



**Small Business  
Development Corporation**

Costs of Doing Business: Retail  
Trade Industry  
Productivity Commission  
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To whom it may concern

The Small Business Development Corporation (SBDC) welcomes the opportunity to comment on the Productivity Commission's (the Commission) Interim Report *Relative Costs of Doing Business in Australia: Retail Trade*. While the SBDC is unable to address all of the Commission's information requests, we have specifically focused on information requests 2.1, 3.1, 4.1 and 5.2, using data and feedback from small business operators where possible.

The SBDC's first submission (Submission 1) highlighted specific policy settings that contribute to the costs of doing business for retailers in Western Australia (WA). The SBDC commented that a significant cost of doing business for most retailers relates to the wages and labour on-costs of employing staff. The fact that WA has a separate industrial relations system to the rest of the country can result in some confusion as well as retailers having a competitive advantage over other businesses because of the award and penalty rates applicable to their employees. Currently, the provisions under each equivalent award are not identical between the federal and State systems.

The regulation of retail trading hours is another policy setting impacting on retailers in WA. As identified by the Commission, WA has one of the most restrictive trading regimes in the country. While there have been numerous calls for full deregulation of trading hours in WA, it must be noted that retailers classified by the *Retail Trading Hours Act 1987* (WA) as a 'small retail shop'<sup>1</sup> can already open 24 hours a day if they wish to do so.

If full deregulation of trading hours in WA was to happen, the SBDC considers it critical that retailers must continue to have the right to operate the hours that they wish, rather than be forced to open the preferred hours of their landlords. Such protections currently exist under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the CT Act), where any provision in a retail shop lease that requires a tenant to open at specified hours or times is void<sup>2</sup>.

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<sup>1</sup> Shops owned by up to six people who operate no more than three retail shops, in which 18 people work at any one time.

<sup>2</sup> Section 12C of the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.



The CT Act also prescribes standard trading hours<sup>3</sup>, which are used to allocate operating expenses to retail tenants. Currently, the CT Act provides that if a retail tenant does not open outside standard trading hours, they cannot be charged for the associated operating expenses (such as additional security or cleaning costs) of the shopping centre. If the standard trading hours stipulated under the CT Act were to be extended, this would mean that retailers would be liable to pay their proportion of the operating expenses for more hours than at present, even if they did not choose to open.

Submission 1 also discussed the other protections for retail tenants prescribed under the CT Act, as well as the impact that development and planning decisions can have on competition in a particular locality.

**Information request 2.1:** What are the impediments to a faster adoption of e-commerce by Australian retailers?

As the Commission has identified in the Interim Report, many Australian retailers are slow to embrace online retailing, even though consumers are embracing it<sup>4</sup>. Of concern to the SBDC is that small business retailers are apparently becoming increasingly unsuccessful at online retailing, with our 2014 *State of Small Business Survey*<sup>5</sup> indicating that there has been a decline over the past three years in the percentage of business generated by online sales (see Figure 1). Interestingly, those businesses that are trading online are becoming more confident in their abilities to do so: in 2013, only 43.6% of small business respondents felt confident that their business systems and processes could manage the logistics of selling products online, while the figure has increased to 60.8% this year<sup>6</sup>.

In another survey recently conducted by the SBDC which sought information on the types of e-commerce activities being undertaken by small businesses<sup>7</sup>, it was found that the most common activity was for businesses to buy goods online from suppliers (50% of responses), followed by businesses selling goods online to customers (30.7%) and allowing customers to book services online (26.9%). On the other hand, 42.3% of respondents reported that their business did not sell goods online to customers.

*Figure 1: Percentage of business generated by online sales – WA small businesses<sup>8</sup>*

<sup>3</sup> 8am to 6pm Monday, Tuesday, Wednesday and Friday; 8am to 9pm Thursday; and 8am to 5pm Saturday.

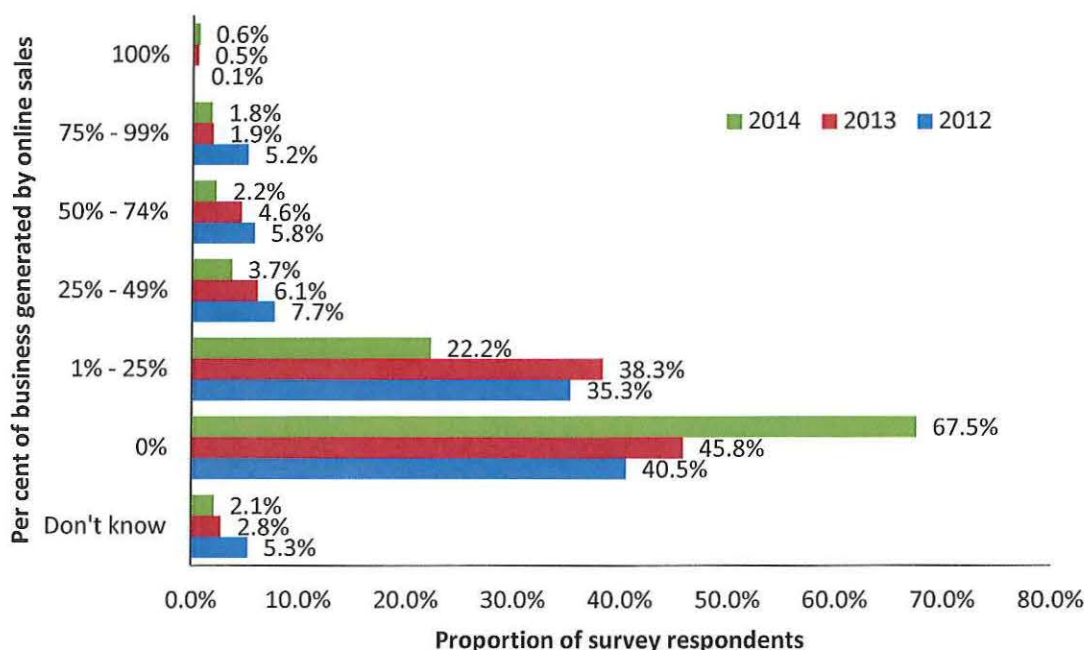
<sup>4</sup> Productivity Commission 2014, *Relative costs of doing business in Australia: retail trade*, Government of Australia, Available from: <http://www.pc.gov.au/projects/study/business-costs/retail-trade/interim> [17 June 2014].

<sup>5</sup> Small Business Development Corporation 2014, *State of Small Business Survey (n=850)*, Government of Western Australia, Available from: Small Business Development Corporation [17 June 2014].

<sup>6</sup> Ibid.

<sup>7</sup> Small Business Development Corporation 2014, *Survey: Have your say on the costs of doing business - retail trade industry (n=31)*, Government of Western Australia, Available from: Small Business Development Corporation [7 July 2014]. Summary of results included at Appendix 1.

<sup>8</sup> Small Business Development Corporation 2014, *State of Small Business Survey (n=850)*, Government of Western Australia, Available from: Small Business Development Corporation [17 June 2014].



Further evidence illustrating how small businesses are behind the times in embracing e-commerce is found in a recent study conducted with small businesses in the Bunbury Wellington district of regional WA<sup>9</sup>. This study found that only 13.86% of the 101 small business respondents with a corporate website had online retailing capability. It is not just that they are not selling goods online, businesses are also not understanding the benefits of the online environment for marketing in general. For instance, less than half (47%) of respondents with a business email did not even have the email specifically branded for their business, rather, they were using generic 'gmail' or 'hotmail' address names.

In addition, the majority of these businesses had not used search engine optimisation to generate traffic to their websites. Finally, only 20% of respondents' websites had some sort of mobile optimisation, even though a large proportion of the Australian population (approximately 7.5 million Australians) access the internet via a mobile device<sup>10</sup>.

Based on the SBDC's experience assisting small business clients to move online and introduce e-commerce strategies<sup>11</sup>, together with the results of a recent survey

<sup>9</sup> Concise Creative 2014, *Online capability development program analysis, Bunbury Wellington Small Business Centre*, Available from: Concise Creative. [4 July 2014].

<sup>10</sup> Australian Communications and Media Authority 2013, *Australia's mobile digital economy – ACMA confirms usage, choice, mobility and intensity on the rise*, Government of Australia, Available from: <http://www.acma.gov.au/theACMA/Library/Corporate-library/Corporate-publications/australia-mobile-digital-economy> > [4 July 2014].

<sup>11</sup> The SBDC offers free, specialist business advice and runs online marketing workshops.



we conducted of WA retailers<sup>12</sup>, it appears that the main reasons why small retailers may be slow to take up e-commerce are:

- They are afraid their businesses cannot compete with large retailers with successful, prominent internet presences and e-commerce platforms so do not even attempt to try.
- The belief that without considerable budgets and dedicated resources, small retailers will not be able to achieve high ranking search engine optimisation compared to their larger counterparts. Rather than focusing on their websites and e-commerce activities, small retailers are tending to focus on social media and building a loyal customer base.
- Small retailers are too busy running their businesses to investigate how to develop e-commerce functionality for their websites.
- Small retailers believe they lack the money to develop a multifunctional website that is search engine optimised and do not have the expertise to understand the true cost associated with website development.
- The age of the business owner and their willingness to embrace change. The SBDC is aware that some older business operators do not understand or see the value in e-commerce activities for their businesses. Rather, these business operators want to continue to do things the way they have always been done and consider that online business strategies are for the younger generation<sup>13</sup>.
- The belief that e-commerce is not relevant to their business.

**Information request 3.1:** The Commission is seeking further information on the costs of doing business (including costs of labour, capital, rent, energy, transport) across different categories of retailers operating in Australia.

- To what extent have these costs changed in recent years?
- What is the impact of business size on cost structures?
- To what extent is e-commerce affecting cost structures? Which types of retailers are most affected?

As has already been submitted to the Commission, the cost of wages is one of the predominant costs facing Australian retailers. In its submission, the Council of Small Business of Australia (COSBOA)<sup>14</sup> argued that penalty rates in particular are a significant cost for small businesses. The SBDC would agree with the proposition that, in some cases, small retailers are electing to not open extended hours (including on Sundays) due to the high penalty rates payable to their staff, which would make trading on these days unprofitable. The SBDC is also aware that in some regional towns particularly reliant on tourism, many small businesses are not opening during preferred tourism times (particularly weekends and public holidays), which is a challenge and frustration faced by regional local governments and

<sup>12</sup> Small Business Development Corporation 2014, *Survey: Have your say on the costs of doing business - retail trade industry (n=31)*, Government of Western Australia, Available from: Small Business Development Corporation [7 July 2014]. Summary of results included as Appendix 1.

<sup>13</sup> Anecdotal feedback obtained from regional Small Business Centres.

<sup>14</sup> Post-draft submission to Productivity Commission Study: Costs of doing business: retail trade industry, available from: <http://www.pc.gov.au/projects/study/business-costs/retail-trade/submissions> > [4 July 2014].



Chambers of Commerce. Anecdotally, the high cost of penalty rates on these days is a major contributing factor to these businesses not opening.

For many years now there have been ongoing calls for reforms to penalty rate provisions, including most recently the introduction of a private member's Bill<sup>15</sup> in the Federal Parliament seeking to provide small businesses in the retail and hospitality industries an exemption from paying penalty rates unless an employee works more than ten hours a day or more than 38 hours over a seven day period.

The SBDC notes that the Fair Work Commission recently decided to reduce Sunday penalty rates by 25 per cent for casual employees on the lower level pay grades under the Fair Work Restaurant Industry Award 2010 (i.e. the Sunday penalty rate together with the casual loading should not exceed 50% in total), which may pave the way for further reforms in the retail industry. In making this decision however, the Fair Work Commission reiterated its stance that "working on Sundays involves a loss of family time and personal interaction upon which special emphasis is placed by Australian society"<sup>16</sup>. For this reason, it appears unlikely that penalty rates will be removed completely in the foreseeable future.

To further investigate the costs facing retailers in the day-to-day running of their businesses, the SBDC surveyed a sample of small business clients in the WA retail industry. Although this survey was only completed by a very small sample (n=31), the results did confirm that the most costly items for retailers are stock and wages. A summary of the survey results is included at Appendix 1.

When asked how these costs have changed over the past three years, responses included:

*"[There has been a] sharp increase in wages and utilities."*

*"Wages were higher six years ago and now cannot be changed and the sales are down due to internet buying and the US dollar [going] up."*

*"Significant change. I am unable to pay myself."*

*"Rent has been adjusted despite the [Global Economic] crisis. Price of products for sale has dropped while costs have gone up."*

*"Have all increased. Rent goes up 4% annually"*

*"Ever increasing costs, freight being the major factor. Makes running a business almost impossible for small business in the regions"*

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<sup>15</sup> The Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012, as introduced by Senator Nick Xenophon on 16 August 2012.

<sup>16</sup> Fair Work Commission 2014, *Summary of Decision: Restaurant and Catering Association of Victoria*, Government of Australia, Available from: [https://www.fwc.gov.au/documents/documents/summaries/2014fwcfb1996\\_summary.pdf](https://www.fwc.gov.au/documents/documents/summaries/2014fwcfb1996_summary.pdf) >. [8 July 2014].



The imposition of payroll tax is another significant cost facing many retailers and can act as an inhibitor to business growth and increased employment. It was recently reported that WA collected \$3.4 billion in 2012-13 in payroll tax revenue, which is a 10.5 per cent increase compared to 2003-04 and higher than the national average<sup>17</sup>. Although the State Government has made changes to the annual payroll tax threshold, it remains the third lowest in the country.

*Table 1: Australian payroll tax rates and thresholds*

State/Territory	Payroll tax rate	Annual wages threshold	Annual payroll tax bill for payrolls of \$850,000	Annual payroll tax bill for payrolls of \$1.2 million
Victoria	4.85%	\$550,000	\$14,550	\$31,525
New South Wales	5.45%	\$750,000	\$5,450	\$24,525
Western Australia	5.5%	\$800,000	\$2,750	\$22,000
Queensland	4.75%	\$1,100,000	\$0	\$4,750
Tasmania	6.1%	\$1,250,000	\$0	\$0
Northern Territory	5.5%	\$1,500,000	\$0	\$0
Australian Capital Territory	6.85%	\$1,750,000	\$0	\$0

Another area of significant complaint by the SBDC's clients is the cost of electricity supply. These complaints range from increased tariff rates; the ability for large retailers to choose their supplier and negotiate their tariff rate (whereas smaller businesses are unable to do so); and the different costs faced by retailers depending on what geographic location they are in. The SBDC acknowledges that the matter of tariff rates is a difficult one given the State already heavily subsidises the cost of electricity production and supply and as such, any further tariff rate relief would mean increased subsidisation by the Government.

By way of elaboration, the SBDC is aware of the different energy costs facing small retailers in different parts of the State. For example, in regard to electricity costs facing regional retailers, those in Esperance rely on power supplied by Horizon Power, whereas those in the Perth metropolitan area and south west of the State receive their power from the South West Interconnected System (SWIS) operated by Synergy. Businesses connected to the SWIS are in some regards at a competitive advantage to non-SWIS users as they are able to access time-of-use tariffs, which charges different rates depending on whether power is used at peak or off-peak times. Businesses connected to Horizon Power are not offered this same rate, meaning they do not receive the benefit of off-peak rates and end up paying more if using electricity beyond peak periods.

This is particularly an issue for supermarkets and other retailers that run refrigerators constantly. As a specific example, the SBDC is aware of an Esperance-based supermarket that pays up to 50 per cent more for its electricity than an equivalent supermarket connected to the SWIS, as no off-peak rate is available. This demonstrates the inequity in costs facing retailers in WA as a result of where they are located.

<sup>17</sup> Penaranda, J 2014, 'WA's payroll tax bonanza', *Business News* 9 June, p. 20.



A further significant cost facing retailers (especially those in regional and remote locations of WA) is that associated with the transportation of goods. Among other things, the vast size of the State and often poor road quality, with some remote locations only accessible via unsealed roads, is a big problem and can impact on the cost and frequency of goods being delivered to these towns. The ever increasing, high cost of fuel means that retailers in remote towns in particular bear the additional cost of freight to receive their goods than their metropolitan counterparts.

**Information request 4.1:** The Commission is seeking further information on the impacts of planning and zoning laws on retailers' occupancy costs. To what extent are occupancy costs also influenced by the behaviour of retail property owners?

Continuing with the issue of electricity, the SBDC is aware of the practice by some retail shopping centre landlords in WA of adding a margin to the cost of supplying electricity and on-selling this to their retail shop tenants. This practice is made possible through the *Electricity Industry Exemption Order 2005 (WA)*, which grants exemptions to a range of people or classes of people from the requirement to hold a licence to sell electricity to a customer.

Clause 4(4) of the Exemption Order exempts a person from holding a licence under the *Electricity Industry Act 2004* "if the electricity is sold for consumption on commercial premises under the control or management of the supplier". This type of arrangement is known as on-selling as the supplier (e.g. the shopping centre landlord) purchases electricity from a licensed retailer (such as Synergy) and then on-sells that electricity to its customers (e.g. the shopping centre tenants). Other than the obvious extra cost this places on retail tenants, this practice also acts to distort the market by unfairly targeting smaller retailers who don't have the choice and flexibility of negotiating their tariff rates directly with licensed electricity retailers.

As mentioned previously, under the CT Act retail tenancy landlords are prohibited from prescribing mandatory opening hours. This being said, the SBDC is aware of claims where this continues to take place. It has been reported that in some cases, landlords are threatening and issuing tenants with fines if they do not open their nominated hours and in some cases, tenants are told that their lease will not be renewed unless they open the preferred hours of the landlord. This is more likely to be the case in markets with retail stallholders where the landlord wants the tenants to be open over the weekend. This also occurs in some shopping centres and under some franchise agreements, where franchisors are forcing franchisees to open set hours.

While this practice is prohibited under legislation, it demonstrates that smaller, unsophisticated retailers continue to be taken advantage of under their contractual relationship with other (typically larger) businesses.

**Information request 5.2:** What has been the impact of recent reforms to retail-specific and generic regulation to date? Where the pace of reform has lagged, what are the barriers to reform and how could these be overcome?

- To what extent could these barriers be attributed to the reform process?



- Where these barriers are considered sufficient to jeopardise the prospect of reform, what other approaches could provide net benefits to the community?

As mentioned in the Interim Report and Submission 1, amendments to the CT Act commenced in WA on 1 January 2013<sup>18</sup>. These changes were designed to improve transparency of information and fairness in retail tenancy leases and focus on:

- disclosure statements;
- the right to a five year tenancy;
- relocation and redevelopment requirements;
- options to renew;
- market rent reviews;
- legal costs;
- misleading and deceptive conduct; and
- resolution of disputes through the WA Small Business Commissioner (and SBDC).

The introduction of these reforms has meant that small business retailers have enhanced rights and protections under the legislation. One of the greatest benefits of the recent changes for retail tenants is the prohibition against landlords passing on their legal costs when preparing leases. Unfortunately, the SBDC is aware that some landlords are finding ways to exploit this prohibition.

Since the amendments came into effect (through to 24 June 2014), the SBDC has dealt with 623 commercial tenancy related disputes, with 163 referred for intensive case management, 19 issued with Certificates to go to the State Administrative Tribunal, and 26 cases referred to mediation. This highlights that even with increased protections for retail tenants, disputes between landlords and retail tenants can and do happen. It also demonstrates that no legislative protections will entirely safeguard against the conduct of shopping centre landlords, and that there is a genuine need for ongoing education and access to dispute resolution services for small businesses.

Although not a reform that has been introduced to date, the SBDC is also aware that there have been several attempts to introduce a shopping centre lease register in WA. More recently, the concept of a national lease register is currently being considered by the Senate Economics References Committee's inquiry into the need for a national approach to retail leasing arrangements<sup>19</sup>. The SBDC believes this would be of interest to the Commission as, if introduced, it could have the potential to significantly impact on the cost to retailers in Australia.

<sup>18</sup> Department of Commerce 2012, *Commercial tenancy – information for tenants*, Government of Western Australia, Available from:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/commercialtenancinformationfortenants.pdf> > [17 June 2014].

<sup>19</sup> Senate Economics References Committee 2014, *Need for a national approach to retail leasing arrangements*, Parliament of Australia, Available from:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Retails\\_leasing](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Retails_leasing) >. [16 July 2014].



Although the intent behind calls for lease registers has been to increase transparency of information for retailers, the SBDC does not believe that they would provide small business tenants with the best outcome in their leasing arrangements, and does not support their introduction from a small business perspective for the following reasons:

- the costs of entering leases (especially in terms of indirect costs passed onto tenants) would increase, as would red tape;
- the information contained on the register may be incomplete and not a true reflection of the value or cost of the lease;
- without expert analysis, the information published could be misleading to many retail tenants;
- prospective tenants may fixate on one aspect of the lease (e.g. the amount of rent) while ignoring or not properly considering other important information (i.e. analysing what a business can afford is more critical to potential success than information about how much other retailers pay for their rent);
- decisions might be based on incorrect or outdated information contained on the register;
- there is a potential for competitors to access the lease information of other businesses for the purpose of undermining their position within a shopping centre; and
- the publication of lease information (e.g. specifically negotiated incentives) may adversely impact on a landlord's willingness to negotiate with future tenants.

Thank you again for the opportunity to submit comments to this study. The SBDC hopes that the information provided in both Submission 1 and this submission better informs the Commission of the range of cost factors faced by retailers in WA. For further clarification of these issues, please liaise directly with Ms Lauren Westcott, A/Senior Policy and Advocacy Officer

Yours sincerely

David Eaton  
SMALL BUSINESS COMMISSIONER

28 July 2014



**Appendix 1: Small Business Development Corporation survey of retailers – summary of results (n=31)**

Types of goods sold by respondents:

- telephone systems and computers
- fashion jewellery and accessories
- food and beverages
- kitchenware and giftware
- automotive
- newsagency goods
- music and merchandise
- marine products and boats
- clothing
- outdoor leisure products
- curtains and blinds
- toys
- fishing and camping goods
- hardware and building supplies

Range of business sizes for respondents:

Business size ranges	Number of respondents
0 employees	6
1 to 4 employees	10
5 to 19 employees	14
20 to 49 employees	1

The five most costly items for the business (in decreasing order of cost, as selected by respondents). (Number of respondents indicated in brackets)

- Stock (9) and wages (8)
- Rent of premises (8)
- Business insurance (5)
- Utilities (8)
- Communications technology (4) and wages (4)



The extent to which the costs of the five most costly items have changed over the past three years: (quotes from survey participants)

<i>"20% increase"</i>	<i>"In some instances costs have gone up 400% in the past year!"</i>
<i>"Annual increase"</i>	<i>"Insurance costs including workers compensation and public liability have increased considerably"</i>
<i>"Sharp increase in wages and utilities"</i>	<i>"Wages and super[annuation] has impacted on us significantly along with ATO taxes"</i>
<i>"Small increases each year"</i>	<i>"They have increased in price dramatically"</i>
<i>"Gone up"</i>	<i>"Electricity the highest for many years, wages out of control"</i>
<i>"5%-8% [increase]"</i>	<i>"Been in business 1.5 years and the costs are stable"</i>
<i>"Wages were higher six years ago and now cannot be changed and the sales are down due to internet buying and the US dollar [going] up"</i>	<i>"Over 11% [increase]"</i>
<i>"Significant change. I am unable to pay myself"</i>	<i>"Rent has been adjusted despite the [Global Economic] crisis. Price of products for sale have dropped while costs have gone up"</i>
<i>"Fairly static increasing generally relative to each other, other than business loan interest which has fluctuated in line with overall economic monetary policy"</i>	<i>"Gradually increased"</i>
<i>"Have all increased. Rent goes up 4% annually"</i>	<i>"Increased greatly"</i>
<i>"Utilities have gone up a lot. Changes in fuel prices has affected freight costs"</i>	<i>"All gone up far more than income"</i>
<i>"All over inflated because the government did not keep its word on utilities being raised. Inflation is out of control in this country"</i>	<i>"Ever increasing costs, freight being the major factor. Makes running a business almost impossible for small business in the regions"</i>
<i>"Increasing cost versus the same sales or even worse, lower sales that [makes it] so difficult for [a] small business to grow"</i>	<i>"They keep going up"</i>



The types of e-commerce activities undertaken by survey respondents (multiple responses were provided): (Number of respondents indicated in brackets)

- Business sells goods online to customers (9)
- Business allows customers to book services online (7)
- Business buys goods online from suppliers (15)
- Business books services online (3)
- Business does not sell goods online (13)

Reasons why businesses do not sell goods online include: (Number of respondents indicated in brackets)

- The belief that it is not relevant for their business (8)
- The business operator is too busy to investigate the benefits of e-commerce and how to set it up for their business (1)
- Concerns about transport costs (2)