

18 July 2013

The Hon. Jarrod Bleijie MP
Attorney-General and Minister for Justice
GPO Box 149
Brisbane QLD 4001

Dear Minister Bleijie,

RE: Proposal to review aspects of the Queensland Retail Trading Hours framework.

The Chamber of Commerce and Industry Queensland (CCIQ) is committed to reducing the impact of red tape and making it easier and less costly for Queensland businesses to be compliant. We strongly support the State Government's commitment to reduce red tape in Queensland by 20 per cent and wish to play an active role in supporting the realisation of this target by proactively identifying opportunities for deregulation and simplification.

The regulation of shop trading hours is one such area where we believe the State Government could reduce the administrative compliance burden on business and the community. Importantly CCIQ does not support the deregulation of trading hours, as it continues to afford small retail businesses protection against larger competitors.

However CCIQ members have raised a number of concerns over the unintended cost and compliance burden that the trading hours regulation imposes. CCIQ research and consultation with small businesses have revealed instances of unnecessary compliance cost, complexity and regulatory anomalies which currently disadvantage those small business owners who the legislation aims to protect.

Accordingly CCIQ believes there is merit in conducting a limited regulatory review with the view to simplify and streamline the trading hours framework in Queensland which may deliver benefits in the way of reduced administrative burden and compliance cost for both government and the business community.

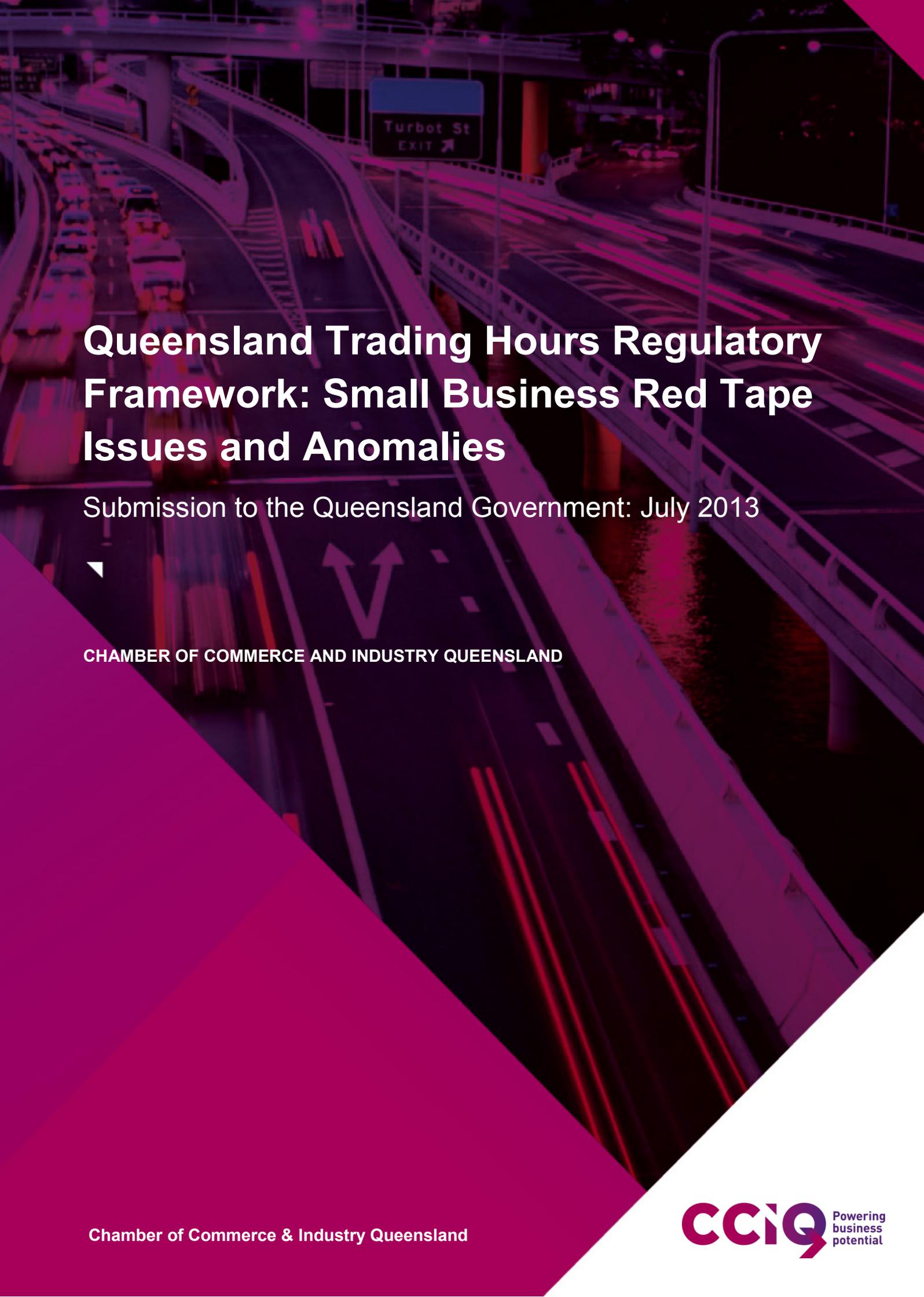
Please refer to the attached submission presenting evidence and arguments in support of our proposal to conduct a limited review of the Queensland Shop Trading Hours framework. Should you wish to discuss this submission in more detail please do not hesitate to contact me on ph. 07 3842 2279.

Yours sincerely,



Nick Behrens

General Manager - Advocacy



Queensland Trading Hours Regulatory Framework: Small Business Red Tape Issues and Anomalies

Submission to the Queensland Government: July 2013



CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

1. INTRODUCTION

As the State's peak business organisation, the Chamber of Commerce and Industry Queensland (CCIQ) represents in excess of 25,000 businesses across all industry sectors and all business sizes. We have established links with more than 120 local chambers of commerce and professional associations, making us the most authoritative voice on small and medium business issues in Queensland.

CCIQ is committed to reducing the impact of red tape and making it easier and less costly for Queensland businesses to be compliant. Accordingly we strongly support the State Government's current commitment to reduce red tape in Queensland by 20 per cent. CCIQ believes we can play an active role in supporting the realisation of this target. Rather than simply being critical of regulators for current levels of red tape and past regulatory practices, CCIQ is now proactively working to identify regulatory compliance issues and opportunities for deregulation and simplification.

The regulation of shop trading hours is one such area where we believe the State Government could reduce the administrative compliance burden on business and the community. From the outset CCIQ wishes to confirm that we do not advocate for the deregulation of shop trading hours as our members strongly believe this remains an effective protection against large retail companies. However CCIQ is aware that a number of aspects of the current regulatory framework unfairly disadvantage some small businesses or impose significant compliance burden and red tape on their operations. Accordingly we believe there is merit in conducting a limited review of the trading hours framework to ensure this area of regulation continues to efficiently and effectively meet business and economic objectives.

It is CCIQ's view that a review may reveal opportunities for the Government to improve the efficiency of the current framework and deliver benefits in the way of reduced administration and compliance cost for both government and the business community.

2. BACKGROUND AND CONTEXT

Queensland Trading Hours Framework

The trading hours of shops in Queensland are regulated through the *Trading (Allowable Hours) Act 1990* supported by the *Trading (Allowable Hours) Regulation 2004* and various trading hours orders made by the *Queensland Industrial Relations Commission (QIRC)*.

The stated objectives of the act cover:

- The determination of trading hours for non-exempt shops across Queensland;
- Providing for employee holidays and restricted trading on Anzac day;
- Providing for closure of banks and insurance companies on bank holidays;
- Prohibiting trade outside of allowable hours; and
- Facilitating trade in tourist areas.

Hours of trade will depend on the classification of shops and trading activity. However generally, the minimum allowable trading hours throughout Queensland are:

- 8.00am to 9.00pm Monday to Friday
- 8.00am to 5.00pm on Saturday (extended hours may apply in certain areas).

Different extended trading applies to some categories of shops on Sunday and certain public holidays, but only in the defined South-East Queensland area. Declared tourism business zones have different allowed trading hours (e.g. Weekend trading has been allowed until 9pm in the Cairns CBD since 2011).

To ascertain which hours of trade and restrictions apply, a business must first determine which of the three categories of shops they fall into, as well as their location, as specifically defined under the Act. Shops are mainly classed as:

- exempt shops – trading hours for these shops are totally unrestricted. There are 36 categories of exempt shops defined under the Act.
- independent retail shops – have unlimited trading hours in the same way as exempt shops (with the exception of 2.5 public holidays when they must remain closed), provided they meet certain criteria defined under the Act.
 - As a subset to this category, independent retail shops that are predominantly food and/or grocery have unlimited trading hours and are allowed to open even on the 2.5 restricted days.
- non-exempt shops – are restricted in their hours of trade to the minimum allowable trading hours defined under the act and/or extended trading hours if operating within declared SEQ trading area or tourism zones. These shops can however make applications to the QIRC for approval to trade beyond allowable hours or to hold special displays or exhibitions.

Comparison with other states

Restrictions on shop trading hours vary across state jurisdiction, however Queensland has one of the most restrictive frameworks. A review of the legislation across jurisdictions has found that Queensland applies a number of restrictions not imposed in Victoria, New South Wales, Tasmania, ACT and the Northern Territory. Interestingly, whilst South Australia and Western Australia maintain restrictions in CBD and metropolitan areas, they apply no state regulatory restrictions to regional and remote communities instead leaving these decisions to the local government and community. Queensland also has one of the highest numbers of declared and restricted public holidays with 5 restricted days in SEQ, and 11 across the remainder of the state. The table on the following page provides a summary comparison of trading restrictions applied across Australian jurisdictions.

What this means is that with respect to the retail and service industries, Queensland maintains a more highly regulated retail trading environment than other states. However member feedback to date suggests this framework continues to have broad support from the business community. This support is premised on the role of the trading hours framework in protecting small business competitiveness.

Table: Comparison of trading restrictions across Australian jurisdictions.

Jurisdiction	Weekdays	Saturday	Sunday	Public Holidays
ACT	No restrictions	No restrictions	No restrictions	No restrictions
Northern Territory	No restrictions	No restrictions	No restrictions	No restrictions
Victoria	No restrictions	No restrictions	No restrictions	2.5 Restricted Days - Good Friday - ANZAC Day (before 1pm) - Christmas Day
Tasmania	No restrictions	No restrictions	No restrictions	2.5 Restricted Days - Good Friday - ANZAC Day (before 12 noon) - Christmas Day
New South Wales	No restrictions	No restrictions	No restrictions	4.5 Restricted Days - Good Friday - Easter Sunday - ANZAC Day (before 1 pm) - Christmas Day - Boxing Day (Sydney CBD exempt)
South Australia –CBD Tourist Precinct	midnight to 9pm	midnight to 5pm	11am to 6pm	2.5 Restricted Days - Good Friday - ANZAC Day before 12pm - Christmas Day
– Metropolitan shopping district	midnight to 9pm	midnight to 5pm	11am to 6pm	10 Restricted Days (all public holidays except Easter Saturday)
–Proclaimed shopping districts	midnight to 9pm	midnight to 5pm	closed	11 Restricted Days (all public holidays)
– Remainder of state	No restrictions	No restrictions	No restrictions	No restrictions
Western Australia – South of the 26th parallel	8am to 9pm	8am to 5pm	11 am to 5 pm	3 Restricted Days - Good Friday - ANZAC Day - Christmas Day 11 am to 5 pm on other public holidays
– North of the 26th parallel	No restrictions	No restrictions	No restrictions	No restrictions
Queensland – South East Queensland	8am to 9pm	8am to 5pm	9am to 6pm	5 Restricted Days - Good Friday - Easter Sunday - ANZAC Day - Labour day - Christmas Day
– Selected towns and tourist areas	8am to 9pm	8am to 5pm	9am to 6pm 11am to 6pm 10.30am to 5.30pm Closed 7am to 6pm	4 Restricted Days - Good Friday - ANZAC Day - Labour day - Christmas Day 8.30am to 5.30 pm 7 am to 6pm
– Remainder of State	8am to 9pm	8am to 5pm	closed	11 Restricted Days (all public holidays except Easter Saturday)

3. SMALL BUSINESS 'RED TAPE' ISSUES

Whilst the restrictions imposed on retailers in Queensland largely differ significantly to that in other states, as previously stated CCIQ does not support deregulation of trading hours. However from a red tape perspective there are aspects to Queensland's trading hours framework which are considered cumbersome and inefficient in the sense that:

- a) it is overly complex to navigate and interpret creating confusion amongst business owners and the community;
- b) a number of anomalies currently disadvantage those who the legislation aims to protect (small businesses); and
- c) it imposes onerous and costly compliance processes on the business community.

For these reasons CCIQ believes there is merit in reviewing the trading hours framework from the perspective of regulatory efficiency and effectiveness.

Complexity

To ascertain which hours of trade and restrictions apply, a business must first determine which of the three categories of shops they fall into, as well as their location, as specifically defined under the Act. Business feedback suggests that this is typically not an easy task as businesses must consider factors such as the mix of products they sell, their business activities, ownership structures, and number of employees rostered at particular times of the day to determine if they are either an exempt, independent retail or restricted business. Businesses must then also have regard for any relevant QIRC orders.

At present the state is divided into 36 different areas for trading regulation, leading to considerable confusion and uncertainty for retailers, shopping centre managers and members of the public. On occasions such as Christmas and Easter for example the full list of allowable trading hours typically spans over 5 pages of detailed and variable trading times and conditions. In practice this means that businesses (and consumers) face a degree of uncertainty and time cost when seeking clarification of their regulatory requirements in relation to trade on restricted days and in some circumstances may unintentionally expose themselves to regulatory breaches and penalties.

Anomalies

Regulatory anomalies exist within the framework which warrant review in order to ensure the legislation is current and that small business are not disadvantaged by the trading hours framework:

a) Boundary / Trading Area Anomalies

The variability across the separate trading zones has also led to anomalies, particularly in regional Queensland where businesses face a comparative disadvantage to businesses in other areas. Such boundary anomalies distort retail markets and result in trade being lost to other regions or other avenues of discretionary spending including online shopping. For example:

- Standard Saturday trading hours for the majority of shops in South-East Queensland is 8am - 5pm, but special exemptions exist permitting:
 - inner city Brisbane shops to trade until 5.30pm;

- Queen Street Mall/CBD entertainment precinct shops to trade until 7pm;
 - New Farm shops until 9pm; and
 - Gold Coast shops to trade until 10pm.
- Shops can trade on Sundays in Toowoomba but are not permitted to do so in neighbouring centres such as Warwick; and
 - Businesses in Cairns CBD can trade until 9pm on both Saturday and Sunday, whilst in neighbouring towns of Port Douglas and Mareeba trade is restricted to standard hours.

As a result customers travel to other regions to take advantage of extended trading hours impacting on profitability and employment in areas where trading hours continue to be restricted.

b) Definition and Exemption Anomalies

There is evidence that exemptions for small business within the trading hours framework have the undesired consequence of preventing the expansion of successful small businesses. To qualify as an ‘independent retail shop’ a business may be run by a single operator or private company and where no more than twenty employees work at one time. This exemption creates a disincentive to hire casual staff or expand operations. At the same time limiting capital to only single operators or private companies discourages investment and entrepreneurship. A number of Queensland businesses have raised this very issue with CCIQ noting that in some cases the ability to employ additional staff and offer a higher level of customer service is a marketing tool and factor differentiating independent retailers from larger retailers. In effect the trading hours framework therefore forces small business to stay small and is an anti-growth law in a state that prides itself of promoting economic development, employment growth and an entrepreneurial business culture.

Other businesses are prevented from trading due to out-dated and technical definitions of trading activity and mix of products sold which determines whether they must adhere to trading restrictions or are exempt. Whilst the basis for the 36 categories of exempt and excluded shop types in principle aim to protect small retailers from large business dominance, in actual fact it has resulted in small businesses losing their customer base and/or being forced out of the market. Some particular examples raised by CCIQ members include:

- The inclusion of businesses such as restaurants and cafes, bookshops, or souvenir shops in the exempt category (with unrestricted trading hours), whilst other small retailers such as clothing boutiques, gift shops and household/décor shops must adhere to trading hour restrictions as they are not specifically defined under the exempt category. This is a particular issue in tourism regions such as Port Douglas and the Whitsundays, where such shops make a significant contribution to the overall “tourism experience” and accordingly lose business opportunities during peak tourist periods such as the Easter long weekend and Christmas holiday period.

- That caravans and boats cannot be sold outside of standard trading hours (despite these hours predominantly being preferred by customers to purchase such products), whilst retailers of other camping and travel and marine products are able to trade with unrestricted hours;
- Businesses classified as motor vehicle retailers (under other licencing and regulatory instruments) are restricted from trading outside standard trading hours, even when their predominant product mix is non-standard, recreational and household use vehicles (e.g. on farm quad bikes, off-road motorcycles and ride on lawn-mowers) whilst large hardware classified business competitors (that sell these or similar vehicles) are exempt and have unrestricted trading hours; and
- Similarly businesses classified as motor vehicle retailers are restricted from trading outside standard trading hours, but shops selling motor vehicle spare parts have unrestricted trading hours.

In each of these circumstances, significant costs are imposed on those retailers who are prevented from trading to the extent to which they would like and the extent to which their customers demand. They therefore forego trade to other retailers, and also to other avenues of discretionary spending including online shopping. The Productivity Commission noted in a recent review that the regulation of trading hours has contributed to the growth of online retailing in Australia posing a greater potential threat to local bricks and mortar retailers particularly in those states such as Queensland where shopping hours are most restricted.

Inefficiencies (Cost)

Onerous and costly compliance processes exist for those retailers seeking the opportunity to apply for special exemptions and or challenge trading hour restrictions. This process in Queensland requires applicants to gather specific evidence and provide opportunity for full community consultation at a business' own expense before having their case heard before a full bench of the QIRC. CCIQ has a number of examples of the cost and complexity faced by small business operators who seek to make representations to the QIRC for special exemptions to their trading conditions. For example, one regionally based small business estimated QIRC applications cost them over \$100,000 annually which included over \$14,000 in public notice and advertising costs.

Therefore due to the high complexity, lengthy public notice periods and significant upfront financial outlays the process has in effect only acted to further restrict and disadvantage small retailers. This is because large retailers are well resourced and well represented to make applications and defend themselves in the QIRC; while small businesses on the other hand typically find it highly costly and onerous to make applications to the QIRC to seek special exemptions or permission to trade.

Additionally an assessment of the various trading hours orders made by the QIRC following various applications (majority of which reflect large retail chain applications for Sunday, public holiday and other trading hour extensions) suggests that most applications have been granted with only a very small minority refused in the last few years. This evidence would suggest that the costly and cumbersome procedures intended to protect small businesses by deterring larger businesses are not having the desired effect and therefore only act to disadvantage those small businesses who attempt to make applications to the QIRC for

other special exemptions. In a practical sense resources are consumed by small retailers in making costly applications and by the government in maintaining and administering the system which represents a cost to the overall economy.

4. SUMMARY AND RECOMMENDATIONS

Whilst CCIQ does not recommend the deregulation of shop trading hours (as it stands the only tool for maintaining a comparative advantage for small business against large retailers) we do believe there to be merit in conducting a review of the trading hour regulation to ensure there is no unnecessary compliance cost for small businesses and that it continues to efficiently and effectively meet its intended objectives.

Accordingly CCIQ recommends that the Queensland Government conduct a limited public review of the *Trading (Allowable Hours) Act 1990* and the *Trading (Allowable Hours) Regulation 2004*. The Review should give consideration to the following matters:

- ensure the objectives of the Act are current and reflect the need to protect the competitiveness of small businesses;
- consider simplifying the existing categories of 'shop' and give more clarity to what constitutes a exempt shop for the purposes of being permitted to trade on restricted days/times;
- review any anomalies currently placing small business at a disadvantage to other retailers and/or other avenues of discretionary spending;
- consider simplifying the process and circumstances under which shops and small businesses can seek exemptions; and
- improve information sources and education regarding the regulated trading hour framework in Queensland.