

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

E-MAILED

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6 September 2013

Mr Lyndon Rowe
Chair
Economic Regulation Authority
Inquiry into Microeconomic Reform in Western Australia
PO Box 8469
Perth BC WA 6849

Dear Mr Rowe

Unnecessary Regulation of Trading Hours in Western Australia

The Shopping Centre Council of Australia would like to bring a further matter to your attention for your consideration in the current inquiry into microeconomic reform in Western Australia.

As you may be aware, the Productivity Commission in 2011 conducted an inquiry into the economic structure and performance of the Australian retail industry. One of the recommendations of the inquiry was that "retail trading hours should be fully deregulated in all states (including on public holidays)". I refer you to the discussion of this issue in Chapter 10 of the Productivity Commission's report of this inquiry (No. 56, 4 November 2011). We do not believe this is a matter that needs to be thoroughly investigated again by your inquiry given the comprehensive investigation by the Productivity Commission. This would be an important microeconomic reform for Western Australia.

This is not a radical proposal. The Northern Territory and the Australian Capital Territory do not regulate trading hours. Nor is there any regulation of trading hours in the vast area of Western Australia above the 26th parallel of south latitude. Victoria and Tasmania are 'effectively deregulated': the law permits all shops to open at any time except on 2½ days of the year (Christmas Day, Good Friday and the morning of Anzac Day).

Nor is there any risk of retailers being forced to trade when they do not wish to trade. The restrictions placed on lessors in this regard in the WA *Commercial Tenancy (Retail Shops) Agreements Act* are the toughest of any jurisdiction in Australia. In any event the experience of the jurisdictions where there is deregulated trading hours has shown that this is not a problem.

The Productivity Commission concluded its examination of this issue by quoting favourably the conclusion of another inquiry on this issue, conducted in Western Australia in 1986, by Mr ER Kelly:

"... it appeared to me that such a law could only be justified if it demonstrably saved the community from some serious and clearly perceived harm, or conferred on it some almost universally approved benefit."

At the end of the Inquiry I am satisfied that the present law in Western Australia serves neither of those purposes... It gives an advantage to some retailers over others; ...and to retailers in some areas of the State over retailers in other areas. It protects some retailers from competition from other retailers. It creates obstacles to competition in an area in which the community is best served by competition. It makes judgements about what the community wants in a sphere of activity in which the community itself should be left to demonstrate by its patronage what it wants." (Report p. 312).

The Productivity Commission noted:

"Retailers should have the freedom to open their shops whenever they want to trade. 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." (Report p.231)

The Productivity Commission concluded: "There is no role for governments in determining retail trading hours." (Report p.231)

The deregulation of trading hours in (the remainder of) Western Australia would be a major microeconomic reform.

Yours sincerely,

Milton Cockburn
Executive Director