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Inquiry into the Australian Retail Industry  
Productivity Commission

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**Re: Productivity Commission 2011 *Economic Structure and Performance of the Australian Retail Industry*, Draft Report , Canberra (“Retail Industry Report’)**

I wish to comment on one aspect of the Retail Industry Report: Chapter 9, dealing with retail trading hours regulation.

In 2009 I was engaged by the New South Wales government to conduct a review of the *Bank and Banks Holidays Act 1912*, with a view to recommending measures for modernizing the recognition of public holidays in New South Wales.<sup>1</sup> A consideration of retail trading hours became part of that review, because of the influence of trading hours restrictions on the ability for Australians (as working citizens, and members of families and communities, and not merely as ‘consumers’) to enjoy the celebration of community holidays.

Two trading hours matters came before that Review: shop trading hours, and bank trading hours. Shop trading in New South Wales is prohibited without special permission for large retailers outside of “tourist” zones on only four and a half days a year: Good Friday, Easter Sunday, Christmas Day, Boxing Day and prior to 1pm on Anzac Day. With the exception of Easter Sunday,<sup>2</sup> these days are also public holidays, and this has consequences for the wage rates of some employees working on those days (depending upon whether the industrial instruments governing their working arrangements provide for any penalty rates).

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<sup>1</sup> The final report of this Review was published as *Public Holidays in NSW: Review of the Banks and Bank Holidays Act 1912*, NSW Government, October 2009, ISBN 978-0-9752231-6-1.

<sup>2</sup> For peculiar historical reasons, to do with a tradition until recently to observe Sunday as a rest day, Easter Sunday was not named as a public holiday at the time of the Review, however it was one recommendation of the review that it ought to be so named.



At the time of the Review, bank trading was considerably more restricted. Banks needed to seek permission to trade at all on weekends and all public holidays, not only those named as restricted retail trading days in the *Shop Trading Act 2008* (NSW).

In the course of receiving submissions for this Review, I received 222 letters and emails from members of the public, speaking on their own behalf as individual citizens, and not as the mouthpiece of an employer or employee organization. Relative to the population of New South Wales, the number of submissions was admittedly small. Nevertheless, the uniform message from these submissions was that Australians value public holidays as time to share with family and friends. Two particular times of the year permit people – especially those whose families are separated by distance – to join together: Christmas and Easter. Most submissions seemed indifferent to the religious aspects of these holidays: their importance was that at these times all family members could secure sufficient time away from work to reunite as a family. Most of the submissions appeared to be from people who worked in the retail industry, or who had family members in the retail industry. Their principal concern was that the Review might take away the very few days of the year that they could hold family reunions. Submissions came from workers who were aggrieved at the prospect of losing the few opportunities in the year they presently have for family connection (especially as many already worked regularly on Sundays), and also from older Australians who missed the company of their children at family events, because of what they perceived to be the great erosion of family time by the extension of retail trading to Sundays and public holidays.

This, in my view, is a very important consideration for governments planning the regulation of trading hours. The health and social well-being of people, supported by their ability to maintain some family connections, is a valuable ‘good’, to be weighed heavily in the balance against the claimed interests of the retail industry. In somewhat melodramatic phrasing, the Retail Industry Report (at paragraph 9.1 on p 255) states that:

“[T]he purported benefits of any improvements in ‘social cohesion’ or ‘social capital’ resulting from . . . trading hours regulation need to be weighed against the costs. These costs include the impact on consumers, particularly the inconvenience of being unable to shop at locations and times better suited to their requirements. . . . Consumer preferences or needs can no longer be ignored or downplayed.”

With respect, the inconvenience experienced by those in the community who *do* enjoy their weekends and public holidays off work when they cannot crawl suburban shopping malls to buy more stuff on four and half days of the year out of 365, is inconsequential when compared with the inconvenience of the retail worker who misses Christmas celebrations with the family because she is called in to stack shelves and price sale items on Christmas Day for the Boxing Day sales. It is no answer that the retail worker may



“choose not to work”. Job security for the high proportion of casual workers in this industry is fragile, and it is well-known that retail employers discipline workers who refuse to work particular rosters by withholding further shifts. (The “right to refuse” work on public holidays presently enacted in the *Fair Work Act 2009* (Cth) s 114 is no doubt one of the “inflexible” workplace regulations that the retail industry would have abolished.)

In any event, why should it be the case that society’s patterns of working life must be constructed to ensure that the consumer of retail industry-supplied goods can satisfy a demand to buy stuff at any time of the day or night on any day of the year? We do not make those demands in other industries and services. For example, I made a phone call to the Productivity Commission’s Media and Publications Information line at 5pm on Saturday, 20 August 2011, when I was reading the Retail Industry Report, to seek clarification of a matter. I was not surprised to hear a recorded message that the office was closed. My convenience as a consumer of information services has clearly been “downplayed” and “ignored” in the establishment of working hours in most areas of public service. But do I really have a right to complain? Must every industry be required to operate on a 24/7 basis, simply because there might be some users of their services who find it convenient to obtain assistance at that time? If not, why impose such demands on the retail industry? Clearly, the drive in the Retail Industry Report is not coming from consumers at all. It is coming from the large retailers. My conversations with small owner-operated retailers during the public holidays review suggested that these small business people also valued some guaranteed close-down time on these special public holidays, free from the pressure from retail landlords to remain open.

People’s lives as community and family members are as important as their “consumer” personas. These important interests must be regarded, even if the inability to trade on some restricted public holidays is in fact a cause of reduced profit in the retail sector. If it is *not* true that trading restrictions are a factor in retail results, there is absolutely no reason at all to remove public holiday entitlements, and this appears to be the case. Australian Bureau of Statistics figures on Retail Trade released on August 3, 2011, suggest that restricted trading hours are *not* a factor in retail industry turnover.<sup>3</sup> The State or Territory showing the strongest retail growth to June 2011 was Western Australia with 0.6% growth, while the weakest was the ACT (with -0.6%). And yet trading hours in Western Australia are more restricted than in any other State, and the ACT’s trading hours are completely liberalized. Clearly, trading hours are not the determinative factor in how much consumers spend in shops. Consumers with higher disposable incomes, and confidence in their ability to continue to earn in the future, are more likely to spend. It is difficult to see why a consumer’s disposable income or confidence in markets is likely to expand simply because the shops are open for an extra four and a half days a year.

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<sup>3</sup> ABS, 8501.0, Retail Trade, 3 August 2011.



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My submission is that Draft Recommendation 9.1 that retail trading should be fully deregulated in all states including on public holidays should *not* be adopted. It is based on spurious arguments, which do not adequately value the interests of those members of the community who have to work in the retail sector, or who have family members working in the retail sector. Those members of the community should also be entitled to unite as families for at least some times in the space of a calendar year.

Yours faithfully,

Joellen Riley