

The voice of Australia's leading retailers

**September
2013**

Inquiry into Microeconomic Reform in Western Australia



**Australian National
Retailers Association**

The voice of Australia's leading retailers

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About ANRA

The Australian National Retailers' Association ("ANRA") was established in 2006 to represent the interests of Australia's leading national retailers.

Members of ANRA are:

Best & Less

Harvey Norman

Harvey Norman | Domayne | Joyce Mayne

Bunnings

Just Group

Portmans | Peter Alexander | Dotti | Smiggle | Just Jeans | Jay Jays

Coles Group

Supermarkets | Express | Liquor

Luxottica

OPSM | Laubman & Pank | Budget Eyewear | Bright Eyes | Sunglass Hut

Costco

Petbarn

David Jones

Super Retail Group

Supercheap Auto | Ray's Outdoors | BCF | Goldcross Cycles | REBEL

Dymocks

Woolworths

Supermarkets | Dan Murphy's | Big W | Masters

Forty Winks

ANRA members lead the retail industry, across all types of retail goods and services. Their combined turnover exceeds \$100 billion of the \$255 billion turnover across the retail industry, which is equivalent to more than six percent of Australia's Gross Domestic Product.

A key objective of ANRA's is to ensure that governments and the community understand the vast contribution the retail industry makes to the national economy. Retail is Australia's largest private sector employer, accounting for 1.2 million jobs. The members of ANRA employ more than 500,000 people – or 41% of the retail workforce and 4.4% of the Australian workforce – with approximately 100,000 of these employees located in regional and rural Australia.

ANRA recognises that retailers rely on all Australians, and must competitively deliver to customers' needs. Conversely, the retail industry and members of ANRA in particular, are leading employers, contribute to local communities and regional development, and strongly interrelate with other Australian industries. Indeed, the sector supports a further 500,000 jobs in associated industries including agriculture, manufacturing, transport & logistics and construction & property maintenance.

The spectrum of ANRA member businesses, their scale and contribution to Australian communities means the development and support of robust public policy is critical to strengthening the retail sector and protecting the interests of retail businesses and Australian consumers alike.



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1. Executive Summary

- 1.1. The most important state-based microeconomic reform that could be undertaken for Western Australia's retailers and consumers is further deregulation of retail trading hours. This would benefit both consumers and businesses across the State, which is consistent with the terms of reference for this inquiry.
- 1.2. From the national perspective, ANRA's members are seeking to achieve a degree of alignment in retail trading hours across all states and territories; so that trading hours are unrestricted in all parts of the country with the exceptions of Christmas Day, Good Friday and the morning of ANZAC Day.
- 1.3. ANRA members have also identified planning laws as an area that is currently impeding retail growth and needs further reform in Western Australia.

Trading hours

- 1.4. ANRA acknowledges the Western Australian Government has made several moves towards further deregulation of trading hours in recent years. The expansion of Sunday and Public Holiday trading hours within the metropolitan Perth area have been particularly successful – resulting in higher aggregate spending for both large and small businesses and higher employment levels. However, there is still an opportunity for further trading hour reform more broadly across the State, including expanding the Sunday and Public Holiday changes to outside Perth.
- 1.5. Regulated trading hours are detrimental to consumers, retail operators and employees.
- 1.6. ANRA's position is supported by the Productivity Commission's Inquiry into the retail sector, published in 2011, which recommended¹:

Retail trading hours should be fully deregulated in all states (including on public holidays)
- 1.7. Based on the ERA's reform priority methodology, deregulating trading hours should emerge as a high priority from this inquiry. These changes are both relatively easy to implement and will generate significant benefits to consumers and businesses.

Planning regulations

- 1.8. ANRA is aware that the Western Australian Government has undertaken a number of reforms to planning regulations over the past few years – including the instigation of planning panels and the ongoing implementation of the strategic plan, *Directions 2031*. However, members report that further action is needed before the State can achieve the benchmark planning system outlined by the Productivity Commission in its 2010/11 inquiry.
- 1.9. Reform to the planning system has the potential to encourage and facilitate non-mining investment in the State. In contrast, the Productivity Commission noted that most states have complex planning and zoning rules which:

¹ Productivity Commission (Nov 2011) *Economic Structure and Performance of the Australian Retail Industry* pg. XLII

... create uncertainty and transparency problems for users and regulators and significant compliance burdens, especially for businesses which operate across state and territory boundaries. This complexity suggests the regulatory systems are in need of further reform.²

- 1.10. ANRA members are also concerned about the use of the planning system to prevent competitors moving into a market (also known as 'gaming'). This practice allows incumbents to swamp potential entrants in red tape and slowdown the approval process.
- 1.11. Reforming planning is a complex and long-term process, however, microeconomic reform in this area has the potential to deliver significant gains to businesses looking to invest and to their potential customers.
- 1.12. Thank you for considering ANRA's input into this inquiry. Should you have any questions regarding ANRA's recommendation please contact Mr Russell Goss, at our Sydney office on (02) 8249 4520 or via email on rgoss@anra.com.au.

² Productivity Commission (2011) *Business Regulation Benchmarking: Planning, Zoning and Development Assessments – draft report pg XXVI*

2. Background

Trading hours

- 2.1. There are a variety of approaches taken towards the regulation of retail trading hours across Australia, ranging from total deregulation in both territories to Queensland's highly fragmented regional approach.
- 2.2. Western Australia retains one of the more complex systems in Australia, with multiple trading hour regimes operating across the State.
 - The following stores have unrestricted trading and can operate 24 hrs a day, 7 days a week:
 - All stores located above the 26th parallel have unrestricted trading hours;
 - All small retail stores (small retail shops are shops owned by up to six people who operate no more than three retail shops, in which up to 18 people work at any one time);
 - Service stations (although not all products sold by them can be offered for sale at all times); and
 - Online retail stores – located in either WA, another state or another country.
 - 'Special' retail stores can open 6am to 11:30pm 7 days a week (pharmacies; garden nurseries; hardware and home improvement shops; newsagencies and bookshops; video shops; art and craft shops; souvenir and duty free shops; shops at sports venues; boating shops; motor vehicle spare parts shops; and shops at international standard hotels)
 - 'Special' retail stores may stock, but must not sell items classified as 'General' outside of the specified hours for General retail stores (this is usually achieved by separating entire sections of a store or enshrouding individual product displays until the item can be offered for sale)
 - Stores on Rottnest Island must close by 9:30pm (with no stated opening times)
 - Motor vehicle yards can open 8am to 6pm (Mon, Tues, Thurs, Fri), 8am to 9pm on Wednesday, 8am to 1pm on Saturday and closed on Sunday and public holidays.
 - General retail stores located in the Perth metropolitan area and in the Rockingham and Wanneroo special trading precincts can open 8am to 9pm on weekdays, 8am to 5pm on Saturdays and 11am to 5pm on Sundays and unrestricted trading public holidays. These stores must be closed on Christmas Day, Good Friday and ANZAC Day.
 - General retail stores located outside the Perth Metropolitan area can open 8am to 6pm (Mon, Tues, Wed, Fri), 8am to 9pm on Thursday and 8am to 5pm on Saturday. These stores must be closed on Sundays and public holidays.
- 2.3. This system is clearly unnecessary complex and costly, particularly for retailers that have stores in multiple locations across WA.

Planning

2.4. The planning system in Western Australia is similarly complex and in need of simplification.

2.5. In its 2010/11 inquiry, the Productivity Commission's draft report noted that:

Western Australia has nine plans — State planning strategy; Local planning strategies; Regional, district and local structure plans; Regional planning schemes; Local planning schemes; State planning policies; Development control policies; Planning bulletins; and Local planning policies — which are required to be consistent across eight levels. In addition, it has numerous other plans, and limited explanation is provided of how they fit together.³

2.6. In its final report the Productivity Commission highlighted its concern that planning laws are being used to limit competition is a problem in Australian jurisdictions.

In most jurisdictions, there is considerable scope for businesses to use planning criteria as a basis for objecting to developments and/or appealing DA decisions, to the disadvantage of competing businesses.⁴

2.7. As with trading hours, there are opportunities for further microeconomic reform in this area to reduce costs for business operators and consumers.

³ Ibid

⁴ Productivity Commission (2011) *Business Regulation Benchmarking: Planning, Zoning and Development Assessments* – pg 277

3. Cost of regulations and benefits of removal

Trading hours

- 3.1. There are numerous costs caused by the regulation of trading hours.
- 3.2. Regulated trading hours are detrimental to consumers because the policy restricts the ability of consumers to buy what they want, when they want and from where they want. Restricting trading hours is an out-dated practice that does not reflect the demands of modern consumers.
- 3.3. This restriction is well illustrated by the increase in online retailing in recent years. Consumers want to be able to shop when they have spare time – such as on weekends, late at night and on public holidays - and if their local shops are closed then they will simply turn to online stores which are open 24 hours a day, 7 days a week.
- 3.4. Regulated trading hours are detrimental to retailers because the policy distorts competition in the sector. Some retailers face no restrictions on when they can trade – such as small or online traders. However, others are not able to open all of the hours that their customers demand – either due to their size, the types of goods they sell or the geographic location of stores. Regulated trading hours also creates significant red tape for national retailers, which need to operate under unnecessarily complex systems in different states and even different regions or cities within states.
- 3.5. Regulated trading hours are detrimental to retail employees because the policy prevents some employees accessing penalty rates for working on weekends and Public Holidays. Employees at stores that are able to open can earn additional wages but those in closed stores are denied this opportunity.
- 3.6. These costs are well recognised by the Productivity Commission.
- 3.7. In 2011, the Productivity Commission's Inquiry into the retail sector recommended:

Retail trading hours should be fully deregulated in all states (including on public holidays)
- 3.8. The Productivity Commission cited a number of reasons for this recommendation including⁵:

In today's more competitive, globalised retail trading environment, where consumers have greater access to goods from all over the world through online suppliers, there is now an even stronger imperative for retailers to not be inhibited in their ability to respond to changing consumer tastes and preferences.

There are good reasons why trading hours in Australia should be fully deregulated:

⁵ Productivity Commission (Nov 2011) *Economic Structure and Performance of the Australian Retail Industry*. pg. 275

- increased consumer welfare benefits associated with greater convenience and product choice
- reduced discrimination and greater competition between retailers
- a less artificially distorted retail industry
- potentially lower retail prices and higher retail employment.

- 3.9. Moreover, the Productivity Commission also conclude that *'When given the freedom to do so, consumers actually shift their shopping patterns towards the deregulated trading hours.'*
- 3.10. Indeed, the benefits of deregulating trading hours have been observed first-hand in Western Australia recently, with the expansion of Sunday trading hours in the Perth Metropolitan area. These reforms have delivered increased choice for customers, increased wages and employment opportunities for staff and increased customer numbers for *all* retail business operators by generating greater footfall in shopping precincts.
- 3.11. Removing the different regulations across a state would be particularly beneficial for those retailers operating along the borders of areas where there are differences between the permissible trading hours in each area. This would remove the scope for stores within an 'open' area to benefit from drawing customers from neighbouring 'closed' areas with more restrictive trading hour regulations. Such outcomes are causing confusion for consumers and distorting competition.
- 3.12. Trading hour reform would also end the unusual practice in Western Australia where stores have to block-off some parts of their store or individual displays at selected times. This is frustrating for customers, who can see goods are available but are unable to legally purchase them and staff that must constant open and close display arrangements. One of the more bizarre examples includes being able to purchase a light fitting, but not a light globe to go in that fitting outside of 'General' retail store hours.
- 3.13. Uniform deregulated trading hours would also allow all stores to compete on an equal competitive footing. This is becoming increasingly an issue when geographic location is irrelevant with the emergence of on-line stores that can open 24 hours a day 7 days a week.

Planning

- 3.14. The high economic cost of a poor planning system was explored by the Productivity Commission in 2010 and 2011 – which undertook a benchmark study to explore the best-practice frameworks used in Australia – with a particular focus on the interaction between planning and competition.
- 3.15. The types of costs that arise due to a poor planning system can be broadly divided into two categories holding costs and red tape costs.
- 3.16. Holding costs are incurred as a result of poor processes which create unnecessary delays in approvals. Red tape costs are driven by complex rules that are often inconsistent with other planning instruments or inconsistently applied across

jurisdictions. Both of these costs deter investors from undertaking projects, many of which are job creating investments.

- 3.17. ANRA members are also concerned about the costs associated with the misuse of planning laws to impede competition. For example, the impact of a new entrant on existing operators is often used as a way of protecting incumbents. This has a business costs – in terms of reduced sales capacity – but it also has a consumer cost amid reduced choice and potentially higher prices being imposed on households due to a lack of competitive forces.
- 3.18. Many States and Territories have recognised the cost of complex planning systems that put investment at risk. For example, NSW is currently undertaking a comprehensive review of its planning laws. Planning reform can be a challenging process, mainly because of the difficulty involved unwinding the complexity of the existing system. This means that it is often an ongoing process, with small incremental changes implemented gradually - as has been the case in Western Australia in recent times. Nevertheless, the benefits of a smoothly operating planning regime that attracts investment, supports jobs and encourages competition flow-through to both businesses and consumers.

4. Implementation process

- 4.1. The ERA Issues paper associated with this inquiry highlighted the importance of prioritising reforms – with those that have a large benefit and associated small implementation costs being placed at the top of the list.

Trading hours

- 4.2. ANRA believes trading hour reform fits into this category – it is relatively easy to change and has largely only upside benefits for Western Australia's consumers and businesses.
- 4.3. The implementation would involve three key amendments to the Retail Trading Hour Act 1987:
- Removal of all references to the Perth Metropolitan area so that all retailers covered by the Act are treated equally, regardless of location.
 - Removal of specific trading hours for all non-public-holiday weekdays and weekends.
 - Retain only restricted trading days of Christmas Day, Good Friday and ANZAC Day morning only.
- 4.4. ANRA has no objection to retaining exemptions for 'special' stores to remain open during the restricted trading times detailed above. Consumer welfare would not be enhanced if petrol stations, convenience stores and newsagents etc were forced to close on restricted trading days where consumers are likely to require their services.

Planning

- 4.5. Similarly, changes to the planning system to remove complexity and enhance the approval process are likely to deliver benefits to businesses and consumers in the form of greater investment, more jobs and strong competition.
- 4.6. The Productivity Commission has provided a blueprint for reform in improving state planning systems. Its key recommendations were:

Leading practices to improve planning, zoning and assessment include:

- *providing clear guidance and targets in strategic plans while allowing flexibility to adjust to changing circumstances and innovation (so long as good engagement, transparency and probity provisions are in place)*
- *strong commitment to engage the community in planning city outcomes*
- *broad and simple land use controls to: reduce red tape, enhance competition, help free up urban land for a range of uses and give a greater role to the market in determining what these uses should be*
- *rational and transparent rules for charging infrastructure costs to businesses*
- *risk-based and electronic development assessment*
- *timeframes for referrals, structure planning and rezoning*

- transparency and accountability, including for alternative rezoning and development assessment processes as well as having limited appeal provisions for rezoning decisions*
- limiting anti-competitive objections and appeals, with controls on their abuse*
- collecting and publishing data on land supply, development assessment and appeals⁶.*

4.7. In terms of competition and planning, the Productivity Commission made the additional recommendations which ANRA urges the ERA to pursue in Western Australia⁷:

- Changes to planning and zoning systems which could improve competition include:*
- reductions in the prescriptiveness of zones and allowable uses therein*
 - facilitation of more 'as-of-right' development processes*
 - elimination of impacts on the viability of existing businesses as a consideration for DA and rezoning approval*
 - consideration of impacts on the viability of centres only during the metropolitan and strategic planning stages*
 - clear guidelines on alternative assessment paths, and*
 - disincentives for gaming of third party appeals.*

⁶ Productivity Commission (2011) *Business Regulation Benchmarking: Planning, Zoning and Development Assessments* pg XVIII

⁷ *Ibid.* pg 277