

**MGA Independent Retailers and
The Chamber of Commerce
& Industry Queensland**

Queensland Trading Hours Review

Submission Paper

November 2016

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I. Introduction

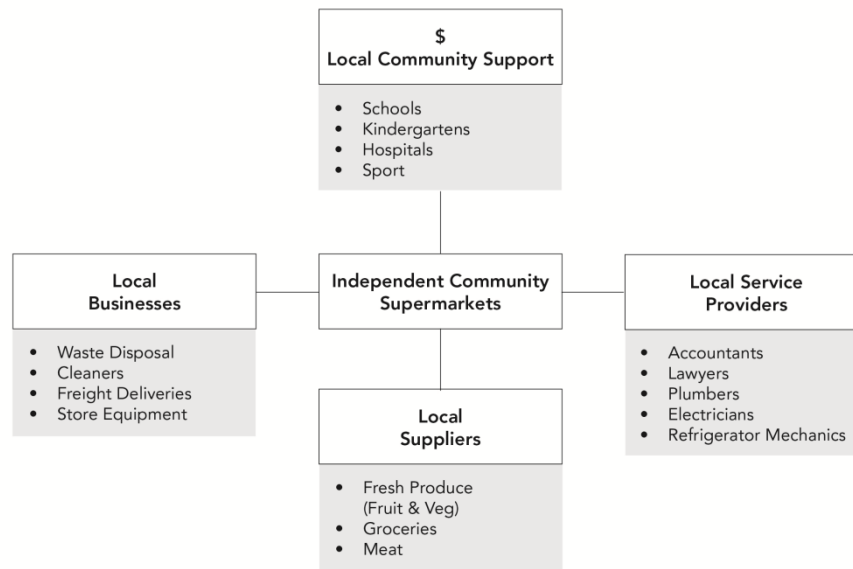
1. On 31 August 2016 the Palaszczuk Government established an independent review of Queensland's retail trading hours' arrangements. The review is in response to concerns by business and the community that Queensland's trading hours arrangements are difficult to navigate and may act as a disincentive to smaller business expansion, employment and growth. MGA and CCIQ would concur with this position concerning the current disincentive to smaller business expansion, employment and growth.
2. The Government has appointed a Trading Hours Review Reference Group, comprising of key business groups including MGA, CCIQ, the Queensland Tourism Industry Council and Unions to consider and report to the Government on Queensland's current trading hours' regulatory framework and to make recommendations that will improve trading hours' regulation to promote employment and economic growth while continuing to balance the interests of consumers, workers and small and large businesses.
3. The Chair of the Reference Group has sought business and community opinion on shop trading hours' regulation in Queensland and that parties make a submission to the Trading Hours Review after considering the information contained in the issues paper. In response, MGA and CCIQ are pleased to make this submission and hopes that this submission is of value to both the Reference Group and Government in their consideration of Queensland's Trading Hours arrangements. MGA and CCIQ's submission responds directly to the terms of reference posed by the review, namely:
 - The impact of the current framework, and any alternative models, on employment and business growth in Queensland.
 - The impact of the current framework, and any alternative models, on the Queensland economy overall or particular regions or sectors of the economy.
 - The impact of the current framework, and any alternative models, on the market share of small and medium-sized businesses.
 - The impact of the current framework and any alternative models, on workers and their families.
 - The impact of the current framework, and any alternative models, in meeting the needs of the Queensland public and visitors to the state.

- The impact of the current framework, and any alternative models, in providing certainty and consistency in retail shop trading hours arrangements between and within regions of Queensland, including in relation to public holidays and trading hours on those public holidays.
4. MGA and CCIQ appreciate the opportunity to comment on this review and welcomes effective reforms that would strengthen independent community businesses, Queensland workers and consumers. MGA and CCIQ thank the Office of Industrial Relations for providing the opportunity to join the reference group and comment on the Issues Paper.

II. About Master Grocers Australia

5. Master Grocers Australia (“MGA”) is a national employer industry association representing independent grocery and liquor supermarkets in all States and Territories of Australia.
6. In Queensland alone, there are 760 independent supermarkets that trade under brand names such as IGA, Foodworks, Friendly Grocers and SPAR. These supermarkets range in size from small to medium or large businesses. While many of MGA’s members are small family-operated businesses that employ 25 or fewer employees, these community businesses account for the employment of more than 21,000 full time, part time and casual employees, who are employed to work across a seven day working week. This represents retail sales in excess of \$2.8 billion, which is 156 million customer transactions per annum or 3 million customer transactions per week.
7. In addition, the role of independent supermarkets in Australia has traditionally always been community-focused, with many of these supermarkets making and returning substantial contributions to the communities in which they trade. This is not only demonstrated in the forged relationships between independent supermarkets and their local communities but also in the strong commitment of independent supermarkets to support their local communities, through local fundraising initiatives that support schools, kindergartens, hospitals, clubs and so on. Independent supermarkets also support the businesses of local suppliers and service providers as well as provide employment.

Many of their employees include working mothers, tertiary students, trainees, and apprentices.



DRIVING LOCAL EMPLOYMENT AND ECONOMY

III. About the Chamber of Commerce and Industry Queensland

8. CCIQ is Queensland's largest business organisation. CCIQ has a State-wide membership across all industry sectors and of business sizes. In total, we directly and indirectly represent more than 25,000 businesses with links to more than 120 local chambers of commerce and professional associations.
9. CCIQ for over 140 years has been the voice of small business in Queensland. By articulating the message of small business and acting as solely the voice by factually representing small business views, CCIQ has progressed to having excellent working relationships with all sides of politics with influence to create a better business operating environment in the Sunshine State.

IV. Executive Summary

10. In the previous two years, MGA has been at the forefront of Trading Hours Applications before the Queensland Industrial Relations Commission ('QIRC'), engaging in approximately thirteen separate trading hours applications. MGA has represented both

our members and non-members in these matters in areas ranging from South East Queensland ('SEQ') to Mount Isa.

11. The focus of MGA's involvement in these matters has been to oppose applications filed by the NRA to extend trading hours for non-exempt stores. MGA maintains and regularly evidences that successful QIRC applications which extend trading hours for non-exempt stores simply increase the market share of Coles and Woolworths and crowd out independent community retailers.
12. Although there are a number of retailers affected by the current trading hours legislation across Queensland, there are only five large retailers who consistently trade the requested longer hours that were recently sought as part of the South East Queensland decision before the QIRC. That is in both the capital cities and non-metropolitan areas of NSW, Victoria and Tasmania (where hours are further deregulated) namely, Coles and Woolworths Supermarkets and Kmart Discount Department Stores. These retailers are owned by two companies (Woolworths and Westfarmers) and any efforts to further extend trading hours for non-exempt stores in Queensland is simply a strategy to further consolidate the retail duopoly in Australia at the expense of independent community retailers.
13. Throughout the significant number of trading hours applications before the QIRC, MGA has evidenced our genuine concerns for both the retail interests of our members (and non-members) and the broader implications associated with the deregulation of trading hours or increase in trading hours for non-exempt stores. Several of the important aspects and challenges that our Queensland members understand so well, such as the detriment to community vibrancy, the unequal ratio of employment opportunities in independent stores vs non-exempt stores, the decreasing economic stimuli and new job growth in regional communities, and the decrease in consumer choice and market diversity are all relevant and often ill-considered under the current trading hours regime.
14. MGA and CCIQ members face a highly competitive environment in Queensland with a significant number of our members operating within 5km of a non-exempt store such as Woolworths, Coles or Aldi (the 'National Chains'). As a result the opportunity to trade when the National Chains are closed is of particular importance to our members with

most stores endeavouring to open before their nearest national chain store opens and remain open until after their nearest national chain store has closed. This is in order to remain competitive and make up for the lost sales during the hours when the National Chains are now open.

15. Therefore, MGA and CCIQ propose a number of changes to the current framework for the regulation of trading hours in Queensland. The proposed changes are made in consideration of the terms of reference of this review and in light of the unique insight MGA and CCIQ offer into the independent retail sector across Queensland.
16. Naturally as the trading hours of the National Chains are extended through countless QIRC hearings, our members face increased challenges to remain competitive. Compared to other states across Australia, these challenges are magnified in Queensland as a result of the constraints that exist in the Queensland Liquor Act 2008 ('the Liquor Act') which prevent independent supermarkets from participating in the liquor industry in Queensland. Should trading hours for non-exempt stores continue to be liberalised or deregulated across Queensland, MGA and CCIQ submit that such changes should only occur concurrently with the liberalisation of liquor licensing laws across the state. Such a model could be effectively introduced similar to that which occurs in Victoria and New South Wales and remain responsibly regulated in a manner that best serves Queensland.
17. In addition to changes to the Liquor Act, in light of the most recent decision before the QIRC which allowed for the significant expansion of trading hours for non-exempt stores across SEQ, MGA and CCIQ submit that there now must be a five-year moratorium on any further expansion of trading hours for non-exempt stores. Regardless of the outcome of this review, a moratorium on any expansion of trading hours for non-exempt stores anywhere in Queensland is now essential and overdue.
18. At this time, changes should also be made to Queensland's legislative framework by amalgamating, redefining and broadening exempt shops and independent retail shops into one easy to understand category of shops (exempt shops). This new category of exempt shops should operate with no restrictions upon when they can trade excluding

Good Friday, Christmas Day and before 1 pm on ANZAC day as is the current scenario for exempt stores.

19. Changes should also immediately be made to Queensland's legislative framework so that the QIRC is immediately prevented from making any further trading hours orders. This would prevent the continuation of the significant number of trading hours Applications before the QIRC that have continued to relentlessly occur following the Government's 1994 and 2002 trading hours decision . This would also prevent an influx of 'last minute' applications as the state transitions towards the Government deciding allowable trading hours.
20. Following the five year moratorium, it would be the legislative responsibility of the Government to establish the basic allowable trading hours across Queensland. The Government is the sole body with the resources to investigate and legislate on such matters while ensuring the best interests of all relevant parties are considered.
21. The moratorium would allow the Government the opportunity to review and consider the effects of the expansion of trading hours for non-exempt stores in South East Queensland and consider whether any future changes should occur anywhere in the state.

V. Retail Trade in Queensland

22. All FoodWorks, IGA and SPAR stores across Queensland are independently owned and operated, and generally form the major investment for family/personal enterprises and form a large part of an individual's or group's investment and/or superannuation strategy. Each of the branded stores are small businesses independently owned and operated as sole traders or family run businesses, and some are partnerships where more than one family has a financial interest in the business. Many stores are handed down to the next generation as a legacy to continue as a form of family enterprise/asset.
23. Our members' stores range in size in Queensland from 100m² to 3,000m² and vary in service-type from pure convenience up to full offer supermarkets with all fresh departments. In many locations throughout Queensland, these stores form a major contribution to the local economy and employment. These stores along with the other

non-corporate retailers are part of the fabric of the communities in which they serve, contributing to local clubs, schools and charities, and supporting local trades, vendors and services.

24. MGA and CCIQ are opposed to the substantial deregulation of trading hours for non-exempt stores in Queensland and argues that by adopting the approach found in a number of other states such as New South Wales, Victoria and Tasmania), Queensland will experience a significant reduction in both independent retailer stores and employment opportunities across the state. That is because the simplistic approach of mirroring other states fails to recognise the unique nature of the Queensland retail environment and fails to allow for the intricacies that are unique solely to Queensland retail sector.
25. As an example of the distinction between Queensland and other states, Australian Bureau of Statistics (ABS) data can be categorically relied upon to exemplify the significant disparity in the population density levels and market conditions between the Eastern States and Queensland. The data which was published by ABS on 31 March 2015 indicates that the Queensland region covers a much greater area (1,729,958.1 km² compared to 227,495.7 km² for Victoria, 800,808.8 km² for New South Wales and 68018.2 km² for Tasmania) yet has a significantly lower population density (2.7 persons/km² compared to Victoria which has 25.7 persons/km², New South Wales which has 9.4 persons/km² and Tasmania which has 7.6 persons/km²).¹
26. In Queensland unlike other states, independent retail stores are excluded from acquiring a liquor license, many stores are highly reliant on sales that they make when non-exempt stores are closed due to current trading hours regulations. Countless stores experience a peak in trade later in the day and this can form a significant part of their sales. In regional areas, stores often turn a profit only as a result of the opportunity to trade on Sunday when non-exempt stores are required to remain closed. In addition early morning trade on Saturday and Sunday is also important with shoppers at these times usually interested in everyday consumption items; that is, the purchases are for the

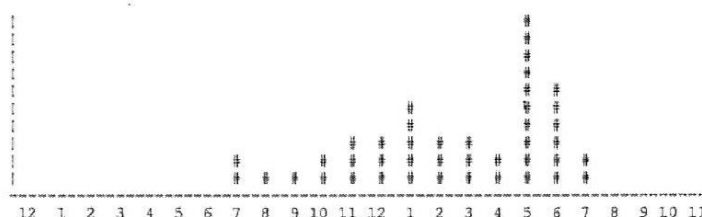
¹ Australian Bureau of Statistics. Regional Population Growth, Australia, 2013-14 (cat. no. 3218.0).

day's consumption. The graph below indicates the importance of late trading on Saturday for an independent retailer (which is indicative of the industry):

Saturday Sales Data – shows the importance the late trading on Saturdays

Consolidated Hourly Productivity Report		27/08/2015 13:01		PAGE: 1/1			
For Saturday, 8 August 2015							
Hour Starting	Customers	Items Sold	Sales (\$)	Sales per Customer	Items per Customer	Avg price per Item	% of Sales
12:00:00 AM	0	0	0.00	0.00	0.00	0.00	0.0
1:00:00 AM	0	0	0.00	0.00	0.00	0.00	0.0
2:00:00 AM	0	0	0.00	0.00	0.00	0.00	0.0
3:00:00 AM	0	0	0.00	0.00	0.00	0.00	0.0
4:00:00 AM	0	0	0.00	0.00	0.00	0.00	0.0
5:00:00 AM	1	2	39.85	39.85	2.00	19.93	0.4
6:00:00 AM	12	22	153.27	12.77	1.83	6.97	1.7
7:00:00 AM	38	108	456.45	12.01	2.84	4.23	5.2
8:00:00 AM	20	40	252.71	12.64	2.00	6.32	2.9
9:00:00 AM	27	75	351.42	13.02	2.78	4.69	4.0
10:00:00 AM	33	113	432.04	13.09	3.42	3.82	4.9
11:00:00 AM	37	110	607.21	16.41	2.97	5.52	6.9
12:00:00 PM	33	88	577.86	17.51	2.67	6.57	6.5
1:00:00 PM	37	175	918.18	24.82	4.73	5.25	10.4
2:00:00 PM	35	80	562.77	16.08	2.29	7.03	6.4
3:00:00 PM	32	138	585.34	18.29	4.31	4.24	6.6
4:00:00 PM	29	96	542.26	18.70	3.31	5.65	6.1
5:00:00 PM	102	400	1832.86	17.97	3.92	4.58	20.7
6:00:00 PM	68	244	1126.44	16.57	3.59	4.62	12.7
7:00:00 PM	24	75	419.62	17.48	3.13	5.59	4.7
8:00:00 PM	0	0	0.00	0.00	0.00	0.00	0.0
9:00:00 PM	0	0	0.00	0.00	0.00	0.00	0.0
10:00:00 PM	0	0	0.00	0.00	0.00	0.00	0.0
11:00:00 PM	0	0	0.00	0.00	0.00	0.00	0.0
	528	1766	8858.28	16.78	3.34	5.02	

Graph of Value of Sales for Each Hour



27. Sales by our members during times when non-exempt stores are prohibited from trading forms a significant part of their daily/weekly sales volume. Decisions by the QIRC, most recently the SEQ decision, to extend trading hours for non-exempt stores creates a significant potential for small business failure as any previous benefit to independent grocery retailers is extinguished and non-exempt stores expand their hours and market dominance.

28. In several other states, independent stores have the option of mitigating or overcoming such losses through the sale of liquor however this option remains unavailable in Queensland. In addition, a significant number of independent community stores do not meet the definition of an 'independent retail shop' because of their size and number of

employees and while they remain small locally owned family businesses, they are prevented from opening beyond the hours permitted by the duopoly.

29. Of course many MGA and CCIQ members are currently categorised as non-exempt stores even though they remain relatively small family operators. Similarly several of our members have been forced to stem the growth of their businesses to remain an 'independent retail shop'. Such efforts appear to contradict the likely origins and intent of the legislation to protect 'mum and dad businesses' as the legislation now appears to stem small business growth.
30. Evidently several of the proponents for the deregulation of trading hours based on models in other states of Australia remain staunch defenders of tight liquor regulation in Queensland to the exclusion of independent grocery stores.
31. This leaves independent store owners with little option but to terminate staff that they can no longer afford or reduce employee hours and work longer hours themselves as profit margins decrease. The expansion of trading hours for non-exempt stores further harms our members as it impacts their family lives as they work longer hours, harms their superannuation nest egg through the devaluation of their business and often results in ensuing health problems.
32. Amendments to Trading (Allowable Hours) Act 1990 (the "Trading Hours Act") should ensure that family community businesses that wish to expand their businesses and increase their employment of local persons are not hindered by local trading hours regulations. This will assist in the maximisation of retail employment in rural and regional areas beyond the capacity of the large National Chains and assist those independent stores in servicing their communities.

Case study - Mundingburra IGA & Walters IGA

Mundingburra IGA is a 1000m2 supermarket located 5 minutes for the CBD of Townsville. Its operating hours are 6am to 10pm, 7 days a week. It is owned and operated by Adam and Maree Westbury, who have owned the store since March 2013. Mundingburra IGA currently employs 26 staff. Adam and Maree advise that:

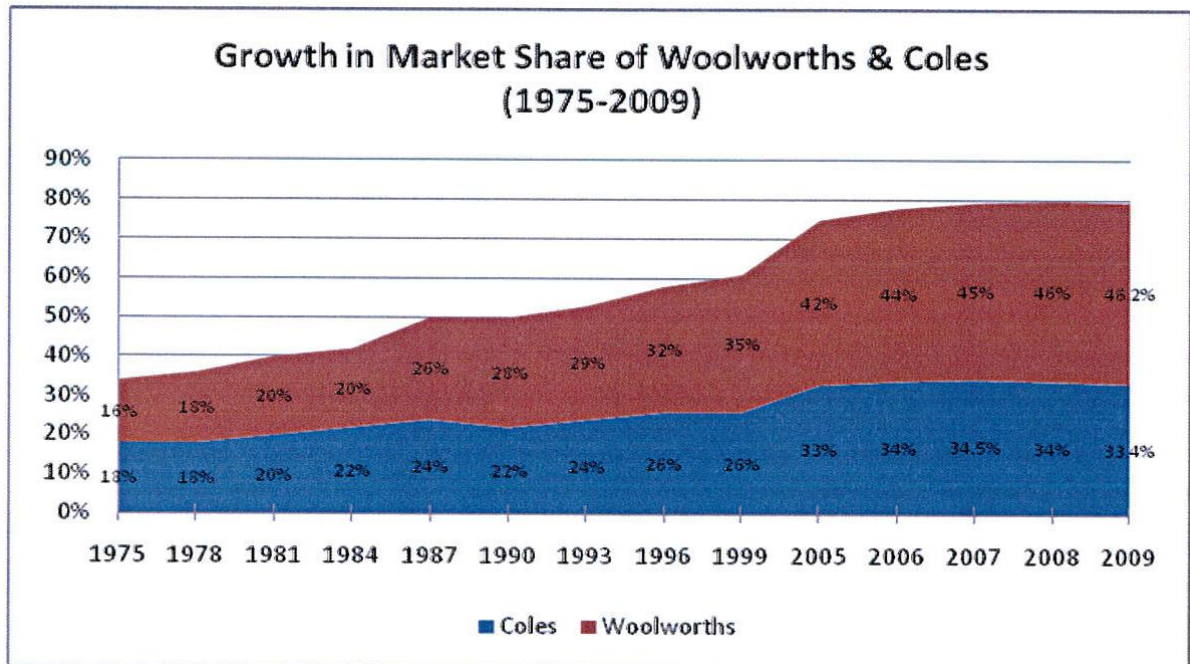
- In 2014, the tourist area of Townsville was granted extended trading hours on a Sunday morning from an 11am opening to an 8am opening for stores at:

- Coles – North Ward (was a Bi-Lo); and
 - Woolworths Townsville CBD
- The direct impact on their store was a loss of \$3,000 per Sunday in sales and \$5,000 loss for the week.
- As an already struggling business competing with 25 other full service supermarkets in the Townsville region including 6 Coles, 13 Woolworths and 6 IGAs and another 12 or more smaller stores (Night Owls or Convenience stores) in a population of around 200k people, they had to reduce costs by:
- Making their 2IC redundant
 - Increasing their own hours by 40 hours to cover the 2IC who they could no longer afford;
 - Reducing their casual labour force by 3 hour per day to a total of 21 hours (School boys / girls);
 - Reducing store's cleaning contract by 2 days a week or 6 hours a week detrimentally affecting another local business; and
 - Reducing their donations to schools and sporting groups by \$3,000 per year.
- Adam and Maree are now both forced to work 6 days a week undertaking roughly 65 hours per week each.
- Prior to the 2014 decision, in 2007 the whole district of Townsville was granted Sunday trading hours of 11am to 5pm. Mundingburra IGA was trading at \$100k per and employed over 32 staff. Following the 2007 decision its sales dropped to \$60k per week due to the direct change in hours by Coles and Woolworths and staff numbers were slashed to 20.
- Prior to the 2007 decision, the only stores that operated were independent community supermarkets consisting of 4 Walters IGA stores (1 now operated by Woolworths) and one IGA on Magnetic Island. The 4 Walters IGA stores had a combined trading income of \$460k per Sunday. The impact of allowing Coles and Woolworths to trade on a Sunday saw a direct reduction of the following in sales:
- \$370k loss of sales on a Sunday to \$90k
 - \$21k loss of sales on a Saturday
 - \$10k loss of sales on a Monday
 - \$401k per week loss of sales for the 4 stores
- Adam and Maree Westbury report that it has taken nearly 9 years to recoup the lost sales for their store and the store is now barely breaking even after posting a financial loss in the last 9 years. Any changes in trading hours for any day of the week will have a detrimental impact on the store's immediate future and all of their remaining 26 staff.

VI. Market power of the 'duopoly'

33. The Australian supermarket retail landscape is the most concentrated in the world with a strong duopoly structure and an unhealthy market share. Statistically, it is evident that Woolworths and Coles account for around 80% of the Australian grocery market and these current share figures are conclusive evidence of the power that the National Chains hold in the Australian supermarket industry.

34. The diagram below² shows exponential growth (in market share) of Coles and Woolworths from 1975 to 2009. Subsequent store openings and site acquisitions have translated into increased market share for Coles and Woolworths.



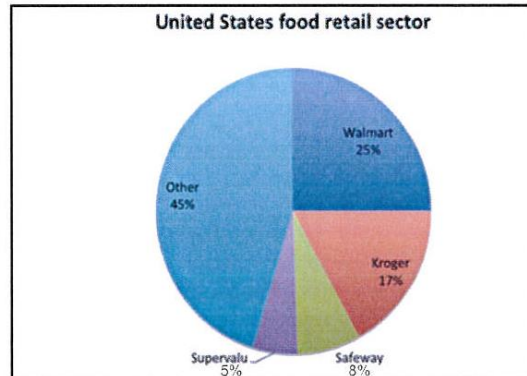
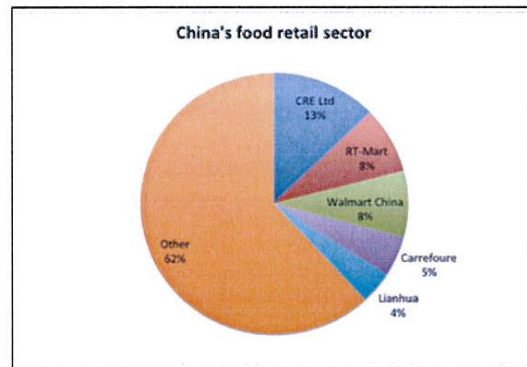
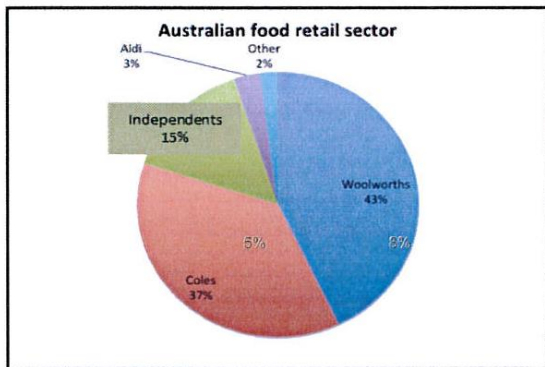
35. Accenture Australia has noted:

"Market share rankings in the supermarket sectors are quite consistent, with Woolworths, Coles and IGA being the order of the major players. Combined market share of Woolworths and Coles ranges between 77 and 80.4 per cent."

² Source: Accenture Australia, The Challenge To Feed A Growing Nation, November 2010, p. 27

36. By comparison to other countries around the world, there are significant differences in the market share of strong retailers. The largest supermarket retailer in the USA is Walmart with a market share of around 25%. In the United Kingdom, Tesco is the largest retailer and has 28% market share. In China, five large retailers collectively hold only 38% of the market share.

37. The following charts³ illustrate the dominance of Coles and Woolworths in comparison to overseas markets and demonstrate the uniqueness of the Qld market and the need to protect small independent businesses:



38. Any further extension of trading hours for Coles and Woolworths will only serve to increase the market share of the 'duopoly' to the detriment of independent supermarkets and small businesses. This can have a significant detrimental effect on town centres,

³ Source: The Conversation Media Group, Fact check: is our grocery market one of the most concentrated in the world? 12 August 2013

local communities, employment opportunities and competition within the grocery retail sector. These issues will be addressed accordingly below.

VII. Do extended trading hours create more jobs?

39. As part of this review, the Palaszczuk Government's terms of reference notes the impact of the current framework, and any alternative models, on employment growth in Queensland. Historically, considerations as to employment growth also appear pivotal in QIRC decisions where bold claims from non-exempt stores of job creation are often unsupported by tangible evidence.

40. MGA and CCIQ submit that despite the claims of the major retail chains, extended trading for non-exempt stores does not necessarily equate with increased retail employment. In fact, MGA and CCIQ argue that the deregulation of trading hours for non-exempt stores results in a decrease in employment opportunities in the retail sector. This occurs as consumers are redistributed away from the independent sector and increased market share shifts towards the larger retail chains.

41. The difficulty associated with ascertaining the effect of extended trading on employment has often been noted by the QIRC as Applicants are reluctant to provide accurate retrospective evidence that reflects previous areas where deregulation has occurred.

42. MGA submits that Applicants have been reluctant to provide such evidence as no increase in employment occurs. For example as noted by Robin Price in her article 'Extended trading Hours – More Retail Jobs?', in 172 QGIG 542 at 543, the Full Bench cites Mr Ewing, the Area Manager for Coles Supermarkets Queensland, who estimates that by commencing trading at 6am on weekdays and Saturdays and ceasing later on weekends, 'an additional 200 hours of work per week would be available, which would, in the first instance, be offered to Myer Centre Coles Express employees'. In the same case, the Full Bench of the Commission stated:

"Coles could have provided 'appropriate statistical material'. It had it within its power to provide the Full Bench with actual employment statistics both prior to the granting of an extension of hours at the Edward Street Coles Express store and the employment statistics for

some period after the granting of that extension of hours, for example, did the 1998 decision of this Commission result in an overall increase in hours and/or did it result in any new jobs being created. Those figures were not provided (172 QGIG 542 at 544).”

43. In her article which is attached to this submission, Ms Price independently examines the impact of extended trading, and Sunday trading in particular, on employment levels within one of Australia’s largest supermarket chains. Interestingly, while the article was published before the widespread implementation of self-serve checkouts, the conclusion asserts that that extended trading hours do not necessarily result in increased overall employment levels within large retailers, such as supermarkets. The article concludes:

“The findings of this research refute the assertions of the large retail chains and their employer associations that extended trading, in the form of Sunday trading, will result in increased employment. In Westside, after Sunday trading was introduced there was an increase in total labour hours for the store, but not more employees. In Southside, after Sunday trading was introduced there was a decrease in total labour hours and in the number of employees. In the case of the two stores examined, Sunday trading did not result in increased numbers of employees within stores, although it did appear to have created longer hours jobs for some part - time employees. Clearly the number of hours that a store trades influences the level of employment within a store, but longer trading hours did not necessarily mean increased employment.”⁴

44. Ms Price’s findings are consistent with those of Professor Fabrizio Carmignani of Griffith University in his paper ‘The Effects of Deregulating Retail Trading Hours in Queensland’. In his paper, Professor Carmignani found that in a community of 40,000 people where four IGA stores operate together with seven National Chains, if trading hours were deregulated resulting in a 10% reduction in IGA market share there would be a loss of

⁴ Robin Price. *Extended Trading Hours – More Retail Jobs?* International Journal of Employment Studies, Vol. 13, No.1, April 2005 (see attached).

8.2 jobs with a total loss of 10.7 jobs in the community⁵. A copy of the Professor's report is also attached to this submission.

45. Professor Carmignani's findings are consistent with the widespread understanding in the retail sector that the National Chains' average weekly wages percentage is roughly six per cent whilst Aldi is roughly four to five per cent. In contrast, independent community stores operate anywhere from nine per cent to thirteen percent of sales.

46. As any deregulation of trading hours will invariably result in some redistribution of sales away from the independent sector and towards the National Chains, the ensuing shift of in store profits will inevitably cause a reduction in overall employment or at best, no increase to employment. This was most recently noted by Industrial Commissioner Thompson after hearing evidence in the Goondiwindi matter in 2015. Concerning the order of employment Commissioner Thompson found:

[177] The positions advanced by both the NRA and the MGA with regards to the impact of the order on employment are considered to be in all likelihood scenarios that would come to fruition should the application be approved and would have the effect of cancelling each other out rendering this criterion as being neutral.

40. Commissioner Thompson's findings reaffirm that the extension of trading hours for non-exempt stores fails to increase employment levels which continually projected by non-exempt stores when seeking an extension to trading hours.

Case study 1: Toowoomba

Based on the projections that were made by the Applicant concerning the benefits of extending trading hours for non-exempt stores in Toowoomba in 2010 as noted in the issues paper the QIRC found 'the impact on employment would be positive if the application were granted' and 'the more meritorious submissions around the interests of small and large businesses were provided by the NRA'. Our members actual experience in Toowoomba has been described by them as follows:

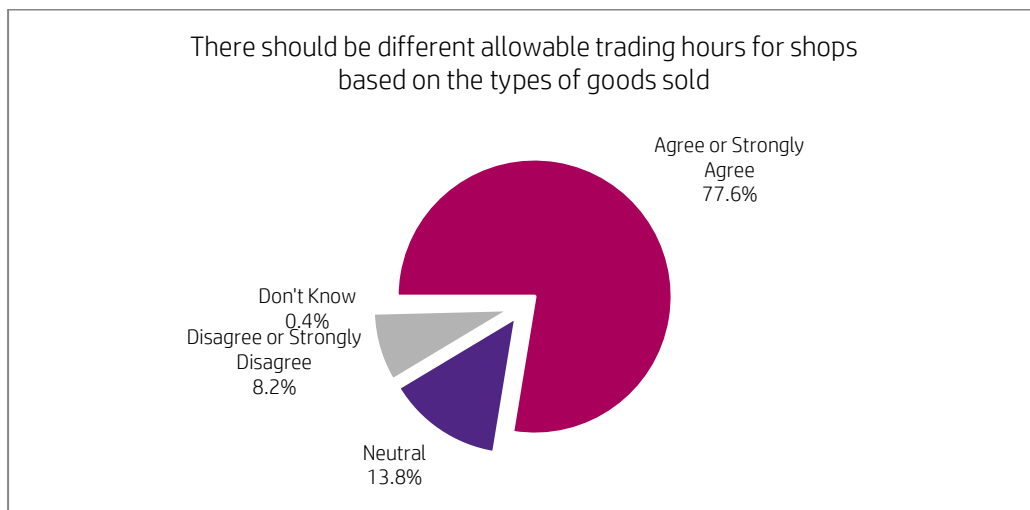
⁵ These are the 80 characteristics of the 80 statistical areas in which Queensland has been subdivided for the purpose of the Professor's analysis.

- We bought two really rundown stores in Toowoomba in 2008, we refurbished, extended and ran an aggressive promotional program and supermarket competitive pricing.
- Since 2010 when Toowoomba went Sunday trading Toowoomba has gone from 5 major shopping centres to 10 and from 6 super IGA's to 2.
- As a result our member's stores' reduction in sales is obvious, as well as the corresponding loss of gross profit. Sales were down for the quarter \$196,487 profit was down \$66,528.
- Employment hours were reduced by 608 senior hours, and 800 junior hours despite the addition of an extra 3.5 hours each day of trading.
- Our member notes that "whilst this didn't happen immediately after Sunday trading was introduced it was a consequence of unsustainable development which was not based on population growth".
 - o The advance of such unsustainable development and how it directly correlates to the deregulation of trading hours is evidenced in Dr Robert Bakers document attached to this submission.

VIII. Household survey conducted by the Queensland Government Statisticians Office

41. Between 4 October, and 15 October 2016 the Queensland Government Statisticians Office conducted a household survey in relation to retail shop trading hours in Queensland. The survey is based on a representative sample 3,364 Queensland residents. MGA and CCIQ submit that overall, it is difficult to make any definitive statements based on the results, as the questions are broad, and fail to address some of the specific issues that underpin retail trading hours. We submit as follows:

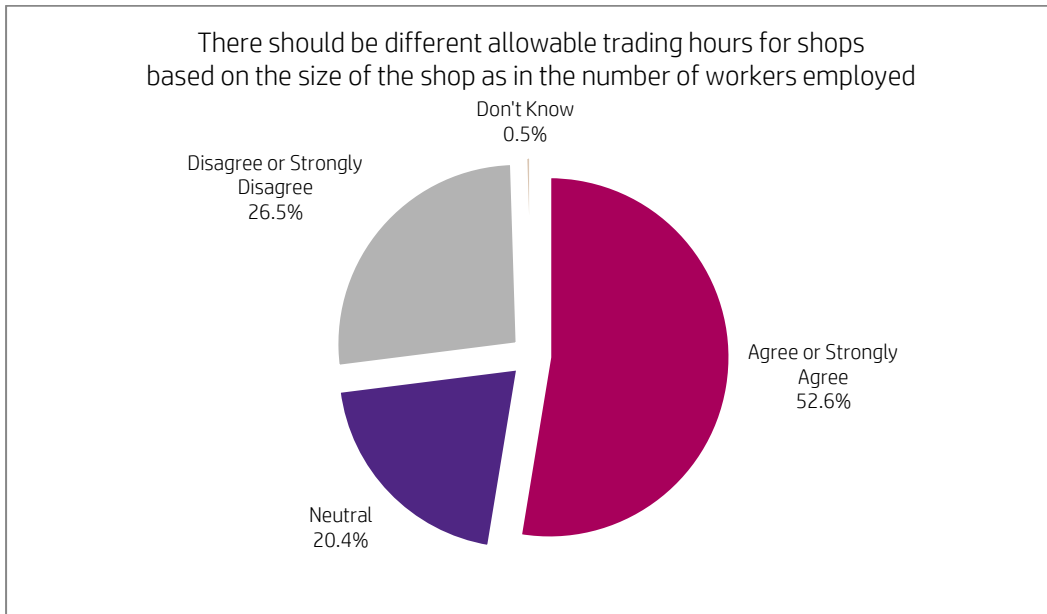
Question 1



Source: QGSO

The majority of respondents (77.6 per cent) indicated that there should be different allowable trading hours for shops based on the types of good sold. While more than three in four respondents indicated that they agreed with this statement, without any further questions in the survey that specifically address what types of goods should have different allowable trading hours, and what those different allowable trading hours should be, it is difficult to gain much from this question. It is possible however, that this response points to there being little support for uniform retail shop trading hours that apply the same conditions to all stores, regardless of the goods that they sell.

Question 2

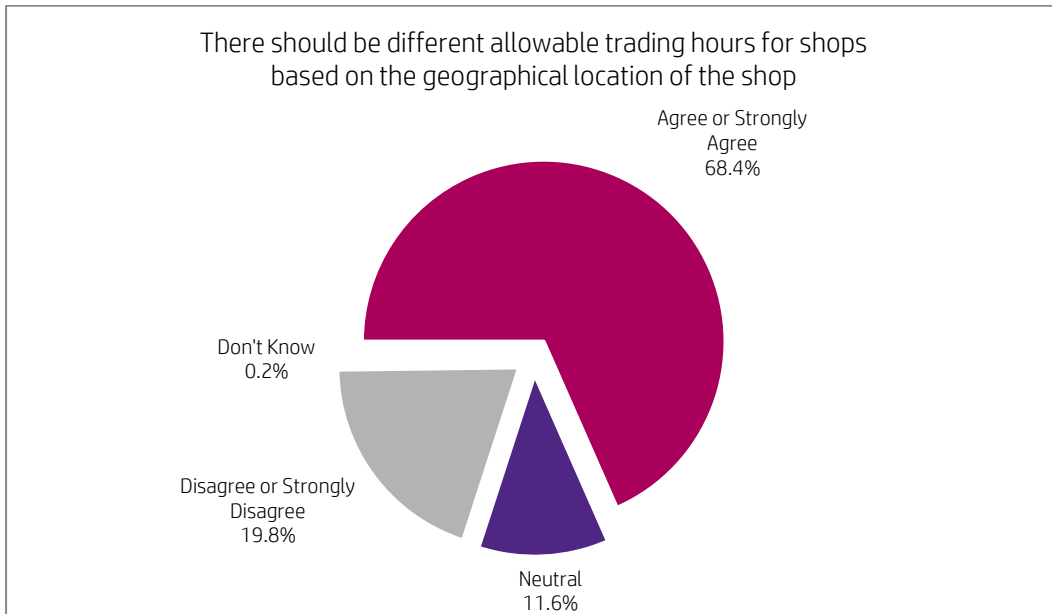


Source: QGSO

Although less definitive than the response to whether trading hours should be different based on the goods being sold by a store, more than half of all people surveyed agreed with the statement that there should be different allowable trading hours based on business size. Similar to the previous question however, as no follow-up questions were asked, it is difficult to determine at what size of business (i.e. number of workers) allowable trading hours should be different, and what those differences should be. As a result, this question is only suitable for determining that 52.6 per cent of people believe that businesses should be subject to different trading hours based on the number of workers they employ.

This could indicate that the public recognises the need to protect different sized businesses, in particular small businesses.

Question 3



Source: QGSO

More than two thirds of all respondents agreed with the statement that allowable trading hours should be different based on the geographical location where a shop is operating. While this provides a further indication that a uniform set of retail trading hours does not have public support, there is no opportunity to provide further commentary, or understand how or why geography is important for determining trading hour boundaries. Although it is clear that most Queensland residents believe that there should be different trading hours by region, it is not possible to say, for example, that tighter restrictions should be applied to businesses operating in metropolitan areas. As there were no follow-up questions to understand what was underpinning responses to this question, the statistics only provide evidence that uniform trading hours would not be supported by the majority of Queensland residents.

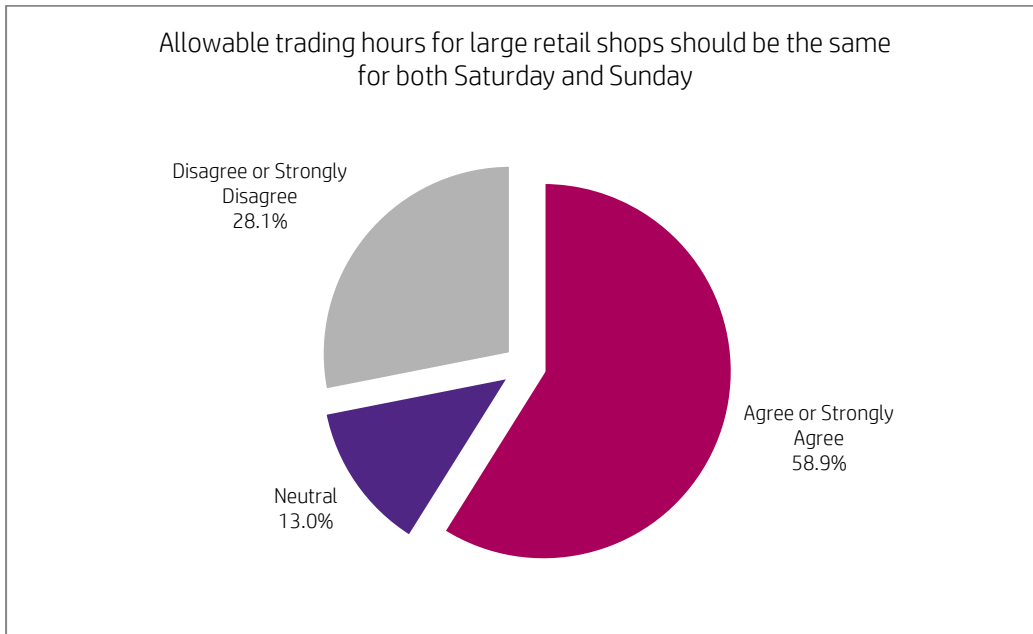
Question 4



Source: QGSO

Half of all respondents (50.4 per cent) indicated that allowable trading times should be the same for week days and weekends. Of all the questions posed to survey respondents, this question produced the least definitive answer, with more than one in three (34.4 per cent) participants indicating that they disagreed with trading hours being the same for week days and weekends. While it is difficult to interpret this response without any additional questions, which would deliver greater understanding, it is possible that this suggests a sizeable proportion of the population still maintain traditional views of the working week. As a result, there is a sizeable proportion of the public that consider the weekend (Saturday and Sunday), as being fundamentally different to the other days of the week.

Question 5



Source: QGSO

More than half of all respondents agreed with the statement that the trading hours for large retail shops should be the same for both Saturday and Sunday. While this appears to have a significant level of public support, it is again difficult to extract any meaningful information from this, other than there being positive sentiment towards there being uniform trading hours for large retailers on Saturday and Sunday. Without follow-up questions, which would address what these hours should be, it is impossible to know what hours of trade for large retailers would be acceptable to Queensland residents on the weekend. All that can be drawn from these statistics is that the majority of Queensland residents agree that the allowable hours should be the same for both days.

Question 6



Source: QGSO

Similar to question five, although there appears to be strong support (58.3 per cent) for uniform trading hours to be applied to large retail shops across Queensland, with no follow-up questions it is not possible to know how residents believe this should be applied. Without knowing what is underpinning these responses, it is not clear as to what kind of uniformity survey participants are supporting. Essentially, it is possible that this could reflect a public belief that the trading hours for large retail shops should be uniform across Queensland, but that greater restrictions should be applied.

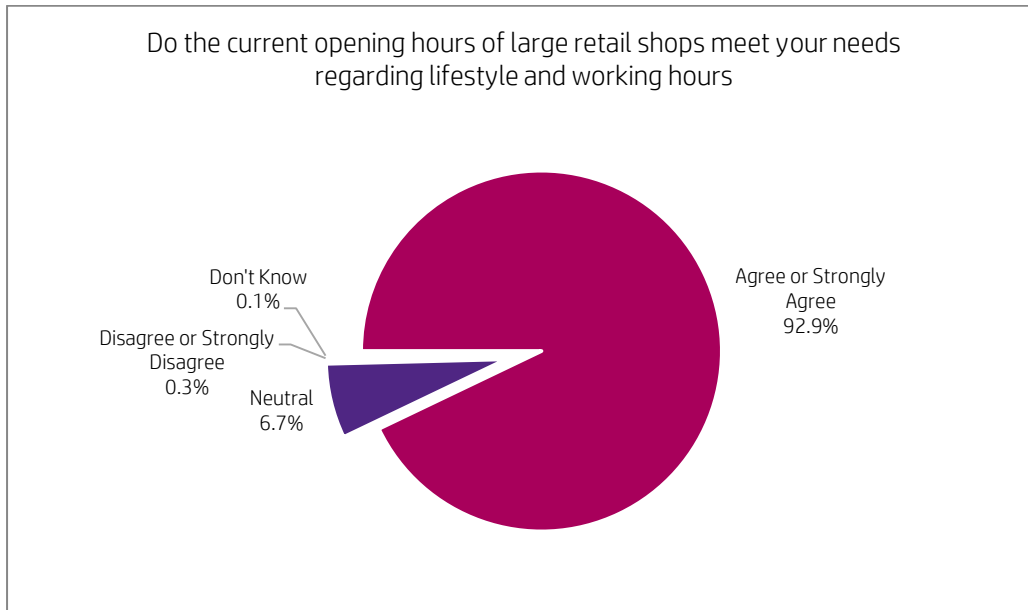
Question 7



Source: QGSO

Slightly more than half (53.7) of all respondents indicated that retail businesses, regardless of size, goods sold, or geographic location, should not be regulated and allowed to determine their own trading hours. While this suggests that there is public support for full deregulation of trading hours, this response appears to contradict the preceding questions. Essentially, while the majority of respondents indicated that different trading hours should be applied to retail businesses based on what they sell, the number of people they employ, and where they operate, it is surprising that respondents would then indicate support for full deregulation. This raises questions as to what statistics are more reliable in terms of determining level of public support. Again, the lack of follow-up questions to develop a better understanding of what is driving these responses is necessary to make sense of these headline figures.

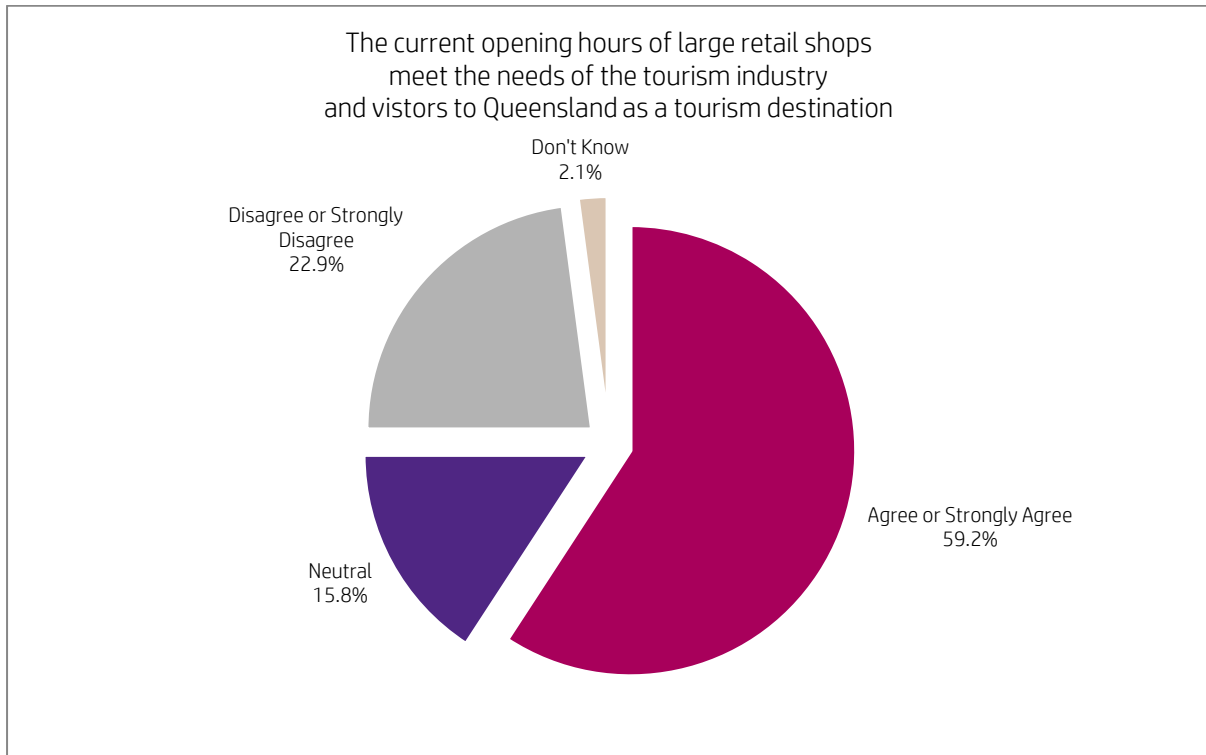
Question 8



Source: QGSO

The most definitive response from the current survey relates to whether the existing trading hours of large retailers (the status quo) meets the lifestyle and work needs of Queensland residents. More than nine in ten respondents (92.9 per cent) indicated that the current opening hours of larger retailers meet their needs, and suggests that any expansion of hours would not have any meaningful impact on the public. Essentially, the current opening hours meet the needs of the overwhelming majority of Queensland residents.

Question 9



Source: QGSO

The final question that was posed to survey participants was whether the existing trading hours of large retailers meets the needs of Queensland as a tourism destination. Almost sixty percent (59.2) indicated that the current allowable trading hours for these businesses was sufficient to meet the needs of the tourism industry and visitors to Queensland and 15.8 percent were neutral to the question. Similar to the previous question, this would suggest that the current conditions (i.e. the status quo) would be acceptable for most Queensland residents, at least in terms of the allowable trading hours made available to large retailers.

IX. Factuality Survey: Trading hours across Queensland.

42. In light of our joint concerns with the survey undertaken by the Queensland Government Statistician's Office ('QGSO') in November 2016 MGA engaged Factuality (an independent research and survey provider) to conduct a separate consumer review into Queensland Trading Hours.
43. The purpose of the research was to:
- a. Examine several aspects of Queenslanders' (all except those living within the Brisbane City Council LGA) shopping habits and their satisfaction with several aspects of shopping in their local areas.
 - b. Determine and rank the priorities that Queenslanders (outside the BCC) believe their Government should focus upon in determining whether opening hours of large retailers should be altered in their local areas.
 - c. "Battle-box" or ask Queenslanders to examine arguments put by those who support and oppose longer trading hours about several related factors and choose which they consider to be the more convincing.
 - d. Ask Queenslanders to assess the criteria that the government has asked the review to consider and indicate if they expect each would become better or worse if trading hours for large retailers were extended.
 - e. Ask Queenslanders whether they support or oppose extended trading hours, either with or without conditions or caveats.
44. A copy of the survey is attached to this submission. Unlike the QGSO survey, the survey provides the detail needed to understand what is really driving opinions and support for extended trading hours in Queensland. Overall, there is an indication that while there is marginal support for changes in trading hours⁶, respondents make it clear that this shouldn't result in an increase in market share for Coles and Woolworths.

⁶ It should be noted that this survey has been undertaken before the implementation of the SEQ decision.

45. As part of the survey, 996 residents aged 18 or over were interviewed online. They comprise a representative sample of the adult population across Queensland with the exception of the Brisbane City Council LGA which was excluded from the survey. Quotas were used for age, gender and location and then a small weight was added to ensure that the sample matches the ABS census profile across the survey area.

46. A summary of the findings largely contained in the survey reflects that:

- a. More than half (53 percent) of respondents support extended trading hours for large retailers in Queensland. However, of these respondents almost two thirds (64 percent) indicate that this support is conditional on the extension of trading hours not resulting in reduced competition and higher food prices.
- b. Further, almost three in four (71 percent) respondents agreed with the statement that “Allowing large nationally operated retail businesses the ability to determine their own trading hours will harm independently owned community stores and reduce consumer choice”
- c. The survey also finds that in “local communities” (i.e outside of the Brisbane City Council LGA), shopping hours are not seen as a significant issues, which reflects what has also been seen in the QGSO data (92.9% believe that current trading hours meet their lifestyle and working hour needs).
- d. Significantly, the second most important priority that people have for the “review” is ensuring that the market dominance of the National Chains will not increase as a result of changes in allowable shop trading hours (Impact on jobs/labour market is the biggest priority).
- e. Further, the lowest priorities for respondents were standardising opening hours for large retailers across Queensland, and making trading hours the same for Saturday and Sunday for large retailers – This is interesting as these are two questions that were asked by QGSO – This reflects that the QGSO survey was not asking the pertinent questions – It asked questions of respondents that don’t appear to be high priorities for consumers when it comes to trading hours!

f. Respondents expected that a number of factors will “become better” if trading hours are extended for large retailers. These are as follows:

- Local employment and jobs
- Queensland economy
- Local economy and business growth
- Local community

MGA and CCIQ submit that none of these factors will in fact ‘become better’ but rather would decline or be harmed by the expansion of trading hours for non-exempt stores.

g. Any expected improvements in employment, the economy or tourism are offset by factors that respondents believe will “become worse” if larger retailers can access extended trading hours – much of this rests on the competitiveness and health of small and independent businesses declining, as a result of reduced competition

h. In broad terms the factors driving support for allowing large retailers to have extended trading hours are as follows:

- Convenience
- Modernising to “catch-up” with other states
- Extra employment/job creation

i. The factors opposing extended trading hours are as follows:

- Unnecessary (Allowable hours already meet lifestyle and working hour needs)
- Negatively impacts small business
- Large retailers already “too” dominant and increasing allowable trading hours will increase the market share of large retailers and reduce competition

X. Harmonisation of trading hours across Queensland.

47. Under the guise of easing consumer confusion or improving workplace efficiencies, non-exempt stores have regularly pressed for the harmonisation of trading hours across the state or basic allowable hours for trading throughout Queensland. The concept of 'basic allowable hours for trading throughout Queensland' reflects the desire by non-exempt stores to operate a significantly larger number of hours in regional Queensland where previous applications before the QIRC have been unsuccessful.
48. Of importance is 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.
49. Yet the argument from non-exempt stores about the 'harmonisation of hours' is difficult to sustain. For example as evidenced when looking at the variability in the hours for Big W across the other states the standard deviation of the hours in Brisbane is 2.4 and this is repeated in the samples of other regions in Queensland (that is, the variation is fairly uniform across the state). There was much more variability in store -to-store hours in Sydney (6.8hrs) and Melbourne (8.7hrs). This evidence suggests that trading hours driven by market forces will lead to less 'harmonisation' of shopping hours and not solve the complexity and confusion for consumers who 'mistakenly travel to shops that shut at different times'.⁷ This failure to harmonise is also reflected in a number of other non-exempt stores as evidenced in Dr Robert Baker's study which was filed with the QIRC during the SEQ matter⁸.
50. MGA and CCIQ further note that the extension of Sunday trading hours for non-exempt stores would undermine recent 2015 decisions by the QIRC concerning Mt Isa⁹ and Goondiwindi¹⁰, and the 2011 decision concerning Warwick¹¹.

⁷ Dr Robert Baker. University of New England. Submission for matter TH/2014/23. Page 5. 2015

⁸ A copy of the document is attached to this submission.

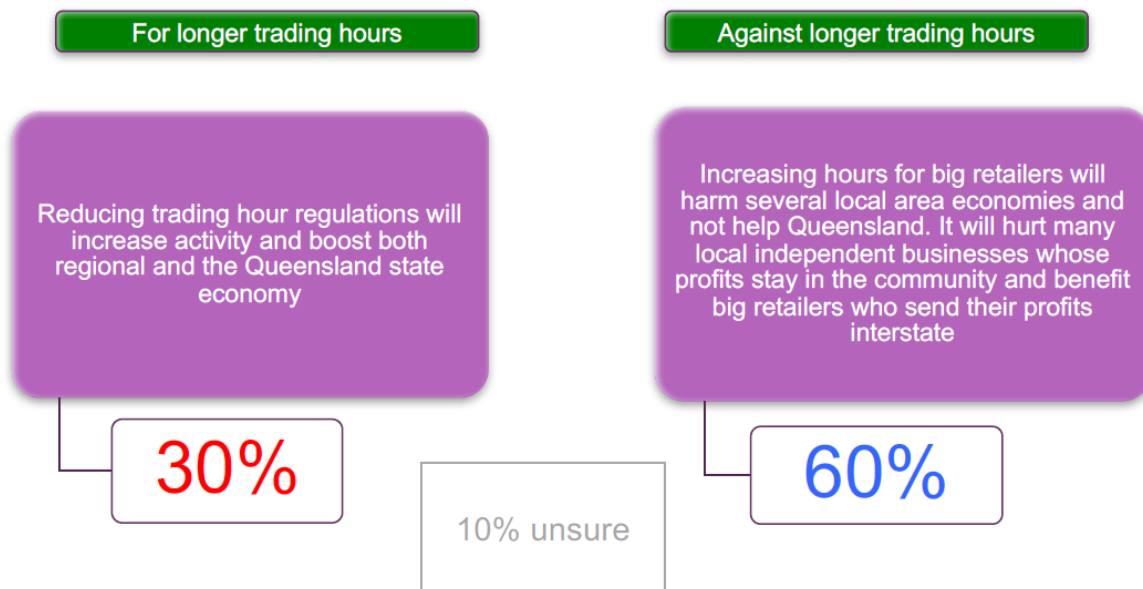
⁹ National Retail Association Limited, Union of Employers [2015] QIRC 044. TH/2014/9

¹⁰ National Retail Association Limited, Union of Employers [2015] QIRC 204 TH/2015/1

¹¹ National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2010/3)

51. Importantly these decisions evidence how a state-wide approach to trading hours will not advance the interests of the regional Communities, particularly with any extension to Sunday trading hours. MGA and CCIQ submit that this fact should be pertinent to the findings of this review, in particular that regional areas have unique retail expectations and do not require any extension to trading hours for non-exempt stores. For example Factuality’s consumer review into trading hours in Queensland found that support for extended hours tends to be weaker in smaller regional and rural communities, where adverse impacts on local businesses are most likely to be noticed and strongly felt. In ‘battle box E’ of the survey Respondents evidenced their concerns regarding local area economies:

Battlebox: *select which one you think is more convincing*



52. As a further example of the unique expectations of regional communities, before denying the recent application to extend retail trading hours on Sunday in Mount Isa, Deputy President Swan in her decision noted that:

[205] “There has been significant credible evidence adduced by those opposed to the Application. There is strong consumer interest in retaining the status quo in Mount Isa and that evidence has not only come from witnesses who operate exempt stores but

also from both local Members of Parliament, and consumers and their combined evidence has been compelling in this matter.”¹²

53. MGA and CCIQ wish to stress that in the additional areas where applications to grant Sunday trading hours for non-exempt stores have been rejected by the QIRC such as Warwick, Kingaroy, Ingham and Ayr, the QIRC in each instance found sound and defensible reasons as to why the extension of trading hours was inappropriate or ill-suited to the locality. Further to this point MGA and CCIQ submit that there would be sound and defensible reasons as to why the extension of trading hours for the National Chains would be inappropriate or ill-suited to the areas of Bowen, Charters Towers, Roma, Goondiwindi, Blackwater, Stanthorpe and Longreach, Pittsworth, Childers, Proserpine, Mission Beach, Weipa and Gloncurry.

The importance of liquor to Qld Grocery Retail

54. MGA and CCIQ dispute that the legislative constraints that exist in the Queensland which prevent independent supermarkets from participating in the liquor industry are not within the scope of this review.

55. The terms of reference of this review clearly include ‘any alternative models’ in regards to employment and business growth, the market share of small and medium businesses and the needs of the Queensland public and visitors to the state. MGA and CCIQ submit that it is therefore directly within the scope of this review to consider altering the Liquor Act in Queensland because alterations to the Liquor Act that allow independent retailers to sell packaged liquor would indisputably benefit the above stated terms of reference. Therefore, MGA and CCIQ are of the strong opinion that it would be at the peril of this review’s findings if this inconsistency with New South Wales and Victoria was not pivotal to the review’s final considerations.

56. The Queensland Liquor Act 2008 has undergone a series of amendments in recent years however, despite previous lobbying to remove restrictions in respect of providing for licences to sell packaged liquor in supermarkets, the laws remain discriminatory and anti- small business. Small independent supermarkets across Queensland struggle

¹² National Retail Association Limited, Union of Employers [2015] QIRC 044. CASE NO: TH/2014/9

every day against the domination of their giant counterparts, namely Woolworths and Coles, in all aspects of grocery sales. In addition, in Queensland, small businesses watch their retail competitors buy up a hotel and then open 3 bottle shops within a 10 kilometre radius, thereby seizing a profitable commercial opportunity, simply because of their extensive wealth.

57. The consequence of the current legislation has led to an increase in the number of hotels purchased by the monolithic duopoly, Coles and Woolworths, and an inevitable increase in the number of stand-alone bottle shops in Queensland. The law permits wealthy retailers to purchase hotels at significant cost and then take advantage of their ability under Section 7 of the Liquor Regulation 2000, to acquire additional approved premises for the sale of liquor.
58. There is evidence of considerable growth by Coles and Woolworths in the retail sales of packaged liquor in Queensland as a result of the current laws. In 2005, Woolworths acquired the ALH group for a total cost of \$1.3 billion through which they acquired 130 pubs and 400 liquor stores. The following year Coles obtained the Hedley Group which included 36 hotels and 103 bottle shops in Queensland.
59. As far back as June 2009, Nielson predicted, based on the data they had at hand, that Coles and Woolworths would grow their store numbers until they reached 45% market share which in fact they have now exceeded. Back in 2009, Nielson data estimated growth for Coles and Woolworths at around 4.9%. Currently in Queensland Coles and Woolworths jointly have around 198 hotels and 495 bottle shops, (this does not include roughly 82 Dan Murphy and First Choice Liquor Barns located on hotel sites) and they are dominating the Queensland packaged liquor market. Woolworths Liquor store brands include “Dan Murphy” and “BWS” whilst Coles store brands include, “First Choice” and “Liquorland”. Coles and Woolworths already have the majority of the packaged liquor market share in Queensland, which is roughly around a staggering 78%, even though they have not acquired the majority of hotels and bottle shops.
60. This is brought about by the fact that when Coles and Woolworths purchase a hotel it is generally one of the largest in volume, they have the funds readily available to renovate and can turn a relatively small bottle shop into one of their “Big Box stores” such as a

“Dan Murphy” store or a “First Choice” store. Due to the massive size of these Big Box venues, which are around 1,000 square metres plus, they are able to obtain sales of up to 10 to 15 times that of one of their smaller competitors.

61. The graphs show the number of hotels (Figure 1) owned by Coles and Woolworths in Queensland and the number of bottle shops that are attached to these hotels (Figure 2)

Figure 1

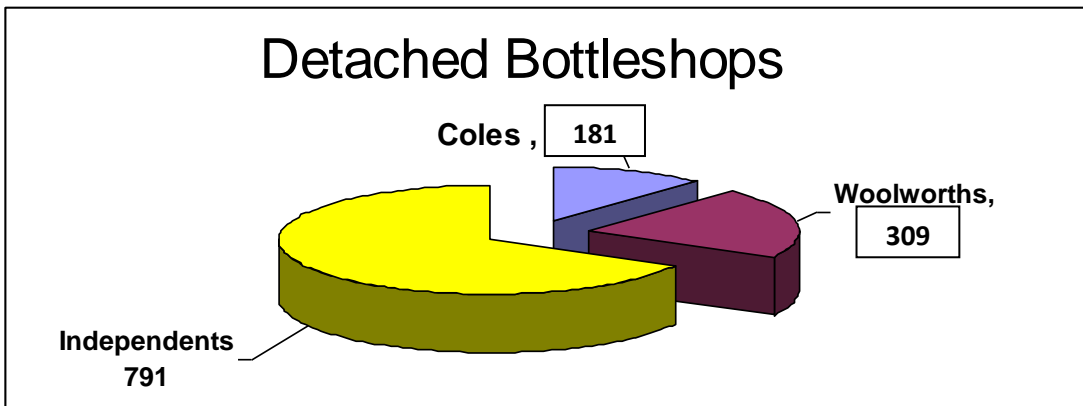
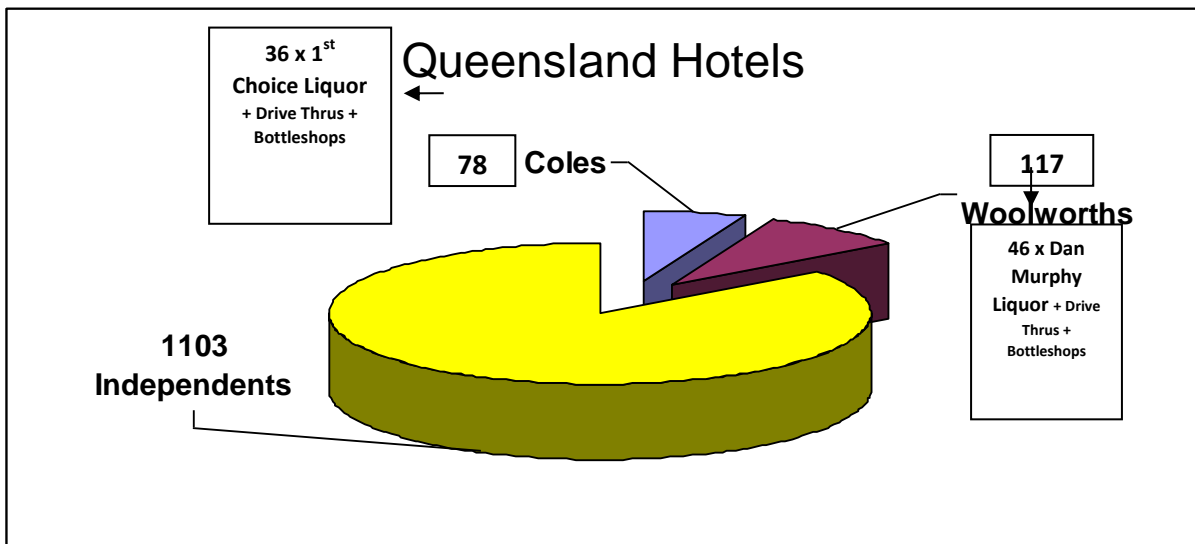


Figure 2.



62. The question independent retailers are asking is where will the chains market share end up and will there be any independent businesses left to compete? Further to this point, if non-exempt stores such as Coles and Woolworths increase their hours of trade to those that are experienced in New South Wales and Victoria, the sole competitive equaliser

- (that being the current limited number of regulated trading hours that independent retail shops can trade to the exclusion of non-exempt stores) will be extinguished. Evidently with the most recent decision concerning SEQ¹³, this has already largely occurred.
63. Based on the dominance of Coles and Woolworths liquor outlets there is conclusive evidence that the liquor licensing laws in Queensland are currently discriminatory and anti-competitive and are a distinct barrier to the entry of independent supermarket competitors to the packaged liquor sales market. The rules protect larger businesses which have been able to establish themselves as the main retail distributors of packaged liquor in Queensland and who are often heard promoting the deregulation of trading hours while stringently opposing any further liberalisation of liquor licensing laws.
64. At the present time there appears nothing that can prevent the continued growth of Coles and Woolworths in the Queensland packaged liquor market with the regulatory structure that currently exists. Both MGA and CCIQ have previously urged the Queensland Government to amend the legislation so as to open up a new opportunity for independent supermarkets to participate in the liquor industry and the importance of such a development is now heightened with the further erosion of trading hours regulations that have previously balanced competing grocery market interests.
65. As an example – Coles (39 Liquorland) and Woolworths (96 BWS) have placed many of their detached bottle shops very close to their supermarkets - utilising their supermarket catalogues to advertise packaged liquor – this is an unfair competitive advantage!

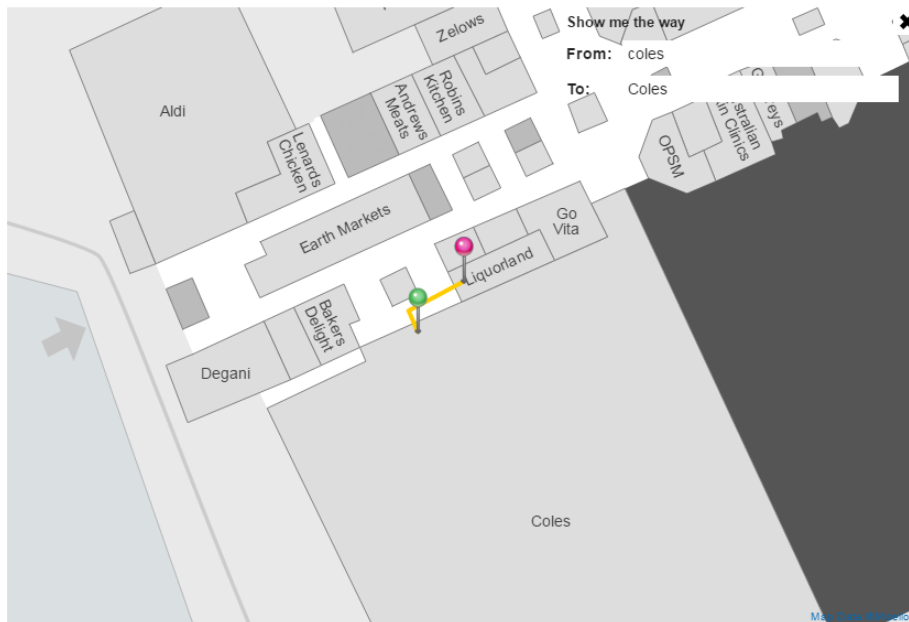


Coles Loganholme Supermarket catalogue featuring packaged liquor (available from the Coles website)

¹³ National Retail Association Limited, Union of Employers [2016] QIRC 106 Matter TH/2014/23.



Loganholme Shopping centre – This map below and photograph above shows a Coles supermarket and a Liquorland store within very close proximity of each other. The Aldi store is unable to sell packaged liquor!



Proposal 1: Amend the Liquor Act to allow a new class of liquor licence to permit the sale of packaged liquor in independently owned supermarkets

66. MGA and CCIQ propose an amendment to the Queensland Liquor Act 2008 which would provide greater opportunities to retailers who are currently disadvantaged by the law. We propose a new class of liquor licence to permit the sale of packaged liquor in independently owned supermarkets which will be a significant boost to their businesses and the Queensland economy.

67. The assertions that have been made by the NRA (often without substance) and evidently accepted by the QIRC to extend trading hours as a result of increased employment opportunities, benefits to tourism and increased consumer choice should equally be relied upon by the Queensland Government when considering amendments to the Liquor Act.
68. These considerations are also consistent with the terms of reference for this current trading hours review, namely to suggest alternative models that would positively impact on employment, the current framework and their detrimental impact of the market share of small and medium community businesses and alternative models to the current framework that would better meet the needs of visitors to the state.
69. Increased employment opportunities and an increased prosperous independent supermarket sector will be a significant positive outcome should independent supermarkets be allowed to expand their business opportunities and as a result, properly respond to the on-going deregulation of trading hours for non-exempt stores.
70. Providing the opportunity have a liquor license to independent supermarkets would benefit tourism in a vast state like Queensland, given that a number of independent supermarkets are located in smaller, remote towns on tourist routes, often featuring local food and beverage products for tourists. Independent supermarkets would welcome the opportunity to supply the boutique beers and local wines of their area, and this increased flow of consumers would go some way to equalising market opportunities as non-exempt stores continue to expand their trading hours across the state.
71. The Queensland tourism industry will also be enhanced for Australian tourists, as well as visitors from overseas, who are already accustomed to shopping for their liquor in supermarkets. In places like America, the United Kingdom and Europe, alcohol is sold through licensed supermarkets and when tourists visit Australia they expect to shop with the same ease and convenience in a controlled retail environment that they are accustomed to back home.

72. The reliance on the Harper Competition Policy Review to support any argument in favour of the further liberalisation of trading hours for non-exempt stores must also place significant emphasis on the Harper Reports final findings that “Trading hours restrictions and restrictions preventing supermarkets from selling liquor impede competition. The Panel recommends that restrictions preventing supermarkets from selling liquor be reviewed as part of a new round of regulation reviews...”¹⁴
73. Therefore, MGA and CCIQ submit that the findings of this regulatory review should strongly recommend that in light of the issues raised above, and the ongoing erosion of trading hours regulations for non-exempt stores, independent supermarkets must now be permitted to participate in the packaged liquor market in Queensland.
74. Queensland grocery retail in its current form cannot simply be compared to grocery retail in other states such as Victoria or New South Wales and ‘like for like’ trading hours in Queensland with other states would not be in the best interests of Queensland consumers, Queensland employees or Queensland retailers. Any further deregulation (or liberalisation) of trading hours for non-exempt stores as part of this review, without the prior deregulation of liquor licensing laws, would cause irreparable harm to independent community grocery retailers.
75. These changes to the Liquor Act should occur before any further expansion of non-exempt store’s trading hours is considered. MGA and CCIQ are mindful that there are several other factors that need to be considered in regards to liquor and we would be happy to work with Government to overcome any challenges. However as we have found in both NSW and Victoria there are clear workable solutions that would allow independent grocery retailers to participate in the packed liquor market and subsequently operate unimpeded as trading hours are further deregulated for non-exempt stores.
76. Beyond the benefits to the consumer and the Queensland economy, this would serve two clear and primary benefits. The first is that it would increase employment and stabilise the market share of small and medium grocery retail businesses and secondly it

¹⁴ Harper Competition Policy Review Final Report. 31 March 2015. Part 2, Findings and Recommendations.

would allow independent retailers ample opportunity and the capacity to better adjust to any future increase in non-exempt stores' trading hours.

Case Study:

Foodworks Maryborough was formally owned by Mr Greg Tierney who gave evidence to the Commission in the Maryborough trading hours matter (TH/2011/6). In paragraph 42 of the decision the Commission referred to Mr Tierney's claim that he believed that he would lose approximately \$45,000 of his Sunday turnover if the application was granted.

In fact the store lost approximately 25% of total trade. When new owners purchased the store the losses caused by Woolworths trading on Sunday remained insurmountable resulting in an inability to maintain the rent or renew stock. The new owners went into liquidation and roughly 60 employees lost their jobs.

MGA maintains that it is highly unlikely those employees were subsequently employed by Woolworths.

XI. A deregulated model?

77. MGA and CCIQ continue to oppose a deregulated model of trading hours for Queensland. As mentioned previously, the grocery retail sector in Queensland remains uniquely distinct from other states across Australia and therefore MGA and CCIQ maintain that a deregulated model for Queensland would harm independent community businesses in Queensland even though similar trading patterns in other states are less problematic.

Proposal 2: A five year moratorium on the extension of non-exempt store trading hours

78. MGA and CCIQ submit that following the recent QIRC decision concerning SEQ, which allowed for the significant expansion of trading hours for non-exempt stores to the detriment of exempt retailers, there must now be a 5-year moratorium on any further extension of trading hours for non-exempt stores across Queensland.

79. The 5 year moratorium will allow for the State Government to review and monitor the circumstances in South East Queensland following the most recent decision to extend trading hours and conduct an on-going and conclusive study as to whether several of the claims and projections made in the SEQ hearing before the QIRC were true and correct. For example a number of claims were made by the Applicant concerning job creation and economic growth for the state following the expansion of trading hours for non-exempt stores. MGA and CCIQ argue, as indicated above, that such claims are spurious and while 'job creation' appears to be a primary consideration when considering the extension of trading hours to non-exempt stores, such stores continue to develop a trading model that is increasingly less reliant on employing staff.
80. Customers to any Coles or Woolworths in Queensland will have noted the widespread roll out of self-serve checkouts where a number of customers are now served by an automated system instead of an employee. It is self-evident that such automated systems decrease employment opportunities.
81. In addition, the moratorium will provide the Government with an opportunity to ascertain whether the claims concerning the creation of new revenue are in fact correct, or whether they are simply self-serving false promises made by non-exempt stores to promote the extension of trading hours.
82. As the Government will conduct the on-going review, MGA and CCIQ submit that the review should also examine the harmful effects on exempt stores and independent retail stores when there is any extension to trading hours. This should be extended beyond the grocery sector and include for example community butchers, bakeries, pharmacies, newsagents and other competitors to non-exempt stores.
83. In addition a moratorium would allow exempt shops and independent shops the opportunity to properly adjust to the QIRC's latest decision and provide community stores with greater business certainty.
84. The moratorium would also give the Government the opportunity to amend the Liquor Act 2008 to provide for a new class of liquor licence that would allow independent

retailers to compete in the packaged liquor market. This would ensure that following the conclusion of the moratorium, if it was established that a further deregulation of trading hours for non-exempt stores was necessary or appropriate, independent grocery stores could remain viable.

Case Study – Tin Can Bay

While numerous projections were made as to the benefits of extending trading hours for non-exempt stores in the Tin Can Bay area in 2009, MGA's member reports the following:

- Wages were reduced by 400 Hours per week following Woolworths opening in mid 2009 resulting in significant redundancies.
- Wages were reduced by a further \$960 a week following Woolworths commencement of Sunday trading. Once again redundancies were necessary.
- Our member experienced a loss of trade of 40% on Sunday with the introduction of Sunday trading for non-exempt stores.
- Due to the decrease in revenue our member was forced to cease their community support to a number of local organisations and charities.
- The IGA store is still open but only just and 20 other small business stores have closed in the immediate trading precinct.
- The adjacent shopping centre (Dolphin Shopping centre) had a 100% occupancy when our member purchased their store in 2005 but decreased to approximately 65% occupancy after the Woolworths opened 8 kms out of town – many small businesses closed their doors.
 - o MGA has attached this submission the academic document of Dr Robert Baker who highlights the association between the deregulation of trading hours and the decrease in shop occupancy.
- There was a massive disruption to the community centre and total fragmentation of the hub.
- The store was sold due to the consequences of the deregulation of trading hours in the area.

XII. Defining independent retail shops, exempt shops and non-exempt shops

85. The origins and intent of an “independent” retail shop appears to be lost in time, however the provisions in the Act which govern its existence appear to suggest a legislative intention that an independent retail shop be a small, freestanding, “mum & dad” business and corner stores, not associated (by common ownership) with any other than a very small number of similarly sized businesses.

86. A difficulty has arisen in recent years that the businesses which have for some years been defined as “independent retail stores” have in a number of occasions been restricted by that definition (which imposes a restriction on the size of those businesses

related to the number of employees engaged therein), which has become unnecessarily limited in relation to the development of those stores to meet community needs.

87. The ownership criteria are such that expansion of a successful business model, even a relatively small community family business, by building or acquiring new stores, is discouraged, if not actually forbidden.
88. The evident purpose of the definition of an independent retail store to the present time has been to distinguish smaller community stores from larger National Chains in a manner so that differential trading hours can be imposed on the varying groups. This would allow independent community stores to remain viable without the saturation of the National Chains across the state at the expense of family businesses. As a result under the current legislation, larger retailers including the large National Chains have been defined as “non exempt stores” which are restricted by the various trading hours orders made, in relation to the hours in which they are able to trade.
89. Much has changed in the food and grocery market since 1990 and 1997 in relation to the retail sale of groceries in the community. While “Mum & Dad” stores remain prominent in regional areas, community stores located in regional hubs are looking to grasp the opportunities provided by Queensland’s rapid population growth and develop into modern community supermarkets providing local owners with business opportunities, local residents with jobs, and the local public with a full service community option at convenient hours.

What has changed?

90. Firstly, modern business practice has for many years dictated the prudent practice of maintaining a separation of ownership between particular critical assets of the business and the operating and/or employing entity. If a community grocery business was 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 of the Act that the business, if owned by a company, must not be owned by a related body corporate.

91. Secondly, in recent years there has been a very substantial increase in the requirement that community supermarkets have a strong emphasis on fresh food, including fruit and vegetables and delicatessen items. Carrying this kind of stock necessitates regular rotation of food and display stock throughout the day and the replenishment of shelves on a far more regular basis. For a business of a similar size which existed almost 20 years ago when these laws were last reviewed, the number of floor staff required to operate successfully would be substantially more in 2016. The requirement not to exceed 20 persons engaged at any one time in the shop is therefore much harder to meet in the same size business whilst maintaining the level of service now demanded by the public.
92. Thirdly, the imposition of a limit of 20 persons per store does not allow sufficiently for peaks in the business. The public now shops more frequently for fresh food after school and after the main daytime working hours. If an operator seeks to maximise the service to their customers during ordinary hours by engaging 20 persons to work in the store, there is then simply no capacity to increase that number at all during peak hours.
93. This is a significant impediment on the community store operator providing an appropriate service to its customers in order to be competitive in the marketplace, and is a substantial limitation on the employment of staff including part time and casual staff, who might otherwise be able to be utilised in such premises, particularly in rural and regional areas.
94. Fourthly, there has been a dramatic expansion and liberalisation of the regulated trading hours for non-exempt shops, as a result of which independent retail stores, being smaller and without the same buying resources and other market advantages, are seriously hampered in their capacity to provide the service which they wish to provide to their customers in the face of the very active competition from the National Chains.
95. Holding independent retail stores to a particular (and outdated) size and preventing the sale of packaged liquor in those stores, which is quite impractical for the operation of many such stores in the modern era, simply invites the expansion of the major

supermarket chains into areas where independent retail stores are heavily constrained in the nature and variety of services which they can provide.

Proposal 3: Defining and combining independent retail shops and exempt shops

96. Under the current scenario in Queensland and other states, criteria such as number of employees, floor space and other similar measurements are overly rigid and tend to become impractical in many circumstances, and are likely to become out-dated in a fairly short period of time. The limitations on community stores under the current scenario also fail to address the issues raised above and creates an insurmountable hurdle for the independent sector when endeavouring to compete with the National Chains.

97. It is also duly noted by MGA and CCIQ that the Reference Group Members have been instructed by John Mickel to provide a solution that allows for the employment of more people and to devise a new system that is not limited by the number of employees on the shop floor.

98. Therefore, MGA and CCIQ propose that the current divisions between stores are simplified so that there are only two classes of stores, namely exempt stores and non-exempt store. To enable this, the legislation covering trading hours in Queensland requires redrafting to the following effect:

- a. A non-exempt store is defined by reference to three possible standards, any one of which would be sufficient to qualify such a store as a non-exempt store.
- b. Such standards would involve the business being predominantly engaged in the retail sale of groceries, and fresh food, and:
 - i. the store or business be owned and/or operated by an Australian listed public company or a corporation which is a related corporation to such a company within the meaning of the Corporations Law; or
 - ii. the store or business be owned or operated by an entity by whatever name called, which is ultimately controlled by an entity or entities which are not Australian companies or Australian residents; or

- iii. the business is owned and/or operated by a corporation which, together with each of its related corporations, has a turnover in excess of 5% of the Australian market for groceries, food and related merchandise.
- c. All retail stores which are **not** non-exempt stores are taken to be exempt stores and exempt from trading hours regulation.

99. In addition, MGA and CCIQ recommend that the legislation should contain a provision which allows the relevant Minister to make a regulation specifically naming businesses or business operators as being non-exempt operators or stores, in the event that during the life of the legislation another national or multinational business commences operation within Queensland in such a manner as is likely to be highly detrimental to the smaller community supermarkets.

100. MGA and CCIQ submit that this is the only solution (when implemented with the other recommendations in this paper) that would positively affect employment and business growth in Queensland, strengthen the Queensland economy, retain the market share of the independent sector, provide certainty in retail shop trading hours and meet the needs of the Queensland public and tourists.

XIII. A model where trading hours are decided in legislation by Government

Proposal 4: Trading hours matters should be undertaken by government

101. MGA and CCIQ further submit that any future changes to trading hours legislation should be undertaken by Government and not the QIRC. As stated above, the Government has a holistic responsibility to ensure that any changes to trading hours are in the best interests of Queensland and the Government would be accountable for any changes that may occur.

102. Further to this point, any future Government has the capacity to investigate matters beyond the evidence that is presented to them by a limited number of parties and is not constrained by making a decision following the concise presentation of selective evidence.

103. This is an obvious on-going disadvantage experienced by the QIRC, the limitations of which have been outlined above in the context of alleged 'job creation'. As a further example in the most recent SEQ decision, the Applicant relied upon a report drafted by Professor Henry Ergas ('the Ergas Report') to justify the application and their claims therein that the proposed reforms in SEQ, if accepted, would create more than 1000 jobs in the south-east corner and deliver a \$111 million boost to gross state product.
104. Relying on the report the NRA estimated that "approximately 36.17 of the total potential economic and employment benefits would be achieved by allowing trade between 7am and 9 pm from Monday to Saturday, equating to \$111.4m of economic value and the creation of approximately 1000 jobs". However, MGA and CCIQ submit that the report remains punctured with hypothetical data that is presented as real evidence and is unreliable and speculative by nature. Such a report should not be relied upon to make trading hours decisions due to the fact that the detriment to Queensland communities is substantial if the projections are incorrect. Importantly even Mr Brannigan (who concocted the figures) under cross examination conceded that economists regularly make predictions that are often proven to be wrong.¹⁵
105. This was only one of a number of claims that appear concocted simply for the purpose of achieving the extension of trading hours for non-exempt stores. For example the Applicant representing the interests of Coles led evidence before the QIRC claiming that an extension to trading hours for non-exempt stores will result in increased consumer choice. MGA has led contrasting evidence suggesting that the increase in trading hours for non-exempt stores will result in a lessening of choice, competition and a decrease in retail diversity as independent grocery retailers are forced to close their doors. As recently as 26 October 2016 Coles boss John Durkan has also flagged plans by Coles to slash Coles' product numbers by as much as 15 per cent. It would appear that while the Applicant in the SEQ matter was promoting increased choice before the QIRC, they were preparing to decrease consumer choice within their stores.
106. Unlike the QIRC, any future government would have the capacity to investigate misleading claims surrounding the expansion of trading hours for non-exempt stores and

¹⁵ National Retail Association Limited, Union of Employers [2015] QIRC [NO] Transcript Page 1-67 Line 4-13.

avoid decisions that are reliant on theoretical and empirical evidence that is not reflective of actual outcomes. MGA and CCIQ submit that the government has the resources to investigate such claims and make informed decisions when considering changes to trading hours for non-exempt stores without the limitations of time or scope in authority.

107. Under the model proposed by MGA and CCIQ, the Government could also initiate trial periods of extended trading hours whereby independent forensic accountants could be relied upon to consider actual increases to economic value against actual decreases in the independent sector. As MGA has stated on a number of occasions, as the discretionary spend of customers remains the same following any increase to trading hours, any increase to the National Chains' hours simply results in a decrease in sales within the independent sector.
108. Unfortunately the QIRC is also often presented with applications whereby the Applicant has a wealth of resources to draw upon, yet independent retailers and consumers who are not represented by industry bodies are excluded from the process by lack of resources and/or capacity to participate. Such an inequity would be alleviated by any Government that was willing to consider the position of its constituents and make genuine efforts to consult with affected communities.
109. Under the current regime, applications before the QIRC to alter trading hours are predominantly characterised by evidence representing the retail duopoly of Woolworths and Coles, which includes Kmart and Target under the Westfarmers banner, and BigW as a division of Woolworths Limited (excluding decision concerning special exhibitions and special displays). That is, Westfarmers and Woolworths Ltd only.
110. It is indisputable that Queensland's patchwork of convoluted trading hours, are the sole result of the numerous applications from a limited number of interested parties (represented by the NRA), as compared to the fault of the any previous government decision. Those same parties then complain about the patchwork of variable trading hours across Queensland which they *allege* creates confusion for non-exempt stores when they made the originating applications.

111. MGA and CCIQ note that the notion of non-exempt stores requesting an alteration to trading hours and subsequently asserting that the varying trading hours are confusing for them, giving rise to a basis for further trading hours applications is 'kafkaesque' in its absurdity.¹⁶
112. Quite simply, the Government could put a quick, concise and tidy end to this irrationality and waste of resources by ensuring that any future changes to trading hours are solely undertaken by Government and not the QIRC.
113. Should the matter of changes to trading hours rest with future governments, the government of the time could take into consideration the net effect of altering trading hours for the State as opposed to the specific area of concern in an application.
114. Unquestionably a departure away from the QIRC would also alleviate the significant amount of money and resources that are invested into the QIRC and the high cost to those parties that are forced to participate in the trading hours matters.
115. A further advantage of changes being made to trading hours by government enacted legislation is that it will likely lead to a reduction in the level of variation in trading hours across the State. This would enhance business certainty for investors and allow private owners to advance their community businesses without fear of a sudden devaluation of their investment.
116. Under the current regime, an application can be made to the QIRC to alter trading hours for non-exempt stores and on most occasions with very little notice or preparation time, the QIRC grants an order which results in the devaluation of a family investment. This occurs as the store's weekly turnover drops, costs increase (due to wages percentage) and staffing needs to be cut resulting in redundancies. Profitability is immediately reduced often requiring more capital and the business is significantly devalued.

¹⁶ It should be noted that as recently as 14 October 2016 the NRA filed three new concurrent applications with the QIRC concerning Pittsworth, Stanthorpe, Ingham and Warwick which have the potential to create further upheaval in Queensland's trading hours framework.

117. For example in the most recent SEQ matter heard before the QIRC, the decision was delivered on 14 October 2016 to take effect from 1 December 2016. This gives stores an extremely short period of time for what is likely to be a significant disruption to their business and detriment to their financial security.

118. The NRA also works to exploit this vulnerability and amplify this harm to independent retailers by requesting the QIRC to hasten matters. For example in their most recent application concerning the Stanthorpe area signed 13 October 2016 the NRA writes, 'The Commission is respectfully requested to list the application for hearing as soon as possible'.¹⁷ Matching statements can be found in the NRA application filed on the same date concerning Warwick and Pittsworth.

119. While concerns have been raised as to the time it may take for the government to make decisions concerning alterations to trading hours, MGA and CCIQ believe that it is more important that the 'right trading hours decisions' are made rather than 'quick decisions' with dire consequences.

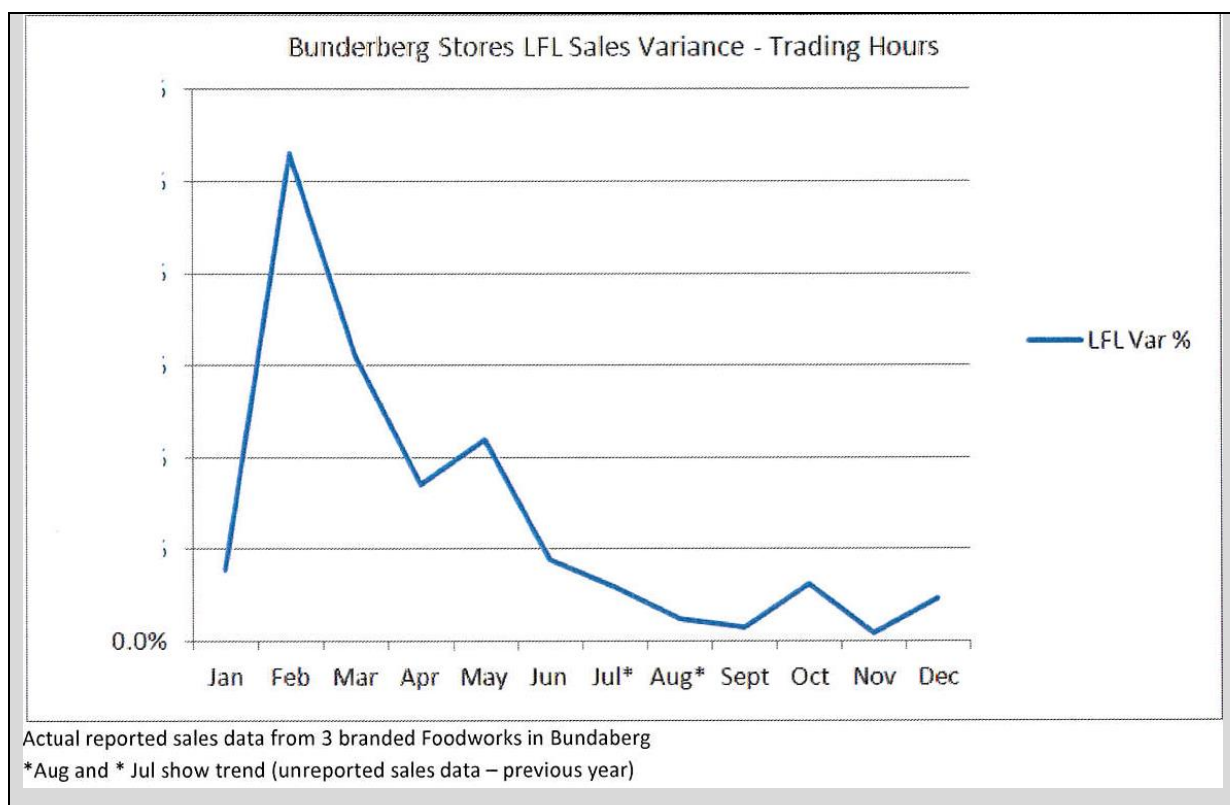
Case Study – Bundaberg

From past experience and feedback from our members we know that regional communities lose up to 25% of weekly turnover from trading hours extensions for non-exempt stores. For example in Bundaberg, the Foodworks stores experienced a drop of roughly 25% in weekly turnover (from the previous year) and 1% drop in GP attributed to the extension of trading hours for non-exempt stores. The stores in Bundaberg are:

- Learmonths Foodworks, 56 Walker Street Bundaberg
- Freshfields Foodworks, Shop 2/ 1A Thabeban Rd, Bundaberg
- Fiveways Foodworks, 16 Boundry St, Bundaberg.

The following chart shows the consequences of the trading hours decision in Bundaberg for the 3 community stores listed.

¹⁷ NRA Application to Amend Trading Hours Order – Non Exempt Shops Trading By Retail. 13 October 2016. Para 18.



XIV. Changes to criteria for deciding applications for extended trading hours:

120. As per 'Proposal 4' outlined above, MGA categorically opposes the QIRC continuing to have the jurisdiction to decide trading hours matters across Queensland.

121. While changes could be made to the criteria for deciding applications for extended trading hours, MGA and CCIQ submit that such changes would fail to rectify the difficulties that have arisen under the current trading hours regime, and inevitably result in on-going and costly trading hours matters. Further, the QIRC would remain vulnerable to finding trading hours decisions in favour of those parties that had the greatest resources to relentlessly invest into applications to the exclusion of the general public and unrepresented retail parties.

122. Nevertheless, as the issues paper has asked interested parties to consider changes to criteria for deciding applications for extended trading hours, MGA and CCIQ have endeavoured to propose changes to the QIRC process as an alternative and

disadvantageous model to 'proposal 4' where government decides all trading hours matters.

The prevention of repetitive applications to extend trading hours

123. Under the current system before the QIRC, Applicants can file and refile matters with no effective method of prevention where matters have already been heard concerning the affected area. For example, in the 2010 the QIRC application was refused in Mt Isa and subsequently refiled by the same Applicant (the NRA) in 2015. The evidence was largely consistent between the matters and the decision decided on the same relevant factors that had not changed over the period.

124. Due to the significant waste of resources required to conduct such matters, including those of the QIRC and all other interested parties, Applicants should be statute barred for a period of 10 years from making trading hours applications concerning any area in which they have previously made an application within the previous 10 years.

Allow company including non-registered organisations to make applications.

125. Currently as per section 23 of the Trading (Allowable Hours) Act 1990 ('the Trading Hours Act') the QIRC can only make an order under section 21 of the Trading Hours Act 'of its own motion or upon application made by or on behalf of any industrial organisation, or other organisation' which is defined in the Industrial Relations Act 1999 (Qld).

126. MGA and CCIQ submit that section 21 is extremely prohibitive for interested parties who could and would seek a significant benefit from the alteration of existing trading hours should they be awarded the opportunity to lodge a trading hours application with the QIRC.

127. This current restrictive nature of the legislation has led to the abundance of applications from the NRA who represent a limited number of parties to the exclusion of almost any other retailer not represented by their organisation.

128. MGA and CCIQ submit that to introduce a higher level of equity into the QIRC processes, any company with an operative Australian ABN and/or Australian registered organisation should be permitted to initiate proceeding before the QIRC for an order under section 21 of the Trading Hours Act.

129. This would allow for example a cluster of businesses who are not represented by an industrial organisation to lodge a trading hours application with the QIRC so that they can better serve their community and their community's interests.

Higher standard of proof and evidentiary requirements

130. MGA and CCIQ submits that should the government continue to rely upon the QIRC to decide trading hours applications (which is not supported by MGA or CCIQ), there is value and scope in broadening the criteria which the QIRC can consider and altering the Industrial Relations Act 1999 to require a higher burden of proof from Applicants who seek changes to existing trading hours. This should include that indirect evidence (hearsay or 3rd party evidence) could not be relied upon to satisfy any of the criteria.

131. Matters have been characterised by the Applicant seeking extensions to trading hours on behalf of retailers or a class of people (such as the community) without providing direct evidence from those relied upon. For example, applications have been characterised by Applicants suggesting there is a public demand for an increase in trading hours, without calling any members of the local public or witnesses representing the local public.

132. Under this proposal any application would require a greater scope of evidence than simply indirect evidence provided from the Applicant's witnesses (most often large national retailers). That is, indirect hearsay evidence could not be relied upon to satisfy any of the criteria.

133. For example, rather than a large national retailer giving evidence as to the 'public interest', a representative public body would need to be available to give evidence on behalf of the public interest (this may include local council). As another example, a small retailer could not give evidence on behalf of the local council. This would minimise the

extent of hearsay evidence and improve time efficiencies at the Commission by avoiding evidence with no probative value.

134. Considering this proposal in the context of a recent matter, currently the QIRC must have regard to the following issues, prescribed by section 26 of the Trading Hours Act, in deciding trading hours for non-exempt shops:

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the view of any local government in whose area the order is likely to have an impact;
- (i) such other matters as the industrial commission considers relevant.

135. To be successful Applicant's submissions must deal with the criteria specified in the Trading Hours Act however as the Commission has regularly stated, 'failure by an Applicant to adduce sufficient evidence in respect of any matters to which the Commission "must have regard" under s 26 does not preclude the Commission from making the orders sought.'¹⁸

136. MGA and CCIQ submit that in light of this position and the on-going understanding that there is no onus of proof on the Applicant to satisfy the criteria of s 26, the

¹⁸ National Retail Association Limited, Union of Employers [2016] QIRC 103. Matter TH/2016/1. Para 18.

evidentiary standard to satisfy the Commission that an application should be approved is insufficient and strongly favours the Applicant.

137. In the decision of TH/2016/1 which was delivered on 7 October 2016 and allowed for an extension of trading hours for non-exempt shops on the public holiday on 27 December 2016, a review of the decision shows that:

- s.21(a): Concerning the locality of where the affected shops or located the Commission found that they were ‘satisfied that this criterion is not significant to the decision in relation to the present application.’
- s.21(b): Concerning the needs of the tourism industry the Commission found that they were, ‘not satisfied that the application must be granted in order to meet the needs of the tourist industry in regional Queensland’ and that, ‘no evidence was called or submission made about the needs of any other industry in the area covered by the application’.¹⁹
- s.21(c): Concerning the needs of an expanding tourism industry the Commission found, ‘...the need of an expanding tourist industry for additional retail hours on 27 December 2016 was not established’ and that ‘...this is not a significant criterion in this case.’²⁰
- s.21(d): Concerning the needs of an expanding population the Commission found that, ‘There is no evidence or suggestion that the needs of an expanding population would have any impact on whether non-exempt stores should be permitted to trade on 27 December 2016. Accordingly, there is no need to give any weight to that criterion in relation to a decision about the current application’.
- s.21(e): The Commission’s decision does not specifically decide on the matter of ‘public interest’ but references precedent in these matters and advises that there is no reason to adopt a narrow construction of the expression ‘public interest’ for the purpose of deciding the matter and that this criteria may also be relevant to other criteria.²¹
- s.21(e): On the matter of consumer interest and the implications if the application was successful or unsuccessful the Commission confirmed that no direct evidence

¹⁹ National Retail Association Limited, Union of Employers [2016] QIRC 103. Matter TH/2016/1. Para 44 & 45.

²⁰ Ibid. Para 49.

²¹ Ibid. Para 56-57.

was provided by any party from consumers. Rather, the evidence was indirect, comprising data about consumer purchasing trends provided by the Applicant.

- The Commission also found that 'most aspects of the NRA's submission about the public interest apply equally, if not more appropriately, to consideration of consumers' interests.'²²
- s.21(e): The Applicant provided no direct evidence from small or medium businesses and all witnesses appearing on behalf of the Applicant represented large businesses. All of the witnesses representing small and medium business opposed the Application.
- s.21(e): The Applicant provided the only evidence representing large business interests if the definition of a large business is defined as a national company and not a large regional store that serves a significant proportion of its community.
- s.21(f): Concerning the alleviation of motor vehicle traffic congestion the Commission found there was no evidence that traffic congestion was a particular issue in the affected towns on shopping days in the week after Christmas, or that any such congestion would be reduced significantly in any or all of the towns affected if this application is successful.²³
- s.21(g): On the issue of 'the order of employment' the Commission found in favour of the Applicant.
- s.21(h): With regards to the view of local government the Commission proceeded on the basis that 'local governments generally throughout the region affected by the application neither support nor object to the application'.²⁴

The Commission subsequently stated that:

[214] Statutory criteria: Consistently with the approach outlined earlier under "Some general issues," I have had regard to evidence and submissions in relation to each of the criteria listed in s 26. It will be apparent from the summaries and analyses above that the following criteria are of little or no significance to the making of an order in relation to this application (emphasis added):

²² Ibid. Para 97.

²³ Ibid. Para 170.

²⁴ Ibid. Para 200.

Section 26:

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such a locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (f) the alleviation of traffic congestion;
- (h) the view of any local government in whose area the order is likely to have an impact.

[215] Consequently little weight should be given to those criteria and the application is to be assessed by reference to:

Section 26:

- (e) the public interest, consumers' interest, and business interest (whether small, medium or large); and
- (g) the likely impact of the order on employment.²⁵

138. Evidently the Applicant did not satisfy 6 of the 8 criteria although MGA concedes that under the current framework the Applicant is not required to satisfy any minimum number of criteria.

139. While MGA respects the position of the Commission and understands that 'it is for the decision-maker to determine the weight to be given to the matter (or matters), provided that the consideration of the matter is genuine²⁶', MGA and CCIQ submit that should this review find that the QIRC should continue to make trading hours orders, amendments should be made to the Act to provide clearer guidance concerning the priority or relative weight to be given to each of the criteria and a minimum number of

²⁵ Ibid. Para 214 & 215.

²⁶ Re: National Retail Association Limited, Union of Employers [2014] QIRC 150, [7]-[9] citing R v Toohey; Ex parte Meneling Station Pty Ltd (1982) 158 CLR 327 and Re Kirby Street (Holding) Pty Ltd [2011] NSWSC 1536.

criteria that must be satisfied before an application can be approved. This will improve clarity and consistency throughout applications.

140. In consideration of the case example provided above²⁷ the onus would have been on the Applicant to provide a higher standard of evidence than that which was provided. That is, the reliance on the evidence from large retailers only could not satisfy any of the criteria except possibly s.21(e) concerning large business interests.

141. While it would appear the Commission also relied upon the 'public interest and consumers' interest (s26(e)) as central to their decision (as indicated above) not a single member of the public or representative body gave evidence on their behalf. In addition, no consumer advocacy groups such as Choice gave evidence before the Commission.

142. Therefore the Industrial Relations Act 1999 should be amended to specify a higher standard of proof required to satisfy the necessary criteria contained in the Trading Hours Act with a requirement on providing direct evidence relevant to the listed criteria.

Introduction of a 'minimum criteria model' or 'points model'

143. In addition to altering the Industrial Relations Act 1999, MGA and CCIQ submit that either a 'minimum criteria model' or 'point's model' should be introduced into the Trading Hours Act to prevent applications only satisfying a negligible number of criteria yet still receiving approval.

144. The alternate models would include either:

- a. That a minimum number of criteria must be met before any application can be successful (**minimum criteria model**); or in the alternative
- b. A '**points model**' whereby the Trading Hours Act allocates points to each criteria based on significance, whereby a minimum number of points needs to be satisfied before an application can be successful (this would require an alteration to the Trading Hours Act).

²⁷ National Retail Association Limited, Union of Employers [2016] QIRC 103. Matter TH/2016/1

Minimum Standard Model

145. Under minimum criteria model, once again in consideration of the case example above²⁸ if the minimum standard or criteria that needed to be met were set at 50%, an application similar to the one evidenced above would fail. Similarly if the minimum standard of criteria that needed to be met were set at 30%, the Application would still fail.
146. Alternatively a stronger application would satisfy a greater number of criteria and should it therefore satisfy a reasonable number of criteria contained in the Trading hours Act, such as 50%, the Application would be approved.
147. In terms of a reasonable minimum standard that needs to be met, should all the criteria be considered equal, MGA and CCIQ believe that any application that fails to satisfy at least 85% of the criteria should fail.
148. The criteria set out in the Act, clearly outlines key considerations and matters of significant relevance that should be considered by the Commission. Should an application fail to address and satisfy those criteria, it is difficult to see how such an application would be in the overall best interests of the affected area. That is not to say that there might not be some benefit to a limited number of parties, however a benefit to one or two interested parties should not outweigh the holistic benefit to the whole community.

Points model

149. Alternatively on the 'points model', if the sum of the points allocated to the two satisfied criteria met the minimum standard of points required, the Application would be successful. Evidently the criteria within the Act are already provided varying emphasis and value however under the 'points model' all parties would be provided with greater clarity as to what emphasis was placed on each criteria.
150. For example the current section 26 criteria may be set out as follows:

²⁸ National Retail Association Limited, Union of Employers [2016] QIRC 103. Matter TH/2016/1

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated; **5 points**
- (b) the needs of the tourist industry or other industry in such locality or part; **25 points**
- (c) the needs of an expanding tourist industry; **25 points**
- (d) the needs of an expanding population **25 points**
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large); **35 points**
- (f) the alleviation of traffic congestion; **5 points**
- (g) the likely impact of the order on employment; **15 points**
- (h) the view of any local government in whose area the order is likely to have an impact; **15 points**
- (i) such other matters as the industrial commission considers relevant. **10 points**

151. Once again MGA and CCIQ maintain that the required points should be set at a reasonable level in acknowledgment of the significance of each of the criteria contained in section 26. MGA and CCIQ submit that in light of the significance of each of the criteria, a minimum of 85 points should therefore be met by any application before it can be approved by the Commission. For example if the Applicant were to satisfy section 26 'c', 'd' and 'e' the application would meet the required 85 points and be approved.

Changes to s 26(e): the public interest, consumers' interest, and business interest (whether small, medium or large);

152. In further consideration of the existing criteria, MGA and CCIQ agree with the proposition provided for in the issues paper that there should be greater clarity as to the 'public interest'. Currently the distinction between public interest and consumer interest is largely indistinguishable and considerations have largely focused on the benefits to consumers at non-exempt stores and additional traders who may receive some benefit if

153. they are in the vicinity of a non-exempt store. MGA and CCIQ therefore submit that the Act should clarify the public interest to be defined as:

‘the welfare or well-being of the general **public** exclusive of their consumer interests’.

154. Consideration of the ‘public interest’, consumer interest, small, medium and large business interests should also each be considered in a separate clause. As a result the section 26 criteria to be considered by the Commission would be categorised as follows:

- a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- b) the needs of the tourist industry or other industry in such locality or part;
- c) the needs of an expanding tourist industry;
- d) the needs of an expanding population;
- e) the public interest;
- f) the consumers’ interest;
- g) small business interest;
- h) medium business interest;
- i) large business interest;
- j) the alleviation of traffic congestion;
- k) the likely impact of the order on employment;
- l) the view of any local government in whose area the order is likely to have an impact;
- m) such other matters as the industrial commission considers relevant.

155. This division of criteria would also be more practical with the implementation of the ‘points system’ proposed above and would invariably result in an adjustment to the allocated points. For example:

- a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated; **5 points**
- b) the needs of the tourist industry or other industry in such locality or part; **25 points**
- c) the needs of an expanding tourist industry; **25 points**

- d) the needs of an expanding population; **25 points**
- e) the public interest; **5 points**
- f) the consumers' interest; **5 points**
- g) small business interest; **5 points**
- h) medium business interest; **5 points**
- i) large business interest; **5 points**
- j) the alleviation of traffic congestion; **5 points**
- k) the likely impact of the order on employment; **15 points**
- l) the view of any local government in whose area the order is likely to have an impact; **15 points**
- m) such other matters as the industrial commission considers relevant. **10 points**

156. The issues paper has suggested that advocates propose greater clarity to 'public interests clause' with the inclusion of measurable components such as 'the value of lost trade to the local economy'. Should this review err and conclude to proceed with the QIRC retaining jurisdiction over trading hours matters, MGA and CCIQ would support such a provision concerning the public interest on the basis that it must include a requirement that it is the evidentiary obligation of the Applicant to show how with the extension of trading hours for non-exempt stores 'lost revenue' would benefit the *local* economy and community and not simply benefit the significant coffers of the National Chains.

157. The onus must also be on the Applicant to show that any increase in trade is not simply a redistribution of trade that would have otherwise occurred during existing trading hours or trade that has been redistributed away from exempt stores. MGA and CCIQ has long advocated that the deregulation of trading hours simply redistributes existing sales away from exempt stores and redistributes existing sales over a longer period. While this provides little to no immediate benefit to non-exempt stores, the detriment to independent community retailers and their staff is immense as sales are lost and employment opportunities subsequently decrease. The long term benefit to the non-exempt stores is the closure of the exempt stores that become unsustainable with the increase to non-exempt stores trading hours.

The view of the local Government

158. During multiple previous applications before the QIRC, local councils have elected to provide the Commission with a letter outlining their position, rather than appearing before the Commission and allowing for cross examination.
159. MGA and CCIQ submit that should a local council fail to have a councillor to appear on behalf of the council, the position of council should be excluded from the QIRC's consideration and the criteria must therefore fail.
160. In addition, should a councillor make themselves available for cross examination, the council must show that they have consulted with their constituents. In the event that the council for example has failed to consult with large or medium business owners, or failed to adequately consult with the local community (for example by council meeting or through written submissions), the council's evidence should be given little probative value.

Conclusions concerning the QIRC

161. Importantly MGA and CCIQ maintain that primarily there is no necessity to make any changes to the criteria for deciding applications for extended trading hours as all future trading hours matters should be considered by the Queensland Government of the time.
162. Future Applicants before the QIRC could adjust to any proposed changes and it is likely that future applications will continue to result in a patchwork of decisions that do not reflect the best interests of the wider Queensland public. The retention of any legislation that allows the QIRC to continue to make trading hours orders would simply be another decision that would entrench the market dominance of the National Chains at the expense of independent community retailers, increased consumer choice and the best interests of Queensland.

XV. Conclusion

163. MGA and CCIQ conclude with the position that a significant change is now required to rectify the imbalance in market dominance of the National Chains in Queensland and avoid the widespread devaluation of independent community grocery stores across Queensland.

164. While the current legislative framework and previous decisions of the QIRC have significantly harmed the independent retail sector and provided the National Chains with the unfettered capacity to harm the retail industry, MGA and CCIQ maintain that by implementing the changes proposed in this submission, the independent retail sector can remain vibrant across the state. These changes include:

1. Amendments to the Liquor Act to allow independent retailers to participate in the packaged liquor market;
2. A five year moratorium on the extension of trading hours for non-exempt stores' trading hours;
3. Altering the definition of a non-exempt shop and combining the newly defined independent retail shops with and exempt shops; and
4. Only allowing government and not the QIRC to alter retail trading hours across the state.

165. The changes proposed in this submission will reinvigorate business confidence, create incentives for further investment, drive innovation, employment growth and inspire independent retailers to compete on a level playing field.

166. We submit that the proposed changes are not severable and that the recommendations made herein should be implemented in their totality.

167. MGA and CCIQ makes this submission to the Trading Hours Reference Group established by the Palaszczuk Government. We jointly wish to thank the Government and the Committee for the opportunity to contribute to its inquiry into retail trading hours arrangements in Queensland.



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14 November 2016



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14 November 2016

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