



Inquiry into the operation of the *Trading (Allowable Hours) Act 1990*

**Report No. 15, 57th Parliament
Education, Employment and Training Committee
January 2022**

Education, Employment and Training Committee

Chair	Ms Kim Richards MP, Member for Redlands
Deputy Chair	Mr James Lister MP, Member for Southern Downs
Members	Mr Mark Boothman MP, Member for Theodore
	Mr Nick Dametto MP, Member for Hinchinbrook
	Mr Barry O'Rourke MP, Member for Rockhampton
	Mr Jimmy Sullivan MP, Member for Stafford

Committee Secretariat

Telephone	+61 7 3553 6657
Fax	+61 7 3553 6699
Email	eetc@parliament.qld.gov.au
Committee webpage	www.parliament.qld.gov.au/EETC

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All web address references are current at the time of publishing.

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Abbreviations

AADA	Australian Automotive Dealer Association
ABS	Australian Bureau of Statistics
Act	<i>Trading (Allowable Hours) Act 1990</i>
ARA	Australian Retailers Association
AWU	Australian Workers' Union of Employees, Queensland
CBD	central business district
CCIQ	Chamber of Commerce and Industry Queensland
committee	Education, Employment and Training Committee
CTIAQ	Caravan Trade & Industries Association of Queensland
department	Department of Education
MGA	MGA Independent Retailers
MTAQ	Motor Trades Association of Queensland
NRA	National Retail Association
OIR	Office of Industrial Relations, Department of Education
QIRC / Commission	Queensland Industrial Relations Commission
Queensland IGA Board	Queensland IGA State Board
QSBC	Queensland Small Business Commissioner
SCCA	Shopping Centre Council of Australia
SDA	Shop Distributive and Allied Employees Association (Queensland Branch)
SEQ	south east Queensland
2016 Review	Review of Queensland's <i>Trading (Allowable Hours) Act 1990</i> by the Trading Hours Review Reference Group, chaired by John Mickel, in 2016
2017 Trading Hours Order	2017 Trading Hours Order previously known as the Trading Hours – Non-Exempt Shops Trading by Retail – State
24/7	24 hours a day, 7 days a week

Chair's foreword

This report presents a summary of the Education, Employment and Training Committee's inquiry into the operation of the *Trading (Allowable Hours) Act 1990*.

The inquiry was referred by the Legislative Assembly on 14 September 2021. The committee's task was to inquire into and report on the operation of the Act and, in particular, the impact of amendments made by the *Trading (Allowable Hours) Amendment Act 2017*.

During the inquiry, the committee heard from key stakeholders representing retailers and retail workers as well as local governments, chambers of commerce, tourism groups and small business owners. As in the previous review, these groups hold quite divergent views on the retail trading arrangements they believe best serve Queensland's interests going forward.

From the evidence and feedback received throughout the inquiry, the moratoriums and amendments to the Act made in 2017 have provided consistent and stable trading arrangements for the retail sector as a whole, as well as for individual businesses, workers and consumers. These amendments were informed by the 2016 review conducted by Mr John Mickel and the Trading Hours Review Reference Group. Mr Mickel and a number of the members of that group also contributed their expertise to the committee's inquiry. I would like to thank those individuals for their contributions.

While the Act is operating well to regulate trading hours arrangements, the committee identified some areas where it believes the provisions can be improved.

The committee has made 9 recommendations to the Assembly. These recommendations seek to simplify trading hours arrangements for non-exempt shops and to ensure their continued stability by removing the power of the Queensland Industrial Relations Commission to make orders on applications to vary core trading hours from the hours prescribed in the Act. The recommendations also seek to strengthen the criteria for the Commission to consider when declaring 'special events', which provide for extended trading hours for non-exempt shops.

The committee has made recommendations to strengthen the protections that the Act provides for retail workers to ensure they are not being coerced by employers to work extended, unsociable hours. This includes clarifying that the Commission has the power to make an order which reflects the protection in the Act that voluntary agreement to work extended hours applies to all retail employees of non-exempt shops affected by a declaration of a special event, and that the protection of workers to freely elect to work or not to work extended hours should be explicitly stated in the 'special event' declaration.

The committee has recommended extensions of the two moratoriums established by the Act to account for the disruptions caused by the COVID-19 pandemic. On the expiry of the special moratorium on trading hours arrangements for businesses located within the Mossman Port Douglas Tourist Area, the committee has recommended that those businesses transition to the same trading hours arrangements that apply to businesses in other high value tourist areas of the state.

The divergence of positions in the retail sector, particularly on issues such as whether non-exempt shops in regional towns and cities should be allowed to trade on Sundays and Public Holidays, highlights the importance of having the Queensland Industrial Relations Commission as the independent arbiter to hear and rule on such matters. While some aspects of the Commission's work may change as a result of the committee's recommendations, the Commission would continue to perform its vital work receiving and adjudicating on applications to vary trading hours area classifications and the definitions of areas once the general moratorium provided by the Act expires.

The COVID-19 pandemic has presented challenges for all industries, but particularly for the retail sector. I would like to take this opportunity to acknowledge and thank the many retail businesses and their staff for their work throughout the pandemic to ensure Queenslanders continue to have safe

access to essential goods and services. These businesses and their hardworking employees make a valuable contribution to our state every day, and have helped to keep Queensland's economy strong during the COVID-19 pandemic. I look forward to seeing our vibrant Queensland retail sector continuing to flourish into the future.

On behalf of the committee, I thank all of the individuals, businesses and organisations who made written submissions or otherwise contributed to our understanding of the issues in this inquiry.

I also thank the staff of the Office of Industrial Relations in the Department of Education and our Parliamentary Service staff for their assistance throughout the inquiry.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Kim Richards', with a long, sweeping underline that extends to the right.

Kim Richards MP
Chair

Recommendations

Recommendation 1

26

The committee recommends the Act be amended to refine the process for consideration of ‘special event’ applications by the Queensland Industrial Relations Commission, to ensure the requirement under section 5(1)(c) of the *Trading (Allowable Hours) Act 1990* that an event declared a ‘special event’ is, in fact, ‘a unique or infrequent event of local, State or national significance’. The list of considerations in section 5(3)(a) of the Act should be expanded to include the following additional considerations the Commission is required to examine when deciding whether to declare an event to be a ‘special event’:

- additional factors which indicate the significance of the event, such as attendance numbers, size of the event, media coverage, contribution to Queensland’s national and international reputation, and its unique or infrequent nature
- whether there is a necessity for non-exempt shops to trade as exempt shops during the period of the special event.

Recommendation 2

33

The committee recommends the categories for non-exempt shops core trading hours (which are defined by their location, under section 16D) be reduced to 4 categories:

- South-east Queensland area (unchanged)
- Tourist area (amended to include the Mossman and Port Douglas Tourist Area)
- Regional area (renaming the category ‘Schedule 1AB areas’)
- Other area (combining ‘Seaside resorts’ as defined in the 2017 Trading Hours Order, and ‘Any other area’, with the core trading hours for this new category being as currently prescribed for ‘Seaside resorts’).

Recommendation 3

34

The committee recommends that the trading hours for the industry specific categories under section 16E – ‘Hardware shops’ and section 16EA – ‘Shops selling motor vehicles or caravans’ be retained in the *Trading (Allowable Hours) Act 1990* without amendment.

Recommendation 4

36

The committee recommends that the definitional criteria for independent retail shop at section 6(1) of the *Trading (Allowable Hours) Act 1990* be retained.

Recommendation 5

39

The committee recommends that the *Trading (Allowable Hours) Act 1990* be amended to remove section 36B(2), so that section 36B applies as a condition of any extension of retail trading hours, irrespective of any workplace agreement or industrial award.

Recommendation 6

40

The committee recommends that the *Trading (Allowable Hours) Act 1990* be amended to clarify that:

- the Queensland Industrial Relations Commission has the power to make an order about voluntary work in accordance with section 36B of the Act, and
- a declaration of a ‘special event’ by the Queensland Industrial Relations Commission must include a condition about voluntary work which reflects that section 36B of the Act will apply to all employees of non-exempt shops covered by the declaration.

Recommendation 7

42

The committee recommends that section 21 (Orders concerning non-exempt shops) of the *Trading (Allowable Hours) Act 1990* be amended to remove sections 21(3)(a) and 21(3)(c)(i) to prevent the situation where applications are made to the Queensland Industrial Relations Commission to make orders to vary core trading hours from the hours prescribed in the Act, once the moratorium has ended.

Recommendation 8

46

The committee recommends that the *Trading (Allowable Hours) Act 1990* be amended to extend the section 59 moratorium for an additional 12 months to 31 August 2023.

Recommendation 9

50

The committee recommends that:

- the section 56 moratorium for the Mossman and Port Douglas Tourist Area under the *Trading (Allowable Hours) Act 1990* be extended to 31 August 2023
- section 16A of the Act be amended to add the 'Mossman and Port Douglas Tourist Area' to the section 16A definition of 'tourist area' in (a) and to remove from the definition '(b) the town of Port Douglas', and for these changes to be effective from 31 August 2023.

1 Introduction

1.1 Role of the committee

The Education, Employment and Training Committee (the committee) is a portfolio committee of the Legislative Assembly. The committee commenced on 26 November 2020 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:

- Education, Industrial Relations and Racing
- Employment, Small Business, Training and Skills Development.

In relation to its portfolio area, a portfolio committee may:

- consider appropriation Bills
- consider other legislation and proposed legislation
- perform its role in relation to public accounts and public works
- initiate an inquiry into any other matter it considers appropriate.²

As a portfolio committee, the committee is also required to deal with an issue referred to it by the Assembly or under another Act, irrespective of whether the issue is within its portfolio area.³

On 14 September 2021, the Legislative Assembly agreed to a motion that the committee inquire into and report on the operation of the *Trading (Allowable Hours) Act 1990* and report to the Legislative Assembly by 31 January 2022.

1.2 Inquiry terms of reference

The motion agreed by the Legislative Assembly⁴ set the following terms of reference:

That the Education, Employment and Training Committee inquire into and report to the Legislative Assembly by 31 January 2022 on:

The operation of the *Trading (Allowable Hours) Act 1990* (the Act), in particular:

1. To consider the impact of amendments made by the *Trading (Allowable Hours) Amendment Act 2017*, with particular regard to:
 - (a) examining the impact of the moratorium on trading hours orders and restriction on making applications (section 59 of the Act) and recommendations following its expiry;
 - (b) examining the impact of the moratorium applicable to shops in Mossman and Port Douglas Tourist Area (section 56 of the Act) and recommendations following its expiry;
 - (c) examination of applications made, and consequences, for relaxation of provisions under section 5 of the Act and recommendations for improvement;
 - (d) the effectiveness of prescribing permitted hours in legislation;
 - (e) the suitability of the permitted hours as currently prescribed; and

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, ss 92, 93.

³ *Parliament of Queensland Act 2001*, s 92(2).

⁴ Queensland Parliament, Record of Proceedings, 14 September 2021, p 2552.

- (f) the role of the Queensland Industrial Relations Commission in setting permitted hours outside the prescribed hours.
2. The operation and performance of the provisions of the Act and how, in practice, different provisions are contributing to the objects of the Act and consider the impact of the existing framework for the regulation of trading hours in Queensland.
3. The effects of trading hours regulation on the Queensland economy and on regional Queensland.

The committee resolved, on advice from the Department of Education, (the department), that liquor trading hours, penalty rates for retail employees working on public holidays and Sundays, and the dates of public holidays, are outside of the operation of the Act and, therefore, not within the inquiry's terms of reference.⁵

1.3 Inquiry process

On 17 September 2021, the committee invited stakeholders and subscribers to make written submissions to the inquiry. The committee received 28 submissions (see Appendix A for a list of submitters). The submitters were predominantly industry peak bodies and unions representing the state's retail businesses and workers. They included:

- the Shop Distributive and Allied Employees Association (Queensland Branch) (SDA) which represents the interests of almost 35,000 essential retail, fast food and warehouse employees across a large range of enterprises
- the Australian Workers' Union of Employees, Queensland (AWU)
- the Australian Retailers Association (ARA) which represents 100,000 retail shops nationally
- the National Retail Association (NRA) which represents more than 45,000 shops nationally
- the Australian Automotive Dealer Association (AADA) which represents around 675 Queensland automotive dealerships that employ 11,500 people and generates turnover/sales of almost \$10.5 billion
- the Motor Trades Association of Queensland (MTAQ) which represents employers in the retail, repair, and service sectors of Queensland's automotive industry, comprised of approximately 15,500 automotive businesses employing more than 90,000 people in Queensland
- MGA Independent Retailers (MGA) which represents 760 independent food and grocery stores nationally whose Queensland members employ over 21,000 full time, part time and casual employees
- the Queensland IGA State Board (Queensland IGA Board) which represents over 350 IGA supermarkets in Queensland
- the Caravan Trade & Industries Association of Queensland (CTIAQ) which represents almost 240 members in the Queensland caravan industry, mostly private family-owned businesses
- the Shopping Centre Council of Australia (SCCA) which represents major shopping centre owners and developers in Queensland and across Australia. Queensland SCCA members own and operate 139 shopping centres in Queensland, accounting for approximately 70% shopping centre floor space

⁵ Public briefing transcript, Brisbane, 30 September 2021, p 6.

- the Queensland Small Business Commissioner, Ms Maree Adshead, a statutory office holder who assists, and advocates for, Queensland small businesses
- three chambers of commerce including the Chamber of Commerce and Industry Queensland (CCIQ), Queensland's peak industry organisation which represents over 448,000 Queensland small and medium-sized enterprises that employ over 66% of Queenslanders working in the private sector.

The committee held 7 public hearings for the inquiry in:

- Brisbane on 25 October, 1 November and 15 November
- Cairns on 19 November
- Mossman on 20 November
- Mount Isa on 21 November
- Townsville on 22 November 2021.

The committee sought and received advice throughout the inquiry from the department which administers the Act. This included a background information paper, a briefing paper with economic analysis provided by Queensland Treasury titled *Queensland Retail Trading Hours: Economic Analysis*, and detailed written responses to the issues raised in submissions to the inquiry.

The committee supplemented its written advice from the department with public oral briefings. The committee received an initial briefing by the department on 30 September 2021. Further briefings followed each of the committee's Brisbane public hearings. The committee received a final briefing on 29 November 2021.

Appendix B lists the witnesses who appeared at the committee's hearings and briefings.

The submissions, written briefings and other correspondence from the department, transcripts of the public hearings and briefings, tabled papers and other inquiry documents are published on the committee's webpage.⁶

1.4 Recommendations in this report

This report provides the committee's findings and recommendations from the inquiry.

The minister responsible for these recommendations is the Minister for Education, Minister for Industrial Relations and Minister for Racing.

Section 46B of the Act requires that the Minister review the effectiveness of the Act within 5 years of commencement, complete the review before the end of the moratorium period, and table a report in the Legislative Assembly.

⁶ <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=166&id=4113>.

2 Queensland’s retail industry and trading hours regulatory framework

2.1 Queensland retail industry

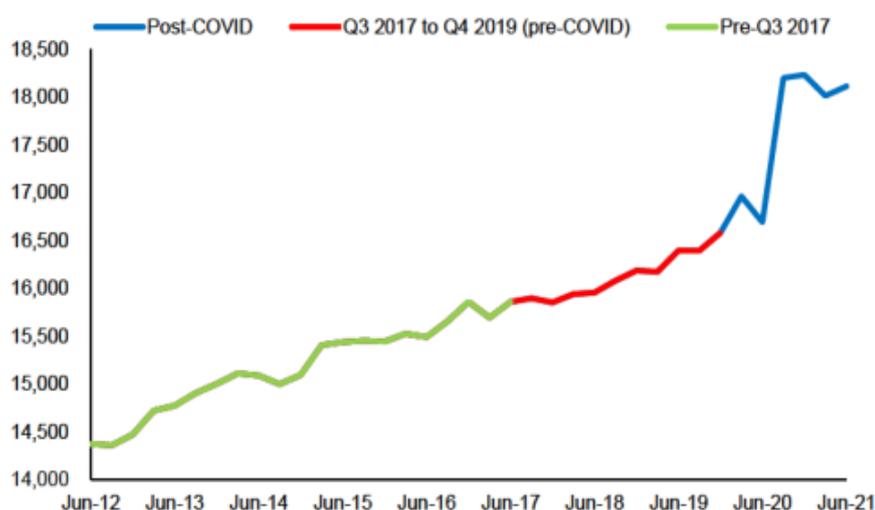
Queensland has a strong and vibrant retail sector. According to data compiled by the Australian Bureau of Statistics (ABS), Queensland’s retail industry generated turnover of \$73.3 billion in 2020.⁷

The department provided the committee with a detailed written economic analysis of the retail industry in Queensland.⁸ The analysis was prepared with assistance from Queensland Treasury. According to the analysis:

- retail is traditionally a large employer of labour in Queensland, employing 266,400 persons (or 10.3% of total employment) in 2020-21, the second largest employer behind healthcare
- consistent with national and international trends, Queensland’s retail sector has been subject to structural change over the past two decades, including technological change through the rise of online shopping and the entrance of new overseas firms
- retailers have introduced various initiatives (eg higher discount events such as Black Friday sales) and there has been evidence of an ongoing substitution of labour with technological advances, such as self-service checkouts, in some sectors of the industry
- more recently, in line with subdued retail growth outcomes, a fall in the level of employment in the industry has been evident since late-2018. The COVID-19 pandemic drove further falls in the second half of 2019-20 but as restrictions were eased, the level of employment in the sector rebounded sharply.

Figure 1 below, from the department’s analysis, tracks movements in quarterly retail spending in Queensland since June 2012.

Figure 1 Real retail turnover, Queensland (\$ million, quarterly, seasonally adjusted)



Source: Department of Education, correspondence dated 15 October 2021, Attachment 1: *Queensland Retail Trading Hours: Economic Analysis*.

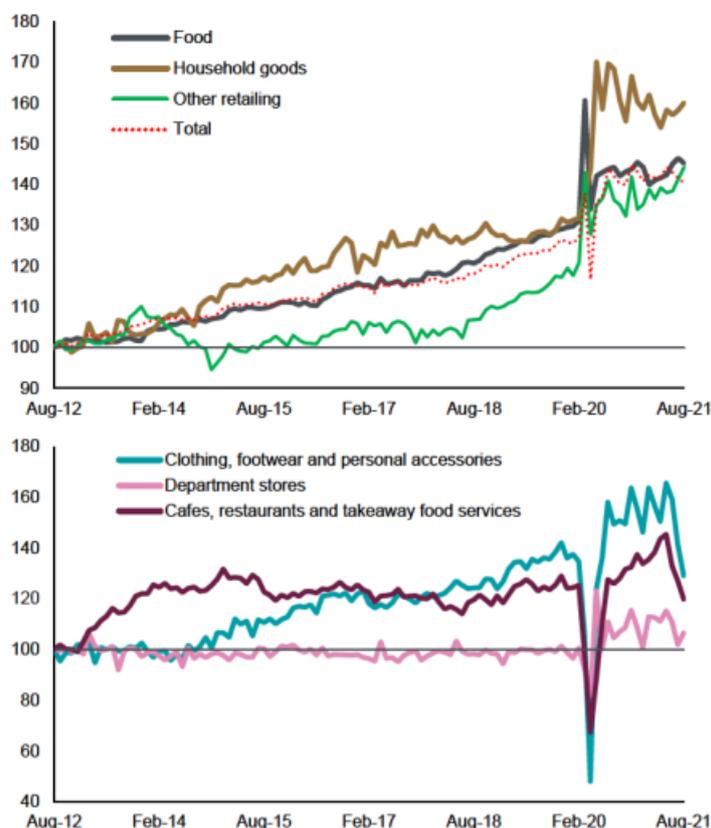
⁷ Based on Australian Bureau of Statistics, ‘Table 12. Retail turnover, state by industry subgroup, seasonally adjusted’, *Retail Trade, Australia*, October 2021, 26 November 2021, and ‘Table 05. Employed persons by State, Territory and Industry division of main job (ANZSIC)’, *Labour Force, Australia*, Detailed, October 2021, 18 November 2021.

⁸ Department of Education, correspondence dated 15 October 2021.

Figure 1 highlights the changes to retail turnover leading up to and during the COVID pandemic.

Figure 2 below tracks retail trade across different components of the state’s retail industry. The department’s economic analysis noted that the period since the COVID–19 pandemic has seen almost unprecedented volatility across retail sectors, with sharp increases in spending on household goods during the COVID-19 pandemic.

Figure 2 Nominal retail trade by component, Queensland (seasonally adjusted, monthly, index, August 2012 = 100)



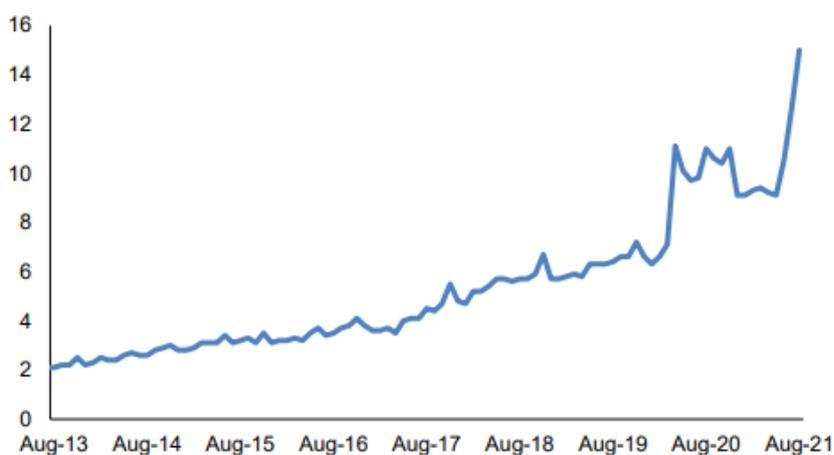
Source: Department of Education, correspondence dated 15 October 2021, Attachment 1: *Queensland Retail Trading Hours: Economic Analysis*.

2.2 Online shopping and the impact of the COVID-19 pandemic

In its analysis the department noted that the shift away from ‘bricks and mortar’ to online retail has been a long-term structural trend, though it has been accelerated by the unique circumstances of the COVID-19 pandemic. Figure 3 below tracks movements in online retail trade as a share of total turnover based on experimental estimates produced by the ABS (available only at the national level). The department’s analysis noted:

- the proportion of online sales rose steadily from around 2% in 2013 to around 6% in 2019, with most of the growth driven by non-food retail
- online sales rose to 11.1% of total sales during the mandatory virus lockdowns in April 2020 across Australia, and remained above pre-COVID-19 levels at around 9–10% in the subsequent months
- online sales reached an estimated 15% in August 2021 driven by the COVID-19 Delta outbreak related lockdowns in New South Wales and Victoria.

Figure 3 Online retail trade as a share of total turnover, Australia (original, monthly, per cent)



Source: Department of Education, correspondence dated 15 October 2021, Attachment 1: *Queensland Retail Trading Hours: Economic Analysis*.

A further snapshot of the growing significance of online retailing is provided by the *Inside Australian Online Shopping eCommerce update* produced by Australia Post.⁹ The update uses deliveries data recorded by Australia Post. The November 2021 update noted that:

- year-on-year growth in eCommerce purchases for the 52 weeks to 13 November 2021 was 17% nationally and 12.1% for Queensland
- 9.2 million households shopped online in the 12 months to 31 October 2021, up 3.5% year-on-year
- 5.7 million households shopped online in October 2021, down 3.9% on the previous month.

2.3 Retail trading hours arrangements

The retail trading arrangements for shops in Queensland are regulated by the *Trading (Allowable Hours) Act 1990* (the Act) in conjunction with:

- the Trading (Allowable Hours) Regulation 2014, and
- orders made by the Queensland Industrial Relations Commission (QIRC) pursuant to section 21 of the Act.

The Act provides that the QIRC may decide allowable trading hours outside of the permitted hours for non-exempt shops.¹⁰ A moratorium on trading hours orders for non-exempt shops being made by the QIRC and on applications to the QIRC to make orders¹¹ has meant this power has been suspended since 31 August 2017.

The Act also provides for the QIRC to decide on an application and make a declaration that shops operating within a specified area for an event which is declared to be a 'special event' are exempt shops, for the declared period, and are permitted to trade for the entirety of the period (see section 4.1 of this report). Since 2017 during the moratorium period, the QIRC has decided only these 'special event' applications.

⁹ Australia Post, 2021, *Inside Australian Online Shopping - eCommerce update*, November 2021, https://auspost.com.au/content/dam/auspost_corp/media/documents/inside-australian-online-shopping-update-november-2021.pdf.

¹⁰ *Trading (Allowable Hours) Act 1990*, Division 4, Part 5.

¹¹ See *Trading (Allowable Hours) Act 1990*, s 59.

Although not currently in force, the following orders by the QIRC are referred to in the Act for defining geographical areas subject to particular trading hours arrangements:

- ‘2017 Trading Hours Order’, previously known as the ‘Trading Hours – Non-Exempt Shops Trading by Retail – State’.¹² The 2017 Trading Hours Order is a compilation of orders made by the QIRC prior to the commencement of the *Trading (Allowable Hours) Amendment Act 2017*
- ‘Repealed Car Yards Order’, previously known as the ‘Trading Hours – Non-Exempt Shops Selling Motor Vehicles – State’ prior to the commencement of the *Trading (Allowable Hours) Amendment Act 2017*.¹³

In addition to restrictions that apply under the Act, the permitted hours of trade for certain types of shops may be regulated by other laws. For example, restaurants, cafes, hotels and bottle shops selling alcohol are subject to the restrictions imposed by the *Liquor Act 1992* and the *Wine Industry Act 1994* in addition to any restrictions that may apply under the Act. These restrictions are outside the committee’s inquiry.

2.4 Trading (Allowable Hours) Act 1990

The objects of the Act, as stated at s 3, include:

- (a) to decide the allowable trading hours of non-exempt shops and independent retail shops throughout Queensland
- (b) to require employees be given a holiday for, and to decide when certain places must close on, Anzac Day
- (c) to provide for closure of banks and insurance companies on bank holidays
- (d) to prohibit soliciting in any publication for business to be transacted outside allowable trading hours at any factory or shop
- (e) to facilitate trading in tourist areas.

The Act is a tool for balancing the needs of consumers to access goods and services where and when they want to, protections for retail workers, and the needs of communities to have viable local businesses. It prescribes trading hours arrangements for retail shops classed as either exempt shops or non-exempt shops according to their locations.

2.4.1 Exempt shops

Exempt shops are essentially exempt from trading hours restrictions under the Act.

Exempt shops are described under s 5(1)(a), (b) and (c) of the Act, and are:

- exempt by nature of the good or services predominantly sold in the shop (s 5(1)(a) and Schedule 1AA) (see Appendix C). Shop types listed in the Schedule include takeaway food shops (cooked provision shops), fruit and vegetable shops, chemist shops and service stations.

These types of shops are permitted to operate at any time and on any day of the year.

- exempt because they are an independent retail shop (s 5(1)(b)). A shop is an independent retail shop (defined at s 6 of the Act) where: the business maintained there is owned by a person, partnership or company; no more than 30 people, including the owner, work there

¹² The 2017 Trading Hours Order is available from the QIRC website, https://www.qirc.qld.gov.au/sites/default/files/2017_trading_hours_order.pdf?acsf_files_redirect.

¹³ The Repealed Car Yards Order is available from the QIRC website, https://www.qirc.qld.gov.au/sites/default/files/repealed_car_yards_order.pdf?acsf_files_redirect.

at any time; and no more than 100 persons are engaged by the business owner across all shops owned in the state at any time. Examples of independent retail shops are small independent grocery stores and clothing stores.

Section 17 of the Act provides that independent retail shops used predominantly for the sale of food or groceries or both may trade at any time and on any day of the year. Other independent retail shops are permitted to operate on any day and time except all day on Good Friday, Anzac Day before 1.00pm and all of Christmas Day.

- exempt because they operate in a stated area declared by the QIRC to be a special event (s 5(1)(c)). In deciding whether to declare an event a special event, the QIRC must consider a range of factors including the cultural, religious or sporting significance of the event and its significance to the economy and the tourism industry (see s 5(3)).

The permitted hours for shops within areas covered by a special event declaration is set by the order declaring the special event.

2.4.2 Trading hours arrangements for non-exempt shops

Non-exempt shops are larger retail shops such as supermarkets (eg ALDI, Coles and Woolworths) and department stores (eg Big W, David Jones, Kmart, Myer and Target) but exclude hardware shops and shops selling motor vehicles or caravans. Table 1 below summarises the allowable trading hours for exempt and non-exempt shops, excluding hardware shops and shops selling motor vehicles and/or caravans.

Table 1 Summary of allowable trading hours for exempt and non-exempt shops

Exempt shops:			Non-exempt shops:					
Schedule 1AA shops	Independent retail shops	Declared special event		SEQ	Seaside Resorts	Tourist areas	Schedule 1AB locations	Other areas
Fully exempt – may trade 24/7 every day of the year.	If used predominantly for the sale of food or groceries or both, fully exempt – may trade 24/7 every day of the year. Otherwise may trade 24/7 every day except Good Friday, Anzac Day before 1.00pm and Christmas Day.	Trading hours arrangements are subject to the terms of each specific special event declaration.	Mon - Fri	7am – 9pm	8am – 9pm	6am – 10pm	6am – 9pm [#]	8am – 9pm
			Sat	7am – 9pm	8am – 6pm	7am – 10pm	8am – 6pm	8am – 6pm
			Sun	9am – 6pm	Closed	7am – 9pm	9am – 6pm	Closed
			Closed Days*	Closed	Closed	Closed	Closed	Closed
			Other public holidays	9am – 6pm	9am – 6pm	7am – 9pm	9am – 7pm	Closed**

Source: Compiled with the assistance of Office of Industrial Relations based on the provisions of the *Trading Allowable Hours Act 1990*.

Notes: * 'Closed Days' are defined at s 16A to be Good Friday, Anzac Day (25 April), Labour Day (the first Monday in May), and Christmas Day (25 December).

7am – 9pm for shops in the Townsville Tourist Area.

** Non-exempt shops are permitted to open Saturday trading hours on Easter Saturdays in these locations.

The permitted trading hours for non-exempt shops, other than hardware shops and shops selling motor vehicles or caravans, depend on whether the shops are located in:

- the south-east Queensland area
- a declared seaside resort
- a declared tourist area

- a location listed in Schedule 1AB of the Act. Trading by non-exempt shops is permitted on Sundays and most public holidays in these locations
- other areas of the state. Non-exempt shops not in the areas listed above are prohibited from trading on Sundays and most public holidays.

The boundaries of the south-east Queensland area, seaside resorts and tourist areas are defined in the 2017 Trading Hours Order. Issues with the definition of these areas are discussed in section 4.8 of this report.

The Act prescribes separate trading hours arrangements for non-exempt shops that sell hardware (s 16E), motor vehicles and/or caravans (s 16EA). A 'hardware shop' is defined in the Act (s 16A) to mean a shop the business of which is, wholly or partly, the supply of -

- (a) construction material, tools, fittings and other appropriate products and equipment to –
 - i. builders, associated tradespeople, contractors or sub-contractors engaged in the building industry, or
 - ii. the general public, or
- (b) similar products appropriate for home improvement purposes to the general public.

2.4.3 Protections for retail workers

Where non-exempt shops are permitted to trade extended hours, the Act provides that work by employees during those extended hours must be voluntary. The Act stipulates that a non-exempt shop employer must not require an employee to work during extended hours unless the employee has freely agreed in writing to do so for a stated or indefinite period.¹⁴

This provision does not apply if an award or industrial agreement provides arrangements for an employee to refuse or agree to work extended hours. The Act states that an employee has not freely elected to work extended hours if the employee is coerced, or if only because they have been rostered on to work the extended hours.

The Act provides for penalties of 16 penalty units¹⁵ for a first offence and 20 penalty units for second or later offences or failure to comply.

2.4.4 Other key provisions

Other key provisions of the Act deal with:

- the powers and protections of inspectors (s 7 to 13)
- extended trading hours in relation to Christmas trading (s 16F)
- the closure of banks and insurance companies on bank holidays (s 20)
- allowable trading hours for the *Retail Shop Leases Act 1994* (s 20A)
- trading hours orders (s 21 to s 31)
- the Anzac Day public holiday for employees and permitted trading hours arrangements (s 32 to s 36)
- the prohibition of soliciting for business outside allowable trading hours (s 37)
- injunctions (s 36C) and offences (s 39 to s 46)

¹⁴ *Trading (Allowable Hours) Act 1990*, ss 36A, 36AA, 36B.

¹⁵ As at 1 July 2021, the value of a penalty unit is \$137.85; Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

- a moratorium and trading hours arrangements for shops in the Mossman and Port Douglas Tourist Area (s 56)
- a general moratorium on trading hours orders and restrictions on making applications (59).

2.4.5 2017 amendments

The Act incorporates amendments made in 2017 following a significant review of the Act in 2016 by the Trading Hours Reference Group (2016 Review). The group was chaired by Mr John Mickel, Associate Professor with the School of Justice at the Queensland University of Technology and a former Speaker of the Legislative Assembly. The focus of that 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 faced in relation to trading arrangements, and
- consider effective ways to promote job creation and business growth.

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 into the Legislative Assembly. The Bill implemented most of the reforms recommended by the Trading Hours Reference Group.

According to the explanatory notes for the Trading (Allowable Hours) Amendment Bill 2017, the Bill sought to reduce restrictions on trading hours in Queensland, and the amendments it proposed represented significant reform with substantial economic and employment benefits to Queensland. Reducing restrictions on trading hours were consistent with the Queensland Government's Economic Framework and the government's focus on growing a more innovative and productive economy to facilitate private sector business growth and investment.¹⁶

The implementation of the reform measures was expected to:

- increase gross state product by up to an estimated \$79 million per year
- support up to an additional 945 full-time equivalent jobs
- reduce regulatory burden on businesses, workers and consumers by replacing the 99 specific trading hour provisions for non-exempt shops contained in over 40 pages of trading hours' orders with six legislated allowable trading hours provisions
- bring the state's trading hours further in line with other east coast states, enhancing the competitiveness of Queensland's retail and tourism industries
- promote retail competition and lower prices for consumers
- promote and enhance Queensland's tourism industry; and provide adequate protections for workers by requiring that any additional hours worked under extended hours are done so voluntarily.¹⁷

In her explanatory speech when introducing the Bill, Minister Grace MP advised the Legislative Assembly of the key reforms in the 2017 Bill:

The key proposed reforms in the bill will mean: allowable trading hours for non-exempt shops under the act will be extended in South-East Queensland from 7 am to 9 pm Monday to Saturday, in line with the decision by the QIRC in late 2016, and in regional Queensland from 7 am to 9 pm Monday to Friday and 7 am to 6 pm on Saturday. Trading hours for Sunday and public holiday trading will be standardised across Queensland from 9 am to 6 pm. Those regional towns that currently do not have Sunday and public

¹⁶ Trading (Allowable Hours) Amendment Bill 2017, explanatory notes, p 1.

¹⁷ Trading (Allowable Hours) Amendment Bill 2017, explanatory notes, p 2.

holiday trading will be able to opt into 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 6 am. 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 6 pm on Christmas Eve to allow retail workers to go home and be with their friends and family.

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. This will remove a current brake on employment and business expansion for smaller retail businesses; and the people of Queensland will be able to buy cars and caravans on a Sunday.

In introducing these reforms, the government also recognises that changes to trading hours can have impacts on retail workers and their families. That is why this bill includes protections for retail workers that 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. The requirement for agreement applies to all hours which are being extended by this amendment bill, not to Sundays and public holidays only.

The bill also amends the act to include the impact on employees as 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 a temporary 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.¹⁸

Minister Grace moved further amendments during the Bill's consideration in detail stage. These amendments sought to make a number of changes, including:

- adding the Cairns CBD and the Pacific Fair Shopping Centre to the defined tourist areas for the purpose of core trading hours for non-exempt shops
- referring to the street addresses for the Westfield Chermside and Westfield Garden City shopping centres by their street addresses rather than real property descriptions
- clarifying that non-exempt shops allowed to trade extended hours in the pre-Christmas period must close at 6pm on 24 December
- maintaining trading hours arrangements in the Tourist and/or Seaside Resort areas which allow trade on public holidays but not Sundays
- amending the opening times to 8am Monday to Saturday for non-exempt shops outside of south east Queensland (excluding the Bill's defined tourist areas and hardware shops) and with the exception of the Townsville Tourist Area which remained at 7am Monday to Friday.¹⁹

The Bill was passed by the Assembly with the amendments moved during consideration in detail on 22 August 2017.

¹⁸ Queensland Parliament, Record of Proceedings, 1 March 2017, p 384.

¹⁹ Trading (Allowable Hours) Amendment Bill 2017, Amendments moved by Hon Grace MP, explanatory notes, p 2.

2.4.6 Administration of the *Trading (Allowable Hours) Act 1990*

The provisions of the Act are administered and enforced by industrial inspectors attached to the Office of Industrial Relations (OIR) within the department. There are 11 industrial inspectors located in Cairns, Townsville, Maroochydore and Brisbane.²⁰

The department advised the committee that between August 2017 and October 2021 there were 59 investigations of matters pertaining to the Act. Through these investigations, 21 warnings were issued by OIR inspectors, no prosecutions were commenced and there were no penalties applied. In addition, the OIR fielded 1,040 telephone and email inquiries relating to operation of the Act during the period from 2017 to the end of September 2021.²¹

Information about shop trading hours arrangements in Queensland is available from the Queensland Government's *Business Queensland* website,²² and the QIRC website.²³

²⁰ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 15 November 2021, p 3.

²¹ Department of Education, correspondence dated 1 November 2021.

²² See www.business.qld.gov.au.

²³ See www.qirc.qld.gov.au/tradinghours.

3 Regulatory policy

This section discusses key policy settings for the regulatory framework for the regulation of retail trading arrangements in Queensland. It also discusses the effectiveness of prescribing trading hours in legislation and the impacts of regulation on the Queensland economy and regional communities.

3.1 The effectiveness of prescribing trading hours in legislation

One of the key challenges identified by the review of retail trading hours in 2016 was the complexity of trading arrangements stemming from the reliance on the QIRC to set trading arrangements for shops by order over the previous fifty years.

As noted by the report from that review:

The complexity associated with the QIRC setting hours is in part a result of being given the power to make orders for non-exempt shops by reference to opening and closing times, selling by wholesale or retail, classes/types of non-exempt shops and localities or parts of localities where non-exempt shops are located.²⁴

The 2016 Review recommended the replacement of 99 specific trading hour provisions for non-exempt shops contained in trading hours orders issued by the QIRC with six legislated trading hours provisions covering all non-exempt shops in south east Queensland and in special tourism areas, for extended trading hours arrangements prior to Christmas each year, and for hardware stores throughout the state.²⁵ These reforms were supported by a 5 year moratorium on further applications being considered by the QIRC (s 59 of the Act). Issues related to the s 59 moratorium are discussed in section 4.9 of this report.

Stakeholders' views

Three submitters commented on the prescription of permitted trading hours in the Act. All were supportive.

The SDA submitted that 'now more than ever, permitted trading hours are effective to protect the work-life balance of retail workers and adequately support consumer needs for in-store trading due to 24/7 access online supporting the small percentage of customers who may desire to shop in unsociable hours'.²⁶

The SCCA submitted that prescribed trading hours for non-exempt shops 'has a significant flow on effect for exempt shops, including in shopping centres':

Our smaller/exempt tenants typically do not open unless an anchor-tenant (i.e. a non-exempt supermarket, discount or department store) is able to, such that exemptions granted to benefit smaller businesses (namely independent food and drink retailers, and supermarkets) are ineffectual and grant unfair commercial advantages to their competitors and other exempt shops that do not compete for market share or conditions.²⁷

MGA submitted that prescribing permitted hours in legislation is 'effective and required to limit the market share of the 'duopoly' created by Coles and Woolworths and reduce detriment to independent food and grocery stores and other small businesses'.²⁸

²⁴ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland's Trading (Allowable Hours) Act 1990*, p 21.

²⁵ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland's Trading (Allowable Hours) Act 1990*, p 7.

²⁶ Submission 18, p 4.

²⁷ Submission 20, p 3.

²⁸ Submission 6, p 16.

Committee findings

The committee accepts that prescribing trading hours in legislation rather than allowing trading hours to be fixed by orders made by the QIRC in response to applications, has helped to reduce localised variations in trading arrangements and inconsistencies and complexities in the state's retail trading arrangements. The committee further accepts that this appears to have helped to achieve the objects of the Act.

3.2 Effects of trading hours regulation on the Queensland economy and regional communities

As noted above, Queensland's retail sector generated turnover of \$73.3 billion in 2020 and is the state's second largest employer behind the health sector.

Reforms identified in the 2016 Review and implemented in 2017 were expected to increase gross state product and support additional jobs.

Stakeholders' views

A number of submitters commented on the changes to trading hours arrangements implemented in 2017 following the 2016 Review. Some also questioned whether the expected economic and employment benefits from those changes have been realised.²⁹

According to the McKell Institute, 'since trading hours were partially deregulated in 2017, Queensland job growth in retail, and the overall economic activity in retail, has been on the same trendline as prior to the reforms, reflecting no statistically significant impact on overall employment figures since the reforms'.³⁰ They also noted that the number of small retailers in Queensland has declined from above 13,000 in 2015 to under 10,000 in 2019, reflecting a growing concentration of the retail market in Queensland in larger retailers.

The SDA disputed claims by larger supermarkets that expanding trading hours does not affect the individually owned medium or small supermarkets and point to southern states as evidence. According to SDA, 'in those states, supermarkets are permitted to sell alcohol which can comprise in excess of 40% of their weekly take. This is not the case in Queensland and much evidence has been adduced by these smaller operators of significant, and at times terminal, loss of business when trading hours have been expanded in an area'.³¹

The Queensland IGA Board told the committee that it can confirm that 'almost all IGA retailers in SEQ observed a statistically significant decline in turnover post deregulation of trading hours in 2017'.³² Based on the observations of its member businesses, the Queensland IGA Board recommended that 'in non-metro communities in SEQ, based on the lived experience of IGA retailers in those communities, there is a good argument for the reintroduction of some trading hour restrictions, so jobs and economic contribution in those communities is supported'.³³

MGA disputed previous claims of job creation and economic growth given the emphasis of non-exempt retailers on developing trading models increasingly less reliant on employing staff (eg self-serve checkouts).³⁴

²⁹ McKell Institute, submission 16; MGA Independent Retailers, submission 6; Queensland IGA State Board, submission 17.

³⁰ Submission 16, p 6.

³¹ Submission 18, p 6.

³² Submission 17, p 2.

³³ Submission 17, p 4.

³⁴ Submission 6, p 4.

Three submitters commented specifically on the impact of trading hours regulation on the state's economy.³⁵

The CCIQ noted that 'regional economies need more opportunities under the current conditions to gain further economic benefits by meeting consumer expectations'.³⁶

The CCIQ also commented that frustration surrounding retail trading hours in Queensland is common during the Christmas and New Year period, and that 'it is necessary that non-exempt stores are able to trade freely to leverage periods of peak economic demand as they see fit'.³⁷

The CCIQ further stated that its consultations with business stakeholders across Queensland confirmed that:

1. trading hour restrictions limit the attractiveness of the regions to tourists
2. large retailers opening attracts customer foot traffic
3. large businesses contribute greatly to employment opportunities
4. all businesses should be able to decide when and for how long they wish to open so long as employees are freely willing to work
5. the legislation in its current form is far too complex and is not competitive.³⁸

MGA noted the important role of trading hours regulation in protecting the interests of small businesses.³⁹ As noted by the Queensland Small Business Commissioner in her submission, most (97%) Queensland businesses are small businesses which make a substantial contribution to employment and the state's economy.⁴⁰

Many submissions commented on the variations in trading hours arrangements provided by s 16D of the Act for non-exempt shops in different regional areas, presenting polarised views on the economic implications of retaining or expanding existing trading hours arrangements. A number of submitters also noted the particular importance of extended trading hours to support tourism and tourist-focused local economies.

For example, the Mount Isa Tourism Association noted that differing trading hours across Queensland creates confusion and frustration for tourists, and was concerned that 'tourists will bypass Mount Isa in favour of destinations with more favourable trading hours' impacting on Mount Isa's 'ability to grow its tourism industry, developing more products, offering training and employment opportunities'.⁴¹

The Member for Traeger, Robbie Katter MP, warned the committee that any changes to current restrictions on Sunday and public holiday trading by major retailers in rural and regional areas would undermine the viability of small businesses in the long-term:

In rural and regional communities, where there are already limited retail options, this would lead to a monopolisation of the market by the larger operators. It is my view, based on real-life experience, that this would further stifle development in the regions as opposed to advance it.⁴²

³⁵ Chamber of Commerce and Industry Queensland, submission 11; MGA Independent Retailers, submission 6; Marc Fotsch-Heatley, submission 24.

³⁶ Submission 11, p 3.

³⁷ Submission 11, p 5.

³⁸ Submission 11, p 5.

³⁹ Submission 6, p 26.

⁴⁰ Submission 10, p 2.

⁴¹ Submission 4, p 1.

⁴² Submission 22, p 2.

In Cairns, business and tourism stakeholders called for 24/7 trading for the Cairns central business district to support tourism. Tourism Tropical North Queensland highlighted the importance of Cairns as a destination for international tourists and to meet the expectations in regard to retail trading for those tourists.⁴³

The Ayr Chamber of Commerce provided a different perspective on the viability of extended trading hours in rural communities such as Ayr:

...extended hours may work in larger cities but not in our rural community. Many family-owned businesses that open on weekends notice it is not even worthwhile opening, as many times it does not pay for the running of the lights and air conditioning. We need to keep our local businesses as viable as possible, keep our community vibrant and thriving.⁴⁴

Similar sentiments were expressed by submitters and witnesses from independent retailers based in Charters Towers and Mundingburra.⁴⁵

The ARA submitted that further deregulation of trading hours is desperately needed in Queensland to 'create jobs, keep local retail trade in the local community, and allow retailers greater flexibility to choose when they open their doors to meet changing consumer behaviour'.⁴⁶ The ARA argued that removing the current trading hours restrictions 'has the potential to drive incremental economic activity, with a recent report by the Centre for International Economics estimating that an increase in trading hours could generate an additional \$200 million of economic activity in Queensland each year'.⁴⁷ The ARA also referred to the report of the Harper Review of national competition policy which stated 'regulation of trading hours should cease as it impedes competition and is not in the public interest'.⁴⁸ The issue of retail trading arrangements for non-exempt shops in regional and rural Queensland is discussed further at section 4.2 of the report.

3.3 Economic analysis

As noted in sections 2.1 and 2.2 above, the department provided to the committee an economic analysis paper prepared by Queensland Treasury which investigated the potential impact of trading hours on retail turnover and retail employment.⁴⁹ The analysis sought to gauge the potential impacts of trading hours on retail turnover over three distinct periods:

- the five years prior to the September quarter of 2017 (before the introduction of trading hours changes)
- the period from the September quarter of 2017 to the December quarter of 2019 since the legislated changes and prior to the COVID-19 pandemic)
- the period from the March quarter 2020 to the June quarter 2021 (capturing the current performance of the sector compared with that immediately prior to the COVID-19 crisis).

⁴³ Mark Olsen, CEO, Tourism Tropical North Queensland, public hearing transcript, Cairns, 19 November 2021, p 12.

⁴⁴ Alissa Muir, President, Ayr Chamber of Commerce, public hearing transcript, Townsville, p 2.

⁴⁵ Lance Birkett, Proprietor, Birkett Enterprises (Foodworks Fresh Supermarket, Charters Towers); Adam Westbury, IGA Retailers, public hearing transcript, Townsville, pp 7-11.

⁴⁶ Submission 9, p 1.

⁴⁷ Submission 9, p 1.

⁴⁸ Submission 9, p 1.

⁴⁹ Department of Education, correspondence dated 15 October 2021, Attachment 1: *Queensland Retail Trading Hours: Economic Analysis*.

The economic analysis made the following key points:

- Given a range of short and long-term factors, including the unprecedented economic volatility experienced in the context of COVID-19, it is not possible to effectively isolate the effects of changes in trading hours regulation from other broader economic trends impacting retail activity or employment in Queensland over the period since the reforms were implemented.
- There is no clear evidence of any discernible change in quarterly retail turnover volume growth in the periods before and subsequent to commencement of the Trading (Allowable Hours) Act 2017 [sic]. However, given the substantial changes in consumer spending patterns and economic activity more broadly since that time, in particular due to the unprecedented impacts of COVID-19, it is also not possible to determine the extent to which outcomes in the sector may differ from what might have occurred in the absence of the reforms.
- Consistent with national trends, significant structural changes in the retail sector over the past two decades, including the shift to online retailing and the increasing use of technology, have constrained retail employment growth in Queensland.
- More recently, the COVID-19 pandemic and related restrictions have significantly disrupted consumer spending patterns, with these impacts overshadowing other underlying drivers of growth.
- Overall, retail trade employment in South East Queensland and regional Queensland have generally moved in line with each other (aside from short-term fluctuations). Further, the trend in retail employment growth, in both SEQ and regional Queensland, appears to have been broadly similar both before and after the trading hours reform.⁵⁰

Committee findings

The committee notes the perspectives of stakeholders about the effects of trading hours regulation on the Queensland economy and on regional Queensland.

The committee accepts the analysis provided by the department that it is not possible to discern a specific effect of trading hours regulation on the economy over the same period, and that economic outcomes are influenced by a range of factors including, over the past two years, the impacts of the COVID-19 pandemic.

The committee was therefore unable to conclude how or to what extent the regulation of trading hours has impacted regional communities or the Queensland economy. The committee notes however that the interests of communities, retail businesses and all shoppers, including tourists, are best served by having consistent trading hours arrangements in regions across the state, as far as is practicable.

3.4 Deregulation (should trading hours arrangements be deregulated?)

In addition to impacts on the Queensland economy and regional Queensland, there are long-standing policy arguments for deregulating trading hours arrangements to maximise competition and consumer choice. The Productivity Commission in its 2011 inquiry into the economic structure and performance of Australia's retail industry noted that the regulation of trading hours had been described as 'an institutionalised and rigid form of non-price competition' which is available only to some retailers.⁵¹ The Commission also noted that 'regulations restricting trading hours impinge on consumer choice regarding when (and where) to shop, causing inconvenience'.⁵²

⁵⁰ Department of Education, correspondence dated 15 October 2021, Attachment 1: *Queensland Retail Trading Hours: Economic Analysis*, p 1.

⁵¹ Bennett, R B, 1981, *Regulation of Services: Retail Trading Hours*, Bureau of Industry Economics, Working Paper no. 21, Canberra.

⁵² Productivity Commission, Australian Government, 2011, *Economic Structure and Performance of the Australian Retail Industry* – Inquiry report, p 279.

To date a number of Australian jurisdictions (the Australian Capital Territory, New South Wales, the Northern Territory, Tasmania and Victoria) have deregulated retail trading hours in line with these and other review findings. Queensland, South Australian and Western Australian governments have resolved to retain regulation of trading hours.

Significant reforms to trading hours legislation in Queensland, based on recommendations from the 2016 Review, commenced on 31 August 2017. For non-exempt shops, the changes included the extension and standardisation of trading hours in different areas of Queensland, and changes to trading hours arrangements for tourist areas, special events and specific classes of shops.

Stakeholders' views

Submitters and other stakeholders provided a range of conflicting arguments about further deregulation of the state's retail shop trading arrangements.

A number of submitters expressed their support for full deregulation of trading hours for a range of reasons including to stimulate the economy, to provide flexibility for consumers and workers, as being required because of population growth, as a solution to underemployment, to benefit the tourism and retail sectors, and to help 'bricks-and-mortar' retailers to compete with online retail.⁵³

Mr John Mickel who chaired the Trading Hours Review Reference Group for the 2016 Review, stated that deregulation is necessary primarily because the current trading hours arrangements deny consumers choice, but also because it results in price gouging by stores which are permitted to open at certain times, denies employment opportunities to workers in the supply chain, and limits the 'economic capability' of locations where there are restricted trading hours.⁵⁴

The SCCA submitted that it 'supports the full deregulation of trading hours for non-exempt shops, except for maintaining restrictions on culturally significant days, similar to New South Wales and Victoria in this regard.' According to the SCCA:

...'majors'/non-exempt shops (i.e. Myer, David Jones, Big W, Target, Woolworths and Coles) are critical to a shopping centre being able to feasibly open to trade, particularly given they serve as major generators of customer foot traffic. Generally, if these non-exempt shops are unable to open, this makes it less feasible for a shopping centre to be able to open and trade due to relatively lower customer traffic, which fails to benefit the smaller, or 'specialty', retailers within the centre.⁵⁵

The NRA submitted that while its preferred position is 'that the State Government would revisit the Mickel reforms and implement them in full as it originally intended' the NRA stated that it understands 'that the political reality is that the Government must balance the competing interests of various parties in this matter. Therefore, we believe the best option for the State Government at this point is to leave the Trading (Allowance Hours) Act as it is, with no amendment'.⁵⁶

A number of submitters opposed further deregulation.

The Member for Traeger, Robbie Katter MP, told the committee that he is 'of the firm belief that an entirely deregulated trading hours model, such as in Victoria, simply would not work for regional and rural Queensland and in the long-term would be to its detriment'.⁵⁷

⁵³ Nicholas Lloyd, submission 1; Andrew Aschman, submission 2; Australian Retailers Association, submission 9; John Mickel, public hearing transcript, Brisbane, 25 October 2021, p 2.

⁵⁴ Public hearing transcript, Brisbane, 25 October 2021, pp 1-5.

⁵⁵ Submission 20, p 3.

⁵⁶ Submission 21, p 2.

⁵⁷ Submission 22, p 1.

MGA told the committee it ‘continues to oppose any deregulated model of trading hours for Queensland’⁵⁸ as it would ‘result in significant detrimental effect on town centres, local communities, employment opportunities and competition within the grocery retail sector’.⁵⁹

The Queensland IGA Board also opposed further deregulation, citing advice provided by Professor Fabrizio Carmignani of Griffith University. The Board noted the key finding of Professor Carmignani that ‘trading hour deregulation causes job losses and loss of economic contribution in communities’.⁶⁰

Other submitters argued against deregulation on the basis that there is a lack of public support for it.

The McKell Institute submitted that there is ‘no demonstrable public appetite for further trading hours reform in Queensland’⁶¹ and that ‘there is no evidence that there will be a significant gain to employment that results from the deregulation of trading hours. This reflects the economic reality that, for trading hour deregulation to lead to an increase in employment, a significant increase in demand needs to occur. There is currently no evidence that expanded trading hours fundamentally shift the demand/supply dynamic in Queensland retail, or retail elsewhere in Australia’.⁶² The Institute further advised the committee:

...the core arguments in favour of trading hour deregulation do not have basis in empirical fact. Fundamentally, the liberalisation of trading hours disproportionately impacts small businesses in the state, while advantaging larger retailers - especially the major supermarket chains. The decline of small retail businesses has been evident in Queensland over the past five years, with this trend likely to increase should further liberalisation of Queensland's trading hours occur.⁶³

The SDA submitted that it ‘has always believed there is no genuine need or overwhelming desire by customers to see trading hours in Queensland extended further’ and that it is ‘especially not convinced that desire has appeared or increased in light of the recent migration to online shopping platforms. When surveyed, 96.18% of our members believe customers have enough choice to shop within the current trading hours and the availability of online ‘click and collect’.⁶⁴

The CCIQ submitted that while ‘full deregulation remains a contentious issue for businesses across Queensland’, it believes that ‘taking the opportunity to improve the current regulation is the most beneficial course of action’.⁶⁵ The CCIQ submitted that evidence collected in its consultations has ‘strongly indicated that trading hour restrictions limit the attractiveness of the regions to tourists and community accessibility’ and that ‘businesses should be able to decide to open so long as employees are freely willing to work, which is a view that is supported by CCIQ’.⁶⁶

A number of submitters urged that the small business, employment and economic benefits of any further deregulation need to be carefully considered.

The Queensland Small Business Commissioner told the committee that any change to trading hours regulation ‘should give consideration to how it may affect the competitive advantage of small and independent businesses, help small businesses recover from the impacts of the COVID-19 pandemic, and whether it will enhance the overall operating conditions for small businesses in Queensland’.⁶⁷

⁵⁸ Submission 6, p 13.

⁵⁹ Submission 6, p 16.

⁶⁰ Submission 17, p 2.

⁶¹ Submission 16, p 6.

⁶² Submission 16, p 16.

⁶³ Submission 16, p 20.

⁶⁴ Submission 18, pp 3-4.

⁶⁵ Submission 11, p 5.

⁶⁶ Submission 11, p 4.

⁶⁷ Submission 10, p 1.

The Queensland Small Business Commissioner also suggested that ‘broader regulatory reform should consider how trading hours influence the overall operating environment for small business’.⁶⁸

The McKell Institute urged that policymakers be cognisant that ‘any reform aimed at disadvantaging online retailers as a means of artificially creating more demand for brick and mortar premises would...disproportionately affect small business owners in Queensland’.⁶⁹ The Institute also warned that ‘arguments in favour of deregulating Queensland’s trading hours regime as a means of stimulating job creation fail to recognise the already strong performance of the Queensland economy, and its sustained low levels of unemployment’.⁷⁰

Similarly, SDA cautioned that ‘a failure to support small businesses by protecting their competitive advantage of unrestricted trading is likely to lead to a complete concentration of the market in Australia’⁷¹ and that ‘any consideration of ‘employment’ should not simply question if someone might gain retail work, but also examine the extent of the hours worked / gained or whether such employment is meaningful in terms of being sustainable and ongoing’.⁷²

The Queensland IGA Board submitted that it ‘believes the committee can have no confidence deregulation of trading hours increases employment or economic contribution to local communities in Queensland’.⁷³

Views of the department

Mr Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, observed that ‘there is no real consensus on options for trading hours reform’ and that:

...the submissions overall have not presented any particular unexpected information, with longstanding positions being adopted on most issues to do with extending or not extending trading hours. While the interested stakeholders have presented genuine arguments and their genuine positions for change or no change, it is my view that much of their positions have been made on assumptions which are difficult to test or prove or are more in the vein of aspirational statements. I do acknowledge the lived experience told by business owners and worker representatives to the committee. If the committee recalls, Queensland Treasury also had difficulty in definitively establishing some of the cause and effect of trading hours on economic indicators, economic data.⁷⁴

Committee findings

The committee has not identified a need, or demand for, radical deregulation of retail trading arrangements in Queensland, but rather a need for some fine tuning of provisions in the Act.

The committee believes any future changes to retail trading arrangements need to be designed and implemented so as to minimise adverse impacts on smaller businesses and regional communities, and implemented incrementally to allow business owners time to adapt to a new retail environment.

⁶⁸ Submission 10, p 2.

⁶⁹ Submission 16, p 19.

⁷⁰ Submission 16, p 17.

⁷¹ Submission 18, p 5.

⁷² Submission 18, pp 4-5.

⁷³ Submission 17, p 4.

⁷⁴ Public briefing transcript, Brisbane, 29 November 2021, p 2.

4 Operation of the *Trading (Allowable Hours) Act 1990*

The following section discuss issues raised by stakeholders about the general operation and performance of provisions of the Act and how, in practice, different provisions are contributing to the objects of the Act. It also discusses the impact of the existing framework for the regulation of trading hours. These issues relate to the second part of the inquiry terms of reference.

Few submissions specifically addressed the impact of the existing framework and instead focussed on the effects of individual provisions and possible amendments to improve them. A number of submissions discussed the policy that underpins the Act and the central arguments about the benefits or costs associated with further deregulation of retail trading arrangements. These issues are discussed in section 3.4.

As a general comment on the operation of the Act, the AWU suggested in its submission that there is no well-founded reason for changing the Act as the provisions of the Act ‘already provide an appropriate balance between the interests of retailers, retail workers, shoppers and other stakeholders in the regional towns and cities where we have retail members’.⁷⁵

Several submitters noted the difficult business environment for retailers during the COVID-19 pandemic, and how business operating conditions have changed.

The CCIQ noted that restrictions attributed to the COVID-19 pandemic have created many difficulties for Queensland small businesses:

Enforced lockdowns and covid restrictions, no international tourism and an increase in the use of eCommerce has greatly impacted our economy and communities.⁷⁶

These concerns were echoed by the Queensland Small Business Commissioner who noted that ‘more than 60% of the commercial leasing disputes lodged with the QSBC have been made by businesses that are ‘exempt shops’ under the Act – suggesting that small and independent retailers have been heavily impacted by the COVID-19 emergency, resulting in sharp declines in turnover and reduced profitability’.⁷⁷

Submitters also noted the growth in online shopping and possible impacts on the effectiveness of the protections provided by the Act for the rights of retail workers outside of ‘bricks and mortar’ retailing.⁷⁸ As noted earlier in this report at section 2.2, online shopping is a rapidly growing segment of the retail industry.

4.1 Special events

Section 5 of the Act provides for the QIRC to decide on an application and declare a unique or infrequent event of local, state or national significance to be a ‘special event’. Such a declaration enables non-exempt shops operating within a specified area for an event which is declared to be a ‘special event’ to operate as exempt shops, for the declared period.

The report of the 2016 Review recommended a number of additions to the list of exempt shops which may trade without any trading hours restrictions. They included ‘shops operating within a designated area around and during international special events (e.g. Commonwealth Games) and for local

⁷⁵ Submission 3, p 1.

⁷⁶ Submission 11, p 2.

⁷⁷ Submission 10, p 1.

⁷⁸ Chamber of Commerce and Industry Queensland, submission 11, p 3; Marc Fotsch-Heatley, submission 24, p 1.

festivals' and that an application for special event or local festival status and the designated area be made to the QIRC for determination.⁷⁹

In deciding on an application for an event to be declared a 'special event', the QIRC must consider:

- the cultural, religious or sporting significance of the event, and
- the significance of the event to the economy and tourism industry.⁸⁰

Since 2017, during the moratorium period, the QIRC has decided on 23 'special event' applications, as follows:

- Weipa Fishing Classic - 3 to 5 September 2021
- Mount Isa Mines Rodeo - 12 to 15 August 2021
- Charters Towers Show - 25 to 27 July 2021
- Burdekin Show - 23 June 2021
- Bowen Show - 22 June 2021
- Proserpine Show - 18 to 19 June 2021
- Mount Isa Show - 18 to 20 June 2021
- Chinchilla Show - 21 to 22 May 2021
- RockyNats - 3 to 5 April 2021
- BrisAsia Festival - 1 to 28 February 2021 – application dismissed
- Australian Football League Grand final - 24 to 25 October 2020
- Toowoomba Carnival of Flowers - 18 to 27 September 2020
- Brisbane Festival - 4 to 26 September 2020
- Townsville 400 - 29 to 30 August 2020
- Toowoomba Royal Show - 26 to 28 March 2020
- Gold Coast 600 Motor Race - 25 to 27 October 2019
- Brisbane Festival - 5 to 29 September 2019
- Mount Isa Rotary Rodeo – 5 August 2019
- Ayr / Burdekin Annual Show - 26 June 2019
- Chinchilla Melon Festival - 1 February 2019
- Christmas trading at Westfield Chermside and Westfield Garden City on 20 and 21 December 2018 – application dismissed
- Mount Isa Rotary Rodeo - 17 July 2018
- Commonwealth Games - 13 December 2017.

A summary of the details of the 23 applications for a declaration of a special event under s 5 of the Act which have been made since 2017 was provided to the inquiry by the Department of Education (see Appendix D of this report).

⁷⁹ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, A Review of Queensland's *Trading (Allowable Hours) Act 1990*, p 29.

⁸⁰ *Trading (Allowable Hours) Act 1990*, s 5(3).

Key points about the applications and the decisions by the QIRC include:

- The NRA made all of the 23 applications for declarations of special events except for the application for the 2021 RockyNats event in April 2021 which applied to only a single business which made its own application.
- Two applications were dismissed – the application for Christmas trading at Westfield Chermside and Westfield Garden City on 20 and 21 December 2018 because the QIRC was not convinced that the special event status was applicable to the event, and the BrisAsia Festival 2021 because the QIRC was not convinced that the event in question was significant to the economy and the tourism industry.
- Five decisions made declarations for a smaller geographic area than was sought in the applications by the NRA.
- For many of the applications, the SDA/AWA requested that the QIRC vigorously assess the applications in regard to the significance of the event, ie that the event ‘is a unique or infrequent event of local, state or national significance’. Other issues raised related to limiting the range of trading hours, the geographic scope, and the necessity for trading hours to be extended for non-exempt shops.
- For most applications, the SDA/AWU requested that any order made by the QIRC express the importance of voluntary work during extended trading hours, as prescribed by s 36B of the Act.
- Over the period since 2017, the QIRC’s decisions have varied in response to the requests for special event declarations to order that employers must not require employees to work during the extended hours unless they have freely elected to do so.

Stakeholders’ views

While some submitters considered ‘special event’ declarations have worked well to balance the needs of retailers, employees, customers and visitors to a town or region for an event,⁸¹ others saw little benefit and suggested amending or removing this provision from the Act.

The McKell Institute advised that its analysis has shown that in each of the local areas where extended trading hours have been granted around major events, there has been no discernible improvement in local employment outcomes.⁸² The McKell Institute contended that ‘special events’ ‘should be restricted to those events where there will be a period of abnormally high economic activity, such as the 2018 Commonwealth Games. In the absence of that, it is difficult to justify temporarily changing the legal status of shops’.⁸³

The SDA submitted that ‘special event’ declarations since 2017 have shown that non-exempt shops (large retailers) did not experience the benefits expected. The SDA stated that a majority of workers at these stores in these locations have reported that customer traffic remained the same or decreased during the period of the declared special event and that most workers did not want to work the extended hours.⁸⁴

The SDA further stated that:

- the Act is deficient in not providing guidance for considerations by the QIRC of ‘special event’ applications, such as the necessity for extended hours during the period, the impact

⁸¹ Submissions 3, 21.

⁸² Submission 16, p 6.

⁸³ Submission 16, p 20.

⁸⁴ Submission 18, pp 11-12.

on employees, a correlation between the shop making the application and the event, and whether previous special event declarations have been beneficial

- the 2016 Review recommendations were not intended to include all special events (rather only significant or international) and were not intended to make all non-exempt shops in locations near an event free from trading regulations
- ‘special event’ declarations do not prevent workers from being required to work extended hours without the protections of s 36B(1) of the Act. (SDA noted that QIRC has recently determined that it does not have the jurisdictional ability to apply this protection to the declarations.)⁸⁵

The SDA also submitted that s 5(1)(c) should be removed from the Act to protect the legislated permitted hours from being undermined by frequent applications for alternative hours without merit.⁸⁶ Similarly, MGA stated that it ‘supports that the QIRC should assess such considerations ‘vigorously’ and that applications under section 5 of the Act should not become a procedural step to permit non-exempt stores to ‘opt in’ to extended trading hours’.⁸⁷

The Queensland Small Business Commissioner also proposed that the ‘special event’ assessment criteria be reviewed and amended to more holistically assess whether a special event’s economic benefits will flow throughout the local business community, not just to major retailers.⁸⁸

Some submitters claimed that the ‘special event’ application process was slow and costly, and suggested that QIRC decisions on applications should be made and communicated in a timely manner so that small and independent retailers have time to take advantage of any potential benefits.⁸⁹ For example, the Queensland Small Business Commissioner stated that decisions on applications for ‘special events’ should be ‘made and communicated in a timely manner, to ensure that small and independent retailers have sufficient time in advance to plan and take advantage of the potential economic benefits’.⁹⁰ The Commissioner suggested that common types of ‘special event’ applications received by the QIRC be identified, and a streamlined approval process for reoccurring events to reduce administrative burden be considered.⁹¹

Views of the department

The department provided the following information about the QIRC’s decisions in relation to requests for orders to include voluntary employment conditions:

The SDA have relied on the precedent set in the decision of DP Swan in the first declaration made for the Commonwealth Games. The SDA also reasoned that the Commission has the power to make ancillary orders to implement any declaration.

NRA has not taken a position in opposition to this and generally commits to voluntary employment in each of its applications.

The Commission in early applications imposed a voluntary employment order as part of its declaration (e.g. Gold Coast 2018 Commonwealth Games, Chinchilla Melon Festival 2019, Mount Isa Rotary Rodeo 2019, Brisbane Festival 2019 and Gold Coast 600 Motor Race 2019) referencing the provisions of section 36B of the Trading Hours Act.

⁸⁵ Submission 18, pp 12, 14, 15.

⁸⁶ Submission 18, p 17.

⁸⁷ Submission 6, p 13.

⁸⁸ Submission 10, p 2.

⁸⁹ Submissions 2, 10.

⁹⁰ Submission 10, p 2.

⁹¹ Submission 10, p 2.

A change of attitude by the Commission is evident in the 2020 applications (commencing with the Toowoomba Royal Show 2020 decision) where the Commission's power to make an order for voluntary employment in respect of a declaration is questioned by the Commission itself resulting in refusal to make such an order as part of a declaration. The Toowoomba Royal Show 2020 decision has been relied on by the Commission in subsequent applications.

In more recent applications decided in 2021 (commencing with the Chinchilla Show 2021 decision) the Commission has continued to state its position that it does not consider it has the power to impose voluntary employment conditions in section 5 [of] the Trading Hours Act special event declarations. In several of these decisions the Commission has gone on to state that the provisions of section 36B the Trading Hours Act prescribing voluntary employment only, do apply to work during the period of a special event declaration (e.g. Chinchilla Show 2021, Proserpine Show 2021, Mt Isa Show 2021, Burdekin Show 2021, Mt Isa Mines Rodeo 2021 and Weipa Fishing Classic 2021).⁹²

In response to the issues associated with s 5 'special event' applications raised by the SDA, the department acknowledged that 'there is some merit in looking at that provisions of s 5 and some merit in looking at the definitions and the meanings of a significant event and the requirements for lodging an application in terms of the evidence that should be brought forward'.⁹³

Committee findings

With the trading hours of shops in Queensland being regulated, 'special event' declarations provide a useful mechanism to extend the trading hours of non-exempt shops in a location when a unique, infrequent and significant event is being held. The committee's examination of the 23 applications for a declaration of a 'special event' made to date highlighted that there is a need to ensure that declarations of 'special events' by the QIRC are only made for significant and major events that warrant extended trading hours for non-exempt shops.

The committee believes that important local cultural events contribute to the fabric and economy of regional communities. However, the committee considers there may not always be a necessity for extended trading for large non-exempt retailers during these events.

The committee recommends the Act be amended to refine the process for the consideration of 'special event' applications by the QIRC to ensure the requirement under s 5(1)(c) of the Act that a declared 'special event' is, in fact, 'a unique or infrequent event of local, State or national significance'.

The list of considerations in s 5(3)(a) of the Act should be expanded to include the following additional considerations for the QIRC to examine when deciding whether to declare an event to be a 'special event':

- additional factors which indicate the significance of the event, such as attendance numbers, size of the event, media coverage, contribution to the state's national and/or international reputation, and its unique or infrequent nature
- whether there is a necessity for non-exempt shops to trade as exempt shops during the period of the special event.

⁹² Department of Education, Office of Industrial Relations, *Background information paper – Review of the Trading (Allowable Hours) Act 1990*, Appendix 2, p 4.

⁹³ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 15 November 2021, p 1.

Recommendation 1

The committee recommends the Act be amended to refine the process for consideration of ‘special event’ applications by the Queensland Industrial Relations Commission, to ensure the requirement under section 5(1)(c) of the *Trading (Allowable Hours) Act 1990* that an event declared a ‘special event’ is, in fact, ‘a unique or infrequent event of local, State or national significance’. The list of considerations in section 5(3)(a) of the Act should be expanded to include the following additional considerations the Commission is required to examine when deciding whether to declare an event to be a ‘special event’:

- additional factors which indicate the significance of the event, such as attendance numbers, size of the event, media coverage, contribution to Queensland’s national and international reputation, and its unique or infrequent nature
- whether there is a necessity for non-exempt shops to trade as exempt shops during the period of the special event.

4.2 Trading hours arrangements for non-exempt shops in regional and rural areas

One of the more contentious aspects of the operation of the *Trading (Allowable Hours) Act 1990* raised during the inquiry has been the effect of s 16D of the Act on non-exempt shops in regional and rural communities. This issue was discussed briefly in section 3.2 of this report.

For trading hours arrangements, s 16D effectively divides non-exempt shops located outside of the south-east Queensland area, designated tourist areas and seaside resorts into two groups:

- shops in a Schedule 1AB area – that are permitted to trade on Sundays and public holidays
- shops in other areas - that are not permitted to trade on Sundays and public holidays.

These arrangements are set out in Table 2 below.

Table 2 Trading hours arrangements for non-exempt shops in Schedule 1AB areas and Other areas

	Schedule 1AB area	Other areas
Monday to Friday	8am – 9pm	8am – 9pm
Saturday	8am – 6pm	8am – 6pm Including Easter Saturday
Sunday & public holidays	9am – 6pm other than closed days	n/a other than closed days and Easter Saturday

Source: see *Trading (Allowable Hours) Act 1990*, s 16D.

The permitted trading hours are the same for non-exempt shops in both categories of areas except that non-exempt shops in ‘other areas’ are not permitted to trade on Sundays or public holidays.

Stakeholders’ views

Stakeholders were divided on the impacts of the restrictions on Sunday and public holiday trading hours for non-exempt shops in affected areas, and whether the restrictions should continue.

The NRA noted the background to the restrictions in its submission:

...due to resistance from the Opposition and minor parties, the Government was not able to implement all the reforms recommended by the Mickel Review, particularly as they applied to regional Queensland. As a result of this, a watered-down version of the proposed reforms was passed through the Parliament, which meant that consumers in a small number of regional centres continue to be denied access to

Sunday and public holiday shopping, and the employment and economic benefits that have repeatedly been demonstrated to flow from that.⁹⁴

The ARA recommended that, at a minimum, there be ‘a further relaxation of the policy settings that currently prohibit extended trade in regional, rural and remote communities in Queensland’ and ‘one of the areas of most concern under the current regime is that non-exempt retailers in regional areas must remain closed on Sundays and public holidays’.⁹⁵ The ARA noted that these restrictions would remain in place even if the current moratorium were lifted. According to the ARA, ‘reducing these regulatory barriers to trade would provide more choice and flexibility for Queensland consumers, particularly in regional areas, and keep local retail trade in the local community’.⁹⁶

The SCCA noted that there is strong support for further trading hours reform in regional areas which are lagging when compared to south east Queensland and other jurisdictions, and that ‘72 percent of Queenslanders in these areas, support further trading hours reform, with only 19 percent opposed’.⁹⁷

The SCCA further noted that the current trading hours regime has ‘created inequality of access to goods and services between certain regional LGAs when compared to SEQ’ and that it is ‘unaware of any evidence that suggests that this policy discrepancy is justified’.⁹⁸ According to the SCCA:

This inequity of access extends to delineating between the merits of servicing tourists (where economic arguments and community sentiment has prevailed with respect to the Mossman and Port Douglas Tourist Area) vs. shift workers (who would stand to benefit from similar such concessions) and indeed the wishes of local communities. It is also fair to contrast Mt Isa with Gympie in that they have similar populations, but the population of the former has less ready access to shops.⁹⁹

Business and tourist groups also supported the removal of Sunday and public holiday trading restrictions as provided for by s 16D.

Aldi Stores submitted that the current restrictions impact its Kingaroy store which is the only store in the 571-store Aldi network that cannot operate 7 days a week.¹⁰⁰

In Mount Isa, which has a population of 20,000 and is the state’s largest city covered by the s 16D restrictions, the local tourism peak body, Mount Isa Tourism, submitted that Sunday trading restrictions on non-exempt businesses impact on Mount Isa’s economy by having trading hours different to other places which causes confusion and frustration for tourists.¹⁰¹

Mount Isa Tourism also noted that the exempt convenience shops that are permitted to trade on Sundays and public holidays ‘do not offer all goods and necessities that are reasonably expected to be available to consumers’¹⁰² and that ‘there is no longer an exempt store with the capacity to offer everything a tourist would expect to purchase to further enable their travels’.¹⁰³ Mount Isa Tourism also stated that guided bus operators who offer onboard catering ‘find it problematic arriving into

⁹⁴ Submission 21, p 2.

⁹⁵ Submission 9, p 2.

⁹⁶ Submission 9, p 2.

⁹⁷ Submission 20, p 2.

⁹⁸ Submission 20, p 2.

⁹⁹ Submission 20, p 5.

¹⁰⁰ Submission 7, p 1.

¹⁰¹ Submission 4, p 1.

¹⁰² Submission 4, p 1.

¹⁰³ Submission 4, p 1.

Mount Isa on a Saturday or Sunday as the supplies they require for such a large group are difficult to get'.¹⁰⁴

Commerce North West provided the findings of a community and business survey with over 1,400 respondents which indicated that 80.03% of businesses support the relaxation of Sunday trading restrictions on large retailers in Mount Isa. In relation to community support, Commerce North West submitted that 80.64% of residents supported Sunday trade and 89.63% indicated they would find Sunday trading convenient.¹⁰⁵

According to Mount Isa Tourism, 'tourists will bypass Mount Isa in favour of destinations with more favourable trading hours (eg Katherine, Alice Springs in the NT) which will impact the development of the city's tourism industry'.¹⁰⁶ They further argued there is a need to bring trading hours into line with community expectations.

The Mount Isa City Council also supported the removal of the trading restrictions for non-exempt shops:

General feedback from tourism, hospitality and accommodation venues is that the visitors who frequent their businesses are surprised that for a major service centre for the outback, 7-day trading is not available. Access to food provisions and goods on a Sunday has been identified by the Mount Isa Tourism Association as an important value add to encourage tourists to the region which supports the growth and visitation to various environmental and cultural tourism attractions being promoted. A greater array of shopping and related services provides better incentives for extended visitor experiences, resulting in increasing length of stays and greater access to the tourism dollar.¹⁰⁷

and:

Mount Isa is the service centre for as many as 100 beef producing businesses or cattle stations within a 300-kilometre radius (some are over a million acres in size and have large seasonal staff quotas). Extended Sunday trading could improve the quality of life for rural industry employees by opportunities to enjoy a Saturday night entertainment stayover and shopping trip combination. Mount Isa has regular live music events, cinemas, fine dining, 12 race meetings a year, and annual major events like the Mount Isa Rodeo, Mount Isa Fishing Classic, camp draft events, and the Mailman Express. Motel businesses in Mount Isa report low weekend occupancy rates, Sunday trading may assist both businesses and travellers to obtain better occupancy rates and add extra incentives for travellers to stay longer.¹⁰⁸

A number of submitters argued strongly against the removal of current trading restrictions for exempt shops in rural and regional areas.

The Member for Traeger, Robbie Katter MP, submitted that 'the ban on Sunday, and public holiday, trading for major retailers in regional communities provides crucial trading opportunities to small businesses who are otherwise constantly out-competed and undermined by the buying power of major corporations such as Woolworths and Coles'¹⁰⁹ and that in rural and regional communities, where there are already limited retail options, 'this would lead to a monopolisation of the market by the larger operators' which Mr Katter argued 'would further stifle development in the regions as opposed to advance it'.¹¹⁰

MGA submitted that the restrictions should not be removed on the basis that 'any further extension of trading hours for non-exempt stores would undermine the 2015 decisions by the QIRC concerning

¹⁰⁴ Submission 4, p 2.

¹⁰⁵ Submission 12, p 3.

¹⁰⁶ Submission 4, p 1.

¹⁰⁷ Submission 25, p 3.

¹⁰⁸ Submission 25, p 4.

¹⁰⁹ Submission 22, p 2.

¹¹⁰ Submission 22, p 2.

Mount Isa and Goondiwindi, and the 2011 decision concerning Warwick'.¹¹¹ MGA further submitted that:

...these decisions support that a state-wide approach to expanding trading hours for non-exempt stores will not advance the interests of the regional communities, particularly with any extension to Sunday trading hours. MGA submits that this should be pertinent to the inquiry, in particular findings that regional areas have unique retail expectations and do not require any extension to trading hours for non-exempt stores.¹¹²

The committee also heard from store owners who would be impacted by any removal of the current trading restrictions for non-exempt shops in their towns.

Lance and Danny Birkett of Charters Towers submitted that allowing Woolworths to trade on Sundays and public holidays, would have a significant effect on their trade, income, and employment requirements, as well as their ability to keep supporting local sporting groups and clubs. They further submitted that changing the trading hours for 'giant' companies would put an end to the way of life in a small country town.¹¹³

Ms Narelle Jones told the committee leaving Sunday and public holidays open only to small business 'gives us a chance to improve our sales. It is hard to compete with major corporations that can sell their products at a much cheaper price, so having a few days where we have a chance is vital for our survival'.¹¹⁴

Griffith's Pharmacy at Charters Towers told the committee:

...there is not an available workforce to support extended trading hours trading days. Already, I have great difficulty recruiting a suitable workforce to cover the basic needs of my extremely busy pharmacy. Any extension of trading hours risks exacerbating these workforce shortages across all small business in rural towns. ...Our hard working staff require the weekends and evenings to rest and recover.¹¹⁵

Committee findings

The committee notes the views of stakeholders that there appears to be compelling arguments for and against the retention of current restrictions on Sunday and public holiday trading for non-exempt shops in some areas located outside of the south east Queensland area, designated tourist areas and seaside resorts.

4.3 Core trading hours for non-exempt shops

Permitted trading hours were prescribed in the Act following the 2016 Review. This was to replace the 99 specific trading hours provisions for non-exempt shops contained in orders issued by the QIRC with legislated allowable trading hours for all non-exempt shops in specified areas of Queensland, and to provide for extended trading hours before Christmas each year. The 2016 Review intended that the revised framework would reduce the regulatory burden and complexity of Queensland's existing trading hours regime at the time, and 'allow retailers greater flexibility to set their hours to best service consumer demand and grow their business'.¹¹⁶

Section 16D of the Act prescribes the core trading hours for non-exempt shops other than hardware shops and shops selling motor vehicles or caravans (larger supermarkets and department stores). Shop

¹¹¹ Submission 6, p 15.

¹¹² Submission 6, p 15.

¹¹³ Submission 26, p 1.

¹¹⁴ Submission 13, p 1.

¹¹⁵ Submission 23, p 1.

¹¹⁶ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland's Trading (Allowable Hours) Act 1990*, p 7.

retail trading arrangements are prescribed in s 16D according to whether a non-exempt shop is in the south east Queensland area, a tourist area, a Schedule 1AB area, a seaside resort or any other area. Table 3 below shows the core trading hours that apply under s 16D.

Table 3 Core trading hours for non-exempt shops in Queensland

Day	Opening time	Closing time
South-east Queensland area		
Monday to Friday	7am	9pm
Saturday	7am	9pm
Sunday and public holidays, other than closed days	9am	6pm
Tourist area		
Monday to Friday	6am	10pm
Saturday	7am	10pm
Sunday and public holidays, other than closed days	7am	9pm
Schedule 1AB area		
Monday to Friday	(a) if the shop is in the Townsville Tourist Area— 7am (b) otherwise—8am	9pm
Saturday	8am	6pm
Sunday and public holidays, other than closed days	9am	6pm
Seaside resort		
Monday to Friday	8am	9pm
Saturday	8am	6pm
Sunday	n/a	n/a
Public holidays, other than closed days	9am	6pm
Other area		
Monday to Friday	8am	9pm
Saturday, including Easter Saturday (the day after Good Friday)	8am	6pm
Sunday and public holidays, other than closed days and Easter Saturday (the day after Good Friday)	n/a	n/a

Source: see *Trading (Allowable Hours) Act 1990*, s 16D.

Stakeholders' views

Non-exempt shops in the south east Queensland area have some of the least restrictive trading hours arrangements, and few submitters raised specific issues about the region's trading hours.

The SDA commented that:

With the availability of online shopping, assistance from initiatives such as ‘click and collect’ and some 83+ hours of available shopping time spread over 7 days a week, we are left to wonder at what point these customers would cease to be ‘time-poor’.¹¹⁷

MGA noted that the extension of trading hours arrangements during the week and at weekends which apply to non-exempt shops resulted in ‘a significant loss of sales for independent food and grocery stores’.¹¹⁸

Six submitters commented on the need to harmonise and/or streamline trading hours.

The CCIQ noted that there is ‘strong support from business to improve regulation as it stands to achieve greater simplicity and consistency’¹¹⁹ and that this could be achieved by simplifying retail trading regulation areas and consolidating to a single set of trading hours across weekdays, Saturday, Sunday, and public holidays, having two discrete categories of shops, exempt and non-exempt, and simplifying and streamlining the exemption process to improve participation.¹²⁰

The Queensland Small Business Commissioner broadly supported ‘the streamlining and simplification of trading hours to make it easier for small businesses and consumers to navigate’.¹²¹

The SCCA submitted that the government should ‘amend the Act to harmonise prescribed Sunday and public holiday trading hours, effectively bringing all regional local government areas (LGAs) in line with South-East Queensland (SEQ)’.¹²²

MGA questioned the benefits of harmonisation of trading hours across the state, and submitted that ‘the concept of ‘harmonisation’ is always only characterised as achievable by increasing trading hours for non-exempt stores and never by non-exempt stores suggesting a reduction in their operating hours’.¹²³

Two submitters¹²⁴ noted the importance of ensuring flexibility during the COVID pandemic. The ARA recommended that ‘policy settings that supported flexible trading hours through the pandemic be maintained, as the retail sector continues to emerge from lockdown’.¹²⁵

Committee findings

The committee notes the views of stakeholders that the Act needs to be simplified. The committee has considered the various perspectives of stakeholders and their suggestions about the trading hours set by the Act. The committee believes further simplification and harmonisation of trading hours would be beneficial, building on the work of the 2017 changes.

The committee recommends the categories for non-exempt shops core trading hours (which are defined by their location, under s 16D) be reduced from the current 5 categories to 4:

- South-east Queensland area (unchanged)
- Tourist area (amended to include the Mossman and Port Douglas Tourist Area – see section 4.10 of this report)

¹¹⁷ Submission 18, p 4.

¹¹⁸ Submission 6, p 17.

¹¹⁹ Submission 11, p 6.

¹²⁰ Submission 11, p 6.

¹²¹ Submission 10, p 2.

¹²² Submission 20, p 1.

¹²³ Submission 6, p 15.

¹²⁴ Marc Fotsch-Heatley, submission 24, p 2; Australian Retailers Association, submission 9, p 2.

¹²⁵ Submission 9, p 2.

- Regional area (renaming the category ‘Schedule 1AB areas’)
- Other area (combining ‘Seaside resorts’ as currently defined in the 2017 trading hours order, and ‘Any other area’, with the core trading hours for this new category being as currently prescribed for ‘Seaside resorts’).

The committee proposes that the boundaries of these areas would continue to be as defined in the 2017 Trading Hours Order, according to s 16A of the Act. Table 4 sets out the trading hours for the 4 categories of non-exempt shops proposed by the committee.

The committee’s recommendation is intended to harmonise the prescribed core trading hours for non-exempt shops in some regional areas, to improve access, choice and flexibility for consumers and equity for retailers in similar locations, and as requested by a significant proportion of stakeholders, to simplify and reduce confusion among retailers and consumers about trading hours.

The committee notes that for the shops currently in the ‘any other area’ category under s 16D of the Act, whose core trading hours would change to permit trade on public holidays (other than closed days) under the committee’s proposal, the core trading hours set out in the Act are allowable trading hours, and not compulsory.

The committee appreciates that the proposal to combine only the categories of ‘seaside resort’ and ‘any other area’ as currently prescribed in s 16D into a new category, ‘Other area’, rather than creating a broader category encompassing locations in ‘schedule 1AB area’, is an incremental change.

Table 4 Recommended core trading hours for non-exempt shops in Queensland

Day	Opening time	Closing time
South-east Queensland area		
Monday to Friday	7am	9pm
Saturday	7am	9pm
Sunday and public holidays, other than closed days	9am	6pm
Tourist area		
Monday to Friday	6am	10pm
Saturday	7am	10pm
Sunday and public holidays, other than closed days	7am	9pm
Regional area		
Monday to Friday	(a) if the shop is in the Townsville Tourist Area— 7am (b) otherwise—8am	9pm
Saturday	8am	6pm
Sunday and public holidays, other than closed days	9am	6pm
Other area		
Monday to Friday	8am	9pm
Saturday	8am	6pm
Sunday	n/a	n/a
Public holidays, other than closed days	9am	6pm

The committee's recommendation is partly based on the fact that the committee was not able to consult with the communities in every regional town to hear their views on trading hours in all of these places. The committee expects that individual communities will have views on the core trading hours category that best matches their needs.

In the event that towns in the new 'Other area' category wish to alter their trading hours to those operating in the 'Regional area' category in the future, this may occur by making an application under s 21 of the Act to the QIRC to independently assess the change. The committee considers that this is the appropriate approach moving forward.

Recommendation 2

The committee recommends the categories for non-exempt shops core trading hours (which are defined by their location, under section 16D) be reduced to 4 categories:

- South-east Queensland area (unchanged)
- Tourist area (amended to include the Mossman and Port Douglas Tourist Area)
- Regional area (renaming the category 'Schedule 1AB areas')
- Other area (combining 'Seaside resorts' as defined in the 2017 Trading Hours Order, and 'Any other area', with the core trading hours for this new category being as currently prescribed for 'Seaside resorts').

4.4 Shops selling hardware, motor vehicles or caravans

The Act prescribes specific trading hours arrangements for non-exempt shops that sell hardware (s 16E) and shops that sell motor vehicles or caravans (s 16EA).

A 'hardware shop' is defined in the Act (s 16A) to mean 'a shop the business of which is, wholly or partly, the supply of -

- (a) construction material, tools, fittings and other appropriate products and equipment to –
 - i. builders, associated tradespeople, contractors or sub-contractors engaged in the building industry, or
 - ii. the general public, or
- (b) similar products appropriate for home improvement purposes to the general public'.

Stakeholders' views

Four submitters addressed the retail trading arrangements for hardware stores and shops selling motor vehicles or caravans.

MGA commented on the permitted hours for hardware shops in the Act at s 16E. MGA submitted that the permitted hours 'resulted in smaller hardware stores operating at a competitive disadvantage to larger hardware retailers as trading hours are virtually identical while incurring proportionately higher operating costs as a result of not possessing the same economies of scale'.¹²⁶

In regard to the trading hours arrangements for shops selling motor vehicles or caravans, the AADA, the MTAQ, and the CTIAQ strongly endorsed the current trading hours for these shops as being necessary to fit the unique nature and trading circumstances of their industry sector. These groups stated that any extension to trading hours for motor vehicle and caravan retailers would be

¹²⁶ Submission 6, p 17.

detrimental to business and employees, while not providing meaningful benefits to customers, for a number of reasons including:

- both dealers and staff (of large, small, city and regional dealerships) are opposed to Sunday trading, primarily because of the negative impact on work-life balance for staff and dealers
- Sunday trade would exacerbate the industry's skills shortage, which since the pandemic has become a skills 'crisis', as dealers are afraid they will lose staff, have additional costs to replace staff, and burn out remaining staff, resulting in more staff departures
- the way people shop for vehicles has changed – dealership foot traffic has reduced with a shift to online research, virtual inspections and test drives, and sales increasingly through manufacturers, with dealerships being responsible more for vehicle delivery and for service and repair
- dealerships being closed on Sunday does not deter customers, as customers are well-educated about the product and vehicle purchase is not usually an impulse buy, involving research and interactions over several days, including online and remotely
- Sunday trade would result in increased costs, but would not increase sales or jobs - the NSW experience is that the volume of sales from Sundays does not offset staff and other costs of opening on Sunday.¹²⁷

Further, according to the MTAQ, 'while dealers would have the option of trading (or not) on a Sunday were it legislated, the reality is that the very competitive nature of the industry ... would compel them to pursue Sunday trading despite the financial implications'.¹²⁸

In its submission, CTIAQ included the outcomes of a survey of its membership suggesting 90% are fully satisfied with present trading hours, 80% don't want Sunday trading for caravan and recreational business legislated, 77% don't want the ability to open/trade on gazetted public holidays, and 78% don't want other modifications to present trading hours arrangements.¹²⁹

Committee findings

The committee notes the views of MGA regarding the competitive operating environment for small hardware retailers.

The committee accepts the submissions of stakeholders from the motor vehicle and caravan retail industry sector about the factors influencing their trading environment and the need for the trading hours of motor vehicle and caravan retailers contained in the Act to be maintained.

The committee recommends that that the trading hours for the industry specific categories under s 16E – hardware shops and s 16EA – motor vehicle and caravan retailers be retained in the Act without amendment.

Recommendation 3

The committee recommends that the trading hours for the industry specific categories under section 16E – 'Hardware shops' and section 16EA – 'Shops selling motor vehicles or caravans' be retained in the *Trading (Allowable Hours) Act 1990* without amendment.

4.5 Independent retail shops

Section 6(1) of the Act provides criteria for determining whether a shop is an independent retail shop based on the number of persons working at the shop and in all shops in Queensland operated by the

¹²⁷ See submissions 5, 8, 15.

¹²⁸ Submission 15, p 4.

¹²⁹ Submission 5, p 3.

same owner. Section 6(1)(b) stipulates the number of persons engaged at any one time in the shop (including an owner of the business) must not exceed 30 persons, and 100 persons in that shop and any other shop owned by the same owner in the state.

These numbers were increased, rather than adopting other types of criteria, as part of the 2017 amendments to the Act from 20 and 60 persons to 30 and 100 persons respectively in line with a recommendation (Recommendation 12) from the 2016 Review.. The report from that review noted:

While alternatives to using employment limits, such as gross turn-over and corporate structure, were explored as a way of distinguishing smaller retailers from the larger retail chains, it was found that these alternatives were unsatisfactory.¹³⁰

Stakeholders' views

MGA argued in its submission that the 30 staff per store and 100 staff per business limit for independently owned shops limits the ability of businesses to expand. MGA proposes that a new framework to define independently owned stores by organisation structure should be pursued or, alternatively, that the staff limits in the Act be increased from 30 to 40 and 100 to 200 respectively. In support of the proposed changes, MGA noted in its submission:

- 'independent retailers ... must be able to employ more people to meet the evolving needs of consumers...however, they are stifled by the current framework'¹³¹
- the person limits discourage or forbid expansion of a successful business model by building or acquiring new stores¹³²
- 'if a community grocery business were to adopt the very common corporate structure whereby the real property, buildings, plant and corporate debt and leases are owned by one company, whereas the operation of the business and employment of staff is conducted by a related entity, such a structure would prevent the business being an independent retail store, as it would offend the requirement in section 6(1)(a) of the Act that the business, if owned by a company, must not be owned by a related body corporate'¹³³
- the 30 person limit per store 'does not allow sufficiently for peaks in the business'.¹³⁴

The SDA stated that it 'accepts that statutory definitions found in the Act may not necessarily reflect an accurate composite of businesses that are found within the retail landscape'.¹³⁵ The SDA noted, for example, there is 'a significant crossover of goods amongst retailers that may not allow a particular store to be classed snugly within the current definitions'¹³⁶ and that 'there are corporate and business structures that utilise non-related entities to overcome the restrictions around staffing and being an independent retail shop'.¹³⁷

The issue of person limits imposed by s 6 was not raised in any of the committee's hearings.

¹³⁰ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland's Trading (Allowable Hours) Act 1990*, p 29.

¹³¹ Submission 6, p 24.

¹³² Submission 6, p 24.

¹³³ Submission 6, p 25.

¹³⁴ Submission 6, p 25.

¹³⁵ Submission 18, p 6.

¹³⁶ Submission 18, p 6.

¹³⁷ Submission 18, p 6.

Committee findings

The committee appreciates the points made by MGA in favour of increasing the person limits for defining ‘independent retail shops’ in s 6 of the Act from 30 persons to 40 and 100 to 200 persons, but is not persuaded that the changes are warranted.

The category of ‘independent retail shop’ and the criteria used in the Act were intended to reflect small businesses. The committee suggests allowing a business entity to have 40 persons on the floor at any one time or 200 persons working at any time at all shops owned by the same owner could be viewed as inconsistent with the original intent of the ‘independent retail shop’ category in the Act.

Recommendation 4

The committee recommends that the definitional criteria for independent retail shop at section 6(1) of the *Trading (Allowable Hours) Act 1990* be retained.

4.6 Protections for retail workers

The Act provides protections for employees in circumstances where a shop’s retail trading hours are extended.

Section 36A was introduced by the *Trading (Allowable Hours) Amendment Act 2002* and provides protections to employees who were employed before 1 August 2002 in non-exempt shops in south-east Queensland, in that they cannot be forced to work hours above what was permitted at that time.

Section 36AA was introduced by the *Liquor and Other Legislation Amendment Act 2017* and provides protections for employees in non-exempt shops in south-east Queensland, in that they cannot be forced to work on Easter Sunday.

Section 36B was introduced by the *Trading (Allowable Hours) Amendment Act 2017* and provides protections to employees in non-exempt shops across Queensland, in that they cannot be forced to work extended hours (being hours greater than those introduced by the 2017 amendment), unless they freely elect to do so.

Section 36B of the Act states:

- (1) An employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours.

Maximum penalty—

- (a) for a first offence—16 penalty units; or
 - (b) for a second or later offence—20 penalty units.
- (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.
 - (3) For subsection (1), an employee has not freely elected to work during extended hours—
 - (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
 - (b) only because the employee is rostered, or required under an industrial instrument, to work during those hours.

- (4) In this section—

elect means agree in writing for a stated or indefinite period.

employer means an employer of an employee in a non-exempt shop.

extended hours means the permitted trading hours under this Act for a non-exempt shop on any day (other than a closed day), but only to the extent the hours are greater than the shop’s permitted trading hours immediately before the commencement.

industrial instrument means any of the following within the meaning of the *Industrial Relations Act 2016*—

- (a) a modern award, bargaining award or certified agreement;
- (b) a federal industrial instrument.

The provision was included on the recommendation of the 2016 Review that legislative protections be provided to workers to ensure that agreement to work extended hours under the Act is voluntary. The 2016 Review acknowledged ‘the need to ensure that retail employees who are already routinely working what are considered to be unsociable hours are not compelled to work further hours’ as well as ‘a number of related safety issues including the safety of journey to and from work, public transport and staff parking’ and ‘the impacts of extended trading hours on vulnerable groups of workers such as young people and women who have lesser access to safe, affordable and accessible transport, particularly late at night’.¹³⁸

The report from the 2016 Review noted the potential for loss of family and leisure time as a result of extended trading hours and that some employees may feel pressured to work unsociable hours.¹³⁹

Stakeholders’ views

The SDA highlighted the critical importance of protecting the rights of workers to choose to work extended hours or to not work those hours, and the need to strengthen the existing protections in the Act.

The SDA submission pointed out that extensions of trading hours invariably result in workers being required to work unsociable hours.¹⁴⁰ The SDA noted significant negative consequences of extended trading hours on quality of life and worker safety and security, and pressure on staff to accept unsociable working hours to retain employment. The SDA submitted that protection of employees’ entitlement to choose to work, or not work, unsociable hours in circumstances where trading hours are extended is required for several reasons, including:

- extensions of trading hours invariably result in workers being required to work unsociable hours (earlier starts, later finishes, working across weekends)
- the ability to utilise public transport to and from work is limited during extended hours, which creates additional pressure for many workers, particularly young workers, single parents and families without access to a vehicle or only one shared vehicle, and is a particular concern for workers in rural areas where access to public transport is even more limited
- lack of choice, increased cost and difficulties with accessing childcare during unsociable hours
- there is evidence of a heightened risk of customer abuse and violence during unsociable hours
- workers feel that electing not to work extended hours will put their employment security at risk.¹⁴¹

In its submission and in evidence to the committee, the SDA noted the expectations placed on retail workers to work unsociable hours and the repercussions for workers who elect not to do so. The SDA described how retail workers have reported that since 2017 where a ‘special event’ declaration of

¹³⁸ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland’s Trading (Allowable Hours) Act 1990*, p 28.

¹³⁹ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland’s Trading (Allowable Hours) Act 1990*, p 14.

¹⁴⁰ Submission 18, p 4.

¹⁴¹ Submission 18.

extended hours for non-exempt shops (large grocery/department stores) has been made, workers have reported that in these situations:

- they were not advised they could elect to work or not during the extended hours
- they felt pressured or forced to work outside their normal hours and
- most did not agree to work those hours in writing.¹⁴²

The SDA submitted that 'special event' declarations have not consistently applied the protections of s 36B of the Act:

Section 36B(1) of the Act states that an employer must not require an employee to work during 'extended hours' unless the employee has freely elected to do so as evidenced in writing. It is our strong view the inclusion of Section 36B(1) in the legislation demonstrates its intention to ensure hours outside the permitted hours remain voluntary working hours for retail employees. Whilst Section 5 applications are not an application to extend the permitted trading hours in a technical sense, the reclassification of a Non-Exempt Shop to an Exempt Shop has the same practical effect. The SDA was successful for a period of time in arguing the Section 36B(1) protections be applied to declarations made by the Commission pursuant to Section 5 of the Act. It has since been determined by the Commission it does not have the jurisdictional ability to apply those protections to future declarations. On occasions where the Commission has determined Section 36B(1) protections could not be applied, attempts have still been made to stress the importance of voluntary work as a strong concern. Ultimately, this does not prevent retail workers from being placed in the situation where they can effectively be required to work the extended hours without the relevant protections originally intended by the legislation to apply to those hours.

We have heard it suggested that although Section 36B(1) protections are desirable, in their absence retail employees are protected by other instruments; such as enterprise agreements which require consultation before a roster change or a written agreement to work additional hours. The SDA submits this perspective does not adequately account for the reality of the expectations, relational pressures and repercussions retail workers face in store.¹⁴³

In regard to protection of employees working extended hours the NRA submitted that:

Retailers recognise the necessary contribution of retail workers to trade any additional hours and respect the voluntary nature of work, regardless of a special event application. This has been the case for many years under Enterprise Bargaining Agreements, and in the last five years has routinely been enshrined in trading hours orders issued by the QIRC.¹⁴⁴

The NRA stated that following approval of special event applications, store managers offering employees additional shifts have noted that some employees are eager for extra work and others prioritise time with families and friends, or participation in sporting, cultural or religious activities over the weekend. NRA states that 'each retail worker can make their own decision about whether to accept any additional hours that may be offered to them over the special event period'.¹⁴⁵

On this point, the SDA noted that 'workers desire an entitlement to have the 'election whether to work or not' so they do not have to simply rely on a general undertaking by a limited number of large employers that work will be voluntary' and that there is a resistance by employers to include in Enterprise Negotiations the guarantee that work during any proposed extended times will be voluntary.¹⁴⁶ The SDA stated that:

¹⁴² Submission 18, pp 15-16.

¹⁴³ Submission 18, p 15.

¹⁴⁴ Submission 21, p 4.

¹⁴⁵ Submission 21, p 4.

¹⁴⁶ Submission 18, p 2.

...certain management from large retailers give unequivocal guarantees that work during any proposed extended times will be voluntary, however members continue to provide feedback they feel pressured by their employers to work in the extended hours and when pressed in Enterprise Negotiations to include this guarantee in the respective agreement, senior management within these businesses refuse point blank to do so.¹⁴⁷

Views of the department

The department advised the committee that the protection of workers provided by the Act was an aspect of the operation of the Act that would benefit from clarification, stating 'there is merit in considering strengthening the protections available to employees, particularly whether the commission has a prospective order-making power to protect voluntary workers; in other words, clarify the situation around voluntary work and extension of hours'.¹⁴⁸

The department further advised the committee that the protection of employees in accordance with s 36B is not monitored by the OIR.¹⁴⁹

Committee findings

The committee concurs with submitters' concerns in regard to declarations of 'special events' and the application of s 36B to ensure that in all circumstances workers who work extended hours do so voluntarily. Impacts on workers can be significant, and include issues such as transport, childcare, and personal safety, and the reported incidence of pressure on employees to work extended hours, contrary to Act, is a concern.

The committee notes that the protection of employees in accordance with s 36B is not proactively monitored or compliance enforced by the OIR. Despite this, the committee considers that application of s 36B of the Act which seeks to protect the rights of retail workers, is a significant aspect of the operation of the trading hours regulatory framework.

The committee notes the potential for employers, through use of enterprise agreements, to effectively bypass the protections intended by the provision.

The committee questions the value of subsection 36B(2) which states that the requirement of s 36B(1) that working extended hours must be voluntary does not apply if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.

The committee considers that employment of a retail worker under a federal enterprise agreement or award does not lessen the risks to that retail worker when working extended hours which the provisions of the Act were intended to provide protection from. The committee therefore recommends that the Act be amended to remove s 36B(2), so that s 36B applies as a condition of any extension of retail trading hours, irrespective of any workplace agreement or industrial award.

Recommendation 5

The committee recommends that the *Trading (Allowable Hours) Act 1990* be amended to remove section 36B(2), so that section 36B applies as a condition of any extension of retail trading hours, irrespective of any workplace agreement or industrial award.

The committee notes that some decisions of the QIRC in a number of s 5 'special event' applications have specifically included an order to protect employees consistent with s 36B, while some recent decisions have not. A decision by the QIRC to grant an application for a declaration of a 'special event'

¹⁴⁷ Submission 18, p 2.

¹⁴⁸ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 15 November 2021, p 1.

¹⁴⁹ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 15 November 2021, p 3.

results in non-exempt shops in an area being allowed to trade as an exempt shop for the period, which means the hours the shop would normally be permitted to trade are *extended* during the period. The committee considers that when an application for extended trading hours for a special event is granted by the QIRC, the protection of workers to freely elect to work or not to work the extended hours, as provided by the Act, should be explicitly stated in the declaration.

In order to affirm that the statutory protection set out in s 36B of the Act applies to employees affected by 'special event' declarations made by the QIRC, the committee recommends that the Act be amended to clarify that:

- the QIRC has the power to make an order about voluntary work in accordance with s 36B of the Act, and
- a declaration of a 'special event' by the QIRC must include a condition about voluntary work which reflects that s 36B will apply to all employees of non-exempt shops covered by the declaration.

Recommendation 6

The committee recommends that the *Trading (Allowable Hours) Act 1990* be amended to clarify that:

- the Queensland Industrial Relations Commission has the power to make an order about voluntary work in accordance with section 36B of the Act, and
- a declaration of a 'special event' by the Queensland Industrial Relations Commission must include a condition about voluntary work which reflects that section 36B of the Act will apply to all employees of non-exempt shops covered by the declaration.

4.7 Role of the Queensland Industrial Relations Commission

Section 21 of the Act provides a role for the QIRC to make orders for allowable trading hours outside the permitted hours prescribed in the Act for non-exempt shops. This power is limited to extending the permitted trading hours of non-exempt shops on days that shops may trade, ie the QIRC may not make an order that permits trade on a day prescribed in the legislation as a closed day. The QIRC may not make an order that shortens permitted trading hours.¹⁵⁰ During the moratorium period since 2017, this role of the QIRC to make trading hours orders for non-exempt shops has been suspended.¹⁵¹

In recommending that the QIRC continue to adjudicate allowable trading hours outside the legislated trading hours for non-exempt shops (to be suspended during the period of the moratorium), the 2016 Review noted at the time that 'a continued role for the QIRC in determining trading hours orders and variations as an independent arbiter' was supported by some members of the reference group (NRA, SDA and AWU) but opposed by others (MGA and CCIQ).¹⁵²

The QIRC's role in relation to making a declaration of a 'special event' under s 5 of the Act and the protection of workers affected by such declarations, is discussed in detail in section 4.1 of this report.

Stakeholders' views

Stakeholders presented a range of views to the committee in relation to the role of the QIRC in regulating of trading hours.

¹⁵⁰ *Trading (Allowable Hours) Act 1990*, ss 21-31.

¹⁵¹ See *Trading (Allowable Hours) Act 1990*, s 59.

¹⁵² John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland's Trading (Allowable Hours) Act 1990*, p 30.

The NRA and the SCCA supported the reactivation of the role of the QIRC as an independent arbiter to decide on applications and make trading hours orders outside the hours prescribed in the Act.¹⁵³ Similarly, while Mr Fotsch-Heatley submitted that trading hours should be deregulated in general, his view was that ‘the QIRC, with its corporate knowledge and ability to hold hearings, is best placed to make decisions on permitted trading hours’.¹⁵⁴

In contrast, MGA was opposed to the QIRC setting hours outside the prescribed hours, submitting that the government ‘could put a quick, concise, and tidy end to the waste of resources and inequality in the application process by ensuring that any future changes to trading hours are solely undertaken by Government and not the QIRC’.¹⁵⁵ MGA suggested that an advantage of requiring any changes to prescribed trading hours to be only by legislation ‘is that it will likely lead to a reduction in the level of variation in trading hours across the State’ which would enhance business certainty for investors.¹⁵⁶

The CCIQ stated that:

The exemption processes require significant time and money to present a case before the QIRC. This makes it difficult to access for smaller establishments. For now, this process is sufficient however, in the future it would be beneficial if this process was simplified and streamlined for better business accessibility.¹⁵⁷

The Queensland Small Business Commissioner submitted that if the moratorium is lifted and QIRC’s power to make trading hours orders reinstated, the regulatory streamlining achieved by the 2017 amendments may be undone, resulting in a more complex trading landscape.¹⁵⁸

Views of the department

In relation to the role of the QIRC in trading hours regulation prior to 2017, the department advised the committee that:

Prior to the 2017 amendments, 99 trading hours provisions were contained in 40 pages of QIRC orders. Much of the complexity and confusion surrounding Queensland’s permitted trading hours have been attributed to these orders. The decision to replace orders with legislated permitted hours was made to simplify arrangements for all parties, to reduce regulatory red tape and to create greater efficiencies for businesses.¹⁵⁹

The department further advised:

Considering the detail of the examination of facts and reasons that accompany applications for trading hours, OIR considers that, operationally, there is merit in retaining the QIRC to hear, test and decide on those applications, whenever they are permitted to be made. The QIRC has traditionally made site visits and interviewed interested parties to ensure there is the fullest ventilation of trading hours claims.¹⁶⁰

As noted in section 4.1 of this report, the department also advised the committee that clarification that the QIRC has the power to make orders consistent with s 36B of the Act in relation to employees of non-exempt shops covered by ‘special event’ declarations would be beneficial.

¹⁵³ Submission 20, p 2; submission 21, p 2.

¹⁵⁴ Submission 24, p 1

¹⁵⁵ Submission 6, p 23.

¹⁵⁶ Submission 6, p 23.

¹⁵⁷ Submission 11, p 3.

¹⁵⁸ Submission 10, p 2.

¹⁵⁹ Department of Education, Office of Industrial Relations, *Background information paper – Review of the Trading (Allowable Hours) Act 1990*, p 8.

¹⁶⁰ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 29 November 2021, p 5.

Committee findings

The committee considers that the primary reason the 5 year moratorium has been valued by the majority of submitters and witnesses is for the stability it has provided, allowing shops to operate according to predictable retail trading arrangements that are prescribed in the Act, as most stakeholders (retailers, workers, and consumers) do not wish to return to the previous system for making changes to trading hours for exempt shops.

The committee recommends that s 21 (Trading hours orders on non-exempt shops) be amended to remove ss 21(3)(a) and 21(3)(c)(i) to prevent applications being made to the QIRC to make orders to vary core trading hours from the hours prescribed in the Act, once the moratorium has ended.

The committee considers that core trading hours should be legislated in the Act for consistency and to avoid having a variety of trading hours orders again being made. If trading hours need to be changed in the future this would, rightly, require change to the Act.

Recommendation 7

The committee recommends that section 21 (Orders concerning non-exempt shops) of the *Trading (Allowable Hours) Act 1990* be amended to remove sections 21(3)(a) and 21(3)(c)(i) to prevent the situation where applications are made to the Queensland Industrial Relations Commission to make orders to vary core trading hours from the hours prescribed in the Act, once the moratorium has ended.

4.8 Definitions of trading hours areas

As noted earlier in this report, the boundaries of the south-east Queensland area, seaside resorts and tourist areas are defined in the 2017 Trading Hours Order. This is a compilation of orders made by the QIRC in response to applications to vary trading hours arrangements prior to 2017.

The south-east Queensland area is defined to include the Sunshine Coast area, the Brisbane Statistical Division (as defined in the 2001 edition of the Australian Geographical Classification published by the ABS), the local government area of the Gold Coast City Council, the islands in the coastal waters east of these areas, and the towns of Beaudesert, Fernvale, Gatton, Laidley and Woodford.¹⁶¹

Section 16D of the Act states that the term 'seaside resort' means 'a Tourist and/or Seaside Resort within the meaning of the 2017 trading hours order'.

The 2017 Trading Hours Order includes at Schedule 1:

- (3) *Tourist and/or Seaside Resorts* - Rainbow Beach; Tin Can Bay; Burrum Heads; Woodgate; Moore Park; Keppel Sands; and the islands off the sea coast of Queensland being part of the State of Queensland.

Provided that for the purposes of trading on Sundays and Public Holidays this definition excludes the islands as defined in clause (1) of Schedule 1.¹⁶²

The definitions for areas for trading hours arrangements specified in the Act continue to rely on the definitions set by individual orders made by the QIRC. These orders are now compiled in the 2017 Trading Hours Order, including orders originally made by the QIRC in the 1990s. The wording used in the orders and area definitions reflect the wording used in the applications the orders relate to which vary in how areas are described. This has led to inconsistencies and discrepancies in how particular areas are defined for the purposes of the Act. As business precincts develop and expand, it is also

¹⁶¹ Queensland Industrial Relations Commission, *2017 Trading Hours Order*, p 13, https://www.qirc.qld.gov.au/sites/default/files/2017_trading_hours_order.pdf?acsf_files_redirect.

¹⁶² Queensland Industrial Relations Commission, *2017 Trading Hours Order*, p 14, https://www.qirc.qld.gov.au/sites/default/files/2017_trading_hours_order.pdf?acsf_files_redirect.

feasible that definitions for areas in the 2017 Trading Hours Order to define those precincts may now be inaccurate.

Stakeholders' views

The CCIQ shared with the committee the frustrations of several of its chambers in relation to the definitions of areas, such as tourist areas or central business districts. The CCIQ told the committee:

Several chambers consulted discussed irritation in trading hour discrepancies along boundaries of differing areas. This has improved a great deal as the number of areas has shrunk significantly since 2016 however, businesses are still experiencing difficulties. For example, shops on the side of a road may be considered a 'tourist area' and able to trade on a Sunday, whilst a shop on the other side may be categorised as 'all other areas' and not be able to open. This results in all foot traffic being diverted to areas that can open and creates market opportunities for shops nearby to trade.¹⁶³

Views of the department

At the 29 November 2021 public briefing, Mr Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, told the committee:

...the geographical boundaries have not been reviewed since the original order was made...the geographical boundaries that are set in this order are set and frozen...if there were to be a reconsideration of those geographical boundaries, without any other process being introduced for that, it would be by application to the commission under the provisions of section 21.¹⁶⁴

Committee findings

The committee considers that the process available under s 21 of the Act for applications to be made to the QIRC to vary area definitions is an appropriate process for changing the existing area definitions used to set the core trading hours categories for non-exempt shops.

The committee encourages chambers of commerce, local governments and other business bodies to lodge applications with the QIRC for area definitions to be amended where there are discrepancies.

4.9 Moratorium on trading hours orders and restrictions on applications

Section 59 of the Act suspended, for a 5 year period, the power of the QIRC to hear applications and make orders for allowable trading hours for non-exempt shops outside the permitted hours specified in the Act.¹⁶⁵ This moratorium is due to end on 31 August 2022.

The moratorium was recommended by the 2016 Review to provide certainty about trading hours, after many successful applications to the QIRC for extended hours in the decade prior to 2016 had produced a complex and confusing environment with numerous different trading hours arrangements across Queensland.¹⁶⁶

Stakeholders' views

A number of stakeholders supported the moratorium provided by s 59 of the Act and the stable trading hours arrangements it has provided.¹⁶⁷ Others highlighted the costs and stifling effects for some

¹⁶³ Submission 11, p 4.

¹⁶⁴ Public briefing transcript, Brisbane, 29 November 2021, p 7.

¹⁶⁵ *Trading (Allowable Hours) Act 1990*, s 59.

¹⁶⁶ John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland's Trading (Allowable Hours) Act 1990*, p 28.

¹⁶⁷ MGA Independent Retailers, submission 6; Robbie Katter MP, Member for Traeger, submission 22; Queensland IGA State Board, submission 17; Shop Distributive and Allied Employees Association (Queensland Branch), submission 18.

businesses and regions.¹⁶⁸ Another cohort of stakeholders called for the moratorium to be allowed to lapse in August 2022, as prescribed in the Act.¹⁶⁹

MGA supported the moratorium and noted that the opportunity for MGA members to trade when the 'Chains' are closed is of particular importance to MGA members with most stores endeavouring to open before and close later than their nearest chain store, but also noted that 'any certainty provided by the five-year moratorium has been eroded by the impact of COVID-19'.¹⁷⁰

MGA submitted that an extension of the moratorium for at least another 10 years would provide time for independent food and grocery retailers to continue to develop 'a unique point of difference ... in the form of family and privately owned food and grocery businesses being able to stock and sell artisan Queensland fresh and gourmet foods alongside various Queensland produced local and artisan beverages'¹⁷¹ which it considers is 'crucial to the survival and viability of these small retailers'.¹⁷²

The Member for Traeger, Robbie Katter MP, also supported extension of the moratorium.¹⁷³

The Queensland IGA Board submitted that at a minimum it believes the committee should recommend 'extending the current moratorium for 5 years'.¹⁷⁴

The SDA noted in its submission that the existing trading hours as permitted by the legislation 'secure a more efficient framework by providing an appropriate and central set of permissible hours that remain unchanged on a long-term basis by successive and frequent applications'.¹⁷⁵ The SDA submitted that it strongly supports a further moratorium period of five years.¹⁷⁶ The SDA requested that the moratorium be extended for several reasons including:

- the changing retail landscape as a result of the pandemic – customers are not demanding extended trading hours as they can now shop online for most goods at all hours and have them delivered at minimum/no cost
- there is little evidence that longer trading hours result in actual employment growth which is sustainable and ongoing - the SDA noted that there is anecdotal evidence that extended trading hours result in existing workforces being spread more thinly rather than creating new jobs
- the impact on small and medium-sized businesses – failure to protect the competitive advantage for exempt shops is likely to lead to a concentration of the market
- the need to consider vulnerable workers - the Act currently provides a level of protection to retail workers. Extended hours can affect mental health, childcare costs, transport issues, safety and customer abuse
- decreasing federal protection and compensation of retail workers working unsociable hours.¹⁷⁷

¹⁶⁸ Chamber of Commerce and Industry Queensland, submission 11; Marc Fotsch-Heatley, submission 24.

¹⁶⁹ Shopping Centre Council of Australia, submission 20; National Retail Association, submission 21; Australian Retailers Association, submission 9.

¹⁷⁰ Submission 6, pp 6, 9.

¹⁷¹ Submission 6, p 4.

¹⁷² Submission 6, p 9.

¹⁷³ Submission 22, p 1.

¹⁷⁴ Submission 17, p 4.

¹⁷⁵ Submission 18, p 3.

¹⁷⁶ Submission 18, p 17.

¹⁷⁷ Submission 18, pp 3-10.

The CCIQ submitted that with the current pressures largely resulting from the impacts of the COVID-19 pandemic, many regions consulted on this issue have stated that the moratorium ‘has at times been a barrier’ and that not having the flexibility to change the trading hours of stores was ‘stifling to the liveability of communities and has been seen to exacerbate difficulties with job creation and economic prosperity’.¹⁷⁸

The NRA submitted that the Act has not been properly tested because of the moratorium and that the moratorium should expire, allowing the Act to operate in its current form with the QIRC again empowered to make decisions on trading hours orders.¹⁷⁹ The NRA also argued that there is no pandemic-related justification for extending the moratorium any further, and that the COVID-19 pandemic has demonstrated the need for a regulatory system that responds to sudden changes in the business environment. If the moratorium were to be extended, the NRA stated it should be only for a very limited period, and with additional safeguards to allow urgent applications when circumstances warrant.¹⁸⁰

Views of the department

In relation to the moratorium, Mr Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations told the committee:

OIR observes that the moratorium has been in place for just over four years and it has brought stability to the retail sector as far as keeping trading hours unchanged, with the exception of the value of section 5 applications. What I have noted is that COVID has significantly impacted that sector since early 2019. It has impacted everybody but particularly in the retail area. The impacts of the upcoming changes of opening up the state may also have unexpected or unforeseen consequences. To this end—and I stress that this is not government policy—I see that there is merit in extending the moratorium into 2023 to allow any further COVID impacts to be better understood without the burden of retailers, particularly the smaller retailers, having to participate in further trading hours cases.¹⁸¹

Committee findings

The committee acknowledges that the stability provided by the s 59 moratorium since August 2017 has been valued by stakeholders who do not wish to return to the previous system of trading hours arrangements set by the QIRC.

The committee considers that amendment of the Act to remove ss 21(3)(a) and 21(3)(c)(i), preventing further orders being made for changes to trading hours for non-exempt shops, will achieve the same stabilising outcome as an extension of the moratorium.

The committee also notes that while the moratorium has achieved its intended purpose of providing stability in trading hours arrangements, this has been somewhat disrupted by the COVID-19 pandemic since the beginning of 2020. The committee considers that a short extension of the moratorium on all trading hours orders under s 21 of the Act, while there continues to be uncertainty associated with the on-going pandemic, may assist the retail sector’s recovery. The committee also considers this would assist business owners to adapt to the changes to the s 16D core trading hours recommended by the committee in this report.

The committee therefore recommends that the Act be amended to extend the s 59 moratorium period for an additional 12 months to 31 August 2023.

¹⁷⁸ Submission 11, p 3.

¹⁷⁹ Submission 5, p 3.

¹⁸⁰ Submission 5, p 4.

¹⁸¹ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 29 November 2021, p 4.

Recommendation 8

The committee recommends that the *Trading (Allowable Hours) Act 1990* be amended to extend the section 59 moratorium for an additional 12 months to 31 August 2023.

4.10 Mossman and Port Douglas Tourist Area moratorium

Section 56 of the Act provides that, for a five-year period, non-exempt shops in the Mossman and Port Douglas Tourist Area are able to trade as exempt shops, and that independent retail shops in the area are exempt from s 17 and therefore not required to close on Christmas Day, Good Friday and Anzac Day prior to 1.00pm. This moratorium expires on 31 August 2022.

These special trading arrangements for the Mossman and Port Douglas Tourist Area were recommended in the report from the 2016 Review to ‘benefit local tourism servicing cruise ships arrivals and provide a useful case study on the impacts of deregulation’, noting that the ‘Douglas Chamber of Commerce and Douglas Shire Council strongly advocated for this recommendation’.¹⁸²

Separate to the Mossman and Port Douglas Tourist Area, the ‘Town of Port Douglas’ had been previously declared, and remains, a tourist area under s 16A of the Act.

Stakeholders’ views

Stakeholders highlighted the continuing dependence of the Port Douglas and Mossman communities on tourism, the impact and need for the moratorium provided by s 56, the need to expand it to other areas of the Douglas Shire, and whether the moratorium should be allowed to lapse or should be extended. All but one submitter were supportive of the moratorium.

4.10.1 Importance of tourism and of having shops open 7 days a week

The CCIQ, Tourism Port Douglas Daintree and the Douglas Chamber of Commerce highlighted the pivotal role of tourism in the regional economy.

The CCIQ submitted that ‘Port Douglas and Mossman’s economy has been primarily driven by tourism due to its proximity to the Wet Tropics World Heritage Area, National Park, and the Great Barrier Reef World Heritage Area’ and that ‘the industry supporting the greatest employment in the region in 2019/20 was accommodation and food services’.¹⁸³

Tourism Port Douglas Daintree, the local tourism organisation for the Douglas Shire representing 193 businesses, told the committee that tourism contributes to more than 80% of the region’s economy making the region ‘one of the most reliant regions in Australia on the visitor economy’.¹⁸⁴

The Douglas Chamber of Commerce told the committee that the Port Douglas Region is unique because most of the available accommodation is serviced apartments which encourage and depend on longer stays by tourists.¹⁸⁵ According to the Chamber, a tourist’s needs during longer-term stays include all food related businesses such as butchers, bakeries, and supermarkets, cafes and fashion, retail and accessory shops.¹⁸⁶ The Chamber further advised that ‘tourism is greatly dependent both upon social media and word of mouth referrals from visiting tourists to friends, colleagues and social media contacts’ and that ‘images or perceptions of a town or region that is dead, closed or has no significant activity during one of the most visited days of the year (public holidays) has far reaching

¹⁸² John Mickel, Chair, Trading Hours Review Reference Group, December 2016, *A Review of Queensland’s Trading (Allowable Hours) Act 1990*, p 29.

¹⁸³ Submission 11, p 2.

¹⁸⁴ Submission 27, p 1.

¹⁸⁵ Submission 19, p 2.

¹⁸⁶ Submission 19, p 2.

consequences and may significantly damage both industry, economic and population growth or perception of desirability of such areas'.¹⁸⁷

Colliers, which manages the major shopping centre at Port Douglas, noted that 'the visitor market expects and needs seven (7) day trading for Saturday arrivals and the overall visitor experience'.¹⁸⁸

4.10.2 Importance of the moratorium to the region's economy

CCIQ told the committee the deregulated trading arrangements for non-exempt shops provided by the moratorium 'has been noted by the local chamber of commerce as being crucial to businesses' survival'.¹⁸⁹

At the Mossman public hearing, Mr Martin Tranter, President of the Douglas Chamber of Commerce, explained the importance of public holiday and other holiday trading to the region's economic survival:

In the Port Douglas region and the Douglas region in particular, we are also fundamentally reliant upon the school holidays, Easter holidays and Christmas holidays. Those particular holidays really determine maximum turnover for our businesses. If we cannot get maximum turnover during those periods, we cannot sustain ourselves through a long wet season, when there are no visitors.

Telling a business that they cannot open on Good Friday or Christmas is a bit like saying to a farmer, 'Go and plant a crop. We'll give you optimal conditions to grow that crop so you can get the best possible return, but when you need to get that crop off, you can't. We're going to ban you from doing that for the day.' Things like Good Friday and Christmas are actually pretty important for that economy up here.¹⁹⁰

The Douglas Chamber of Commerce also told the committee it does not see 'any negative impact to businesses or community within the region (given the community's heavy reliance on tourism related employment) for such businesses to be able to operate every day of the year, but again particularly during public holidays'.¹⁹¹

Colliers also highlighted the wider benefits to small businesses and employment from the moratorium which allowed non-exempt shops to trade on Sundays and public holidays:

Port Village Shopping Centre is anchored by a Coles supermarket and Kmart discount department store along with more than 21 specialty stores. These local businesses rely heavily on the trade providing by tourism to the region...Our customer visitation on Sundays represents 15% of total customer visits for the week and the same proportion of sales for our retailers. Locally, Sunday trading provides an opportunity for local youth to have jobs during high school creating pathways for future growth.¹⁹²

Mr Andrew Aschman noted in his submission that the deregulated trading arrangements in Mossman and Port Douglas provide evidence that 'retail businesses can open and close to conditions and reflect the need of the consumer'.¹⁹³

MGA highlighted the adverse impact of the moratorium on smaller food and grocery stores in the region, stating that 'the deregulation of trading hours for non-exempt businesses in Mossman and Port Douglas has been detrimental for smaller retailers in these areas, particularly in the more recent

¹⁸⁷ Submission 19, p 2.

¹⁸⁸ Submission 28, p 1.

¹⁸⁹ Submission 11, p 4.

¹⁹⁰ Martin Tranter, President, Douglas Chamber of Commerce, public hearing transcript, Mossman, 20 November 2021, p 6.

¹⁹¹ Submission 19, p 2.

¹⁹² Submission 28, p 1.

¹⁹³ Submission 2, p 2.

years of the five-year exemption¹⁹⁴ and that ‘independently owned food and grocery entrants have been “crowded out” and are prevented from entering the region due to an inability to access a point of difference through differential trading hours, given the dominance of the ‘Chains’ in the area’.¹⁹⁵

4.10.3 Whether the moratorium should be extended or expanded

MGA told the committee the moratorium should be allowed to lapse.¹⁹⁶ Other submitters called for the moratorium to be extended to all areas of the Douglas Shire¹⁹⁷ and for the moratorium to be extended for a further five to ten years.¹⁹⁸

The Douglas Chamber of Commerce and Colliers requested that the Queensland Government grant a further 5 -10 year moratorium (to allow businesses to trade on all public holidays).¹⁹⁹ The Chamber also requested that the Queensland Government ‘expand that moratorium to apply to all of the Douglas Shire given the shire’s wide dependency upon the tourism economy.’²⁰⁰ The Chamber also commented that:

The Douglas Shire has been greatly impacted by COVID related border closures. The region badly needs to be able to operate at its full potential during the next 5 years to recover from the 2020 and 2021 position.²⁰¹

Tourism Port Douglas Daintree urged the Queensland Government to grant a 10 year extension to the moratorium to ‘allow all businesses to trade on public holidays and Sundays, and expand the moratorium to apply to all of the Douglas Shire given the wide spread reliance on tourism, visitor dispersal and growth in the drive market’.²⁰²

Views of the department

The department advised the committee that on the expiry of the moratorium provided at s 56 of the Act (as well as the expiry of the s 59 moratorium), if the Act is not amended, the permitted hours for non-exempt shops in the ‘Town of Port Douglas’ will be those of a tourist area shop, as per s 16D. The permitted hours for non-exempt shops in the Mossman and Port Douglas Tourist Area will be those of a Schedule 1AB shop. Exempt shops, excluding independent shops, in the Mossman and Port Douglas Tourist Area will be unaffected by the end of the moratorium.²⁰³

The department also provided the committee with detailed trading hours information for major non-exempt shops in the Mossman and Port Douglas Tourist Area, Coles Port Douglas and Woolworths Mossman.²⁰⁴ The department commented that:

¹⁹⁴ Submission 6, p 10.

¹⁹⁵ Submission 6, p 11.

¹⁹⁶ Submission 6, p 11.

¹⁹⁷ Andrew Aschman, submission 2; Douglas Shire Council, submission 19; Tourism Port Douglas Daintree, submission 27; Michael Kerr, Mayor, Douglas Shire Council, public hearing transcript, Mossman, 20 November 2021, p 1; Martin Tranter, President, Douglas Chamber of Commerce, public hearing transcript, Mossman, 20 November 2021, p 7.

¹⁹⁸ Chamber of Commerce and Industry Queensland, submission 11; Douglas Shire Council, submission 19; Tourism Port Douglas Daintree, submission 27; Colliers and Primewest Pty Ltd, submission 28; Michael Kerr, Mayor, Douglas Shire Council, public hearing transcript, Mossman, 20 November 2021, p 1; Martin Tranter, President, Douglas Chamber of Commerce, public hearing transcript, Mossman, 20 November 2021, p 7.

¹⁹⁹ Submission 19, p 2;

²⁰⁰ Submission 19, p 2.

²⁰¹ Submission 19, p 2.

²⁰² Submission 27, p 1.

²⁰³ Department of Education, correspondence dated 3 December 2021, pp 1-2.

²⁰⁴ Department of Education, correspondence dated 9 December 2021, p 2.

Although these shops could have chosen to open 24-hours per day seven days a week, their trading hours have generally matched the permitted hours applicable for non-exempt shops trading in a tourist area.²⁰⁵

At the final departmental briefing on 29 November 2021, Acting Deputy Director-General, Mr James told the committee:

That moratorium effectively releases traders in that area from any restrictions. In the main, while they could trade 24/7, they have not. My understanding is that they have not traded on hours outside what you would find in the tourist area section in which the town of Port Douglas would ordinarily or otherwise fall. I just make a side comment there. I note that, in the successful section 5 applications anywhere in the state, retailers have not taken up a 24/7 opening.

The main benefit mentioned for the Port Douglas and the Mossman area is that non-exempt shops and independent retail shops that do not sell food or groceries can trade on Good Friday, Christmas Day and prior to 1 pm on Anzac Day. The dress shops, which are genuine independent retail outlets, are able to trade on Good Friday. In fact, the bigger stores, the Woolworths and Coles, are able to trade on any public holiday; they are not confined to closing on the closed days. I am unable to determine whether they have actually taken up the arrangements for Good Friday trading, but you might recall that Good Friday trading was the trigger that had my inspectors in Port Douglas several years ago over trading hours concerns.

On the submissions presented to the committee by local traders, the council and other representatives in support of keeping the existing arrangements, I do not see any operational issue with extending the moratorium arrangements to Mossman and Port Douglas, but it is a matter for the committee.²⁰⁶

Committee findings

The committee notes the critical importance of tourism to the Mossman and Port Douglas region's economy, and the challenges faced by the businesses in the region during the COVID-19 pandemic. The committee also accepts that permitting non-exempt shops to trade tourist-friendly hours is an important part of meeting the needs and expectations of tourists to the region. However the committee is not persuaded of a need for non-exempt shops to trade 24/7.

In line with the revisions to s 16D core trading hours, and the extension of the s 59 moratorium, which have been recommended by the committee in this report, the committee recommends that:

- the section 56 moratorium for the Mossman and Port Douglas Tourist Area be extended to 31 August 2023
- section 16A be amended to add the 'Mossman and Port Douglas Tourist Area' to the section 16A definition of 'tourist area' in (a) and to remove from the definition '(b) the town of Port Douglas', and for these changes to be effective from 31 August 2023.

This recommendation will result in shops in the Mossman and Port Douglas being permitted to operate within specific 'Tourist area' trading hours, as permitted in other tourist destinations in the state.

During the moratorium large supermarkets and department stores in the Mossman and Port Douglas tourist area have had the opportunity to trade at any time but have essentially settled on 6am – 9pm or 10pm Monday to Friday, 7am – 9pm or 10pm Saturday, and 7am – 9pm Sunday. These times are within the permitted core trading hours for a 'Tourist area' under s 16D of the Act. Therefore, the committee concludes that including the Mossman and Port Douglas tourist area in the category of 'Tourist area' will not impose shorter trading hours than the hours shops have chosen to open under the moratorium, though will mean opening times on the weekend will change to 7am.

²⁰⁵ Department of Education, correspondence dated 9 December 2021, p 2.

²⁰⁶ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 29 November 2021, p 2.

In regard to the proposal to expand the existing Mossman and Port Douglas Tourist Area to include all of the Douglas Shire, the committee encourages the Douglas Shire Council and the Douglas Chamber of Commerce to make an application to the QIRC to consider this change after the expiry of the general moratorium on s 21 orders provided for in s 59 the Act.

Recommendation 9

The committee recommends that:

- the section 56 moratorium for the Mossman and Port Douglas Tourist Area under the *Trading (Allowable Hours) Act 1990* be extended to 31 August 2023
- section 16A of the Act be amended to add the 'Mossman and Port Douglas Tourist Area' to the section 16A definition of 'tourist area' in (a) and to remove from the definition '(b) the town of Port Douglas', and for these changes to be effective from 31 August 2023.

4.11 Education and information

As noted above, the department's 11 industrial inspectors attached to the OIR administer and enforce the provisions of the Act. In this role inspectors conduct investigations, issue warnings and field inquiries.

Information about trading hours is available from the Queensland Government's *Business Queensland* website,²⁰⁷ and the QIRC website.²⁰⁸

Stakeholders' views

Mr Chris Gazenbeek, Queensland Branch Secretary of the SDA, told the committee that a greater emphasis is needed to educate and train people about what their legal rights and entitlements are so that they can make sure they are adhered to.²⁰⁹ In further evidence, the SDA proposed that flyers or fact sheets be provided to employers at critical times of the year to assist them to understand their obligations under the Act and to ask questions before they open for trade.²¹⁰

The views of the department

The department's chief industrial inspector highlighted the advisory work of his officers in relation to trading hours matters at the committee's briefing on 30 September 2021:

...the role of the inspectorate is really two pronged. First of all, we give information to the public on trading hours, because people generally are very interested in trading hours. Business owners obviously and the public are very interested in trading hours in shops across the different areas of the state, particularly when it gets to public holidays and different trading hours periods throughout the year. We have an information service and the website where we provide that information.

The other area is if there are any complaints from any of the stakeholders, whether it is a business owner or whether it is a member of the public. They lodge complaints and we do take complaints about breaches of the act and investigate those. There have been matters in the past— nothing recent but in the past— that have proceeded through courts, but generally a lot of our role now is providing information to the public.²¹¹

²⁰⁷ See www.business.qld.gov.au.

²⁰⁸ See www.qirc.qld.gov.au/tradinghours.

²⁰⁹ Public hearing transcript, Brisbane, 1 November 2021, p 5.

²¹⁰ Chris Gazenbeek, Queensland Branch Secretary, Shop Distributive and Allied Employees Association (Queensland Branch), public hearing transcript, Brisbane, 1 November 2021, p 7.

²¹¹ Tony Shostakowski, Chief Industrial Inspector, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 30 September 2021, p 3.

In relation to education for employers and employees about s 36B, the department advised the committee that:

...the Office of Industrial Relations has not gone on any particular educational campaign around this although all of our officers would be very aware and would advise, if asked, about any trading hours matter on extended hours or on section 5 applications that work is always of a voluntary nature.²¹²

In response to questioning from the committee about the tools available to the department to better educate retailers, the department advised:

The primary means for us to get information out on trading hours is through our website. We also have an inquiry line. People can ring up. I also suggest that the major associations would have advisory services. I do know that the Motor Trades, for example, has advice for its members, as does the QCCI and the NRA.

...In terms of our phone inquiry lines, we do not get a lot of questions of 'What am I?' I think most people intuitively know what is an exempt shop and what is non-exempt shop and what is an independent retail shop, mainly because they flock together with others of a like nature and they are advised. In terms of resources available to the department should further information be needed, it would lead, I would suggest, with our website. Depending on the outcome of the government's consideration of the report that you will make, there may well be some other form of promotion or education that we could do.²¹³

The department has further advised that the OIR intends to review the information published on the government website.²¹⁴

Committee findings

The committee noted, particularly in the regions, that there was uncertainty around the provisions of the Act. The committee considers that informing and educating stakeholders in the retail sector is important for encouraging compliance with the provisions of the Act. The committee sees particular value in education for:

- retail employers about the protection provided in the Act to ensure that workers are voluntarily choosing to work extended hours and about employers' responsibilities in this regard, and
- workers about their rights to choose to work extended hours, and the protection provided by the Act.

The committee notes that the OIR intends to review the information on its website. The committee encourages the OIR to review its communication and education strategies so as to better inform retail employers, employees and the public about the protections for employees contained in ss 36A, 36AA and 36B of the Act.

²¹² Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 15 November 2021, p 2.

²¹³ Tony James, Acting Deputy Director-General, Department of Education, Office of Industrial Relations, public briefing transcript, Brisbane, 29 November, pp 9-10.

²¹⁴ Department of Education, correspondence dated 9 December 2021, p 2.

Appendix A – Submitters

Sub #	Submitter
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1	Nicholas Lloyd, and supplementary
2	Andrew Aschman
3	Australian Workers' Union of Employees, Queensland (AWUEQ)
4	Mount Isa Tourism Association
5	Caravan Trade & Industries Association of Queensland (CTIAQ)
6	MGA Independent Retailers
7	Aldi Stores Australia
8	Australian Automotive Dealer Association
9	Australian Retailers Association
10	Queensland Small Business Commissioner
11	Chamber of Commerce & Industry Queensland
12	Commerce North West
13	Narelle Jones
14	Advance Cairns
15	Motor Trades Association of Queensland (MTA Queensland)
16	McKell Institute, Queensland
17	Queensland IGA State Board
18	Shop Distributive Allied and Employees Association (SDA), Union of Employees
19	Douglas Chamber of Commerce
20	Shopping Centre Council of Australia
21	National Retail Association
22	Robbie Katter MP, Member for Traeger
23	Griffiths Pharmacy
24	Marc Fotsch-Heatley
25	Mount Isa City Council
26	Birkett Enterprises
27	Tourism Port Douglas Daintree
28	Colliers and Primewest Pty Ltd

Appendix B – Witnesses at public briefings and public hearings

30 September 2021 – Public briefing - Brisbane

Office of Industrial Relations, Department of Education

- Tony James, Acting Deputy Director-General
- Tony Schostakowski, Director, Regulation and Compliance

25 October 2021 – Public hearing - Brisbane

Individual witness

- Adjunct Associate Professor John Mickel

Chamber of Commerce and Industry Queensland

- Gus Mandigora, Senior Policy Adviser
- Luisa Baucia, Policy Adviser
- Suzie Tafolo, Vice-President, Redlands chamber of Commerce

Master Grocers Association Independent Retailers

- Jos de Bruin, Chief Executive Officer

Queensland IGA State Board

- Frank Spano, Chairman

McKell Institute, Queensland

- Hon. Rachel Nolan, Executive Director

Shopping Centre Council of Australia

- James Newton, Manager, Policy and Regulatory Affairs
- Nadia Superina, Senior Policy Officer

25 October 2021 – Public briefing - Brisbane

Office of Industrial Relations, Department of Education

- Tony James, Acting Deputy Director-General

Queensland Treasury

- Patrick Wildie, Assistant Under Treasurer

1 November 2021 – Public hearing - Brisbane

Shop, Distributive and Allied Employees' Association Queensland

- Chris Gazenbeek, Queensland Branch Secretary
- Laura Armstrong, Industrial Officer

Australian Workers' Union of Employees Queensland

- Barry Watson, Senior Industrial Advocate
- Terry McQuillan, Industrial Advocate

Motor Trades Association of Queensland

- Rod Camm, Group Chief Executive Officer
- Kellie Dewar, Deputy Group Chief Executive Officer

Caravan Trade & Industries Association of Queensland

- Jason Plant, Chief Executive Officer

Australian Automotive Dealer Association

- James Voortman, Chief Executive Officer

National Retail Association

- Dominique Lamb, Chief Executive Officer
- Malcolm Cole, Director, External Relations
- David Stout, Director, Industry Policy

Shopping Centre Council of Australia

- Angus Nardi, Executive Director
- James Newton, Manager – Policy and Regulatory Affairs

Australian Retailers Association

- Paul Zahra, Chief Executive Officer
- Fleur Brown, Chief Industry Affairs Officer

1 November 2021 – Public briefing - Brisbane

Department of Education, Officer of Industrial Relations

- Tony James, Acting Deputy Director-General
- Rhett Moxham, Acting Director, Strategic Policy

15 November 2021 – Public hearing - Brisbane

Shop, Distributive and Allied Employees' Association Queensland

- Chris Gazenbeek, Queensland Branch Secretary
- Laura Armstrong, Industrial Officer

15 November 2021 – Public briefing - Brisbane

Office of Industrial Relations, Department of Education

- Tony James, Acting Deputy Director-General
- Rhett Moxham, Acting Director, Industrial Relations Strategic Policy

19 November 2021 – Public hearing - Cairns

Advance Cairns

- Adjunct Professor Trent Twomey

Cairns Chamber of Commerce

- Patricia O'Neill, President

Tourism Tropical North Queensland

- Mark Olsen, Chief Executive Officer

IGA State Guild and Master Grocers Association Australia

- Peter Piccone

20 November 2021 – Public hearing - Mossman

Douglas Shire Council

- Michael Kerr, Mayor

Douglas Shire Chamber of Commerce

- Martin Tranter, President

Tourism Port Douglas Daintree

- Tara Bennett, Chief Executive Officer

Member for Cook

- Cynthia Lui MP

Individual witnesses

- Janette Walker, Jungle Road Clothing
- Cheryl Wellham

21 November 2021 – Public hearing - Mount Isa

Member for Traeger

- Robbie Katter MP

Mount Isa City Council

- George Fortune, Councillor
- David Keenan, Chief Executive Officer

Commerce North West

- Emma Harman, President

Mount Isa Tourism Association

- Nadia Cowperthwaite

Knight Frank, Shopping Centres Australasia Property Group

- Craig Stack, Senior Partner

Individual witnesses

- Michelle Russell, Brumby's Bakery Mount Isa
- David Hydon
- Robert Burrow, Colonial Convenience Store

22 November 2021 – Public hearing - Townsville

Ayr Chamber of Commerce

- Alissa Muir, President

McConaghy Properties

- Katherine Langsford, Centre Manager, Castletown

Individual witnesses

- Lance Birkett, Birkett Enterprises
- Adam Westbury, IGA Retailers
- Jason Valastro

29 November 2021 – Public briefing - Brisbane

Office of Industrial Relations, Department of Education

- Tony James, Acting Deputy Director-General
- Tony Schostakowski, Acting Executive Director, Industrial Relations

Appendix C – *Trading (Allowable Hours) Act 1990* Schedule 1AA Exempt shops

1. antique shop
2. art gallery or arts and crafts shop
3. aquarium, aquarium accessories or pet shop
4. bait and tackle or marine shop
5. bookseller's or newsagent's shop
6. bread, cake or pastry shop
7. butcher's shop
8. camping equipment shop
9. chemist shop
10. confectionery shop or ice-cream parlour
11. cooked provisions shop (where the provisions are cooked or heated on the premises immediately before sale), milk bar, restaurant, cafe or refreshment shop
12. delicatessen
13. fish shop
14. flower shop
15. fruit and vegetable shop
16. funeral director's premises
17. hairdresser's, beautician's or barber's shop
18. licensed premises under the *Liquor Act 1992* or the *Wine Industry Act 1994*
19. nursery (plant) shop for selling garden plants and shrubs, seeds, garden and landscaping supplies or equipment, and associated products
20. photographic shop
21. premises in relation to which a pawnbrokers licence under the *Second-hand Dealers and Pawnbrokers Act 2003* is in force
22. service station
23. subject to section 5(4), shop of a class declared by regulation to be a class of exempt shop
24. shop for selling motor vehicle spare parts or motorcycle spare parts, or both
25. shop in an international airport terminal, cruise terminal, casino, or tourist resort on an off-shore island
26. soap shop
27. souvenir shop
28. special exhibition or display of goods (for example, an annual 3-day caravan, camping and fishing expo, or a one-off launch of a new model campervans held at a shopping centre)
29. sporting goods shop
30. tobacconist's shop
31. toy shop
32. veterinary supplies shop

Appendix D – Applications for a declaration of a ‘special event’ under section 5 of the *Trading (Allowable Hours) Act 1990* made since 2017

Submissions in response to applications for a Declaration of a Special Event section 5 Trading (Allowable Hours) Act 1999 (as reported in decisions of the Queensland Industrial Relations Commission)

1. Gold Coast 2018 Commonwealth Games - 3 to 17 April 2018
National Retail Association, Union of Employers (TH/2017/26)
 - Application made by National Retail Association Limited, Union of Employers (NRA).
 - Application for declaration granted (DP Swan).
 - Applicable to the area of Brisbane City Heart (as defined by post code 4000) and City of the Gold Coast Local Government Area.
 - In written correspondence to the Commission, both relevant Local Government Councils (Brisbane and Gold Coast) expressed their full support for the application made by NRA.
 - The Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (the SDA) and the State of Queensland sought leave and were granted the right to be heard in the application. The SDA was permitted to appear and make submissions in the matter. DP Swan observed that leave to appear in trading hours’ special event declaration applications under s5 of the TAH Act must be properly sought through the Industrial Registry rather than direct communication with a Commissioner.
 - The SDA, while not disputing the significance of the Commonwealth games, sought a limitation on the spread of allowable trading hours and also that workers be protected such that any work during additional trading hours be voluntary. DP Swan observed that there is no discretion to set opening and closing times within the scope of the application. The declaration by the QIRC includes a condition agreed by the parties that any work during the additional hours as a result of the declaration is to be voluntary.
 - Concerns regarding voluntary employment expressed by the SDA related to the impact of this type of decision upon employees who are employed by non-exempt stores and the potential for them to be required to work additional hours allowed by the decision. In the body of the decision (para 28) the provisions of s 36B of the TAH Act (i.e. an employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours) were stated to be conditions of employment during extended hours although not included as part of the formal declaration. The matter of voluntary employment during the extended hours was agreed to by the NRA. Upon submission by the State of Queensland DP Swan accepted that the Commission has the jurisdiction under s539(f) of the IR Act to make such a condition on the declaration.
2. Mount Isa Mines Rotary Rodeo - 8 to 12 August 2018 (TH/2018/1)
National Retail Association Limited, Union of Employers [2018] QIRC 096
 - Application by NRA.
 - Application for declaration granted (DP O’Connor).
 - Applicable to a defined area of Mt Isa.
 - No appearances or submissions from any other parties.
 - No mention of voluntary work conditions in body of decision or as part of formal declaration.
3. Extended Christmas trading at Westfield Chermiside & Garden City - 20 to 21 December 2018 (TH/2018/2)
Re: National Retail Association Limited, Union of Employers [2018] QIRC 118
 - Application by NRA. Intervention by Minister.
 - Application for declaration dismissed (DP O’Connor).
 - Applicable to Westfield Chermiside and Garden City.
 - Sought unlimited trading on 20 and 21 December on the basis that pre-Christmas shopping was a special event. Commission did not accept the status of a special event but viewed it only as an attempt to move for that year extended trading arrangements already allowed by the TAH Act.

4. Chinchilla Melon Festival - 14 to 17 February 2019 (TH/2019/1)
National Retail Association Limited, Union of Employers [2019] QIRC 026
 - Application by NRA.
 - Application for declaration granted (Commissioner Knight).
 - Applicable to a defined area of Chinchilla.
 - SDA sought and was granted leave to be heard in the matter. SDA submissions related to importance of preserving protections for employees who if the application was granted may be required to work increased hours.
 - Voluntary employment - In body of decision (para 27) it is stated that the statutory protections set out at s 36B of the TAH Act will apply for employees engaged by non-exempt shops during the nominated period. At hearing SDA indicated in those circumstances it was willing to have the application proceed.

5. Burdekin Annual Show (Ayr) - 26 June 2019 (TH/2019/2)
National Retail Association Limited, Union of Employers [2019] QIRC 095
 - Application by NRA.
 - Application for declaration granted (DP Merrell).
 - Applicable to a defined area of Ayr.
 - No person made application seeking leave to be heard.
 - No mention of voluntary work conditions in body of decision or as part of formal declaration.

6. Mount Isa Rotary Rodeo - 7 to 11 August 2019 (TH/2019/3)
National Retail Association Limited, Union of Employers [2019] QIRC 112
 - Application by NRA.
 - Application for declaration granted (VP O'Connor).
 - Applicable to a defined area of Mt Isa.
 - Voluntary employment - In body of decision (para 8) it is stated that the Australian Workers' Union of Employees (Queensland) (the AWU) in correspondence indicated that it did not intend to seek leave to appear but raised the application of s 36B of the TAH Act which provides that an employer must not require a current employee to work during extended hours (such as would result if the application was granted) unless the employee agrees, in writing, to work during extended hours. Such conditions were not made part of the Commission's declaration.

7. Brisbane Festival - 5 to 29 September 2019 (TH/2019/4)
National Retail Association Limited, Union of Employers [2019] QIRC 127
 - Application by NRA.
 - Application for declaration granted (Commissioner Dwyer).
 - Applicable to a defined area of Brisbane.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The decision states that while the SDA questioned the need for a declaration in their written submissions, they did not disagree that the Brisbane Festival was a significant event locally. It was apparent from their submissions that the SDA was predominately asking the Commission to make a vigorous assessment of this application and to apply appropriate limitations and protections for its members. The SDA issues with respect to the application were limited to the geographic scope of the application and the need for protections for their members that were consistent with the protections set out for employees in s 36B of the Act.
 - By agreement of the parties the geographical range of the order was significantly reduced from the whole of the Brisbane City Council area to a number of named BCC wards (Central, Gabba, Morningside, Coorparoo, Tennyson, Walter Taylor and Paddington) and to Hamilton North Shore Area (sufficient to cover the geographic scope of events during the festival). Although not agreed by the parties the Commission also decided to not include Westfield Chermside, Carindale and Garden City shopping centres in the area to which the declaration was applicable.
 - Voluntary employment - In body of decision (para 14) the NRA indicated that it had no difficulty with an order including protections for employees consistent with s 36B of the TAH Act. The Commission's declaration states

"5. The statutory protections set out at s 36B of the Act will apply to all employees engaged by non-exempt shops covered by this declaration during the nominated period".

8. Gold Coast 600 Motor Race - 25 to 27 October 2019 (TH/2019/5)
National Retail Association Limited, Union of Employers [2019] QIRC 150
 - Application by NRA.
 - Application for declaration granted (Commissioner Dwyer).
 - Applicable to a defined area of the Gold Coast.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - In their submissions the SDA cautioned that a vigorous assessment of applications of this nature needs to be made and to apply appropriate limitations and protections for its members. To this end, the SDA submitted that the GC600 was not a "unique or infrequent event of local, state or national significance". The SDA also took issue with the geographical scope of the order sought being too wide. The NRA conceded this and indicated a willingness to reduce it to have a northern boundary at Hope Island.
 - The Commission decided that the GC600 was a special event for the purposes of s 5 of the TAH Act as it is a unique event of local and State significance but that the area to which the declaration was to apply was the geographic area contained within the boundaries of the Coomera River, Tallebudgera Creek, the M1 Motorway and the coastline between the mouth of the Coomera River and Tallebudgera Creek.
 - Voluntary employment - Formal declaration includes *"4. The statutory protections set out at s 36B of the Act will apply to all employees engaged by non-exempt shops covered by this declaration during the nominated period"*.

9. Toowoomba Royal Show - 26 to 28 March 2020 (TH/2020/1)
National Retail Association Limited, Union of Employers [2020] QIRC 031
 - Application by NRA.
 - Application for declaration granted (DP Merrell).
 - Applicable to a defined area of Toowoomba reduced by the NRA to the Toowoomba CBD and suburbs adjacent or close to it.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The SDA opposed the making of the declaration sought. It submitted that the application does not afford the Commission an absolute discretion to grant the declaration and that it is imperative the Commission vigorously assess and only declare an event a '... unique or infrequent event of local, State or national significance' when the factual circumstances and evidence strongly dictate that circumstance. The SDA's concern was that s 5 applications will be used to suggest that any event, no matter of what significance held in any area will procedurally be declared and hence all retail stores in the proximity of any event will be afforded the expansion of hours to those of an exempt shop (i.e. no limits).
 - The SDA submitted that while the TAH Act describes the matters the Commission must consider when making a determination about whether an event is a 'special event', there is a deficiency within the TAH Act whereby the Commission has no guidance or any reference to considerations for matters such as the necessity of non-exempt shops to actually trade as exempt shops during the special event, the impact a declaration has on employees of shops affected by the granting of such a declaration and the necessity to limit any retail hours during the special event period. In response to these submissions DP Merrell stated that he had not had argument from the parties about whether such matters are relevant in determining whether or not to declare an event to be a special event, having regard to the subject matter, scope and purpose of the TAH Act and that in the absence of that argument, these questions should be left to another day.
 - As part of its submission the SDA stated that an application of this type gives the Commission a significant power to declare a 'non-exempt shop' to be an 'exempt shop' for a specified event and that such a declaration extends the possible trading hours of non-exempt shops and has significant impacts on employees and its members. As a result, employees may be required to work 'extended hours' as defined under the TAH Act without the requisite protections (i.e.

voluntary work only) afforded to employees of non-exempt shops pursuant to s 36B of the TAH Act.

- The SDA contended that the Commission had to some extent set a precedent in relation to the protection of employees in non-exempt shops regarding extended trading hours. The SDA referred to the decision of Swan DP in the Commonwealth Games declaration where her Honour stated that the rights and conditions of employment by employees engaged by non-exempt stores, would be retained during the period of the declaration made in the that case. In that case her Honour incorporated the meaning of s 36B of the TAH Act into her decision as a condition applying to those non-exempt employees working during the extended trading hours during the nominated period for the Games although the condition did not form part of the declaration itself.
 - The SDA submitted that the Commission can provide ancillary orders to any declaration made that a protection from working extended hours should be provided to employees in all affected shops.
 - DP Merrell raised with the SDA and the NRA the source of the power for the Commission to make such an ancillary order. In its further submissions, the SDA submitted that the Commission had previously considered and ordered such protections and that the Commission should also take into account the '... agreement by all parties that such protections are applicable in the circumstances' and that the Commission may be guided by the precedent set by previous orders made by the Commission (e.g. Commonwealth Games 2018, Gold Coast 600 2019 and Brisbane Festival 2019).
 - The NRA made no further submissions about the issue.
 - DP Merrell was not persuaded the Commission has the power to make such an order as sought by the SDA. It was accepted that there is a long-standing principle that where the exercise of power is conferred by statute, the conferral of such power is said to carry with it the powers that are 'necessary' for, 'incidental' to or 'consequent' upon the exercise of that power granted. DP Merrell was not persuaded that an order of the kind sought by the SDA is indispensable to, fairly incidental to or consequential upon the statutory power to make a declaration under s 5(2) of the TAH Act. The decision stated that none of these considerations, or any other source of power for the Commission to make an order of the kind sought by the SDA, appeared to have been argued before Swan DP in the Commonwealth Games 2018 case.
10. Townsville 400 Motor Race- 29 to 30 August 2020 (TH/2020/3)
National Retail Association Limited, Union of Employers [2020] QIRC 112
- Application by NRA.
 - Application for declaration granted (Commissioner McLennan).
 - Applicable to a defined area of Townsville.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The AWU did not seek leave to be formally heard but did make a written submission stating that the Commission should take into consideration all matters referred to in s 5 of the TAH Act and whether there is any necessity for a non-exempt shop to be redefined as an exempt shop for the purpose of such application and that if the application was granted it should ensure that all employees in the affected shops receive a protection from working extended trading hours by reason of s 36B of the TAH Act.
 - The SDA submissions re-stated the concerns expressed in the 2019 Toowoomba Royal Show application (see above) regarding vigorous assessment of the application and voluntary employment conditions.
 - Commissioner McLennan stated his agreement the SDA's submissions that "...it is imperative the Commission vigorously assess..." such applications for extended trading hours and that such decision should not be taken lightly. But in circumstances where the experience of past years demonstrates the Townsville 400 event is one of sporting significance, with economic and tourism benefits to the regional economy, the application was accepted.
 - Regarding voluntary employment conditions, the NRA indicated their acceptance of the unions' proposal. Commissioner McLennan stated his absolute agreement that such protections (referencing s36B of the TAH Act) for affected employees are appropriate, applicable and necessary in these circumstances and emphasised the good sense of leaving each affected retail

worker to make their own decision about whether or not to accept any additional hours that may be offered to them. However, those conditions were not made part of the formal declaration.

11. Brisbane Festival - 4 to 26 September 2020 (TH/2020/4)

National Retail Association Limited, Union of Employers [2019] QIRC 154

- Application by NRA.
- Application for declaration granted (Commissioner Dwyer).
- Applicable to a defined area of Brisbane reduced from City of Brisbane to the Central and Gabba Wards only (sufficient to cover the geographic scope of events during the festival).
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA was broadly opposed to the application submitting that the Commission should make a vigorous assessment of the application and apply appropriate limitations in protection of its retail worker members (i.e. voluntary employment protections under s36B of the TAH Act). The NRA was not opposed to the making of a voluntary employment order.
- The Commission stated that in response to the submissions of the SDA it is not convinced that the Commission has the discretionary power under the TAH Act to make an order about voluntary employment and therefore declined to make such an order. Commission further stated:
"[32] In doing so, I note that s 36B is not the only protection available to employees who may find themselves subject to duress or coercion etc with respect to being directed to work during extended hours. There are any number of scenarios where an employee might reasonably and lawfully refuse such a direction or seek protection available under other statutes or instruments.
[33] I hasten to add that if the SDA identifies any cases of its members being compelled to work involuntarily during extended hours, such evidence is likely to be a relevant consideration in future applications of this type. I would expect that the NRA will ensure that its members appreciate that while the protections for employees under s 36B are not applicable during the period of the exemption, they ought to conduct themselves as if they were."

12. Toowoomba Carnival of Flowers - 18 to 27 September 2020 (TH/2020/5)

National Retail Association Limited, Union of Employers [2020] QIRC 168

- Application by NRA.
- Application for declaration granted (Commissioner Hartigan).
- Applicable to a defined area of Toowoomba.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The parties each raised matters in their submissions which go beyond the matters required by s 5(3)(a) of the TAH Act (e.g. submissions from the SDA on the necessity of additional trading hours for business or patrons, whether additional hours for the shop is for the event or merely during the event, etc). Section 5(3) does not provide that in deciding whether or not to make the declaration, the Commission must have regard only to the matters specified in that section. However, any other matters that the Commission is bound to consider must be determined by implication from the subject matter, scope and purpose of the TAH Act.
- Whilst the parties each raised matters regarding the benefit (or conversely, potential detriment) to be derived from the declaration and the sufficiency or otherwise of the current trading hours, they did so without identifying how these matters are a relevant consideration to the determination to be made by the Commission, having regard to the subject matter, scope and purpose of the TAH Act. Accordingly, the submissions made by the parties did not establish the extent to which those other matters are relevant to consideration of the application.
- The SDA also submitted that the Commission provide to all employees in any affected stores, as part of the declaration, a protection from working extended hours by reason of s 36B of the TAH Act, to allow work in extended hours to be voluntary. The Commission stated that it was not persuaded that it has the power to grant the relief sought by the SDA and declined to make the order sought. At the request of the Commission, no source of power to make such an order was able to be identified by the SDA. Reference was made back to a similar decision of DP Merrell in the Toowoomba Royal Show declaration (see above).

13. Australian Football League Grand Final - 24 to 25 October 2020 (TH/2020/6)
National Retail Association Limited, Union of Employers [2020] QIRC 177
- Application by NRA.
 - Application for declaration granted (Commissioner McLennan).
 - Applicable to a defined area of Brisbane encompassing the Central and Gabba Wards.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The SDA submissions repeated many of the arguments from earlier applications regarding vigorous assessment and questioning the necessity for extended hours related to the special event. It was additionally stated that there was anecdotal evidence from retail employees that stores do not generally implement the extended hours despite the NRA's suggestion that these applications are desired by retailers.
 - The SDA expressed concern that employees working during the extended hours granted should do so only on the basis of volunteering to do the work. The NRA gave an undertaking in the application that work would be on a voluntary basis in accordance with s36 B of the TAH Act. Commissioner McLennan stated in the decision that such protections for affected employees are appropriate, applicable and necessary and any additional work during extended hours will be on a voluntary basis as per section 36B of the TAH Act. Reference was made to the decision of DP Swan in the Commonwealth Games 2018 case.
14. Bris Asia Festival - 12 to 14 February 2021 (TH/2021/1)
National Retail Association Limited, Union of Employers [2021] QIRC 029
- Application by NRA.
 - Application dismissed (Commissioner McLennan).
 - Applicable to a defined area of Brisbane Central Ward covering the area of Brisbane CBD, Bowen Hills, New Farm and Milton.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - At the hearing of this matter, the NRA tabled a short letter of support from Lord Mayor Adrian Schrinner in which he stated:
"Council supports liberalising trading hours generally and supports this application specifically. We believe that increased access to trading hours during major events and celebrations is critical to helping businesses recover from the recent economic downturn and enhances Brisbane's reputation as a liveable and prosperous city."
 - The NRA also handed up a letter of support for the application from Queens Plaza Centre Management.
 - The NRA also stated that the application dates had been further revised down to a range of 12 – 14 February 2021 inclusive. The compressed dates of the application were said to coincide with the Lunar New Year celebrations in the 2021 event program in the Chinatown Mall and the greater CBD, with the major event occurring in the Chinatown Mall on 13 February 2021.
 - The NRA advised that the application was envisaged to effect specifically the attendants of Queens Plaza and associated businesses in the Edwards Street strip. It was confirmed that the location of the sole festival event in the Brisbane Ward is in the Chinatown Mall and not in the immediate vicinity of Queens Plaza, but was instead potentially a walk of 15 – 20 minutes. The Lunar New Year event in the Chinatown Mall was scheduled to run from 6 – 9 pm.
 - The SDA opposed the application submitting that the NRA's application does not afford the Commission an absolute discretion to grant the declaration and that it is imperative the Commission vigorously assess and only declare an event a "unique or infrequent event of Local, State or National significance" when the factual circumstances and evidence strongly dictate that circumstance. In its oral submissions the SDA maintained objection to the NRA's application on the grounds it is questionable as to whether the event is 'significant' within the parameters of the legislation.
 - The SDA submissions strongly advocated for the voluntary nature of work in any extended hours that may be granted through the application. The NRA's submitted that any additional work during extended hours will be on a voluntary basis as per section 36B of the TAH Act.

- The Commission in its decision stated that the BrisAsia Festival was an unique or infrequent event of local, State or national significance and had cultural, religious or sporting significance. However, it was not convinced that it was an event significant to the economy and the tourism industry.
- The Commission noted the position of the NRA in relation to the tenants of Queen's Plaza and was critical of basing the application on an expectation that potential customers would walk 15-20 minutes from the Chinatown Mall at the conclusion of the major festival event to shop at Queen's Plaza. The Commission was also critical as the NRA maintained the area sought for the declaration as the whole of the Central Ward when they had indicated that it was tenants of Queen's Plaza that would be most affected if the application was granted.
- The Commission also stated that the letter of support from Brisbane City Council only outlines Council's view of trading hours broadly. It does not provide specific evidence or any detailed submission of the significance of the event in particular – the mandatory criteria that informs consideration of such applications.
- In concluding its decision to dismiss the Commission stated:
"[49] I entirely agree with the SDA's comments that it is imperative the Commission vigorously assess such applications for extended trading hours and that such decision should not be taken lightly. The BrisAsia event is of some cultural and religious significance. However, in such circumstances where the experience of past years (even pre-COVID) demonstrates dwindling attendance numbers, flow-on economic and tourism benefits to the economy are unlikely to be realised as a result of the BrisAsia Festival."

15. Rocky Nats - 3 to 5 April 2021 (TH/2021/2)

Re: CQ American Motorcycles Pty Ltd T/A Rocky Harley Davidson [2021] QIRC 109

- Application by CQ American Motorcycles Pty Ltd trading as Rocky Harley Davidson (represented by Motor Trades Association of Queensland).
- Application related only to a single business premises to operate extended hours over the Easter weekend public holidays to service the 2021 Rocky Nats car and motorbike festival event.
- Application granted (Commissioner Hartigan)
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA objected to the application on the basis that the RockyNats is not of sufficient significance to be declared a special event and that the application did not provide guidance or any reference to considerations on such matters as the necessity for non-exempt shops to actually trade as exempt shops during the special event, the impacts such a declaration has on employees of shops effected by the grounding of such a declaration and the necessity to limit any retails hours during the special event period.
- The SDA also submitted that in the event a declaration is granted, that the Commission provide, as part of such declaration, an expression as to the importance of work within extended hours remaining voluntarily. Commissioner Hartigan stated he was not persuaded that the Commission has the power to grant the relief sought by the SDA and therefore declined to make the declaration sought by the SDA.

16. Chinchilla Show – 21 to 22 May 2021 (TH/2021/3)

National Retail Association Limited, Union of Employers [2020] QIRC 155

- Application by NRA.
- Application for declaration granted (Commissioner Dwyer).
- Applicable to a defined area of Chinchilla.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- No objections were received to the declaration from the Chinchilla area with the Western Downs Regional Council appearing in the hearing but maintaining an essentially neutral stance. Although the application was not prompted by local retailers the Commission noted this was not a prerequisite for the application to succeed.

- Submissions from the SDA broadly concentrated on emphasising the preservation of protections afforded to employees whose employment, by reason of the declaration, would temporarily be in 'exempt shops' rather than 'non-exempt' shops potentially increasing their hours of work.
 - The Commission stated it was comfortable that the TAH Act sets out at s 36B adequate protection for retail employees potentially impacted by the application being granted and that it was not empowered to make orders incorporating those provisions. The Commission noted that during the proceedings, there was clear consent by the parties that employees affected by a granting of the application, whose hours may extend outside the normal range as prescribed by their Certified Agreements and Awards, would only be required to work those additional hours on a voluntary basis.
17. Proserpine Show – 18 to 19 June 2021 (TH/2021/4)
National Retail Association Limited, Union of Employers [2021] QIRC 197
- Application by NRA.
 - Application for declaration granted (Commissioner Pidgeon).
 - Applicable to a defined area of Proserpine.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The SDA's objected to the application. The SDA believe the application may benefit major retailers however is likely to put significant pressure on the availability required of retail workers and removes the competitive advantage of late-night trading which is relied upon by small business owners.
 - The SDA submitted that the existing protections are not always adequate in preventing the reality of pressures in store where a worker may wish to decline work during the period of the event. However, Commissioner Pidgeon stated that protections exist under s36B of the TAH Act and there are mechanisms for complaints to be made or disputes notified where the protections are not adhered to. The NRA noted the voluntary nature of work should the declaration be made.
18. Mt Isa Show – 18 to 20 June 2021 (TH/2021/5)
National Retail Association Limited, Union of Employers [2021] QIRC 199
- Application by NRA.
 - Application for declaration granted (Commissioner Knight).
 - Applicable to a defined area of Mt Isa.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - In respect of the significance to the economy and tourism of making a declaration, the SDA argued the term "significance" was not intended to be used as an unmeasured benchmark available to the NRA to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading. The SDA argues a reasonable understanding of the legislation "would be it applies where an event is of such significance it creates the real possibility of retail opportunities in the extended hours". The SDA contended that on "nearly every occasion" where similar applications have been granted, exempt shops have not opened for longer periods.
 - Within the proceedings, the SDA requested the Commission reflect, in any declaration made, the importance of extended work hours being voluntary. In support of its position, the SDA argued the existing protections (s36B of the TAH Act) are not always adequate in preventing a breakdown of relationships, in store where a request to work additional hours is rejected by the employees. The NRA referred to its members' assurances that any requirement to work additional hours will be on a voluntary basis and that retailers will only trade in line with customer expectations. Commissioner Knight did not consider that the Commission has the power to make a declaration of the type sought by the SDA but was comfortable that both the NRA and the SDA will take the appropriate steps to remind their respective members of the voluntary nature of any additional hours worked during the period, along with the statutory protections afforded to employees as set out at s 36B of the TAH Act.
 - Commissioner Knight accepted that given the remoteness of Mount Isa and the large distances out of town visitors, competitors and exhibitors will no doubt be required to travel in order to attend the Show, on this occasion there is some merit to the NRA's submission as to the value in extending the period for which the declaration applies to include 20 June 2021 (the day after

closure of the show), such that both visitors and locals more broadly can take advantage of extended trading hours over what will no doubt be a particularly busy period.

19. Bowen Show – 22 June 2021 (TH/2021/6)

Re: National Retail Association Limited, Union of Employers [2021] QIRC 217

- Application by NRA.
- Application for declaration granted (Commissioner McLennan).
- Applicable to a defined area of Bowen.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA repeated the submissions made in the Mt Isa 2021 case (see above) regarding the significance of factors in making a declaration. Additionally, the SDA noted that the application did not demonstrate real necessity for extended trading by major retailers and thus undermined the existing trading regime by introducing increased competition for small traders already allowed to trade extended hours.
- The SDA's submissions sought to protect the voluntary nature of any work to be performed within the extended hours, in the event that the application was granted. The union submitted that existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store.
- The SDA also argued that local retail workers should equally be able to enjoy the public holiday on the day of the Bowen Show, after being engaged in essential front-line work for their community over the last year and a half...without the pressure of an expectation to work it.
- The NRA indicated their acceptance of the proposition that work during extended hours as a result of a declaration should be voluntary only emphasising their commitment that whilst the Commission may not be afforded the discretionary powers to preserve the rights protected by s36B of the TAH Act, any additional work during extended hours will continue to be on a voluntary basis. Commissioner McLennan stated that he absolutely agree that such protections for affected employees are appropriate, applicable and necessary in these circumstances.

20. Burdekin Show (Ayr) – 23 June 2021(TH/2021/7)

National Retail Association Limited, Union of Employers (2021 Burdekin Show case) [2021] QIRC 220

- Application by NRA.
- Application for declaration granted (DP Merrell).
- Applicable to a defined area of Ayr.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA opposed the application. Ms Armstrong, on behalf of the SDA, repeated the arguments made in the Mt Isa 2021 and Bowen Show 2021 cases (see above) regarding the significance of factors in making a declaration. Additionally, the SDA argued it is not enough for an event to have cultural, religious or sporting significance without some other compelling argument (e.g. economic significance) to disturb the existing regime (reference was made to the decision of Commissioner McLennan in dismissing the application in the BrisAsia 2021 case – see above).
- The SDA also argued that the Commission should consider that 23 June 2021 is a show/public holiday which should be enjoyed by the local retail workers who have engaged in essential front-line work for their community over the last year and a half. The public holiday represents an opportunity for the community to come together after the impact of the pandemic in 2020 and retail workers should have the opportunity to enjoy the public holiday without the pressure of an expectation to work on that day. It was also submitted that the NRA application did not provide enough information on population in Ayr, numbers attending the show and the need for large shops to open on the show day. Without such information it was submitted that the Commission did not have enough information to make a decision.
- The SDA's arguments were not accepted by DP Merrell. Reference was made to the declaration of a special event in the Burdekin Annual Show 2019 case. DP Merrell stated that the same reasons presently exist (in 2021) as to the unique local significance of the Burdekin Show, the cultural significance of the Burdekin Show and the significance of the Burdekin Show to the economy and tourism industry in and around Ayr.

- The SDA further submitted that existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store. DP Merrell stated that as has been noted by decisions of members of the Commission about similar applications, the legislature has made it an offence for an employer to require an employee to work during extended hours unless the employee has freely elected to work during the extended hours (s36B of the TAH Act).

21. Charters Towers Show – 25 to 27 July 2021 (TH/2021/8)

Re: National Retail Association, Union of Employers

- Application by NRA.
- Application for declaration granted (Commissioner Hartigan).
- Applicable to a defined area of Charters Towers.
- The SDA and AWU sought and were granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA made general written submissions with respect to the operation of the TAH Act. The decision's description of those submissions are repeated here in full as it is considered they represent a summary of both the submissions particular to this case and a summary of submissions made consistently by the SDA in previous cases.

“Those submissions, in summary, include as follows:

- (a) *whilst s 5(3) of the Act describes matters the Commission must consider when making a determination whether to declare an event to be a "special event", there is a deficiency within the Act for not providing guidance or any reference to considerations on such matters as:*
 - (i) *the necessity of non-exempt shops to actually trade as exempt shops during the special event;*
 - (ii) *the impact such a declaration has on employees of shops effected by the granting of such a declaration;*
 - (iii) *the necessity to limit any retails hours during the special event period.*
- (b) *recommendations arising out of the Office of Industrial Relations review in December 2016, stated that a change to the trading hours legislation was considered in terms of assisting tourism by specifically providing "shops operating within a designated area around and during international special events (example Commonwealth Games) and for local festivals to be able to be declared exempt from trading hours regulation after consideration of an application to the QIRC and the QIRC will decide the appropriateness and time frame for the exemption";*
- (c) *the review recommendations were not intended to make every event significant nor to make all non-exempt activities in a location near an event free from trading regulation and that these types of applications are simply a false suggestion by the NRA that there is a necessity for de-regulation of trading hours to assist the economy and tourism without approving the actual necessity for extending trading hours in the events or into the future;*
- (d) *the application by the NRA raises concerns around the immediate and long-term consequences for the SDA's members including:*
 - (i) *where s 5 applications are used to suggest the significance of any event without demonstrating real necessity for extending trading by major retailers, the application undermines the existing trading regime. This consequence may benefit some major retailers but is likely to put significant pressure on the availability required of retail workers in the future and removes the competitive advantage of late night trading relied upon by many small business owners and operators.*
 - (ii) *the existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality or other relational pressures in store. Whilst it is ideal to hypothesise additional hours will be available to those employees who request work, employers usually direct employees to work a particular roster for the relevant period on the basis of operational needs or requirements. The SDA submits that it is regularly informed by its members that they*

experience relationship breakdown and other consequences if those rosters are declined, regardless of the reason for declining.

- (e) *due to the current situation in Queensland relating to Covid-19, if the event does proceed, the SDA is not confident it will hold the same level of significance it has in previous years. It submits it is likely the economic and tourism interests of the area would be better served by minimising any unnecessary gathering opportunities such as shopping at Woolworths in extended hours, to avoid increasing fears of community transmission. The SDA also submits that the current situation with Covid-19 is very likely to have a significant impact on any domestic tourism in the month of July and this will not only reduce attendance numbers at the event, but locals to the area are accustomed to the existing regime and will not have an expectation of additional shopping opportunities;*
 - (f) *it is submitted that if the event does proceed, the existing trading regime is sufficient for the period of the Charters Towers Show and that the application does not serve any genuine need of patrons attending the event;*
 - (g) *the term "significance" was not intended to be used as an unmeasured benchmark available to the NRA to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading."*
- The SDA also requested that the importance of work within the extended hours as remaining voluntary should be expressed in any order made by the Commission.
 - The Commission did not accept the arguments of the SDA, determining that the Charters Towers Show is significant to the economy and tourism of Charters Towers and declaring the Charters Towers Show a special event.
 - The SDA requested the importance of voluntary work within the extended hours be expressed in any order made by the Commission. The AWU appeared at the hearing and sought to emphasise the operation and effect of s 36B of the TAH Act which provides that an employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours. Reference was made to the Toowoomba Carnival of Flowers 2020 declaration in which the Commission stated that it is not persuaded that it has the power to grant the relief sought by the SDA and declined to make the order sought (that 2020 case referred back to a similar decision of DP Merrell in the Toowoomba Royal Show 2020 declaration - see above). Commissioner Hartigan stated that for the same reasons, he declined to make an order in the terms sought by the SDA.

22. Mt Isa Mines Rodeo – 12 to 15 August 2021 (TH/2021/9)

National Retail Association Limited, Union of Employers (Mount Isa Mines Rodeo) [2021] QIRC 254

- Application by NRA.
- Application for declaration granted (Commissioner Pidgeon).
- Applicable to a defined area of Mt Isa.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA submissions as outlined in the decision repeated many of the arguments from previous cases, for example:
 - there is a deficiency in the TAH Act for not providing guidance or any reference to considerations on such matters as: the necessity of non-exempt shops to actually trade as exempt shops during the special event; the impact such a declaration has on employees of shops affected by the granting of such a declaration and the necessity to limit any retail hours during the special event period.
 - It was not intended to make every event significant nor to make all non-exempt facilities in locations near an event free from trading regulation.
 - Applications which suggest the significance of any event without demonstrating real necessity for extended trading by major retailers undermines the existing trading regime. This may benefit some major retailers but is likely to put significant pressure on the availability required of retail workers in the future and removes the competitive advantage of late-night trading relied upon by many small business owners and operators.
 - The existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store.

- There was no confidence that the event will hold the same level of significance it has in previous years as a result of the impact of COVID-19. It was submitted that the economic and tourism interests of the area would be better served by minimising any unnecessary gathering opportunities such as shopping in extended hours, to avoid increasing fears of community transmission.
 - It was noted that the current COVID-19 situation is likely to have an impact on the attendance numbers at the event and that locals to the area will not have an expectation of additional shopping opportunities.
 - It was submitted that the existing trading regime is sufficient for the period of the Mount Isa Mines Rodeo. The area requested has a number of existing exempt shops and the show website encourages patrons to purchase food and drink at the event. The application therefore does not serve any genuine need of patrons attending the event.
 - It was requested that the Commission give particular thought to whether the Mt Isa Rodeo will be sufficiently significant to justify the order requested in consideration of all of the circumstances.
 - Commissioner Pidgeon found that the Mount Isa Mines Rodeo:
 - is a unique event of local, state or national significance,
 - is of cultural and sporting significance and is both unique and infrequent,
 - is of significance to the economy and the tourism industry as per s 5(3)(a)(ii) of the TAH Act, and
 - there is nothing put forward in written or oral submissions that causes me to determine that the declaration of a special event should not be made.
 - Commissioner Pidgeon stated that protections for voluntary employment only by retail workers during extended hours resulting from a special event declaration exist under s36B of the TAH Act. No order for voluntary employment was made in the declaration.
23. Weipa Fishing Classic 2021 – 3 to 5 September 2021 (TH/2021/10)
National Retail Association Limited, Union of Employers [2021] QIRC 287
- Application by NRA.
 - Application for declaration granted (Commissioner Dwyer).
 - Applicable to a defined area of Weipa.
 - The AWU filed an outline of submissions in support of the Application and submitting that it further notes that the Commission can provide ancillary orders to ensure that all employees in the affected shops receive protection from working extended trading hours pursuant to s 36B of the Act.
 - The SDA wrote to the Commission as a union who has members who have an interest in the effect of the declaration sought but did not seek leave to be heard. The SDA's email broadly sought to emphasise the 'deficiencies in the legislation'. It highlighted that the wording used in s 5(3) of the Act does not provide any guidance or reference to other significant considerations, namely the necessity of non-exempt shops to trade, the impact of the declaration on employees; and the necessity to limit retail hours. The SDA also made reference to the importance of voluntary work in extended hours and requested it be expressed in any order made.
 - Commissioner Dwyer stated in the decision that he was satisfied that the Weipa Fishing Classic is a unique event of local significance.
 - Commissioner Dwyer also stated in the decision that he was comfortable that the TAH Act (s36B) provides adequate protection for retail employees potentially impacted by the application being granted but he was not empowered to pre-emptively make orders incorporating the protections contained in s 36B. However, from the submissions made by all parties to participating in the hearing it was noted that there was clear consent by the parties that employees affected by a granting of the application, whose hours may extend outside the normal range as prescribed by their Certified Agreements and Awards, would only be required to work those additional hours on a voluntary basis.

Statement of Reservation

OPPOSITION MEMBERS' STATEMENT OF RESERVATION

Education, Employment and Training Committee Report No 15: Inquiry Into the operation of the *Trading (Allowable Hours) Act 1990*

The trading (Allowable Hours) Amendment Act 2017 amended the retail trading hours arrangements for Queensland, allowing for further trading of businesses in limited areas that previously would not have been able to trade on restricted days or extended hours. The act also required the Minister to undertake a review into Trading Hours before the end of the 5-year moratorium period lapses.

When considering trading hours, balancing community convenience with potential adverse economic impacts for small and family businesses and their staff is no easy task. The public understandably desires the convenience of unregulated trading hours, however we also need to consider the potential impacts that this may have on the viability of small business and their employees, with their attendant impacts on families and communities - particularly in regional and remote areas. Many of the written and in-person submissions by small businesses, their peak body representatives and employee unions received by the committee explored these considerations and exposed significant downside risks in undertaking further deregulation of trading hours.

Whilst being outside of the scope of the Inquiry, the impact of the internet on customer shopping habits shouldn't be dismissed. The internet has created a new standard of convenience with the ability to shop anytime and almost anywhere. Though this does not have the instant gratification of seeing and touching the real product, the convenience, and often lower prices of online shopping, make it an important competitor even in more remote communities.

RIGHTS OF EMPLOYEES

During the committee hearing employee interest groups highlighted valid concerns about lifestyle impacts, mental wellbeing and availability of childcare services outside of the typical working week. Their concerns regarding the lack of suitable childcare availability on weekends appears quite valid - especially for single parent families. These families would have to rely on assistance from other family members or friends to care for their children in order to complete work shifts beyond normal business hours. In many situations this may not be possible as care may not be available, an outcome that may be more prevalent in smaller and remote communities.

As many of the employees are casually employed, employee interest groups are also concerned that these workers are vulnerable to pressure for them to work additional hours. There are concerns that 7-day trading hours may impose additional costs and stress to these workers and their families.

VIABILITY OF SMALL BUSINESSES

Small business is our nation's biggest employer and generator of economic activity and growth. Evidence presented to the committee by Mr Frank Spano representing IGA stores and the Master Grocers' Association indicated that grocery sales by independent retailers result in a greater employment of staff than identical grocery sales by the large retailers such as Woolworths, Coles and Aldi. Mr Spano also argued that the practice of independent retailers employing young people and apprentices in areas such as the bakery and meat sections is no longer matched by the large supermarket chains, and is therefore threatened by deregulation of retail trading hours.

Small family-owned businesses regard changes to trading hours with trepidation and this is understandable due to the highly competitive nature of the larger supermarket chains. The size of these large supermarket chains gives them significant economies of scale and buying power, which often results in a lower marginal cost of operation which can be used to undercut potential small business competition. It also permits large supermarket chains to amortise the cost of freight to rural and regional centres against the remainder of their vast supermarket operations. This artificial advantage allows them to undercut smaller independent retailers in areas such as newspaper sales. For example, it was mentioned at the Mount Isa hearing, that newspapers were only available at the large supermarket chains. Whilst this may seem trivial, it does redirect foot traffic to the larger supermarkets.

It was also claimed that large supermarket chains sometimes aggressively target their competition by undercutting price on certain products to attract customers away from smaller convenience stores. Such trade practices may threaten the viability of small independent retail stores and by extension threaten to extinguish competition in the groceries market.

It ought to be acknowledged however that the argument advanced by shopping centre interests may also have merit. That is to say that there is a symbiotic relationship between the foot traffic of large supermarket chains and the collocated small speciality stores who depend upon them.

TOURISM REGIONS

Queensland with its idyllic warm weather and natural attractions has always been a desirable location to holiday, especially for those venturing north during cooler southern winters. These tourists, typically from large metropolitan areas are accustomed to extended trading hours as part of their daily routine. Therefore, it is completely understandable for tourist areas like Port Douglas to support extended trading to cater for the expectations of visiting tourists.

COVID-19 PANDEMIC

Over the last 2 years, the COVID-19 pandemic has caused havoc for the Queensland economy, especially in hospitality and tourism industries. This has made it difficult to assess the economic effects of the 2017 reforms to trading hours, particularly in areas that were heavily reliant on tourism.

CONCLUSION

The LNP Opposition members of the committee understand that small businesses, including small independent and family-owned retailers, are the powerhouse of our economy, employing a significant proportion of the nation's workforce, and generating prosperity for owners and staff alike. In doing so, tax revenue is generated which funds the social security, infrastructure and services upon which our society depends. Such small businesses and their staff work very hard and strive to serve and support their local communities, customers and suppliers. We believe that there is a need in such environments to ensure that the institutionalised power imbalances between small independent retailers and large chain supermarkets are not left unchecked, and that the preservation of competition depends upon a degree of retained retail trading hours regulation. We believe that this approach is essential in a large and decentralised state such as Queensland.

The LNP Opposition members of the committee generally supports the committee reports' recommendations which have resulted from a thorough and searching engagement with interest

groups, retailers and the public throughout the state. The recommendations seek not to deprive small family retail businesses and their staff of any existing trading hours protections, but rather to adjust and improve the workings of the Act.



James Lister MP
Member for Southern Downs

28 January 2022



Mark Boothman MP
Member for Theodore