



Submission by

**The Shop Distributive and Allied  
Employees Association (Queensland Branch)**

To

Mr John Mickel  
Committee Chair

Review of the Trading (Allowable Hours) Act 1990

## CURRENT REGIME

### **Minimum hours**

Retail trade hours are regulated by various pieces of legislation in conjunction with Orders, Awards and Judicial decisions of the Queensland Industrial Relations Commission (QIRC). The **Trading (Allowable Hours) Act 1990** ('the Act') supported by the **Trading (Allowable Hours) Regulation 2004** and the **Trading Hours Order** (the Order) as amended from time to time (via *Section 21* of the Act) regulate trading hours (in particular of Non-Exempt Shops). The Act enables the Queensland Industrial Relations Commission to decide trading hours for non-exempt shops only with the Commission being barred by the Act from deciding trading hours that are less than the following hours, other than on public holidays—

#### Non-Exempt Shops

Medium to large retailers that do not fit within the definition of Exempt or Independent shops:

Monday to Friday	8:00am to 9:00pm
Saturday	8:00am to 5:00pm or 5:30pm
Sunday/Public Holidays	9:00am to 6:00pm

However, shops in certain designated tourist areas are permitted to remain open on Saturdays and Sundays until 7:00pm or 10:00pm.

#### Exempt Shops<sup>1</sup>

Defined service or product stores - Unrestricted hours.

#### Independent Shops<sup>2</sup>

Stores that are usually medium sized businesses where the store must have no more than 20 people working in the store at one time or 60 people working at any one time across all stores which are owned by the same employer – Virtually unrestricted hours, restrictions apply for non-food retailers on Anzac Day (before 1:00pm), Good Friday and Christmas Day.

### **Extending hours**

The Order operates to amend or extend the minimum hours as a result of applications made to the QIRC on the basis of various considerations (via *Section 26* the Act). The QIRC must take into consideration the following matters:

- (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.

<sup>1</sup> Section 5 Trading (Allowable hours) Act.

<sup>2</sup> Section 6 Trading (Allowable hours) Act

The current legislation appears to be weighted in favour of expansion of trading hours for non-exempt shops, leaving limited ability by other interested parties to express opinion or valid objection. For example, the SDA can adduce evidence under criterion (i) only to convince the Commission of the effect on their members. The small to medium retail businesses that might be adversely affected may adduce evidence under part of criterion (e) only. There is no particular body to speak on behalf of the public interest. The SDA is aware of only three matters where the opinion of the general public was canvassed and these matters have been highlighted in the issues paper provided. In these matters the majority voted against the proposed expansion.

The SDA submits that when evidence of consumer needs is being determined, the needs or desires are weighted upon material given by major retailers or an independent body asking customers entering a store if they would like additional hours in which to shop. There is little or no canvassing of opinions or effects of any foreseeable adverse consequences such as the effect on the retail workers or potential loss of jobs in, or closure of, smaller retail businesses as a result of any approved extension of hours.

### ***Successive Applications***

There has been no limit on lodging successive applications, nor the number of applications a party may lodge.

The issue paper acknowledges that successive applications have led to a continuum of applications for different zones and times over decades. The current regime that requires the applicant to nominate a particular trading zone has established a plethora of zones within zones.

The result of successive applications to amend the order has resulted in numerous trading zones with differing variations of trading hours across those zones. There may be a degree of inconsistency (some may say confusion or complexity) in having various zones. The issues paper clearly outlines by annexing the current Trading Hours order relevant trading zones that apply to the state of Queensland.

The SDA submits and recognises merit in having distinct trading precincts/zones as trading hours should not be a 'one size fits all' approach. For example, the location and necessity of having extended trading hours in a country/rural area is very different to the necessities associated to a store in a tourist destination. The SDA recognises the merit of trading hours fitting the requirements of the relevant district in which the store operates and the characteristics of the considerations to that locality as mentioned above. It should be noted that although the Applicant seeks certain trading zones and trading hours, the commission has the ability to grant trading hours or zones that differ from those contained in the application, however, this is seldom done.

The SDA submits that there have been a number of applications immediately following the refurbishment of shopping centres or new store openings (for example recent applications for Ipswich, Toowong, Robina, and Newstead). The SDA submits that these applications were granted despite no definitive request or push by consumers. We submit that the primary motivator was simply the refurbishment/new store opening.

### ***Other influences***

In addition to the above regulatory matters, trading hours are also regulated by reference to the requirements of the **Holidays Act 1983** (as amended) that specify when certain shops may operate on specified public holidays. The interaction of this piece of legislation, the Act and the Order again result in variations across different trading zones.

### ***Significant applications (QIRC)***

In addition to materials presented in the relevant issues paper the SDA submits that three (3) recent and significant QIRC decisions affect the trading hours landscape.

➤ **32 Hour Christmas trading**

The large retail precincts of *Westfield Chermside* and *Westfield Garden City* now have the ability to trade continuously as follows:

23 December	8.00am – 12 .00pm (Midnight)
24 December	12.00am – 9.00pm.

➤ **Applications to extend Pre Christmas Trading hours**

Applications (TH 3 – 12 of 2016) apply to Christmas Trading in 2016 covering several shopping centres across South East Queensland. The decision allows extended trading hours as follows:

19 December	8.00am – 12 .00am (Midnight)
20 December	8.00am – 12 .00am (Midnight)
21 December	8.00am – 12 .00am (Midnight)
22 December	8.00am – 12 .00am (Midnight)

➤ **Application - Merger of Zones – South East Queensland**

This application (TH 23 of 2014) sought to merge several trading zones into one general zone (South East Queensland). The decision allows the following:

Monday to Friday	7.00am – 9.00pm [extending the opening hours from 8.00am]]
Saturday (from 5.00pm)]	7.00am – 9.00pm [extending opening hours (from 8.00am) and Closing
Sunday	9.00am – 6.00pm [No change].
Public holidays	9.00am – 6.00pm [No change].

As detailed in the proceeding submission, the impact for retail workers (in particular SDA Members) by these decisions is significant. Although certain protections have been implemented as follows:

- By *Section 36A* of the Act, employers cannot require current employees to work extended hours (i.e. the permissible hours for Sundays and Public holidays) unless the employee agrees in writing to work during those extended hours.<sup>3</sup>
- A number of non-exempt employers before the Commission have provided undertakings whereby work for extended hours will be voluntary for existing employees at the time of the order to extend hours.
- Orders in Pre-Christmas Midnight Trade application and South East Queensland Applications require work to be voluntary and at the election of the employee.

Whilst the protections are a result of discussion, consultation and argument before the Commission and in our submission required they remain limited. It is submitted that the matter of voluntary work for all hours extended for all employees must be voluntary and encompassed into the legislation and part of all orders from the commission.

We reiterate that the current time that these protections apply only to the application being applied for and at the time the Commission may hear it and the current system really only hears from the represented Non-Exempt retailers whereas a vast majority of non-exempt stores do not provide evidence in these matters and so do not give any undertakings. The Act's requirement does not cover hours that relate to other weekdays. There are still significant numbers of workers who could be required or at the very least pressured or coerced to work either excessive or unsociable hours to cover the expanded regime of trading hours.

The Christmas trading hours regime is of significant concern. Whilst there was a consent position taken by the SDA in the Midnight Trade application abovementioned, it was subject to and dependent upon a more

<sup>3</sup> This encapsulates the *Voluntary Work – Extended Trading Hours – Non Exempt Shops – Award – State* – allowing an election of the employee to work extended hours.

rigorous voluntary/election to work undertaking than any previous trading hours matter before the Commission. It is very significant that despite this consent undertaking never having been canvassed or presented as either evidence or submission in the South East Queensland Application the Commission of its own volition sought to include this in the orders relevant to that application, clearly indicating that there was a definite need of protection of workers in extended trade hours.

The impact of retail workers in 2016 is that they had and may well continue to have the potential scenario of having to work excessive and unsociable hours leading all the way up to and including Christmas Eve. Workers at Christmas (especially in retail hubs such as major shopping centres) are particularly pressed upon to work what retailers refer as their '*black out period*' (i.e., where workers are generally not encouraged to take or even apply for leave, given limited opportunity to have any downtime based on business needs and are worked extremely hard in this hectic retail period).

The SDA acknowledges that certain trading periods are extremely important to businesses and Christmas is one (if not the most important) time period in which that occurs. However, the business need must be weighed against the retail worker's personal needs and expectations and is an essential part of the SDA's role to ensure a reasonable work life balance is maintained. The retail industry is one of the largest, if not the largest, private sector employer and it continues to expand. All retail workers are impacted during this period where it is 'all hands on deck'. The limiting or possible denial of the recreational time most of us take for granted does not affect the worker solely but their family also suffers. The SDA suggests that the legislation should require the acknowledgement that the Christmas season has business, personal, social, religious and cultural significance that should not be weighted purely on business/commercial criteria.

Whilst we acknowledge any consideration of the reduction in the number of public holidays, are not within the scope of the review it is pertinent to note that the SDA has lobbied and been persistent in its approach to successive governments and the business sector that part-day holidays for Christmas Eve and New Year's Eve are relevant and warranted when considering the impact on retail workers at those times.

The SDA supports the introduction of a part-day holiday for Christmas Eve and New Year's Eve between 6:00pm and Midnight giving retail workers the ability to elect to work or not. The SDA believes that allowing workers the ability to elect to work within any extended hours over Christmas/New Year is warranted when viewing and considering the extent of the pending applications abovementioned. It is relevant and important to note these part day public holidays have been recognised by governments in both South Australia and recently the Northern Territory.

### ***Role of government and the QIRC***

The current framework relies on the independence of the Commission to test and arbitrate applications that request extensions to the permissible hours under the Act. The question that arises is whether the current system of QIRC Applications is the most efficient, cost effective and appropriate way in which to achieve an improved regime.

It is a matter for discussion whether Trading Hours could or should be a matter that is solely legislated under an Act of Parliament or whether the system requires an arbitrator to independently assess trading hours when a significant need for change might arise.

The SDA suggests that whilst trading hours might be a somewhat fluid concept, it requires a strong base on which to set appropriate minimums/maximums but give appropriate interested parties the ability to submit either a support for or objection against change and that continual change contribute to confusion for the consumer.

This might also be served by a regime of suitable industry/regional enquiry by an independent tribunal and spaced at appropriate time intervals that allow sufficient evidence to be accumulated to support any change to create more stability.

### **SDA'S PRIMARY ROLE – THE INTERESTS OF RETAIL WORKERS**

The SDA represents the interests of approximately 33,000 retail, fast food and warehouse employees across a vast range of enterprises both large and small. We submit that our membership is an excellent representational sample of workers within the retail industry. The SDA views its primary role as one to ensure its members specifically and other retail workers by extension are protected from the erosion of working conditions and to maintain a reasonable work/life balance. Such interests are intrinsically entwined with the expansion of trading hours as the extensions are invariably within what workers view as unsociable hours (i.e., being earlier starts, later finishes, working across weekends.) We should never lose sight of the fact that our children or our children's children may work in the retail industry.

Retail workers cover a wide gamut of employees who are engaged in full-time, part-time and casual work. There is no 'stereotypical' retail worker. There are many retail workers that have been engaged in the industry for numerous years and work various hours and days across the entire week. A large number (if not the majority) of retail employees are engaged part-time or casually; often times this is simply because they cannot attain full-time hours, or perhaps they work to supplement household incomes and work day time hours whilst young families are in schooling.

The SDA membership comprises 63% female and 37% male employees with 34% of our membership being aged under 25, 44% aged between 25 and 50 and the remaining 23% over 50 years of age.

A large portion of retail employees are students – whether they are school or university students the amount of work and hours in which this sector should or can work is influenced by the legislation and regulation of trading hours or promulgated in the Child Employment Act 2006.

Retail workers also comprise an indeterminate number of individuals who might desire or require to work unsociable hours for a period of time because it happens to suit their lifestyles. A parent that needs to be home in daylight hours might wish or need to have night time work; a student might find night work more suitable so they can study at university, school children might want to work on a weekend when school is not running.

Prima facie though, there is a large number of working mothers and sole parents who work in the industry. Many of these feel vulnerable and susceptible to coercive activities in order to hold down the job or maintain their casual hours. The SDA has always maintained a stance that to achieve a work/life balance for members and other retail workers means it must regularly, and at considerable cost, oppose the successive applications made before the QIRC by employer groups wishing to extend trading hours into unsociable hours that might negatively impact a worker's personal, social or family life.

The SDA submits that a key issue for retail workers is the ability to have the choice to elect to work or not work 'unsociable' hours. The effect of any amendment to retail trade hours and the regulation of same is based on an assumption that hours may be extended. As a result of this assumption the SDA submits that workers desire an entitlement to have the 'election whether to work or not' so they do not have to simply rely on a general undertaking by a limited number of large employers that work will be voluntary. It should also be noted that certain management from large retailers give unequivocal guarantees that work during proposed extended times will be voluntary, and we do not doubt their veracity, however when pressed in Enterprise Negotiations to include this guarantee in the respective agreement, other more senior managers refuse point blank to do

so. This must call into account the value one can attach to the guarantees given, albeit in good faith, in a hearing in the Queensland jurisdiction where its enforcement in the federal commission is doubtful at best.

The SDA has conducted numerous surveys of its members over many years to ascertain their views of extensions to retail trading hours when many successive applications to extend trading hours have been made, overwhelmingly the response has been that our members value their time with family and loved ones and oppose any extensions to trading hours.

Furthermore, in a recent public poll conducted by ReachTel, we know that a survey of 1,682 residents across Queensland on 5 October, 2016 overwhelmingly concluded that most Queenslanders (54.2%) do not support any extension of shop trading hours throughout the State.

### **EMPLOYMENT AND BUSINESS GROWTH**

The SDA has a philosophical approach to trading hours in that its primary focus is to ensure the worker (the human interface of the retail trade) is not forgotten. Hence the SDA looks at retail hours from the viewpoint of a human worker working hours that are considered to be unsociable.

All too often our organisation hears retailers say *'you need to be there for customers'* without any regard to what impact that *'being there'* has on the actual human worker. Accordingly, we submit that any regulation of hours needs to take this into account. Certainly the legislation requires the Commission to consider *'employment'* but that tends to simply question if someone might gain retail work rather than examining the extent of the hours worked/gained or whether such employment is meaningful in terms of being sustainable and ongoing.

There is certainly evidence to suggest that by having a robust retail trading hours regime, the economy will be enhanced. Retailers generally give statements and provide data in trading hour applications that infers that by extending hours new employment arises. The SDA remains sceptical that by merely extending trade hours offers real or meaningful employment. When canvassing members as to the hours gained and employment offered in stores with changed hours our historical feedback has been that whilst there is some take up of hours there is no discernible or large employment increase. In fact we are often advised by retailers that available work hours are limited and permanent engagements rare.

The SDA submits that despite suggestions of positive impacts on employment by the Productivity Commission and employer groups, actual evidence given to the QIRC regarding increased employment has proven spurious. The SDA is aware of one matter where evidence was cited that extending trading hours for an additional three hours would create nine new jobs, under cross examination the witness admitted that it would result in nine workers being in the store for the additional three hours and could not guarantee they would be additional hours for the workers.

It should be noted that at best the gain is speculative, neither the SDA nor employers or any other body has the ability to gauge the veracity of such claims. Anecdotally, SDA members have consistently reported that no additional hours are apparent whenever trading hours are expanded; existing staff numbers remain static and rosters are changed to cover the new times leaving fewer workers on the floor at other times and causing stress.

The SDA suggest that there should be a requirement for a revised model that may require a mechanism in which employment is a focus. A possible revised model might require that hours are not to change without some evidence or mechanism for an improved employment outcome combined with a mandatory review after a period of implementation to ensure the outcome was achieved or if not, the reason for its non implementation.

The current framework tends to focus on the employment in non-exempt stores where trading hours may be extended. There is a tendency to either not account for or disregard the possible significant impacts the current regime has on employment in Exempt and Independent stores when trading hours are changed. An alternative model might have a more robust mechanism to examine impacts from different employers or store types.

The SDA acknowledges that larger retailers press for having more hours focused towards weekends and base revised times around supposedly time-poor customers seeking accessible retail alternatives. With some 83+ hours of available shopping time spread over 7 days a week, we are left to wonder at what point these customers would cease to be 'time-poor'. Shift workers are often cited to be in this category, but if simple logic is applied, shift workers have much more time available in which to shop than a 9-5, Monday to Friday worker, probably 40 hours more, or almost half as much again. This, of course, disregards absolutely the fact that they are free to shop at independent or exempt stores.

Whilst the SDA would consider supporting a revised regime of trading hours that might reflect consumer requirements and more adequate coverage with a stable set of hours, it must be qualified with a system that does not allow constant change or radical expansion and is more attuned to social needs and requirements, and in particular the needs of workers within the retail industry.

#### **REGIONS/SECTORS OF THE ECONOMY**

The current model requires a consideration of the regions and industry in order to accommodate hours that reflect and meet the needs of the region in which the store/industry operates. The overarching conflict for the SDA in the current framework is the competing factions of Business objectives versus Individual needs/impacts. Any discussion about a revised framework should focus on a system that alleviates the conflict. The SDA believes that this could be achieved by implementing a stable set of trading regions/zones with a corresponding set of stable hours with a moratorium on change unless there is significant change in the economy or regions.

#### **MARKET SHARE OF SMALL, MEDIUM SIZED BUSINESSES**

The current model poses considerable conflict with the competing interests of various sized businesses. Whilst small (one owner) stores are allowed to enjoy unrestricted hours, their competitiveness and market share are eroded by the extension of trade hours for larger stores. Medium sized operators (e.g., IGA's) suggest that as they compete directly with non-exempt retailers there is merit in the restriction of trading hours so they retain some form of competitive advantage. Larger supermarkets claim that expanding trading hours does not reflect on the individually owned medium or small supermarkets and point to southern States as evidence. In those States, supermarkets are permitted to sell alcohol which can comprise in excess of 40% of their weekly take. This is not the case in Queensland and much evidence has been adduced by these smaller operators of significant, and at times terminal, loss of business when trading hours have been expanded in an area.

The SDA accepts that statutory definitions found in the Act may not necessarily reflect an accurate composite of businesses that are found within the retail landscape. For example:

- There is a significant crossover of goods amongst retailers that may not allow a particular store to be classed snugly within the current definitions.
- There are corporate and business structures that utilise non-related entities to overcome the restrictions around staffing and being an independent retail shop.

These matters are of significance to employer or business stakeholders to the review but whatever change might be suggested, will result in an impact on retail workers. As stated the SDA's primary concern is for the workers who are engaged across all store types. Accordingly, it is imperative that those workers retain entitlements or benefits and do not erode their ability to have a work/life balance.

The ability for workers to elect to work or not work extended hours outside the current permissible regime of hours is of paramount importance to securing a work/life balance. It is absolutely clear to the SDA that our members and retail employees more broadly do not want to work at unsociable times in the evenings, particularly on weekends and their interests must be protected.

## **WORKERS AND THEIR FAMILIES**

Several impacts on retail workers have been identified above but we reiterate that it is the SDA submission that workers should have the right to refuse unsociable hours and should workers agree to work during extended hours they should receive appropriate compensation. Furthermore, whilst the terms of reference for the Committee do not encompass the level of penalty rates applicable to retail workers the current applications by employer groups in the federal system to reduce penalties in awards will impact the compensation retail workers might gain for working such unsociable hours.

The issues paper indicated to a degree that there is a general belief that retail workers might have a security around penalty rates or other benefits when performing duties in extended hours or on public holidays. Whilst Awards currently maintain penalty rates, they are under attack by employers to be reduced. The Fair Work Act requires employees to work on public holidays and hence the SDA submits that there should be a protection of benefits if a worker must work OR inbuilt in the legislation an avenue for the retail worker to have to elect whether to work or not.

The SDA submits:

- That the current regime has generally allowed the continual extension of working hours into earlier starts, later finishes and weekends that have traditionally been time when workers have the opportunity to socialise and spend time with families and friends.
- Workers in retail do not necessarily choose to work in retail, but that retail is where they were able to find employment.
- That workers have very limited protection against working extended trading hours.
- That workers feel pressured to work all manner of hours to achieve business and consumer needs but actual impacts on the worker are not a significant consideration in determining whether trading hours are appropriate.
- That workers in different regions have different requirements or responsibilities that the current framework does not give significant consideration (e.g., workers in rural or regional areas might require or desire restricted hours because of travel distances, reduced customer numbers etc.).
- That workers who actually perform duties in unsociable hours sacrifice time with family, miss social events and require appropriate compensation for that sacrifice. A prime example would be where extended hours in the Christmas period is balanced with a part-day Christmas Eve holiday just prior to the worker having Christmas day off thereby allowing a retail worker a short respite before a traditional social day.

The SDA reiterates that a primary outcome envisaged by any revision of the current regime would be to see a balanced set of trade hours without persistently changing or applications to change the set acceptable trade hours.

## **PUBLIC AND VISITOR NEEDS**

As stated above, there is a primary consideration of the needs of the public and tourism within the current framework. Certainly the SDA submits that these are important considerations to review and implement appropriate trade hours to meet visitor expectations/demands but again they should not be weighted more importantly than how additional trading hours impact retail workers.

Any revised model needs to account for actual consumer and visitor expectations, desires or requirements and not a retailer's assertions of what they believe tourists might desire. The SDA would generally support appropriate extended hours where there is a significant tourism impact and expectation. The retail regions of the Gold and Sunshine coasts are significant tourist regions and would and do require an appropriate set of trade hours. However the impact of tourism or consumer needs should be significant in order to set an appropriate set of trading hours.

It is not unusual that applications to extend retail trade hours suggest certain regions having the most minimal tourist or consumer needs are espoused to be significant when they are not, on balance, significant at all. It is the SDA's experience from many applications that tourist numbers include a significant number of day trippers who may or may not go to the shops, but when they do it is almost always during the existing trading times. By way of example the most recent application for extended hours in Ipswich CBD cited tourism as a significant reason for the extension. It is inconceivable to anyone that Ipswich CBD, including (as stated in the application) its purported vineyards, could be considered a tourist destination. The SDA concedes that this criterion may not be the primary consideration for the Commission in reaching its decision to approve the application, but is included for illustration purposes.

#### **CONSISTENCY OF HOURS, BETWEEN REGIONS AND PUBLIC HOLIDAYS**

It is conceded that the current regime has a degree of complexity and in some respects may create in limited ways confusion to the general public or visitors to the respective trading zones.

The SDA sees merit in having consistency in hours, however again this must be balanced on whether there is a one size fits all approach as opposed to the relevant considerations associated with regions and the distinct characteristics within that region.

Many applications before the QIRC have indicated that non-exempt stores seek ambit hours that are not necessarily required at that moment in time but might in the future. The SDA submits that hours should reflect the required needs. The introduction of extended hours by ambit claims introduces the possible requirement of workers to work unsociable hours when there may not be any actual necessity or desirability in the region or store to do so. The competitive nature of retail businesses sees many stores open at unprofitable times in order to prevent a competitor gaining an edge.

#### ***Easter, Christmas Eve and New Year's Eve***

The SDA applauds the decision to introduce a change to the Holidays Act and Industrial Relations Act on the introduction of Easter Sunday as a public holiday. Whilst we wait to see if this piece of legislation is passed, it is relevant to acknowledge that there was an anomaly over the Easter weekend. Public holidays have to date been declared on Good Friday, Easter Saturday and Easter Monday. As Easter Sunday was not a holiday, workers in the South East Region had the situation whereby Good Friday and Easter Sunday were closed days, Saturday was an open day for trade so the potential is that a worker might enjoy time off on Good Friday, Easter Saturday and Easter Monday but have to work in regions outside of the south east on Sunday but not necessarily in the South East. The introduction of Easter Sunday as a public holiday rectifies the anomaly and applies consistency.

In furtherance of consistency and appropriate working hours for retail workers the SDA continues to strongly urge that a part-day public holiday on Christmas Eve and New Year's Eve allows workers to have appropriate downtime or the ability to elect to work if desired.

### ***Saturday and Sunday***

When the Government enacted its 2002 changes to the Act to significantly amend a decision of the Commission in relation to Sunday trade, it enabled trade for non-exempt stores between the hours of 9:00am and 6:00pm, while Saturday trade was allowed between 8:00am and 5:00pm or 5:30pm. The SDA accepts that it is counter-intuitive to the vast majority of consumers that the shops should be open later on a Sunday than a Saturday. It also accepts that there is probably a similar degree of confusion in the minds of the consumers regarding the later opening time on Sundays.

The SDA believes that the interests of business and consumers would be served by standardising weekend trading hours. The SDA submits that median hour between what retailers might desire and what impacts retail workers so as not to significantly hamper the ability to engage in family and social activities.

Once again, as stated previously, the ability for workers to elect to work or not work extended hours outside the current permissible regime of hours is of paramount importance to securing a work/life balance. It is absolutely clear to the SDA that our members and retail employees more broadly do not want to work at unsociable times in the evenings, particularly on weekends and their interests must be protected.

### **SUBMISSION SUMMARY**

In summary the SDA submits:

- ✓ That the current framework whilst reviewing considerations that allow an independent party to evaluate requirements/expectations of various stakeholders in retail trade hours does not account to a significant degree the requirements/impacts on retail workers.
- ✓ That all applications for expansion of trading hours be heard by a full bench of the Commission.
- ✓ That a primary concern and expectation of retail workers is to have the ability to elect to work extended trade hours if extended by a revised model or by the legislative review process.
- ✓ That there should be a concrete protection of retail workers work/life balance whereby the considerations of business and consumer expectations do not outweigh that of retail workers, not limited to, but especially in times such as Easter, Christmas and on weekends.
- ✓ That whilst an account of actual penalty rates is not within the terms of reference in this inquiry there must be a consideration in any revised framework that by working extended hours the retail worker achieves compensation in some form for working those extended and or unsociable hours.
- ✓ That as part of a compensation for the unsociable or extended trade hours the SDA suggests the introduction of Part-Day Public holidays on Christmas Eve and New Year's Eve from 6pm until Midnight to give effect to a worker's ability to elect to work on days that regularly require work to be performed in an unsociable time period.
- ✓ That in order to secure a more efficient framework there should be a consideration for a more appropriate central set of permissible hours that remain unchanged by successive and frequent applications. In addition, that there be a moratorium period in which hours should not be changed in

order to achieve the desired stability. As suggested, legislative or QIRC reviews might occur at regulated periods rather than having successive applications to amend hours.

- ✓ That discussions must evaluate the necessity for either government to legislate and regulate or retain the QIRC as an independent arbitrator, the SDA submits that it has a preference for an independent tribunal such as the QIRC to retain a judicial review ability.
- ✓ That in the past, the non-exempt retailers through their industrial association in many cases have created the agenda for trading hours and used the criteria contained in the Act to rationalise their own desires rather than reacting to demand, and a more rigorous test should be applied to ensure more stability in the future.
- ✓ That in terms of the Act/Order, amendments such as the following may be warranted:
  - Definition of stores may need review.
  - A graduated permissible hours regime might be applied (Rural areas, tourist areas, Major urban areas).
  - Criterion for the consideration of extending trade hours to include impact on retail workers not just general references to employment.
  - Introduction of legislated protection on the election of work in extended hours for all employees.
  - Introduction of part-day holidays for certain periods such as Christmas Eve and New Year's Eve from 6pm-Midnight.
  - Introduction of legislated protection to ensure trading hours don't go beyond 6pm on weekends.