie
 - Biloela
 - Marian
 - Cairns CBD
 - Dalby

There was criticism from some witnesses that this order changing the trading hours was made in the midst of the 2016 review of Queensland's trading hours.¹²

The Bill intends to standardise trading hours across Queensland based on areas within south-east Queensland, areas outside of south-east Queensland and tourist areas.

¹⁰ NOTE: the department's briefing includes the current extended trading hours orders made by the QIRC for non-exempt shops.

¹¹ See: http://www.qirc.qld.gov.au/qirc/resources/pdf/orders/trading%20hours%20-%20non-exempt%20shops%20trading%20by%20retail%20-%20state_011216.pdf

¹² See for example, Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia, Brisbane hearing transcript, 12 April 2017, p 15.

2.3 2016 review of Queensland's Trading (Allowable hours) Act 1990 in 2016

On 31 August 2016, the Queensland Government established the Trading Hours Reference Group (the review), led by Mr John Mickel, to consider and report on Queensland's current trading hours' regulatory framework. The focus of the review was to:

- address irregularities in trading hours arrangements which exist across the state
- consider challenges that small and large businesses, workers and the community face, in relation to the current trading arrangements, and
- consider effective ways to promote job creation and business growth.

The review found Queensland's patchwork of trading hours, due to ad-hoc QIRC orders over time, is unnecessarily complex to navigate, causes confusion for retailers and consumers, does not adequately reflect contemporary shopping and leisure preferences and detracts from Queensland's appeal as a tourist destination. It found support to address the issues but no current call for total deregulation of retail trading hours for all retail businesses.¹³

It released an issues paper, consulted with a range of industry stakeholders, and considered a survey of 3,364 respondents. Its report contained 13 recommendations which were largely accepted by the Government.¹⁴

Key findings in the review report

Significance of the retail industry

In 2015-16, Queensland's retail industry employed 255,000 Queenslanders with wages of around \$9.9 billion and accounted for 5% of overall economic activity in Queensland. In 2014-15, it had sales of around \$76 billion.¹⁵ The review report states that regulatory impediments to this industry should be appropriate and justified.

The review found that less restrictive trading hours regulation could:

- reduce administrative and compliance costs for businesses, for example:¹⁶
 - non-exempt businesses managing the varied opening and closing times throughout the state e.g. deliveries and different advertising material, or making applications, submissions etc. to the QIRC around trading hours extensions
 - independent retailers' rostering and structuring their business to ensure they remain under the minimum staffing allowed (20 employees per shop and 60 state-wide)
- increase operational efficiency and productivity:¹⁷
 - currently shops closing on Sundays and bank holidays means wastage of perishable goods for some businesses, and others may need to pay more staff to deal with concentrated patronage during their restricted opening times
- result in increased retail sales – evidenced in Queensland and other states where there are less restrictive trading hours¹⁸

¹³ Office of Industrial Relations, *A Review of Queensland's Trading (Allowable Hours) Act 1990, A report by John Mickel, Chair – Trading Hours Review Reference Group*, December 2016, p 2.

¹⁴ Further information on the review, including submissions, the report and the government response is available at: <https://treasury.qld.gov.au/fair-safe-work/industrial-relations/trading-hours-review/index.php>

¹⁵ Office of Industrial Relations, *A Review of Queensland's Trading (Allowable Hours) Act 1990, A report by John Mickel, Chair – Trading Hours Review Reference Group*, December 2016, p 16.

¹⁶ Ibid pp 16-17.

¹⁷ Ibid p 17.

¹⁸ Ibid

- increase tourism spending and competitiveness as a tourism destination:¹⁹
 - in 2014-15 tourism direct output was \$10.2 billion and accounted for 3.6% of state output, employing 135,200 people (5.8% state total). The majority was demand for goods and services (excl. food and beverages) at around 12.2% of total tourism (cf 12.8% in New South Wales and 13.5% in Victoria). If Queensland achieved the same discretionary spending as New South Wales, that would be \$270 million per year in additional tourism spending. The increases in spending etc. are already accepted given the nine current tourism precincts with less restrictive trading hours
- provide more employment:²⁰
 - trading hours vary from nine to 15 hours on Saturdays and nine to 14 hours on Sundays. These significant differences limit the hours available to employees without extended trading hours or may require some to travel to other locations where the additional hours are available. The QIRC recently found increased trading hours in non-exempt stores results in more employment, extra hours for employees and new employees.
 - the additional hours will likely suit part-time and casual staffers who will be more likely to self-elect to work the additional hours, meaning little impact on current employees who do not wish to work the extended hours
 - community changes i.e. greater diversity in work patterns, increased flexible, non-traditional hours, coupled with dual income, smaller households and lower religious attendance mean consumers want less restrictive trading hours. Evidence in Queensland and other jurisdictions show that consumers will use the extended trading hours – Sunday is now an important shopping day for Queenslanders. Coles reported turnover increased from 1% to 12% after Sunday trading was introduced in Victoria in 1998.

The review considered a range of alternative approaches including:²¹

- substantial deregulation
- legislated trading hours
- continuing with the existing model with changes to allowable hours across the state or in defined regions
- limiting the order making power of the QIRC
- changes for the criteria for deciding applications for extended trading hours orders, and
- continuing the current practice.

Recommendations of the review

The government accepted 12 recommendations in full and one in part. Recommendation 2 to set core trading hours for all non-exempt stores outside south-east Queensland was adopted but excludes those areas which currently do not have Sunday or public holiday trading unless they opt in under a provision in the Bill.²² The government response to the 13 recommendations of the review is included at **Appendix C**.

¹⁹ Ibid p 17-18.

²⁰ Ibid p 19.

²¹ Ibid pp 28-26.

²² See <https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations/trading-hours-review/review-recommendations.php>

3. Examination of the Bill

3.1 Exempt shops

Clause 4 of the Bill proposes to amend section 5 of the Act to include independent retail shops in the list of exempt shops. This list would also include butcher shops, shops at trade shows and exhibitions, special exhibitions or shops in airport terminals, cruise terminals, casinos or tourist resorts on an off-shore island.

Special events

The QIRC can declare a special event, which means that any shops operating within a specific stated area of that special event will be considered to be exempt shops for the duration of the declared special event. Examples in the Bill include the Gold Coast Commonwealth Games in 2018 and the Weipa Fishing Classic event.

Issues raised in submissions

The Retail Council advised it is their experience that applications for special events are often rejected in other jurisdictions as the bar for a successful application is too high. The Retail Council provided the example that only three retailers in New South Wales (NSW) were granted a special event exemption and one was overturned on appeal, which has led to retailers feeling disinclined to apply now.²³

The National Retail Association (NRA) suggested that “Natural Disaster” be inserted into 5(1)(c), or reference made to the *Fire and Emergency Services Act 1990* to declare non-exempt shops as exempt shops during national disasters to get supplies to the community.²⁴

The OIR advised that in declared disaster situations, a District Disaster Coordinator may be established under the *Disaster Management Act 2003* with the power to maintain or restore an essential service. In the past this power has been effectively used to authorise the opening of shops outside allowable trading hours to provide perishable foods.²⁵

3.2 Independent retail shops

Clause 5 would amend section 6 of the Act to increase the number of employees allowed per independent retail shop from 20 to 30, and where a company has several shops, increase the overall number of people employed in all shops of the independent retailer throughout Queensland from 60 to 100.²⁶

Issues raised in submissions

The NRA opposes clause 5 of the Bill, contending that businesses of this size are not genuine “mum and dad” operations. The NRA considers that certain protections for genuine independent retail stores to assist these businesses should not enable large retailers to exploit the system by restructuring their businesses and disguise themselves as small retailers.²⁷

The OIR advised that this amendment will provide benefits to independent retailers, who will be able to employ an increased number of staff in a single shop or in multiple shops before being designated a non-exempt retailer and becoming subject to trading hours’ restrictions. The OIR also contended that the change will provide businesses with more opportunity to expand their operations and be more competitive, and will enable businesses nearing the current employment cap to employ additional

²³ Submission no. 9, Retail Council, p 2.

²⁴ Submission no. 13, National Retailers Association, p 2.

²⁵ Office of Industrial relations, response to issues in submissions, p 1.

²⁶ If a shop/company exceeds these limits, they will be subject to the non-exempt shops trading hours.

²⁷ Submission no. 13, National Retailers Association, p 3.

workers in a manner that best suits the needs of their business. These businesses would also avoid some of the administrative costs associated with managing employment levels and business structures to comply with the current lower employment thresholds.²⁸

3.3 Non-exempt shop trading hours

Clause 7 of the Bill would insert a new Part 4, Division 2 and new sections 16A to 16G. Essentially these clauses provide the various core trading hours for non-exempt shops. Proposed new section 16B would create an offence for non-exempt shops to trade outside the new core trading hours in the Bill or a QIRC order. The maximum penalty for the offence would be 40 penalty units, which currently demands a \$4,876 fine.

Definitions

Proposed new section 16A would insert a range of definitions into the Act for the new division. These include:

2017 trading hours order refers to an order of the QIRC titled ‘Trading Hours – Non-exempt Shops Trading by Retail – State’ made under section 21 of the Act on 27 November 1992 as it was in effect immediately before the Bill commences (if the Bill is passed).

closed day means Good Friday, Anzac Day, Labour Day, and Christmas Day.

south-east Queensland area means the south-east Queensland area within the meaning of the 2017 trading hours order but does not include a tourist area

tourist area means the following areas under the 2017 trading hours order:

- a) *area of New Farm of Inner City of Brisbane*
- b) *Hamilton North Shore Area*
- c) *Gold Coast Tourist Area*
- d) *The Great Barrier Reef Wonderland Tourist Complex*
- e) *the town of Port Douglas*

Issues raised in submissions

Several submitters raised issues with the definition of tourist area as it does not reflect the tourist areas in the 2017 trading hours order, particularly with respect to Cairns, Townsville and Yeppoon.

The Shopping Centre Council of Australia and the NRA consider that the Cairns Central Business District (CBD), should be included in the list of tourist areas.²⁹

The Shopping Centre Council of Australia considers the omission of Cairns CBD as a tourist area, coupled with the 5 year moratorium on trading hours order extensions, will leave retailers in the Cairns CBD unable to apply for the designation as a 'tourist area', and hence the allowable hours for tourist areas. These locations will be at a relative disadvantage in terms of their allowable/core hours compared with other tourist locations. The Shopping Centre Council of Australia recommends that Cairns CBD, and possibly other tourist areas, are included in the 'tourist area' definition.³⁰ In addition to the inclusion of the Cairns CBD in the definition of 'tourist area' the NRA considers that the Townsville Tourist precinct would be better served by the inclusion of the Townsville Tourist Area as a substitute for The Great Barrier Reef Wonderland Tourist Complex.³¹

²⁸ OIR response to submissions, p 1.

²⁹ Submission no. 18, Shopping Centre Council of Australia, submission no. 13, National Retailers Association

³⁰ Submission no. 18, Shopping Centre Council of Australia, p 2.

³¹ Submission no. 13, National Retailers Association, p 4.

Some consider that the term ‘tourist area’ should be extended prior to the moratorium to include the whole of the Brisbane CBD, Fortitude Valley, RNA precinct, Woollongabba (West of Ipswich Rd), South Brisbane, Southbank, Petrie Terrace and West End precincts, allowing them to trade on as part of the proposed extended trading hours for Tourism Precincts until 10 pm Monday-Saturday and until 9 pm Sundays and most Public Holidays.³²

The OIR advised that the term “tourist area” includes New Farm, Hamilton North Shore, Gold Coast Tourist Area, the Great Barrier Reef Wonderland Tourist Complex and the town of Port Douglas. Rather than continuing the different hours for each of these areas already provided for in trading hours’ orders, standard hours (which represent the earliest starting time and latest closing times) will apply to all areas in the defined ‘tourist area’.

The OIR identified areas to be defined as ‘tourist area’ based on whether that area’s hours already exceed the extended hours to be introduced by the Bill. The current trading hours in the Cairns CBD exceed the hours to be introduced by the Bill by allowing late night trading on Saturday and Sunday in a regional area outside south-east Queensland, and so the OIR advised that area should be included as part of the defined ‘tourist area’. The OIR advised that the Government will move an amendment during consideration in detail of the Bill to add the Cairns CBD to the defined “tourist area”.³³

The OIR further advised that the current trading hours in the Townsville and Yeppoon Tourist Areas and other areas do not exceed the core trading hours to be introduced by the Bill and so will not be included in the defined ‘tourist area’.³⁴

Committee comment

The committee notes the advice of the department that the Bill should be amended to include Cairns CBD as a tourism area.

Recommendation 1

That the Trading (Allowable Hours) Amendment Bill 2017 be amended to include the Cairns CBD in the defined tourist area.

Trading hours – non-exempt shops

Proposed new section 16D sets three location-based core trading hours’ requirements for non-exempt shops, other than hardware shops:

	South East Queensland area	Tourist area	Other areas
Monday to Friday	7am to 9pm	6am to 10pm	7am to 9pm
Saturday	7am to 9pm	7am to 10pm	7am to 6pm
Sunday and public holidays other than closed days	9am to 6pm	7am to 9pm	9am to 6pm

Table 1: proposed opening hours for non-exempt shops

Proposed new section 16E would allow **hardware shops** to trade on the following core trading hours:

	South East Queensland area	Tourist area	Other areas
Monday to Friday	6am to 9pm	6am to 10pm	6am to 9pm

³² Submission no. 1, Andrew Aschman, p 1, Submission no. 2, Confidential, p 1.

³³ OIR response to submissions, pp 2-3.

³⁴ OIR response to submissions, pp 2-3.

Saturday	6am to 9pm	6am to 10pm	6am to 6pm
Sunday and public holidays other than closed days	6am to 6pm	6am to 9pm	6am to 6pm

Table 2: proposed opening hours for hardware shops

Issues raised in submissions

The majority of the submissions to the committee focused on the proposed extension of non-exempt trading hours across Queensland.

Impacts on small business

Mr Mickel stated in the review report, that some submitters and stakeholders to the review raised concern that small businesses will be disadvantaged. He notes that evidence from Queensland and other jurisdictions showed a participation rate of 90% for small businesses in states where trading hours were regulated and deregulated. This suggests that the impact on small businesses will be negligible.³⁵

A number of submitters and witnesses raised concerns about the negative economic impact of the extended trading hours for large retail stores, particularly Coles and Woolworths. Some submitters provided data that suggested a negative impact on small businesses since the QIRC order extended trading hours on 1 December 2016, including loss of sales and, in some smaller grocers, loss of staff.³⁶ Other stakeholders advised that more work was needed to gauge the health of small businesses in Queensland before any changes to trading hours commence.³⁷

The increased market share, or market dominance, of the two major supermarket retailers was a concern repeated throughout this inquiry. The Chamber of Commerce and Industry Queensland (CCIQ) is concerned about the impact of the majors' market dominance over small businesses because of the proposed reforms as contained in the Bill. It states that Queensland's 414,000 small businesses are concerned about the monopoly of major market players and their dominance of the home hardware market. It considers that the 5 year moratorium, the definition of an independent retailer as an exempt shop and allowing only the government to alter trading hours across Queensland will assist the independent retail sector to address the dominance of the major market players.³⁸

The IGA State Board stated that following the deregulation of trading hours in December 2016, IGA supermarkets lost \$1 million per week in turnover. It advised that the loss in turnover reduced wages by approx. \$5.5 million, which will lead to a reduction in employment across the network of approximately 128 fulltime jobs. The IGA Board contends that the negative impacts to turnover and employment that flow from deregulation of trading hours will increase over time.³⁹

³⁵ Office of Industrial Relations, A Review of Queensland's Trading (Allowable Hours) Act 1990, A report by John Mickel, Chair – Trading Hours Review Reference Group, December 2016, p 18-19.

³⁶ Submission no. 10, SPAR Australia Limited, p 5, Submission no. 12, Form Submission A, p 1, Frank Spano, Owner/Operator, Metcash/IGA Retailers, Emerald and Hong Kong public hearing transcript 29 March 2017, p. 8, Mr Tyrone Jones, Owner/Operator, Metcash/IGA Retailers, Emerald and Hong Kong public hearing transcript 29 March 2017, p. 10, John Costanzo General Manager, Retail Operations and Business Development, SPAR Australia, Brisbane public hearing transcript, p. 6, Chris Antonieff, FoodWorks Oxley, Brisbane public hearing transcript, pp 12-14.

³⁷ Mr Tyrone Jones, Owner/Operator, Metcash/IGA Retailers, Emerald and Hong Kong public hearing transcript 29 March 2017, p. 10, John Costanzo General Manager, Retail Operations and Business Development, SPAR Australia, Brisbane public hearing transcript, p 7.

³⁸ Submission no. 11, CCIQ, p 2.

³⁹ Submission no. 4, Qld IGA State Board, p 1-2.

SPAR Australia Limited stated that it has 72 stores in the south-east Queensland area subject to the 1 December 2016 QIRC order to extend trading hours for non-exempt stores. It states that since that extended hours order, the average non-tobacco sales for those stores has decreased by around 10% per week, with a 25% decrease on Saturday alone.⁴⁰

A confidential submitter advised that independent supermarkets need to find every competitive advantage to compete, including trading hours. Over the past 20 years, successful extended trading hours order applications by the NRA have resulted in decreased sales for independent supermarkets, including the submitter's stores. The submitter advised that the recent extension to trading hours has led to a reduction in employment numbers by 10% on Saturday, and that given the lower sales and turnover, that submitter donates less to local communities, has reduced the amount of goods purchased from local farmers and reduced their use of local services. The submitter contends that a further deregulated market will cause some smaller supermarkets to close and therefore decrease competition and have a significant impact on consumer choice.⁴¹

Some witnesses recommended that no changes be made to non-exempt retail trading hours until the impact of the QIRC December 2016 order be further considered.

The NRA however, in its submission to the Mickel review, showed that, between January 2007 and December 2015, the market share of smaller independent grocers increased across Australia when Coles and Woolworths market share dropped. The NRA notes that the increased competition led to better prices for consumers.⁴²

Additionally, the NRA states that the larger non-exempt stores often bring more foot traffic and consumers to the shopping centres which also benefit the centre's other retailers.⁴³

The OIR advised that these issues were considered during the review but there is little evidence to support that concern, given the similar rates of participation for small businesses in deregulated states and territories.⁴⁴

Employment

The committee heard that small retail stores often pay employees more than the larger, non-exempt retail stores and a larger percentage of turnover is spent on wages. A number of submitters and witnesses stated that the average small business retail stores spend between 9% and 11% of the annual turnover on staff wages, whereas the larger retailers' wages spend is between 5% and 8%.⁴⁵

In his report on the review, Mr Mickel notes that the retail industry is the second largest employer in Queensland, providing a total of around 11% of all Queensland employment. More than 63% of that employment is in the medium and larger businesses (ie the non-exempt stores with over 20 employees). Mr Mickel stated:

Increase in employment

Any increase in employment is likely to be delivered through a range of channels:

- *Overall increase in retail sales and labour demand in the industry.*

⁴⁰ Submission no. 10, SPAR Australia Limited, pp 2-3. SPAR Australia Limited advise that tobacco sales are excluded as the annual 12.5% Excise Tax increase distorts the dollar impact.

⁴¹ Submission no 6, confidential

⁴² Submission no 13, National Retail Association, (copy of submission to Mickel Review p 10.)

⁴³ Submission no 13, National Retail Association, (copy of submission to Mickel Review p 12.)

⁴⁴ OIR response to submissions, p 6.

⁴⁵ See for example, Luke Mackenzie, Metcash, Gold Coast public hearing transcript, 29 March 2017 at p 13, submission no. 4, Queensland IGA State Board, p 1.

- *Increased employment in non-exempt retailers – the extent to which non-exempt businesses increase their opening hours and the number of employees they schedule at these times will determine the employment impact.*
- *Higher employment in larger independent retailers – independent retailers are currently subject to caps on employment within and across stores. Reducing these restrictions is likely to encourage these retailers to hire additional workers.*

While the impact is not clear, there is anecdotal evidence to suggest many independent firms currently limit employment in order to meet regulatory requirements. For example, Master Grocers Australia submitted to the Review that the limit of 20 employees for independent retailers represented “a significant impediment on the community store operator providing an appropriate service to its customers in order to be competitive in the marketplace, and is a substantial limitation on the employment of staff including part-time and casual staff, who might otherwise be able to be utilised in such premises, particularly in rural and regional areas”.

Evidence from previous significant changes in retail trading hours regulation suggest further deregulation is likely to support increased employment in the industry.

For example, the Productivity Commission reported in 2014 that, according to the National Retail Association (NRA), Coles added 450 jobs in Brisbane when Sunday trading was introduced in 2002 in the Brisbane and near metropolitan region.

This claim is also reflected in ABS Labour Force statistics with retail employment in Queensland increasing by 12.6 per cent compared with more modest increases of 6.6 per cent in New South Wales and 6.9 per cent in Victoria in 2002-03. While this increase in retail employment may reflect other factors, it is likely that the introduction of Sunday trading was a meaningful contributor to this increase. Retail employment growth in Queensland was also stronger than New South Wales and Victoria for the next two years.⁴⁶

A number of submitters challenge the position in the explanatory notes and in the Minister’s introductory speech that the Bill will lead to an additional 945 full time equivalent jobs. The committee heard that in south-east Queensland, some smaller grocers had reduced staffing due to the impact of lost sales following the QIRC December 2016 trading hours order.⁴⁷

The committee also heard that employment opportunities will be reduced, particularly for Queenslanders who require flexible, part time work. SPAR Australia Ltd stated:

Further, the impacts of decreased sales have a huge flow on effect. Not only staff (sales decrease has led to a decrease in staff numbers and hours) but the owners and many sub-contractors that service these stores. This also includes the vitality of independent supermarkets, with a number having closed already. The effect to youth employment is probably the hardest hit. The biggest down-turn in sales has been on Saturday afternoons/evenings. Previously the “Chain” stores closed at 5pm and now open to 9pm, with the extended hours granted as from December 1st, 2016. A large number of our stores employed young casual workers for these shifts and with decrease in sales the hours/shifts have been hit.⁴⁸

The committee repeatedly heard that jobs lost from smaller businesses and supermarkets will not be transferred into jobs at larger non-exempt stores and that retail employment positions in the two large

⁴⁶ John Mickel, *A Review of Queensland’s Trading (Allowable Hours) Act 1990, A report by John Mickel chair – Trading Hours Review Reference Group*, December 2016, p 19.

⁴⁷ Chris Antonieff, FoodWorks Oxley, Brisbane public hearing transcript, pp 12-14.

⁴⁸ Submission no. 10, SPAR Australia Limited, pp 2-3.

retailers, Coles and Woolworths, has remained stagnant for several years despite increased trading hours. Reasons for this included that those larger non-exempt stores will simply increase their use of staff-less, self-serve tills.⁴⁹

In contrast, the NRA referenced the Ergas report it commissioned which found that full deregulation of trading hours would realise over 3100 full time jobs.⁵⁰ The NRA advised:

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.⁵¹

The OIR advised that south-east Queensland is home to 70% of Queensland's population and 69% of total retail trading businesses registered in the state. It is estimated by Queensland Treasury that the extension and standardisation of trading hours for non-exempt shops in south-east Queensland will provide annual benefits of up to \$60 million in Gross State Product and 720 jobs.⁵²

Outside south-east Queensland, trading hours will be standardised for those towns that currently have Sunday and public holiday trading. Approximately ten per cent of the state's population live in regions where Sunday trading by the larger retail shops is currently prohibited. It is estimated by Queensland Treasury that economic and employment benefits of standardisation of trading hours for non-exempt shops outside of south-east Queensland are up to \$19 million in Gross State Product and 225 jobs.⁵³

Insufficient extension of trading hours

The Retail Council considers the proposed trading hours do not provide significant improved flexibility. In an average week for a non-exempt retailer from south-east Queensland, the new hours only allow an extra ten hours trading, with an extra hour on weekdays and an extra five hours on Saturday. There

⁴⁹ See for example submission no. 4, Qld IGA State Board, p 1-2, Peta McRae, Brisbane public hearing transcript, 12 April 2017 p 48, Luke McKenzie, Metcash, Gold Coast public hearing transcript, p 14.

⁵⁰ Submission no. 13, (copy of submission provided to Mickel Review p 14.)

⁵¹ Submission no. 13, (copy of submission provided to Mickel Review p 14.)

⁵² OIR response to submissions, p 6.

⁵³ OIR response to submissions, p 6.

are also no changes to Sunday trading which has become one of the busiest days of the week in metropolitan Queensland and other parts of the country, according to the Retail Council.

It states that the proposed trading hour regime will also play a major role in further eroding the competitiveness of Queensland retailers compared to their interstate and international rivals. The Retail Council contends that the proposed Bill shows a complete lack of awareness that, via online shopping, a retailer in 2017 is not just competing with the shop next door, they are competing with retailers in the next state and retailers in another country.⁵⁴

The NRA considers that the drafting of sections 16D and 16E will cause confusion as there is no distinction between the non-exempt shops in 'other areas' that are able to trade on Sundays and public holidays and those that cannot until those areas opt in under proposed section 58. It states that the table does not address non-Sunday traders in such a way to provide clarity on standard trade and public holidays.⁵⁵

The OIR advised that proposed new section 16D sets core trading hours for all non-exempt shops, other than hardware shops, for the south-east Queensland area, tourist areas and other areas. The hours applying on Sundays and public holidays 'in any other area' are qualified by the note cross reference at the end of the section which links to provisions explaining the opt-in process which must occur before those hours apply.⁵⁶

Extended Christmas trading hours

For all non-exempt shops, the core trading hours would be extended during the Christmas period as follows (proposed new section 16F): [NOTE: For normal opening times – see tables 1 and 2 above]

for the 3 Sundays before 18 December	8am to 6pm
18 to 23 December	normal opening time to midnight
24 December	normal opening time to 6pm

Proposed new section 16G would allow Westfield Chermside and Westfield Garden City, to trade from 8am on 23 December to 6pm on 24 December.

Two submitters raised an issue with the proposed closing at 6 pm on Christmas Eve. These submitters consider that closing at 6pm instead of 9pm erodes consumer choice and access to the stores, particularly when many people will be at work on Christmas Eve until 5 or 6pm.⁵⁷

The OIR advised that the extended hours are to be prescribed for the period prior to Christmas Day which are a set of standard hours that will apply across the state. The hours represent the earliest starting time and latest closing time in the current orders which allow extended pre-Christmas trading in various areas of the state. The extended shopping hours' arrangements in the immediate lead up to Christmas Eve currently in place for Westfield Chermside and Garden City will also continue to apply.

The OIR further advised that the review considered that the 6pm closing time on Christmas Eve, is a reasonable compromise which allows most workers to go home at a reasonable hour, balancing costs for all industries if a public holiday was to be declared from 6pm.⁵⁸

⁵⁴ Submission no. 9, Retail Council, p 1.

⁵⁵ Submission no. 13, National Retailers Association, p 3.

⁵⁶ OIR response to submissions, p 6.

⁵⁷ Submission no. 1, Andrew Aschman, p 1, Submission no. 2, Confidential, p 2.

⁵⁸ OIR response to submissions, p 7.

Address of the shopping centres

The Shopping Centre Council of Australia submitted that the real property descriptions as the address for the Westfield Chermside and Garden City shopping centres is appropriate for their current footprint but may not be relevant for any future changes to the footprint of those centres given the possibility of expansion etc.⁵⁹

The OIR advised that an amendment will be moved during the consideration in detail of the Bill.

Recommendation 2

The committee recommends that the Bill be amended, as per the Queensland Treasury's advice, to refer to an appropriate address for the Westfield Chermside and Westfield Garden City shopping centres.

3.4 The Queensland Industrial Relations Commission

Applications to the Commission

Section 21 of the Act currently provides that the QIRC may decide trading hours for non-exempt shops. The Bill proposes to amend section 21 to allow the QIRC to make decisions regarding trading hours for non-exempt shops except where that decision would be shorter than the core trading hours specified at proposed new section 16D or where the order would permit trading on a closed day.

Clauses 15 of the Bill would remove the rights for individuals to, and provide that local governments may, make an application to the QIRC to make orders under section 21 of the Act. Clause 18 would allow local governments to be given leave to appear before the QIRC with respect to an application before the QIRC.

Issues raised in submissions

The Queensland IGA State Board requested the Bill be amended to provide that local governments are not able to make an application to the QIRC under section 21 of the Act.⁶⁰

The OIR advised that local governments are included in the entities that may make application to the QIRC for proceedings under sections 21 and 22, along with industrial organisations and other organisations. This provision permits local governments to make applications to the QIRC for Sunday and public holiday trading in towns where Sunday and public holiday trading do not currently exist.⁶¹

Matters to be considered by the QIRC

Section 26 of the Act currently requires the QIRC to take into account a range of matters when considering an application under section 21 of the Act:

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;*
- (b) the needs of the tourist industry or other industry in such locality or part;*
- (c) the needs of an expanding tourist industry;*
- (d) the needs of an expanding population;*
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);*
- (f) the alleviation of traffic congestion;*

⁵⁹ Submission no. 18, Shopping Centre Council of Australia, p 2.

⁶⁰ Submission no. 4, Qld IGA State Board, p 2.

⁶¹ OIR response to submissions, p 8.

(g) the likely impact of the order on employment;

(h) the view of any local government in whose area the order is likely to have an impact;

(i) such other matters as the industrial commission considers relevant.

Clause 19 of the Bill would amend section 26 to require the QIRC to also consider the likely impact of the order on employees.

Issues raised in submissions

The NRA submitted that if the additional consideration is to be added it needs to be more concise and relate to current employees. It considers that it would be problematic to argue to the impact on potential employees.⁶²

The Retail Guild argues that section 26 of the Act should also be amended to include a requirement that the QIRC should consider social and community impacts assessments and apply a 'better off overall test' when considering new applications.⁶³

The committee heard that, despite section 26 of the Act providing that the QIRC should take account of the views of local governments where an application may affect their area, at least one QIRC commissioner had publicly noted the lack of input or views from some local governments regarding trading hours applications in the past, which did not assist the QIRC in making determinations on the applications.⁶⁴

*The councils are in an unenviable situation, because they are torn between, obviously, the might of the NRA, which are wanting to perhaps expand shopping centres, undertake new developments in their local area, which is obviously advantageous to councils, and the plight of the local business. I suggest to you that councils just put it in the too-hard basket. They are too scared to come out in support either one way or the other. Actually, the Gold Coast City Council did not even want to listen to me in the South-East Queensland case, which I did not take personally. They said that they just were not taking any representations by any side. The Brisbane City Council, the Sunshine Coast Regional Council, Moreton Bay and Redland, I think of the 11 councils in the South-East Queensland area there were two that came out and made a statement to the Queensland Industrial Relations Commission opposing that application. I think the Gold Coast supported the application and most of the others sat on the fence and said that they would abide and respect the decision of the Queensland Industrial Relations Commission.*⁶⁵

The OIR advised that the Government is satisfied that the criteria in section 26 as amended by the Bill are adequate for consideration by the QIRC in making its decisions.⁶⁶

3.5 Protections for employees

Section 36A of the Act provides protections for workers by requiring that employees provide their written agreement to work during extended hours. Clause 27 would provide that section 36A applies to the extended hours under the *Trading (Allowable Hours) Amendment Act 2002*.

The review report states that submissions to the review raised the following points:⁶⁷

⁶² Submission no. 13, National Retailers Association, p 4.

⁶³ Submission no. 15, Retail Guild, p 4.

⁶⁴ Helen Spain, Legal Advisor, Retail Guild of Queensland, Public hearing transcript, 12 April 2017, p 20.

⁶⁵ Helen Spain, Legal Advisor, Retail Guild of Queensland, Public hearing transcript, 12 April 2017, p 20.

⁶⁶ OIR response to submissions, p. 8.

⁶⁷ John Mickel, *A Review of Queensland's Trading (Allowable Hours) Act 1990, A report by John Mickel chair – Trading Hours Review Reference Group*, December 2016, pp 24-25.

- unions were concerned extended hours will negatively impact workers and their families and seek legislative protections for workers if the hours are extended
- some unions will only support extended trading hours if it is combined with explicit penalty/overtime rates for employees working extended or unsociable hours. [Note: penalty rates were outside the scope of the review]
- other issues raised by the QCU included unavailable or insecure public transport, staff parking restrictions mean staff park in unsafe places – this could be unsafe in extended hours with fatigued drivers, pressure on employees to accept and work any shift to maintain their employment and changes affecting night-fill workers, including changes to childcare and other personal arrangements from extended trading hours, skeleton staffing to cope with the increased spread of hours poses safety risks due to under staffing, impacts on families of working at festive times e.g. Christmas and Easter
- there should be a legislative requirement for workers to be able to elect to work or not work the extended hours.

Clause 28 would insert a new section 36B to make it an offence for any employer to require an employee to work during the extended trading hours proposed under the 2017 Bill, unless they have freely elected to work those hours. Extended hours mean an extension of the hours in operation immediately prior to the Bill being passed. An employee's agreement must be in writing for a stated or indefinite period, unless there is in place an industrial agreement that provides an alternative way for the employer to agree or refuse to work the extended hours. An employee would not be considered to have freely elected to work those extended hours if they were coerced, harassed, threatened or intimidated by or for the employer.

Issues raised in submissions

The Retail Council considers that this clause would introduce an excessive amount of red tape for owners and employees. If retailers want to open in any of the new 'extended' hours they have to get, in writing, from all employees that they have freely elected to work. Given that retail employees' shifts change from week to week, especially casuals, this may mean that every day every staff member is rostered on, for what might only be an extra hour or two, they will need to fill in extra paperwork to show that they have freely elected to work.⁶⁸

The OIR advised that submissions made to the review highlighted the need to ensure that retail employees who are routinely working what are considered to be unsociable hours are not compelled to work further hours. The Bill is based on the New South Wales legislation, which provides that any employee of a shop exempted to trade on a restricted day must freely elect to work without any coercion, harassment, threat or intimidation by or on behalf of the shop owner. The requirement to evidence agreement in writing already forms part of the current Act at section 36A in respect of similar protections for the south-east Queensland area and additionally is a requirement for voluntary work in the QIRC's October 2016 decision allowing extended trading in south-east Queensland.⁶⁹

3.6 Moratorium on trading hours orders and restriction on making applications

Clause 31 would insert a new Division 6 with transitional provisions set out in proposed new sections 55 to 63.

Moratorium period

Proposed new section 55 provides a range of definitions including:

amendment Act means the Trading (Allowable Hours) Amendment Act 2017

⁶⁸ Submission no. 9, Retail Council, p 2.

⁶⁹ OIR response to submissions, p. 9

moratorium period means the period starting on the introduction and ending 5 years after the day of the commencement

introduction means the introduction into the Legislative Assembly of the Bill for the amendment Act

Clause 59 would enforce a moratorium on any applications or orders for trading hours orders except for extended hours orders under proposed new section 58 (see below).

Issues raised in submissions

A number of submitters consider that the moratorium should extend to the proposed opt-in exceptions (discussed further below) until there is further consultation with the small business industry, an impact assessment of the impacts of the recent trading hours changes in south-east Queensland and certainty that the proposed changes to trading hours will increase employment and economic activity.⁷⁰

The NRA argued that the five year moratorium is an excessive timeframe for a sector that is changing as quickly as retail. The NRA considers that the new trading hour regulations are not fit for purpose in 2017 and they will be completely outdated in five years. The NRA suggested the removal of the moratorium from the Bill.⁷¹

Additionally, the NRA raised concerns around the retrospectivity in the definition of the ‘moratorium period’ which would mean the moratorium applies from the introduction of this Bill into the Legislative Assembly – i.e. 1 March 2017. The NRA noted that it has an undecided application with the QIRC that it lodged in 2015 and is effectively unable to make any applications despite the Bill not yet being passed.

The OIR advised that the Review recognised the complexity associated with the different trading hours arrangements in Queensland. The complexity has arisen from the many successful applications made to the QIRC for extended hours over the past decade. The five year moratorium period will provide certainty in relation to trading hours over the next five years. The moratorium will also allow independent supermarkets time to adjust to the extended trading in the Bill and provide time for Government to gather information and consider the effects of extended trading hours in preparation for the future review.⁷²

The OIR further advised that the commencement of the moratorium period is from the introduction date of the Bill so as to prevent applications to the QIRC being lodged before the proposed commencement of the amending legislation, which would potentially dilute the effect of the uniform hours which are a feature of the Bill.⁷³

Moratorium on orders, other than extended hours orders

The intention of proposed new section 59 is to prevent the QIRC from making orders regarding trading hours during the moratorium period except for extended hours orders for those areas which currently do not have Sunday or public holiday trading and wish to opt in to the extended trading hours (see below).

At its public briefing on the Bill, the committee sought clarification as to the effect of proposed new section 59.

⁷⁰ See for example submission no. 4, Qld IGA State Board, p 2, Submission no. 6, CONFIDENTIAL, p 2, Submission no 10, SPAR Australia Limited, p 5, Submission no. 14, MGA Independent Retailers, p 9 and Submission no. 15, Retail Guild, p 2.

⁷¹ Submission no. 9, Retail Council, p 2.

⁷² OIR response to submission, p 11.

⁷³ OIR response to submission, p 9.

The provision reads:

59 Moratorium on trading hours orders and restriction on making applications

(1) During the moratorium period—

(a) the industrial commission must not make an order under section 21, other than an extended hours order; and

(b) an industrial organisation, another organisation or a local government must not make an application for an order mentioned in paragraph (a).

(2) An application for an order mentioned in subsection (1)(a) made or purportedly made during the moratorium period is of no effect

The committee raised concerns around the drafting of this provision at its public briefing with the department.⁷⁴ There are a number of ways that the provision can be read. One is that, as any order under section 21 of the Act and extended hours orders are mentioned in section 59(2), applications made to the QIRC for those orders will have no effect under subsection (2) because of the words ‘mentioned in subsection 1(a)’. This issue was also raised in a submission by the Queensland Law Society.⁷⁵

If this is the case, then the potential impacts are that no applications for extended hours orders could be made under new section 58 and the QIRC could not consider current applications for extended hours under proposed new section 60 of the Act. Essentially, those areas which would be excluded from the application of the core trading hours in the Bill – i.e. those with no current Sunday or public holiday trading hours – could not apply for extended hours orders for the duration of the 5 year moratorium.

The OIR advised it has reviewed the section in light of the concerns raised. While the OIR acknowledges that the section could be amended as proposed by the QLS, nevertheless OIR remains satisfied that the section, as currently written, is sufficient to achieve its aim. Accordingly, it is not proposed that this section be further amended.⁷⁶

Committee comment

In drafting legislation, the *Legislative Standards Act 1992* (LSA) provides the fundamental legislative principles that apply to legislation. One is that the legislation should have sufficient regard to the rights and liberties of individuals. The LSA includes examples of how this principle can be demonstrated including whether the legislation is unambiguous and drafted in a sufficiently clear and precise way.⁷⁷

While the *Acts Interpretation Act 1954* (AIA) provides for the intent of legislation to guide the interpretation of the provisions,⁷⁸ it is desirable that legislation be passed by the House where the intent of the provision is clear and recourse to extrinsic materials is not necessary. The advice of the department during the public hearing that the committee should read the provision a certain way demonstrates that this provision is able to be read in ways that could result in different meanings and outcomes available on the general and plain understanding of the words used in the clause.

It is preferable that this issue be remedied at this point, rather than through potentially costly and time consuming legal challenges regarding the jurisdiction of the QIRC to consider applications for extended hours orders.

⁷⁴ Public briefing transcript, 22 March 2017, pp 11-12.

⁷⁵ Submission no 20, Queensland Law Society

⁷⁶ Correspondence from OIR dated 24 April 2017

⁷⁷ *Legislative Standards Act 1992*, s 4(3)(k)

⁷⁸ See for example *Acts Interpretation Act 1954*, ss 14A and 14B.

If it is the intent of the Parliament that the QIRC may receive and consider applications for extended hours orders, in accordance with proposed new sections 58 and 60, then this provision can present this intent in a clearer, less ambiguous way. For example by replacing the words ‘*mentioned in paragraph (a)*’ and ‘*mentioned in subsection (1)(a)*’ in (1)(b) and (2) with the words ‘*under section 21, other than an extended hours order*’.

The amended section would read:

59 Moratorium on trading hours orders and restriction on making applications

(1) *During the moratorium period—*

(a) *the industrial commission must not make an order under section 21, other than an extended hours order; and*

(b) *an industrial organisation, another organisation or a local government must not make an application for an order **under section 21, other than an extended hours order.***

(2) *An application for an order **under section 21, other than an extended hours order**, made or purportedly made during the moratorium period is of no effect*

Opt-in process for non-exempt shops outside south-east Queensland area

Proposed new section 58 provides that the core trading hours as set out in proposed new section 16D will not apply to non-exempt shops outside the south-east Queensland area that currently do not have Sunday or public holiday trading. The opt-in arrangements will not apply to hardware shops or to shops selling motor vehicles or caravans, to Christmas trading hours, in tourist areas or in areas which are currently allowed to trade on Sundays and public holidays immediately before the commencement.

The OIR advised the committee that there are currently 22 areas to which this section will apply.⁷⁹

*In determining an ‘opt-in’ application for Sunday and public holiday trading, the QIRC will be limited to granting only the standard trading hours for Sunday and public holidays prescribed in the Act being 9am to 6pm.*⁸⁰

An application can be made to the QIRC for an extended hours order by an organisation, an industrial organisation, or a local government. Any order to extend the trading hours of a particular area under proposed new section 58 will not take effect until it is approved in a regulation.

The OIR advised that this approach will ensure that trading hours’ arrangements for all non-exempt shops remain consistent with those referenced in the Act and there is no return to the proliferation of trading hours’ orders with differing spreads of trading hours between regions which the review found was a significant contributing factor to trading hours’ complexity and confusion.⁸¹

Issues raised in submissions

Exclusion of core trading hours to some regional areas

The Retail Council submitted that the persistence with a ban on Sunday and Public Holiday trading for many regional Queensland areas shows a disrespect to people of regional Queensland and reflects a lack of understanding about modern life. It continues that this treats retailers, employees and

⁷⁹ See Department written briefing, p 5. The areas include Mt Isa, Warwick, Goondiwindi, Chinchilla, Kingaroy, Stanthorpe, Roma, Childers, Blackwater, Bowen, Ayr, Charters Towers, Proserpine, Mission Beach, Cloncurry, Weipa, Nanango, Oakey, Home Hill, Pittsworth, Charleville and Longreach.

⁸⁰ Department written briefing, p 5.

⁸¹ Department written briefing, p 5.

consumers in many regional areas as second class citizens who are unable to have the same opportunities as city-based Queenslanders.⁸²

A number of submitters also advised that in rural and regional Queensland, people do not want a change to the current trading hours, and do not want to see a dominance of Coles and Woolworth. Instead they want competition, choice and local jobs maintained.⁸³

The OIR advised that the review found there was some strong opposition to a blanket state-wide extension of trading hours for non-exempt shops and of trading on Sundays. This was of particular significance to independent supermarkets. The Bill provides for an opt in provision to allow regions that do not currently have Sunday and public holiday trading, to decide whether they want the ability to trade on a Sunday or public holiday and then make application to the QIRC to make those hours applicable in their area.⁸⁴

Motor vehicle and caravan retailers

The committee heard no support from the motor vehicle dealer and caravan retail industries during this inquiry for the extension of the core trading hours to these industries.

The Motor Trades Association Queensland (MTAQ) stated that there is no empirical evidence of consumers seeking Sunday trading for the motor vehicle dealing sector. The consensus view of its members is that the current QIRC *Trading Hours Non-exempt Shops Selling Motor Vehicles State Order* be retained with no changes and the Bill be amended to reflect this view. The deregulation should not proceed unless simultaneous and appropriate amendments are made and stapled to industry and industrial relations provisions that apply to the motor vehicle sector.⁸⁵

Several individual motor vehicle retailers also advised that they believe there is no overwhelming call for vehicle retailers to open on Sundays. They advise that the purchase of a vehicle is often a conscious decision as opposed to impulse buy. The industry advised it has not received any calls from customers for them to open for longer hours on weekends or public holidays. Additionally, one submitter advised that there will be obstacles to overcome in transferring and delivering a vehicle to a purchaser on a Sunday.⁸⁶

Recommendation 3

The committee recommends that the Bill be amended to exclude the application of the changes to motor vehicle or caravan retailers.

Existing QIRC applications

The Bill would require the QIRC to dismiss applications under section 21 of the Act which were current but not decided before the Bill was introduced, unless it amounts to an application for an extended hours order under the opt-in provision in proposed new section 58 (above).

Issues raised in submissions

Some submitters raised concern that current applications before the QIRC which have not yet been decided by the QIRC, would simply be dismissed. The NRA is particularly concerned regarding one application, *TH2015/2 Gold Coast Coastal Tourism*, which commenced in 2015 and the matter was heard by the QIRC over 12 months ago. Given the NRA will be prevented from making an application

⁸² Submission no. 9, Retail Council, p 1.

⁸³ Submission no. 12, Form Submission A, p 1.

⁸⁴ OIR response to submissions, p 10.

⁸⁵ Submission no. 17, Motor Trades Association of Queensland, p 2.

⁸⁶ Mr Darryl, General Manager, Central Highlands Toyota, Emerald public hearing transcript, 29 March 2017, p 1.

for such an order for 5 years if the Bill is passed, the NRA strongly urges the Parliament not to legislate against an application that was made in 2015 and proposes excluding current applications on foot at the time of the bill's introduction.⁸⁷

The NRA and the Shopping Centre Council of Australia consider this application should be dealt with and incorporated into any legislation passed by the House.⁸⁸

The OIR advised that section 60 provides for a transitional provision that requires applications made but not determined before the introduction of the Bill must be dismissed. Only those applications seeking to 'opt-in' to Sunday and holiday trading hours outside of south-east Queensland can be decided by the QIRC. The application described falls under these criteria and does not seek the extended opt-in hours.⁸⁹

Removal of appeals regarding QIRC decisions

With respect to appeals of QIRC decisions made before the commencement of the Act:

- if the appeal relates to a QIRC order made under current section 21, proposed new section 57 would repeal that order
- if the QIRC refused to make an order which would (after the commencement) amount to an application to opt-in to the extended trading hours under section 58, the QIRC can set aside the decision and make an extended hours order.

New appeals cannot be made regarding QIRC orders under current sections 21 and 22 from the commencement of the Act, if passed, as these previous orders will be repealed by section 57.

OIR advised that the appeals provisions, following the moratorium, are contained in the current provision of the *Industrial Relations Act 2016* (section 558) which provides that a person aggrieved by a decision of the commission may appeal to the court on the ground of error of law or excess, or want, of jurisdiction. Section 46B of the Bill requires that the Minister must review the effectiveness of the Trading Hours Act within 5 years from the commencement.

Section 61 provides that appeals in relation to a decision on a former section 21 application, started but not decided by the industrial court, before the commencement, either end on commencement or are limited in their outcome only to orders that could be made under section 58 (i.e. standard Sunday and public holiday hours). Special exhibitions in section 22 are to be removed from the Act so there will be no appeals process for those. Appeals against decisions of extended hours' orders are treated in the same way as the appeals process under the provisions of the *Industrial Relations Act 2016*.⁹⁰

⁸⁷ Submission no. 13, National Retailers Association, p 5.

⁸⁸ Submission no. 13, National Retailers Association, p 5, Submission no. 18, Shopping Centre Council of Australia, p 3.

⁸⁹ OIR response to submissions, p 11.

⁹⁰ Correspondence from OIR dated 24 April 2017

4. Compliance with *Legislative Standards Act 1992* – fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill and has found potential FLP issues in relation to clause 31.

Administrative power - Section 4(3)(a) Legislative Standards Act 1992

This fundamental principle considers whether the rights, obligations and liberties of individuals are dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

A number of provisions of this Bill reduce or remove the right to appeal decisions made by the industrial commission.

Clause 31, introduces new section 61, which applies to an appeal against a decision made by the industrial commission, pre-commencement, on an application for an extended hours order under (then) section 21, where the appeal was started, but not decided by the industrial court, pre-commencement.

Where the decision being appealed is the decision to make an order under former section 21, the proceeding for the appeal ends on commencement (see proposed new section 61(2)).

Clause 31 also introduces new section 62 which provides that, from commencement, a person cannot commence an appeal against a pre-commencement decision of the industrial commission to make a section 21 order, or a decision to refuse to make a section 21 order, other than an order that, had it been made, would have applied only to shops to which proposed new section 58 applies.

New section 63 (under clause 31) relates to applications made under former section 22, providing that, from commencement, a section 22 application that was not decided pre-commencement is taken to have been withdrawn, and an appeal that was started pre-commencement, but not decided, against a decision of the industrial commission on a section 22 application, ends. From commencement, a person cannot commence an appeal against a decision of the industrial commission on a section 22 application (see proposed new section 63(2)).

Potential FLP issues

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the exercise of that power is subject to appropriate review. The OQPC Notebook states,

*‘Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review’.*⁹¹

4.1 Offence provisions in the Bill

The following table outlines the proposed or new amendment offence provisions in the Bill.

⁹¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

Clause	Offence	Proposed maximum penalty
7	<p>Insertion of new s16B - Shops to be closed other than during permitted trading hours</p> <p>(1) A non-exempt shop must be closed on a particular day other than during—</p> <p>(a) the shop’s core trading hours under subdivision 2 for the day or, if applicable, the extended trading hours under subdivision 3; or</p> <p>(b) if an order made by the industrial commission under section 21 prescribes trading hours for the shop for the day—the prescribed trading hours for the day.</p> <p><i>Note—</i></p> <p>Under section 21(2), the industrial commission cannot permit trading on a closed day or, for a day other than a closed day, decide trading hours that are shorter than the hours under subdivision 2 or 3.</p> <p>(2) The occupier of a non-exempt shop must ensure subsection (1) is complied with for the shop.</p>	40 penalty units.
28	<p>Insertion of new s36B - Protection for employees—extended hours under Trading (Allowable Hours) Amendment Act 2017</p> <p>(1) An employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours.</p> <p>(2) However, subsection (1) does not apply in relation to an employee if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.</p> <p>(3) For subsection (1), an employee has not freely elected to work during extended hours—</p> <p>(a) if the employee elects to work during extended hours because the employee has been coerced, harassed, threatened or intimidated by or for the employer; or</p> <p>(b) only because the employee is rostered, or required under an industrial instrument, to work during those hours.</p>	<p>Maximum penalty—</p> <p>(a) for a first offence—16 penalty units; or</p> <p>(b) for a second or later offence—20 penalty units</p>

Appendix A – List of submissions

Submission no.	Submitter
01	Andrew Aschman
02	Confidential
03	Irelands Holden
04	Queensland State IGA Board
05	John Freeman
06	Confidential
07	Southern Downs Regional Council
08	Local Government Association of Queensland
09	Retail Council
10	SPAR Australia Limited
11	Chamber of Commerce and Industry Queensland
12	Form Submission (13 submitters)
13	National Retail Association
14	MGA Independent Retailers
15	Retail Guild
16	Queensland Tourism Industry Council
17	Motor Trades Association of Queensland
18	Shopping Centre Council of Queensland
19	Mr Rob Katter MP, Member for Mt Isa
20	Queensland Law Society
21	Frederick Eleisha

Appendix B – List of witnesses

Departmental Briefing

Date	Location	Witnesses from the Office of Industrial Relations, Queensland Treasury
22 March 2017	Brisbane	Mr John Mickel, Chair, Review of the <i>Trading (Allowable Hours) Act 1990</i> Dr Simon Blackwood, Deputy Director-General Mr Tony James, Executive Director, Industrial Relations Policy and Regulation

Public hearings

Date	Location	Witnesses (in order of appearance)
29 March 2017	Gold Coast	Mr Wayne Mason, State Operations Manager, FoodWorks Mr Frederick Eleisha, Owner, IGA Express Mr Luke Mackenzie, Metcash
	Ipswich (Videoconference)	Mr Mark McNamee, Director, Marellen Consulting Mr Ian O'Brien, Dealer Principal, Lockyer Valley Toyota
	Emerald (Videoconference)	Mr Darryl McClure, General Manager, Central Highlands Toyota Mr Steve Schofield, General Manager, Emerald Holden Mr Lachlan Miller MP, Member for Gregory
	Hong Kong (Teleconference)	Mr Tyrone Jones, Independent retailer Mr Peter Piccone, Independent retailer Mr Terry Slaughter, Independent retailer Mr Frank Spano, Independent retailer Mr Michael White, Independent retailer Mrs Roz White, Independent retailer
12 April 2017	Brisbane	Mr Andrew Aschman Dr Brett Dale, Chief Executive Officer, Motor Trades Association of Queensland (MTAQ) Mr John Costanzo, General Manager – Retail Operations & Business Development, SPAR Australia Mr Bruce Francis Luchterhand, Owner / Director, SPAR Alexandra Headland Mr Chris Antonieff, FoodWorks, Oxley Mr Jos de Bruin, Chief Executive Officer, MGA

Date	Location	Witnesses (in order of appearance)
		<p>Ms Helen Spain, Legal Advisor, Retail Guild of Queensland</p> <p>Mr David Stout, Manager Industry Policy, Research & Projects, National Retail Association</p> <p>Ms Kristin Pryce, Deputy Director, Shopping Centre Council of Australia</p> <p>Mr Angus Nardi, Executive Director, Shopping Centre Council of Australia</p> <p>Mr Ashley Uren, Deputy Chair of the QLS Industrial Law Committee, Queensland Law Society</p> <p>Ms Kate Brodrik, Policy Solicitor, Queensland Law Society</p> <p>Mr Ron Chapman, Chief Executive Officer, Caravanning Queensland</p> <p>Mr Jason Plant, General Manager, Caravanning Queensland</p> <p>Mr Scott Templeman, Manager, Economic Development & Tourism, Southern Downs Regional Council</p> <p>Mr Trent Dunn, Dealer Principal, Lawrences Motors Pty Ltd</p> <p>Mr Michael Kopittke, Board Member, Townsville Chamber of Commerce</p> <p>Ms Debbie Smith</p> <p>Mr Richard Ireland, Joint Managing Director, Ireland's Motors</p> <p>Mr Michael Burge, Lamberts Produce</p> <p>Mr Robbie Katter MP, Member for Mt Isa</p> <p>Mr Peta Macrae</p> <p>Ms Louise Arsenic</p>

Appendix C – Government response to recommendations of the Review of the Trading (Allowable Hours) Amendment Act 1990

The Queensland Treasury website provides the Government response to the review, reproduced below.⁹²

The following information provides a summary of each recommendation, and in some cases, clarification of the current situation or how Government intends to amend trading hours' legislation in response to the recommendation.

Recommendation 1

All non-exempt shops in the south-east Queensland area may open:

- 7am – 9pm Monday to Saturday; and
- 9am – 6pm Sundays and most public holidays.

Adopted in full.

Recommendation 2

All non-exempt shops in areas outside south-east Queensland may open:

- 7am – 9pm Monday to Friday;
- 7am – 6pm Saturday; and
- 9am – 6pm Sundays and most public holidays.

Adopted subject to:

Cabinet has decided that trading hours for Sunday and public holidays in regional Queensland not be extended to those areas that currently do not have Sunday and public holiday trading. Industrial organisations and any other organisation including local governments may make application to the Queensland Industrial Relations Commission to opt-in to those provisions.

Most major regional towns along the coast are covered by seven day trading hours' orders and already have Sunday trading.

The 23 major towns without Sunday/public holiday trading are Mt Isa, Warwick, Goondiwindi, Chinchilla, Kingaroy, Stanthorpe, Roma, Childers, Blackwater, Bowen, Ayr, Charters Towers, Proserpine, Mission Beach, Cloncurry, Weipa, Nanango, Oakey, Home Hill, Pittsworth, Blackwater, Charleville, and Longreach.

Recommendation 3

In special and tourist areas (i.e. the following areas as currently defined in the trading hours' orders - New Farm, Hamilton North Shore, supermarkets in Gold Coast Coastal Tourist Area and Port Douglas, Great Barrier Reef Wonderland Tourist Complex) non-exempt shops may open:

- 6am – 10pm Monday to Friday;
- 7am – 10pm Saturday; and
- 7am – 9pm Sunday and most public holidays.

Adopted in full.

⁹²

<https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations/trading-hours-review/review-recommendations.php>

Recommendation 4

In all areas of the State hardware and builders' material supply non-exempt shops (as currently defined in the trading hours' orders) may open from 6am Monday to Sunday and most public holidays with a closing time the same as other non-exempt shops in their area.

Adopted in full.

Recommendation 5

The public holidays on which all non-exempt shops must be closed (closed days) are to be the same in all areas of Queensland. These are Good Friday, ANZAC Day, Labour Day and Christmas Day.

Adopted in full.

Recommendation 6

Extended trading will apply in the period prior to Christmas Day by allowing non-exempt shops in all areas of the state to open:

- *8am - 6pm on the three Sundays prior to 18 December each year, and*
- *until midnight Monday-Sunday in the period from 18-23 December.*

All non-exempt shops to be closed from 6pm on 24 December.

The 24-hour shopping arrangements currently in place for Westfield Chermside and Garden City will continue.

Adopted in full.

Recommendation 7

The trading hours for non-exempt shops selling motor vehicles or caravans are to be the same as for all other non-exempt shops in Queensland.

Adopted in full.

Recommendation 8

Legislative protections are to be provided to workers which will ensure that agreement to work on any of the new extended hours is to be voluntary.

Adopted in full.

Recommendation 9

A five-year moratorium on further trading hours' applications to amend the allowable trading hours for non-exempt shops with a commitment to further review prior to the end of the moratorium period.

Adopted in full.

Recommendation 10

The following shops are to be included in the list of exempt shops (meaning they can trade without any restrictions):

- *special exhibitions, trade shows;*
- *shops in international airports, cruise terminals, casinos, tourist resorts on offshore islands;*
- *butcher shops;*
- *shops operating within a designated area around and during international special events (e.g. Commonwealth Games) and for local festivals. An application for special event or local festival status and the designated area will be made to the QIRC for determination; and*

- *shops in the Mossman and Port Douglas Tourist area to be exempt for a trial period of five years.*

Adopted in full.

Recommendation 11

The categories of independent retail and exempt shops are to be amalgamated into a single category of exempt shop. Current trading hours' restrictions for independent retail shops on Good Friday, Christmas Day, and to 1pm on ANZAC Day are to remain (other than those selling groceries and fresh food).

Adopted in full.

Recommendation 12

The number of persons that may be engaged at an independent retail shop or shops at any one time is to be increased from 20 to 30 in any one shop, and where a number of related retail shops are operated, increased from 60 to 100 overall.

Adopted in full.

Recommendation 13

The QIRC will continue to adjudicate allowable trading hours outside the legislated spread of hours for non-exempt shops. However, this power is suspended during the period of the proposed moratorium.

Adopted in full.

Statement of Reservation

Trading (Allowable Hours) Amendment Bill 2017

THE NON-GOVERNMENT MEMBERS' POSITION

The non-Government members of the Finance and Administration Committee found difficulty with the overall expected outcomes of changes to the operating hours for the differing types of retail outlets and were therefore unable to recommend passing of this Bill by the House.

Whilst appreciating the work by the task-force headed by Mr John Mickel that produced a report for the Government that recommended several significant changes to the current trading hours operating regime, the calamitous effect on smaller retail traders, the proposed infliction of Sunday trading for car and caravan retailers and the loss of employees outside of the non-exempt retailing duopoly further impacting on small-business owners left the non-Government members with no option but to reject these wholesale changes to the retailing sector recommended in this Bill.

Understanding that there would be some solid community support for the extension of trading hours for Coles and Woolworths shopping stores who have over 200,000 union-affiliated employees on their payroll, the non-Government members are of the opinion that the job losses threatened to the smaller independent traders who cannot compete with the lesser wages paid by the big non-exempt operators under their union negotiated EBA's would result in net job losses to the retail sector rather than the unsubstantiated 945 job increases espoused in the Mickel report.

The current and future use of electronic and mechanical job eradicating measures by the big duopoly were also considered as negatively affecting the spurious claims of job creation by the big duopoly which reinforced the non-Government members opposition to the passing of this Bill.

It is noted that the Government members agreed with the non-Government members that the infliction of Sunday trading for motor vehicle and caravan retailers was an unnecessary and unwelcome outcome if the Bill were to pass.



Ray Stevens
Deputy Chair of Finance and Administration Committee
State Member for Mermaid Beach