

11 July 2014

Cost of Doing Business: Retail Trade
Industry Study
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Sir/Madam

We write to you in relation to the Interim Report on the relative costs of doing business in Australia with respect to retail trade.

Executive Summary

Although we agree with many of the findings in the Interim Report, the Commission still needs to undertake more analysis of the impacts of specific regulatory impediments which are placing the most burden on retail businesses, including but not limited to shop trading hour restrictions, penalty rates and junior rates of pay. While we acknowledge that for example, penalty rates are not peculiar to the retail sector, there still needs to be a comprehensive review of the actual costs that penalty rates are adding to retail businesses, particularly in light of penalty rate increases in the Modern Award. Costs should also include consideration of foregone revenues when shops are unable to open and trade profitably.

The final report on the cost of doing business in the retail industry needs to make a strong case for reform in these areas and may require economic modelling to do so. In light of the broader fiscal situation, it is imperative that the final report make the case for change given the public resources which are allocated to the Commission to undertake such reports.

The retail industry is labour intensive and operates on low profit margins. Therefore, labour costs become an essential factor to control. Current regulatory impediments often force retailers to either close on weekends or public holidays, reduce staff hours or increase hours for the owners themselves. Given the growth in online retailing, cost increases cannot be passed on in full to the consumer as this can result in the consumer bypassing the retailer by purchasing their goods and services online. Shop trading hour restrictions operate in a similar manner and further disadvantage local retail businesses that must compete with on-line retailers, not just international competitors but also with other retail competitors that operate within the same State, as is the case in South Australia.

Background

We acknowledge the Commission found that 'prima facie, labour unit costs appear to be relatively high in Australia by international standards and that similarly, occupancy costs, as a share of sales, seem to be relatively high'. Furthermore, the Commission found that the retail sector 'continues to labour under regulations that are out of step with changing shopping patterns. These include restrictions on trading hours across and within jurisdictions, and restrictions on what can be sold at particular times'.

We provide further comment on the Commission's findings as follows:

1. South Australia has an antiquated system of shopping districts with separate shop trading regulations for the CBD, metropolitan shopping district and specific proclaimed shopping districts in regional South Australia which are all small towns. By contrast, all major regional centres in South Australia have no shop trading hour restrictions at all. Furthermore, a number of shops are exempt from all shop trading hour restrictions on the basis of the types or goods they sell, or their size. Combining the various exemption categories, only 34% of retail employees are employed in shops which are heavily regulated, with another 10% being employed in shops which are partially regulated. Therefore, 56% of retail employees work in shops which are completely deregulated.¹

Business SA has long advocated for an end to regulated shopping hours, primarily on the basis that it is not the role of Government to decide when businesses can open and consumers can shop. Furthermore, in an increasingly competitive retail environment, consumers can shop on-line 24/7 and existing regulations on 'bricks and mortar' retailers places them at a further disadvantage. Deregulation would also mean that retailers can choose to align their trading hours to match consumer demand and open at times when it is the most profitable to trade, not just the times they are allowed to trade.

The total deregulation of shop trading hours would also remove the situation where exempt shops are allowed to open at times when others must remain shut. These exemptions are discriminatory and irrational and some retailers are significantly disadvantaged because their competitors are able to open while they are not.

Deregulation may also encourage some smaller retailers to invest in expanding their premises and their product lines as restrictions on floor space sizes and what goods can be sold by exempt shops would be removed.

2. In 2013 the South Australian Centre for Economic Studies (SACES) conducted an independent review of the impact of 2012 legislative changes to deregulate public holiday trading restrictions for the Adelaide CBD which included allowing non-exempt shops to trade from 12:00 pm to 5:00 pm on Anzac Day and from 11:00am to 5:00 pm on all other public holidays except for Christmas Day and Good Friday.

¹ South Australian Centre for Economic Studies, 'Review of Changes to *Shop Trading Hours Act 1997* – Final Report', March 2013 - Page III

SACES' review found that across the 9 new CBD public holiday trading days during 2012, retail turnover was \$57.5 million. Acknowledging that some of this expenditure was likely to have been transferred from spending on other days, the review still noted the appearance of a substantial net increase in retail turnover.²

SACES also found that while there was some welfare gain for consumers from being able to shop somewhere on public holidays, (given it is limited to the Adelaide CBD), there is potential for significant additional gains should consumers be able to shop in their preferred location. In fact, 66 per cent of respondents to the SACES survey of community attitudes strongly agreed that they preferred to shop in the suburbs, compared to 11 per cent who strongly agreed that they preferred to shop in the Adelaide CBD.³

3. We highlight the Commission's 2011 report, *Economic Structure and Performance of the Australian Retail Industry*, in which it found that shop trading hours across Australia should be fully deregulated in consideration of the following reasons:

- Increased consumer welfare benefits associated with greater convenience and product choice;
- Reduced discrimination between retailers;
- A less artificially distorted retail industry; and
- Potentially lower retail prices and higher retail employment.

The Commission also made a compelling point that 'for the vast majority of retailers deregulating shopping hours is not about operating 24 hours a day seven days a week, but simply being able to open to meet the needs of consumers, at times when retailers can also trade profitably'.

4. In its pre-state election survey of members conducted in late 2013, Business SA found that 73% of respondents supported the move to fully deregulated shop trading hours.
5. Until the commencement of the General Retail Industry Award 2010 on 1 January 2010, the majority of South Australian retail businesses were able to trade on Saturdays without the imposition of a separate penalty. Instead, a slightly higher rate of pay applied to all ordinary hours worked during weekdays. The *Retail Industry (South Australia) Award NAPSA (AN150130)* reflected that Saturdays were one of the main trading days and should be regarded as an ordinary working day and not attract a separate penalty. With the commencement of Modern Awards, a Saturday penalty of 25 per cent was introduced subject to a transitional provision.

² South Australian Centre for Economic Studies, 'Review of Changes to *Shop Trading Hours Act 1997* – Final Report', March 2013 - Page VI

³ South Australian Centre for Economic Studies, 'Review of Changes to *Shop Trading Hours Act 1997* – Final Report', March 2013 – Page 22

Furthermore, under the *Retail Industry (South Australia) Award NAPSA (AN150130)*, ordinary hours worked on a Sunday attracted a penalty of 60 per cent for permanent employees and 70 per cent for casual employees. Under the Modern Award, this increased to an additional 100 per cent.

In combination, the increase in penalties has significantly increased labour costs for retail employers. Anecdotal evidence from retail employers in South Australia suggests that as a result of this cost increase, rather than employing staff on Saturdays and Sundays, business owners elect to work these days themselves. Others have elected to remain closed on Sundays due to the high costs associated with Sunday trade.

6. Apart from the imposition of penalties, the General Retail Industry Award 2010 provides onerous, prescriptive and detailed rostering provisions that create barriers to efficient and flexible rostering and utilisation of staff. For example, under clause 12.8(a) of the Modern Award where an emergency requires the change of a part-time employee's roster, 48 hours prior notice must be given before the roster change. Furthermore, any employee regularly working Sundays must be given three consecutive days off each four weeks. It should be noted that other service industries, including the hospitality industry, restaurant industry and fast food industry are not subject to such restrictive provisions.
7. Retail trade is no longer a Monday to Friday operation. With social, demographic and work patterns changing, consumers have varying needs and accordingly, retail opening hours need to be more flexible. However, rather than enabling retail employers to better respond to customer needs and preferences in relation to trading hours, the Modern Award in its current form create barriers to evening and weekend trade by the imposition of penalties.
8. In South Australia each Sunday is nominally a public holiday due to the operation of Schedule 2 of the *Holidays Act 1910*. However, there has been a long-standing understanding among the industrial parties in South Australia that notwithstanding the *Holidays Act 1910*, Sundays will not attract a public holiday penalty where the industrial instrument provides a Sunday penalty or overtime payment.

South Australian legislation cannot prescribe any entitlements for national system employees to receive penalty payments for work on public holidays, to substitute a public holiday for a day off on another day, to absent from work without the loss of pay or refuse to work on a public holiday. However, as a consequence of section 115(1) of the *Fair Work Act 2009*, any day prescribed as a public holiday under the *Holidays Act 1910* is recognised as a public holiday under the National Employment Standards and therefore may create additional entitlements under the National Employment Standards and/or the Modern Award system.

For example, under section 114(1) of the *Fair Work Act 2009*, an employee is entitled to be absent from work on a day that is a public holiday. Furthermore, under section 114(3) an employee is entitled to refuse working on a public holiday, where the refusal is reasonable or where the employer's request for the employee to work on the public holiday is unreasonable.

Given that Sundays are prescribed as public holidays under the *Holidays Act 1910*, arguably national system employees would be entitled to absent from work each Sunday and refuse to work Sundays where such refusal is reasonable. We have long called on the State Government to amend the *Holidays Act 1910* to ensure that each Sunday no longer is prescribed as a public holiday. This would bring South Australia in line with other jurisdictions and eliminate the risk of disputes as to the payment and other entitlements for employees working on Sundays, particularly in industries such as retail, where weekend trade is the industrial norm.

9. On 21 March 2014, the Fair Work Commission (FWC) decided to remove junior rates of pay for employees aged 20 age in the in the retail industry and announced that from 1 July 2014, 20 year old retail employees would be entitled to 95% of the adult award rate which would increase to 100% on 1 July 2015. This equates to an 11% pay rise over eighteen months.

Business SA acknowledged at the time that while a pay rise may be desirable, junior rates of pay had long been in existence to encourage employers to train up young people and to reflect the costs of training which employers absorb.

Although the FWC's decision only affects 20 year old retail employees, it has also set a dangerous precedent for the eventual abolishment of all junior rates of pay.

At the time of this decision the retail sector in South Australia was already struggling and had only recorded sales growth of 0.85% in 2013 following on from just 0.67% growth over 2012. This compares with average turnover growth between 2009 and 2013 of just 1.3%.

Who we are

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA

Yours sincerely

Nigel McBride
Chief Executive Officer