



Government of **Western Australia**  
Department of **Commerce**  
**Consumer Protection**

# REPORT

## STATUTORY REVIEW OF THE RETAIL TRADING HOURS ACT 1987

October 2015

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## STATUTORY REVIEW OF THE RETAIL TRADING HOURS ACT 1987

### Introduction

Section 41 of the *Retail Trading Hours Act 1987* (the Act) states that the Minister is to carry out a review of the operation and effectiveness of the Act as soon as is practicable after the expiry of three years from the commencement of the *Retail Shops and Fair Trading Legislation Amendment Act 2006* on 11 July 2007. Section 41(2) requires the Minister to prepare a report based on the review, and as soon as practicable after the report is prepared, to cause a copy of the report to be laid before each House of Parliament.

Since the changes introduced in 2007, the Act has been under continuous review and, since coming into office in 2008, this Government has introduced and implemented six separate amendment Bills on retail trading hours. Each Bill has been the subject of considerable Parliamentary debate which reflects the range of community and retailer views on retail trading hours. In addition, numerous changes to regulations have been made and Ministers have issued over 100 trading hour variation orders.

Given the number of amendments to the regulatory regime since the 2008 election, it was not considered practical to carry out a statutory review of the legislation until now because it was necessary to allow sufficient time to elapse to assess the impact of reforms. It has now been two years since the Government implemented the *Retail Trading Hours Amendment Act 2012*, which introduced Sunday trading for all general retail shops located in the metropolitan area, and it is now opportune to report on the operation of the Act and present proposals for further reform.

The report identifies the major reforms made since 2007 within the context of the Government's policy of making incremental changes to the regulatory regime, comments on the purpose and outcome of those reforms, and provides proposals for further incremental change and possible longer term options for regulatory reform.

## The Government's policy of incremental change to retail trading hours

Since 2008, the Government has adopted a policy of making incremental changes to the regulatory regime so that restrictions placed on retailers are gradually removed and trading hours progressively deregulated. Many reforms while not unanimously welcomed, have been generally positively received and the Government believes that adopting an incremental approach allows retailers and consumers time to adjust to new trading possibilities and make the most of the opportunities provided as reforms are introduced.

In formulating its policy agenda for retail trading hours the Government has been conscious of the varying views in the community about the need for reform and of the changes that are occurring in work and family life. The participation of women in the workforce<sup>1</sup> has continued to grow and there has been a significant increase in fly-in fly-out working patterns. The service sector of the economy has also grown with its requirements for out of hours and weekend work<sup>2</sup>. Households are expecting that retail trading hours will alter to accommodate these changes so that individuals can find their optimal balance of work, family and leisure time. To some extent on-line shopping has met this demand but most people still want or need to shop at stores.

Most surveys on consumer sentiment demonstrate strong support for extended trading hours for all shops and for trade in all goods and the introduction of Sunday trading in particular has been welcomed by most consumers<sup>3</sup>. However there are members of the community who feel that extending trading hours places too much emphasis on economic development and has a detrimental effect on family life, participation in sporting and other community activity or on Christian religious observance. While the Government understands this sentiment it considers that the changes in workforce participation and the structure of work life are the main reasons for the demand for extended retail trading.

Reports issued by the Productivity Commission<sup>4</sup>, the University of Western Australia<sup>5</sup> and the Economic Regulation Authority<sup>6</sup> found no evidence to support the contention that deregulated or extended trading hours have an adverse effect on family life, sports and community participation rates. Nor is there any evidence that extended trading hours affect church attendance. Nonetheless Sunday has always been regarded as a day of rest or leisure and current trading hours recognise that it is not simply another day of the week.

The Government is also conscious of the position of retail workers and acknowledges that extended trading has led to demands from employer organisations to redefine work hours in order to reduce penalty rate payments.

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<sup>1</sup> Productivity Commission 2014 *Relative Costs of Doing Business in Australia: Retail Trade, Research Report, Canberra*.

<sup>2</sup> Productivity Commission 2014 *Relative Costs of Doing Business in Australia: Retail Trade, Research Report, Canberra*.

<sup>3</sup> Appendix 1 provides information about major consumer surveys and their results.

<sup>4</sup> Productivity Commission 2011 *Economic Structure and Performance of the Australian Retail Industry*, page 277.

<sup>5</sup> University of Western Australia Faculty of Law 2011 – *Shop trading hours in Western Australia – a research report – a legal, social and economic analysis of the regulation of shop trading laws in Western Australia*.

<sup>6</sup> Economic Regulation Authority 2014 *Inquiry into Microeconomic Reform in Western Australia: Final Report* pages 280 – 281.

Most retail employers are registered companies under the Corporations Act and so covered by the national industrial relations system. The Fair Work Commission is currently undertaking a review of federal awards in the national industrial relations system, including the General Retail Industry Award 2010. The issue of penalty rates will be considered as part of the review. Many larger retail employers, however, are covered by enterprise agreements that already have modified penalty rates for extended trading hours.

Unincorporated retail employers are covered by the state industrial relations system. In 2012 the Government released the draft Labour Relations Legislation Amendment and Repeal Bill 2012 for public comment. Among other things, the Bill will require the Western Australian Industrial Relations Commission to make new state awards that are economically sustainable and facilitate the efficient and productive organisation and performance of work. As part of the award modernisation process, unions and employers will have the opportunity to make submissions on the issue of penalty rates and the impact of any Government decision to further extend retail trading hours.

There are a number of current inquiries and recent reviews which recommend that retail trading hours be fully deregulated or retain minimal regulation for certain public holidays. These include:

- The Productivity Commission research report *Relative Costs of Doing Business in Australia: Retail Trade* (October 2014) - commented that study participants raised retail trading hours as a priority for reform as it continued to constrain economic activity and consumer choice;
- The Commonwealth Government Harper Review into Competition Policy and Reforms – the Draft Report of 22 September 2014 recommended that retail trading hours should be deregulated except for Christmas Day, Good Friday and the morning of ANZAC Day. A final report is expected March 2015;
- The Economic Regulation Authority Inquiry into Microeconomic Reform in Western Australia (June 2014) - which recommended that trading hours should be deregulated at all times with the exception of Christmas Day, Good Friday and ANZAC day morning during which time only filling stations and retailers that employ eighteen or fewer staff may remain open;
- The Institute of Public Affairs – Consumer-first Supermarket Reform: the market, not government knows now best to meet consumer demand (January 2013) - which recommended that trading hours should be fully deregulated. The report argued that governments should act in consumers' interests, not as industry regulators that advance the interests of supermarkets, and that deregulation leads to more competition, choice and cheaper prices;
- The Productivity Commission inquiry report Economic Structure and Performance of the Australian Retail Industry (November 2011) – which recommended trading hours should be fully deregulated as this benefits retailers, promotes economic activity, employment and sales; and
- The University of Western Australia Consumer Research Unit review Shop Trading Hours in Western Australia: A Research Report – a legal, social and economic analysis of the regulation of shop trading laws in Western Australia (November 2011) – which found that deregulation best accords with an approach that respects economic and personal freedom, and that consumers have frequently demonstrated a preference for extended trading hours.

The findings of these reviews are largely supported by large industry associations and retailers including the:

- Chamber of Commerce and Industry;
- Chamber of Minerals and Energy of Western Australia;
- Shopping Centre Council of Australia;
- Retail Traders' Association;
- Property Council of Australia;
- Australian National Retailers Association;
- National Retail Association;
- Master Builders Association;
- Coles; and
- Woolworths.

The reports argue that restricted trading hour laws stifle competition, impose artificial barriers on business, favour some traders over others, lead to market distortion, restrict consumer choice and discourage innovation. There are also claims that restricted regulatory trading hours create red tape, impose additional administrative costs on business and government, and have a detrimental effect on economic activity, employment and consumers who generally pay higher prices for goods and have less choice on where and when to shop. They argue that consumer preference and market forces should determine trading hours with retailers provided with the power to choose when they open for trade or remain closed.

Counterbalancing these arguments are the views of small retailers, in part represented by the Independent Grocers Association of the Western Australia (IGA) which is critical of such findings. IGA argues that extended retail trading hours have benefited large retailers to the detriment of small retail shops, increased costs to small retailers, resulted in a decline in sales and profitability, and not provided greater choice and variety for consumers, not stimulated consumer spending, and not increased employment in the retail sector. It also argues that restrictions placed on small shops prevent them from growing and competing with larger retailers.

The Productivity Commission, the Economic Regulation Authority and the University of Western Australia reports have noted that small businesses located in other Australian jurisdictions that have deregulated trading hours continue to flourish and there is no evidence that small business has declined or is no longer viable in those states and territories<sup>7</sup>.

The Government has acknowledged the divergent positions of stakeholders and the tensions between some small retailers, larger retailers and industry associations. In formulating its reform agenda the Government has sought to strike a balance between work, leisure and family life. It has provided more opportunities for small retailers to expand and grow and provided general retail shops with more options to trade on weeknights and on Sundays in order to meet the needs and demands of consumers.

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<sup>7</sup> Appendix 2 provides information about major reports on the effects of retail trading hours.  
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## **Major reforms since 2007**

### Changes to trading hours for general retail shops in the Perth metropolitan area

#### *Extension of weeknight trading*

In its 2008 election campaign the Liberal Party made a commitment to examine extending weeknight trading in the Perth metropolitan area for all general retail shops. On 17 June 2009 the Government introduced the Retail Trading Hours Amendment Bill 2009 into Parliament, to allow general retail shops to trade from 8am until 9pm on all weekdays rather than having to close at 6pm or restricting weeknight trading to 9pm on Thursday evenings as was the case. The Bill was passed and subsequently came into effect on 1 November 2010 as the *Retail Trading Hours Amendment Act 2010*.

These reforms were designed to provide consumers and retailers with more choice and general retail shops would not have to trade for longer hours if they did not wish to. The trading hours for small and special retail shops were not altered.

#### Sunday and public holiday trading

From 1 January 2010 the Government began to introduce extensions to tourism precincts to enable the extension of Sunday and public holiday trading to more parts of the metropolitan area.

The Retail Trading Hours (Tourism Precincts) Order 2009 allowed retail shops in the Perth and Fremantle tourism precincts to trade from 8am to 9pm on all weeknights, from 8 am to 5pm on Saturdays, from 11am to 5pm on Sundays, and from 8am to 5pm on most public holidays, with the exception of Christmas Day, Good Friday and ANZAC Day upon which they were required to remain closed. This took effect from 1 January 2010.

The boundaries of the Perth tourism precinct were extended to include East Perth, West Perth, Leederville, West Leederville, Subiaco, North Perth, Mount Lawley, Kings Park, Burswood Park, Victoria Park and South Perth, by making the Retail Trading Hours (Tourism Precincts and Holiday Resorts) Amendment Regulations (No.2) 2009, that were published in the *Government Gazette* on 24 November 2009 and came into operation on 1 January 2010.

On 27 March 2010, the Retail Trading Hours (Tourism Precincts and Holiday Resorts) Amendment Regulations 2010 commenced. These regulations expanded the Fremantle Tourism Precinct to incorporate suburbs that that fell within the City of Fremantle's local government area and included the neighbouring areas of South Fremantle, White Gum Valley, O'Connor, Beaconsfield, Hilton and Samson.

These reforms allowed a greater range of shops to trade on weeknights, Sundays and most public holidays and provided shops in tourism precincts with considerable trading hour advantages over other general retail shops located in other Perth metropolitan areas, which were required to remain closed on all Sundays, public holidays and after 6pm on all weeknights with the exception of Thursdays. Weeknight trading anomalies were reduced on 1 November 2010 when optional trading until 9pm was extended to all general retail shops located in the Perth metropolitan area.

The *Retail Trading Hours (Joondalup Special Trading Precinct) Amendment Act 2010* came into effect on 5 September 2010. This legislation changed the term 'tourism precinct' to 'special trading precinct' and established a new special trading precinct in Joondalup in addition to the existing precincts of Perth and Fremantle. The change of name from tourism precinct to special trading precinct reflected the fact that these precincts were intended to cater for the whole community and that there was no longer a need to reserve extended trading to areas frequented by tourists. The *Retail Trading Hours (Armadale Special Trading Precinct) Act 2010* and the *Retail Trading Hours (Midland Special Trading Precinct) Act 2010* also created Armadale and Midland as new special trading precincts with effect from 1 November 2010. The creation of these new precincts was designed to help geographically balance the demand for extended trading hours.

From 1 November 2010 the Retail Trading Hours (Special Trading Precincts) Order (No.2) 2010 allowed general retail shops in the Perth, Fremantle, Joondalup, Armadale and Midland special trading precincts to trade from 8am to 9pm on all weeknights, from 8 am to 5pm on Saturdays, from 11am to 5pm on Sundays, and from 8am to 5pm on most public holidays, with the exception of Christmas Day, Good Friday and ANZAC Day upon which they were required to remain closed.

Subsequently, a number of other local government authorities lobbied for their districts to be made into special trading precincts but the Government did not accede to those requests. Some retailers and industry associations, while generally supporting more relaxed trading hour arrangements, were nevertheless critical of establishing special trading precincts because they argued that this provided retailers within those precincts with a significant competitive advantage over retailers located outside the precincts.

In response to consumer demand, community expectation and many surveys which demonstrated strong support for Sunday trading for all shops, the Government moved to further relax restrictions placed on general retail shops after the Opposition indicated a change in their policy to support Sunday trading in early 2012.

Subsequently the *Retail Trading Hours Amendment Act 2012* was implemented that permitted all general retail shops throughout the Perth metropolitan areas to trade on Sundays and most public holidays from 11am to 5pm, with effect from 26 August 2012. Special trading precincts were also abolished from this date.

### Regional trading hours

The Act does not apply above the 26<sup>th</sup> parallel and so retail trading hours are unregulated, allowing all shops to trade in response to consumer demand.

For regions below the 26<sup>th</sup> parallel general retail shops may open from 8am to 6pm on weekdays other than Thursday when they may open from 8am to 9pm; on Saturday they may open from 8am to 5pm; and on Sundays and public holidays they may not open.

Since 1994 successive Governments have maintained a policy of permitting local government areas autonomy in setting trading hours for general retail shops. Local authorities may apply to the Minister for Commerce for a trading hour variation order for their particular local government area after conducting community consultations and providing evidence that the community supports the proposed trading hour variations.

At present there are 30 regions with long term regional trading hour variation orders in place. Of these eight regional areas below the 26<sup>th</sup> parallel have fully deregulated trading hours across the region or in centres within the region and one has deregulated trading hours other than for Christmas Day, Good Friday and ANZAC Day when shops are closed; 18 have set trading hours which are less restrictive than the default hours expressed in the Act; while three have trading hours which are more restrictive than the default hours expressed in the Act as they prohibit general retail shops from trading after 1pm on Saturday. A chart showing current regional trading hour variations is attached for information (Appendix 3).

### Regulation of shop types

Apart from general retail shops the Act categorises small retail shops, special retail shops, motor vehicle shops and filling stations. There are no restrictions on the trading hours of small retail shops or filling stations and no change has been made to the trading hours of special retail shops or motor vehicle shops since 2007.

Filling stations and special retail shops are restricted in the types of goods that may be sold and no changes have been made to these restrictions since 2007.

### *Small retail shops*

Retail shops cannot be classified as small retail shops unless they meet the requirements of section 10(3) of the Act which sets out ownership and employee restrictions. These restrictions were originally introduced to provide small retailers with some protection from larger retailers by allowing them some advantage to trade outside regulated hours for general retail shops.

Over the years the cap placed on the number of staff who can work in a small retail shop has gradually been relaxed together with the restriction placed on the number of retail shops eligible persons could own. For example under the *Factories and Shops Act 1963* (which was the precursor to the Retail Trading Hours Act), in order for a shop to be classified as a small retail shop a maximum of only two persons were permitted to work on the floor at any one time.

When the Retail Trading Hours Act was proclaimed in 1987, the staff cap was increased to four persons and eligible persons were permitted to own a maximum of two shops. An amending Act in 1991 raised the staff cap to five persons. Under the Retail Trading Hours Exemption Order 1994, the staff cap was increased to 10 persons. In 2007, the staff cap was raised to 13 persons (including owners but excluding apprentices) while eligible persons were allowed to own three shops instead of a maximum of two shops (*Retail Shops and Fair Trading Legislation Amendment Act 2006*).

The *Retail Trading Hours Amendment Act 2011* adjusted the staff cap to permit small retail shops to have up to 18 persons (including owners but excluding apprentices) working in a shop at any one time. The purpose of this reform was to assist small retail shops by providing more flexibility, thereby encouraging better services and improving small retail shops' general competitiveness while preparing the way for a smoother transition towards further deregulation.

In the lead up to the 2013 election the Government made a commitment to amend the criteria applying to small retail shops so an eligible person can own up to four shops instead of three and to raise the staff cap so that up to 25 persons (including owners but excluding apprentices) can work in a small retail shop at any given time.

These amendments are contained in the *Consumer Protection Legislation Amendment Act 2014* which was passed by Parliament on 25 September 2014 and commenced on 19 November 2014.

## Operation and effectiveness of the Act

The Retail Trading Hours Bill 1987 was introduced into Parliament on 26 May 1987 with the objectives, as set out in the second reading speech, to:

- provide for the establishment of a stable and viable retail environment;
- remove some of the anomalies of the previous legislation (the Factories and Shops Act 1963);
- cater for the seven day demand of consumers;
- meet the expectations of the majority of retailers; and
- provide a basis upon which the retailing industry can develop.

### The consumer experience

From a consumer perspective, there is no doubt that there are now more choices and opportunities to shop on weeknights and Sundays and most public holidays. Seven day trading in the Perth metropolitan area is a reality and has proved to be very popular with consumers. A survey by the Shopping Centre Council of Australia in August 2014<sup>8</sup> reported that the pick-up rate of Sunday trading in Perth has been faster than it was in Brisbane and Adelaide when those cities introduced Sunday trading in 2002 and 2003. The Chamber of Commerce and Industry quarterly survey of consumer confidence in September 2014 found that 69 per cent of respondents had used late night trading and 82 per cent of respondents had used Sunday trading since they were introduced. Further extensions to weekday trading and Saturday and Sunday trading were supported by 53 to 61 per cent of respondents while almost 60 per cent supported full deregulation of trading hours. Support for deregulation was strongest amongst men (65 per cent), younger consumers (66 per cent) and regional residents (60 per cent). An April 2014 consumer survey on behalf of the IGA found that overall 88 per cent of consumers believed that existing trading hours were adequate for their needs while approximately a quarter of younger consumers would like further deregulation<sup>9</sup>.

Seven day trading also occurs in 25 of the 95 local government areas below the 26<sup>th</sup> parallel. As it is Government policy to allow regional local governments to set their own trading hours, provided they can demonstrate community support, it is likely that some of those regions that have not introduced seven day trading are complying with the wishes of the majority of community members. There are however areas such as Albany and Geraldton where community opinion is evenly divided and trading hours are a contentious issue. The status quo remains in these areas although a significant proportion of the community would like more liberal trading hours. The Chamber of Commerce and Industry survey also indicates that most regional residents want extended trading hours.

### The retailer experience

Industry associations such as the Chamber of Commerce and Industry and the Shopping Centre Council of Australia have reported that consumers have embraced Sunday trading and Sunday is now one of the most important trading days of the week, having increased sales and created more employment<sup>10 11 12</sup>.

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<sup>8</sup> Shopping Centre Council of Australia 2014 *Perth Sunday Trading Reforms – Snapshot: Two Years On*, information provided to the Minister for Commerce.

<sup>9</sup> See Appendix 1 for information on consumer surveys.

<sup>10</sup> West Australian 25 August 2014 *Sunday trading hailed as a success*.

<sup>11</sup> West Australian 24 August 2013 *Perth embraces Sunday trading*.

The introduction of extended weeknight and Sunday trading was taken up by most major shopping centres and some of their large anchor tenants in the metropolitan area and this has provided small retail shops within those centres with the option of longer hours. They previously could not exercise the option of a small retail shop to trade for extended hours if the shopping centre was closed.

The Shopping Centre Council of Australia<sup>13</sup> estimates that between 80 to 100 per cent of specialty shops located in member shopping centres have elected to trade on Sundays and that there are over 1400 small retailers now trading on Sundays who did not do so before as the surveyed shopping centres were closed prior to the introduction of Sunday trading. It also reports that weekly sales have increased by 5 to 14 per cent since Sunday trading was introduced.

Industry associations, large national retailers and general retail shops which were previously prohibited from trading on Sundays have reported that they have employed new or extra staff to service customers on Sundays. Small retail shops which previously remained closed but now choose to open on Sunday also have to employ staff to service customers for this extra shift. This is usually done by employing extra casual staff or extending the working hours of the proprietor or existing employees. Woolworths has reported that Sunday trading has created 700 new jobs in their company<sup>14</sup>.

While many small retail shops have always had the choice of trading for extended hours, many have chosen not to remain open until 9pm on weeknights. An IGA survey of small retailers in 2014<sup>15</sup>, excluding its own stores, found that only an additional four per cent of small retail shops elected to trade for extended periods on weeknights after extended trading was introduced and an additional 20 per cent on Sundays after Sunday trading was introduced<sup>16</sup>.

In other jurisdictions such as Victoria, New South Wales and Tasmania, where there are no restrictions on trading hours, except for on a limited number of public holidays<sup>1718</sup>, many retailers choose to close much earlier than 9pm if there is insufficient customer demand to justify remaining open. Similar patterns have also been observed in the Australian Capital Territory, the Northern Territory and in Western Australia above the 26<sup>th</sup> degree parallel, where trading hours are not regulated.

The IGA survey found that 25 per cent of retailers reported they have reduced their trading hours due to lack of customers, wage costs and excessive competition from bigger stores. Respondents also report that for most shops sales are down (49 per cent) or stagnant (40 per cent), 65 per cent reported their profits fell and most retailers estimate that fewer than 25 per cent of stores in their location open on Sundays. Sixty five per cent of surveyed retailers were opposed to any further extension of retail trading hours either through incremental or total deregulation.

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<sup>12</sup> Shopping Centre Council of Australia 15 April 2014 media statement.

<sup>13</sup> Shopping Centre Council of Australia 2014 *Perth Sunday Trading Reforms – Snapshot: Two Years On*, information provided to the Minister for Commerce.

<sup>14</sup> Woolworths' submission to the Economic Regulation Authority dated 21 August 2014.

<sup>15</sup> IGA 2014 *The Lights are out on Extended Trading Hours*, pages 5-6.

<sup>16</sup> IGA 2014 *The Lights are out on Extended Trading Hours*, page 5.

<sup>17</sup> Productivity Commission 2011 *Economic Structure and Performance of the Australian Retail Industry*, pages 284 -285.

<sup>18</sup> National Retail Association February 2014 *Public Holidays and Trading Hours Fact Sheet*.

In relation to its own stores, Mr John Cummings, President of IGA claimed that the additional competition has resulted in IGA losing market share and their businesses have become less profitable as a result of increased trading hours for general retail shops<sup>19</sup>. The majority of IGA stores have traded on Sundays for many years but IGA claims that introduction of Sunday trading for general retail shops has not resulted in increased employment or sales overall.

Sunday trading appears to have resulted in a number of new national and multi-national retailers announcing or establishing retail shops in the Perth metropolitan area, thereby providing consumers with greater choice and the market with greater competition. Examples are the Masters Home Improvement chain and more recently the international grocer Aldi, which has announced its intention to expand into Western Australia<sup>20</sup>.

The introduction of Sunday trading has removed a major anomaly that existed in the Perth metropolitan area with the abolition of special trading precincts. While the concept of establishing tourism and special trading precincts originally helped provide more opportunities for Sunday trading and demonstrated consumer support, it also created significant trading hour anomalies. In particular, retailers located outside trading precincts were placed at a competitive disadvantage to retailers located within precincts, which resulted in market distortion.

On balance, the Government's decision to abolish special trading precincts and allow all general retail shops to trade on Sundays and most public holidays appears to have created a more level playing field.

Research by the Chamber of Commerce and Industry reported in June 2014 found that an average person spent \$12,550 in retail shops in 2013/2014 compared with \$12,227 in 2011/2012 when shops traded six days a week and that total spending in retail shops increasing from \$29.8 billion in 2011/2012 to \$32.4 billion in 2013/2014<sup>21</sup>. This equated to increased retail spending of \$322 a person since Sunday trading was introduced. According to the survey results, the extra \$2.6 million was spent mostly on general and speciality foods, hardware, gardening and building supplies, cafes, restaurants, books, clothing and stationery.

This spending data indicates that at this time the increased economic benefit of Sunday trading may have been partly offset by a decline in trading at other times as consumers are spreading out their shopping. Consumers may also be redirecting some of their spending to on-line purchases or larger shopping centres and retailers which were not previously permitted to trade on Sundays, at the expense of some smaller retailers which previously had an advantage of Sunday trading, particularly in the grocery sector. However there has also been a general slow-down in the economy occurring concurrently and it may well be that spending will increase with employment growth and increases in consumer confidence.

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<sup>19</sup> WA Today 25 July 2014 *ERA report sparks concern for small business.*

<sup>20</sup> Perth Now 9 October 2014 *German discount supermarket to open up to 80 stores in WA by 2016*, Business section.

<sup>21</sup> West Australian 25 August 2014 *Sunday trading hailed a success.*

Interstate trends indicate that when retail trading is deregulated spending increases overall<sup>22</sup> and consumers do spread their time of shopping out over available hours<sup>23</sup>. The benefit of this for retailers is that they can reduce their floor space as their peak demand is more even than when hours are regulated.

While some small retailers are likely to be experiencing increased competition the Government is not aware of any increased likelihood for small businesses to be facing hardship as a result of changes to retail trading hours. The Productivity Commission<sup>24</sup> noted that “Overall, the evidence does not support the claim that deregulation of trading hours has a material impact on the structure of the retail sector and the viability of small retailers. There is no obvious relationship between the proportion of small businesses in a jurisdiction and its approach to trading hours restrictions — the proportion of small businesses has increased in jurisdictions with regulated and deregulated trading hours since the Commission’s 2011 inquiry (figure 5.4).”

Small retailers in shopping centres now have increased opportunity to trade for longer hours if that is their choice and protections are in place that prevents shopping centre operators from forcing them to open if they do not choose to. There is also an increased capacity for small shops to grow larger before having to be classed as a general retail shop and so be in a better position to compete with larger competitors.

Larger retailers have clearly benefited from extended trading and welcome the changes. The Government is also pleased that new entrants to the market are opening in Perth and providing more competition for larger retailers as this will benefit consumers and the economy.

Overall the Government believes that the retail sector has remained stable and viable through the period of change to retail trading hours even though the overall growth in the economy has slowed during the latter part of this period. The Government, most industry associations, policy bodies and consumers believe that Sunday trading in particular has provided consumers and retailers with more choice and opportunities.

### Problems that remain with retail trading hour regulation

The Government is aware that despite the reforms to retail trading hour regulation to date there is still a strong push from most economic and industry groups for full deregulation. It is also aware that several anomalies remain and these will be explored below.

#### *Special retail shops*

A key feature of the Act is that it provides for special retail shops which may trade from 6:00am to 11:30pm every day of the year, including every Sunday and public holiday, but may only sell the restricted range of goods prescribed for their special shop category, at any time.

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<sup>22</sup> University of Western Australia Faculty of Law 2011 *Shop trading hours in Western Australia – a research report – a legal, social and economic analysis of the regulation of shop trading laws in Western Australia*.

<sup>23</sup> Economic Regulation Authority WA 2014 *Inquiry into Microeconomic Reform in Western Australia: Final Report*.

<sup>24</sup> Productivity Commission 2014 *Relative Costs of Doing Business in Australia: Retail Trade, Research Report, Canberra*, page 117.

The concept of establishing special retail shops was formulated on the basis that consumers needed to purchase certain essential and other goods outside the standard hours prescribed for general retail shops. This required government to make judgments on what constitutes these essential and other goods and what sort of shops should be classed as special retail shops.

The Retail Trading Hours Regulations 1988 (the Regulations) provide for 11 subcategories of special retail shops:

- Art and craft (shops engaged in the sale of art and craft works);
- Souvenirs (shops offering items of tourism significance);
- Pharmacy;
- Domestic development (shops offering items for domestic improvements, construction and maintenance, floral arrangements and products for the establishment and maintenance of gardens);
- Marine craft (shops engaged in the sale of marine craft);
- Video shops;
- Duty free shops;
- Motor vehicle spare parts (shops other than shops located on premises on which motor vehicles are sold);
- Sports venue (shops located at special sports participation venues);
- Newsagents and bookshops; and
- Hotel tourist (shops catering for tourist requirements in hotels classified as 4 star or 5 star under a scheme of classification approved by the Minister or any hotel that is in the opinion of the chief executive officer of an equivalent standard).

The Regulations prescribe in detail the types of goods which may be sold by the various categories of special retail shops (see Appendix 4). The sale of any good, outside the relevant prescribed list of goods, at any time, results in a special shop losing its certification and reverting to a general retail shop which may only trade for restricted hours.

Various groups have criticised the prescriptive regulations that restrict the types of goods and services that can be sold by special retail shops. They argue that the consumer, not government, is best placed to make an assessment of whether a good is essential for their needs. Retailers and industry associations also argue that the restrictive range of products which can be sold places artificial barriers on retail shops, stifles innovation and penalises retailers which sell a greater range of products.

In the case of domestic development shops this has become a particularly contentious matter although the issues raised could apply to other categories of special retail shop as the market develops.

The domestic development category originally covered hardware stores and the reasons for extended trading hours were to allow trades people access prior to starting work and householders access on weekends and public holidays. Over the years the concept of what a hardware store is has changed and the product range that some larger retailers wish to sell is now more extensive than prescribed under the Regulations.

For example, Bunnings which is usually classified as a domestic development shop, and a competitor, Masters Home Improvement, which is a general retail shop that sells similar goods but an expanded range of products, have sought amendments to the Regulations so

the list of items which can be sold by domestic development shops can be expanded and they can have access to the widened trading hours afforded to special retail shops.

Most Bunnings stores are classified as special retail shops as they restrict the range of goods on sale to those permitted by the Regulations for domestic development shops. However, Masters Home Improvement stores sell hardware and a greater range of goods than currently permitted under the Regulations, including electrical goods, kitchen appliances and white goods, which means that they do not meet the criteria applying to special retail shops.

Therefore Masters Home Improvement stores and the one Bunnings store which has a widened product range are classified as general retail shops and must comply with the more restricted trading hours applied to general retail shops.

While it would be possible to amend the Regulations so that the list of goods which can be sold is expanded this would create further anomalies. If for example the list of goods was amended to fit Masters' business model, such an initiative would mean that all shops which sell only kitchen electrical items and heating and cooling appliances, would be classed as special retail shops and gain a trading advantage over other general retail shops, such as electrical specialty stores that sell a wider range of electrical or electronic products that do not fit within the prescribed product range. The anomalies would be even more pronounced in regional areas that prohibit general retail shops from trading on Sundays and public holidays or for extended periods on weeknights.

Such an amendment to the Regulations would be highly contentious. During 2010/2011 the Government gave careful consideration to allowing retailers that predominantly sold durable or bulky goods to trade on Sundays. As part of public consultations an issues paper was released and a large majority of retailers and industry associations urged the Government not to proceed with the proposal on the basis that such laws would not suit their business models, could be considered discriminatory and may be difficult or impractical to implement.

Critics did not favour prescriptive legislation further seeking to define what can and can't be traded at certain hours. The majority of consumers who responded to the issues paper expressed a strong preference for Sunday trading for all retailers and in all goods and were critical of the various regulatory models advanced in the issues paper for introducing trading in durable goods. Approximately 66 per cent of retailers and consumers who responded expressed a preference for full deregulation although that was not advanced as an option in the issues paper.

The Government decided not to proceed with the durable goods proposal but instead advised Parliament that it intended to concentrate on developing a deregulatory policy which would include Sunday trading for all retail shops in the Perth metropolitan area.

One alternative might be to abolish some or all special retail shop categories and bring these shops' trading hours into line with those applying to general retail shops in the metropolitan area. However, unless general retail shop trading hours were expanded so that they could trade before 8am on weekdays and before 11am on Sundays and most public holidays, there would be strong opposition as the convenience of extended hours was the reason for these shops being designated as special retail shops. For example, this would not suit members of the building trades who commence work early and need to visit hardware shops which sell building products, or members of the public who need access to pharmacies, or tourists who may only be able to shop outside general retail hours.

Reducing the trading hours of special retail shops is likely to be viewed as a regressive step by all stakeholders and would be contrary to the Government's overarching policy of gradually removing restrictions and progressively deregulating retail trading hours.

The Government is not inclined to significantly adjust the range of goods applying to special retail shop categories at present as this would introduce even greater anomalies.

The preferred approach is to extend the trading hours of general retail shops rather than create more complex regulations for special retail shops.

In taking this position the Government is aware that this limits the ability of some special retail shops to innovate and adapt to consumer demand and also limits the choice for consumers who wish to shop outside general retail trading hours. Ultimately it will be a business decision for retailers as to whether product range or trading hours are more important for their business plans. However the Government will continue to monitor the effects of its policies and will make adjustments if warranted.

### *Motor vehicle shops*

Motor vehicle shops are a sub-category of general retail shops but have more restricted trading hours than those applying to general retail shops.

Section 12B of the *Retail Trading Hours Act 1987* states that subject to the Act or any order made under section 12E(1) that affects the trading hours of the motor vehicle shop, a motor vehicle shop is required to remain closed:

- (a) on Monday, Tuesday, Thursday and Friday in each week until 8am and from and after 6pm; and
- (b) on Wednesday in each week, until 8am and from and after 9pm.; and
- (c) on Saturday in each week, until 8 a.m. and from and after 1pm.; and
- (d) on Sunday in each week; and
- (e) on each public holiday and public half-holiday.

Section 12B was inserted in the Act by the *Retail Shops and Fair Trading Legislation Amendment Act 2006* and applies throughout the state below the 26<sup>th</sup> parallel.

The Motor Trade Association has consistently opposed extending trading hours. In September 2014 the Motor Trade Association reported a survey of its members on its website. It received 330 responses from 370 invitations to an on-line survey of which 91 per cent wanted no change to retail trading hours for motor vehicle shops.

A number of arguments have been advanced by industry for maintaining the status quo. Industry members argue that motor vehicle shops cannot be operated by casual staff as the *Motor Vehicle Dealers Act 1973* requires that motor vehicle sales be conducted by licensed people, therefore licensed staff would have to work unreasonably long hours. While the Act requires motor vehicle sales to be conducted by licensed people, the issue of having existing staff work longer hours or employing additional people on a permanent or casual basis is the same for other types of retail shop considering whether to trade for extended hours.

Industry also reports that buying a motor vehicle is an infrequent and considered purchase for most consumers and that they are unlikely to sell any more vehicles if trading hours are extended. The Motor Trade Association argues consumers have not been active in seeking wider hours and enjoy the capacity to view motor vehicle yards on Saturday afternoons and Sundays without the presence of salespeople.

It is accepted that consumers will shop around for motor vehicles, particularly using the host of websites now available which are dedicated to vehicles for sale. However it would be inconsistent with consumer trends for weekend shopping that they would not visit car yards if they were open.

While the Government can see no compelling reason why the hours for motor vehicle shops should not be brought into line with those for general retail shops, it is not aware of any concerted consumer demand for change. Having regard for the motor vehicle industry's strong opposition to the further liberalisation of trading hours, the Government does not intend to amend trading hours for this sector at this time.

In taking this position the Government acknowledges that it is retaining an anomaly and is restricting some consumer choice. It may also be limiting innovation by the industry although in this respect industry has adopted on-line marketing extensively and this may well be meeting the needs of consumers as they narrow down their choice of vehicle.

### *Regional trading hours*

The Act's default trading hours for regional general retail shops are more restrictive than those that apply to general retail shops in the Perth metropolitan area. General retail shops located in regional areas below the 26<sup>th</sup> parallel must remain closed prior to 8am and after 6pm on all weeknights with the exception of Thursdays upon which they may remain open until 9pm, remain closed prior to 8am and after 5pm on Saturday, and remain closed all day on Sunday, public holidays and public half holidays unless they operate under a regional trading hour variation order issued under section 12E of the Act. Retail trading hours above the 26<sup>th</sup> parallel are unregulated.

Trading hours for all other shop categories (that is, for small, special, motor vehicle shops and filling stations) are applied equally throughout the state below the 26<sup>th</sup> parallel which means that those shops located in regional areas operate under the same constraints as those imposed on similar categories of shops located in the metropolitan area. This means that small and special shops, with their extended trading hours, may have a greater competitive advantage over general retail shops operating in regions which have chosen to retain restrictive trading hour arrangements for general retail shops.

The current policy of providing for a high degree of local determination has provided greater flexibility in the regulatory regime, and has been welcomed by some retailers and local government authorities. However, the Government acknowledges that the policy has also resulted in a host of inconsistent trading hour arrangements for general retail shops in different and often adjoining regions and between regional areas and the metropolitan area.

Appendix 3 shows the range of trading hours that apply in regional Western Australia. It is a complex picture as within a local government area that has a regional variation order, the order may only apply to a town or even part of a town.

There are also local government areas that are sparsely populated and towns may only contain a small shop or filling station and have no established shops classified as a general retail shop. Therefore, although at law trading hour restrictions theoretically still apply, in practice the existing shops (small retail shops and filling stations) in such places are not restricted in the hours on which they may trade.

Based on the information in Appendix 3, there are 66 local government areas or cities that apply the Act's default regional trading hours. Three have sought more restrictive trading hours and 27 local government areas or cities or parts of cities have variation orders that are more liberal than default regional trading hours.

This variability can create additional costs for state-wide and national retailers who have to adjust marketing and other factors and can be frustrating for local and travelling consumers. It also creates additional costs for government, particularly when temporary variations are sought for trading hours.

Most industry associations and organisations such as the Productivity Commission argue that there is no social, economic or policy justification for setting different trading hours across geographic locations. These stakeholders advocate for the deregulation of trading hours including those that apply in regional areas. The Chamber of Commerce and Industry September quarter survey indicates that regional consumers would prefer to see regional trading hours extended or deregulated.

While the Government acknowledges retailers, consumers and community members have different views on the question it believes that the current policy of regional determination should remain for the present time. However at some future time it may consider setting metropolitan regional trading hours as the default below the 26<sup>th</sup> parallel. This may also provide for regional variation provided that more restrictive hours are not imposed. That is where local governments can demonstrate support for further deregulation this will be approved.

### Administrative efficiencies and redundant provisions

#### *Distinction between the types of filling stations and the list of products which can be sold by filling stations*

Section 14 of the Act allows all types of filling stations (petrol stations) to open at any time to sell fuel and motoring accessories and sections 14A and 14B limit the types of other goods that may be sold outside the trading hours for general retail shops. The Act and Regulations also designate three types of filling station; filling stations, small filling stations and prescribed small filling stations.

Small filling stations are differentiated from filling stations by requiring them to meet various ownerships and staffing criteria, which are similar to those applying to small retail shops except that no more than 10 persons can work at the filling station at any one and the same time. Prescribed small filling stations once applied to truck stops or some filling stations based in industrial parts of the metropolitan area and the need for this designation has been superseded.

The Government believes that the distinctions between filling stations are outdated and no longer serve a useful purpose and proposes to amend the Act to remove these distinctions.

Regulations prescribe the range of goods other than fuel and motoring accessories that may be sold outside general retail trading hours by filling stations. Prescribed small filling stations may sell a somewhat greater range of goods than other filling stations and it is proposed to amalgamate this list of goods with the list for other filling stations. Additional goods that can be sold by prescribed filling stations outside general retail trading hours are work clothing, travel rugs, 12 and 24 volt vehicle accessories, video cassettes and pre-recorded music, cameras; coolers, portable barbeques and requisites, portable cassette or compact disc players and canned food.

The types of goods that may be sold by filling stations outside general retail hours will also be reviewed to accommodate changes in technology. For instance the regulations allow the sale of film and flash bulbs but not memory cards for cameras.

### *Shops in temporary markets*

In a relatively new development, many temporary markets have sprung up over the last few years. There are now 25 – 29 temporary markets operating. Typically, these markets are demountable and set up on a morning and then packed up that same day in the afternoon.

Stallholders in these markets are usually very small operators who qualify as a small or special retail shop and these people may have stalls in several markets that operate on different days.

Under the Act these stallholders must have a small or special retail shop certificate to trade in each market if the market operates outside trading hours for general retail shops. As the Act relates to the location of the shop it is not possible to provide a certificate that can apply to all temporary markets that a stallholder may operate in and so the stallholder must apply on every occasion and the Department must assess each application. This is time consuming and costly for both the stallholders and government and serves no useful purpose.

Although temporary markets frequently occur in the same place the stalls are not always the same, with small stallholders entering and exiting the market frequently. This means that a significant percentage of stalls in the same market venue frequently change and government has to expend significant resources certifying or re-certifying shops on a stall by stall basis and has to visit and revisit the same temporary markets.

The Retail Trading Hours (Temporary Markets) Exemption Order 1992 was issued to exempt swap-meets, which typically sell second hand goods, from having to comply with small retail shop certification requirements. This order is still valid and in force. However, it does not apply to shops in temporary markets that sell new goods. The *Retail Shops and Fair Trading Legislation Amendment Act 2006* limited the Minister's power to issue further exemption orders in the metropolitan area and so this is no longer an approach that can be used to reduce red tape for stallholders.

After giving careful consideration to this matter the Government has decided that the administrative costs of regulating temporary markets cannot be justified on public interest grounds and that it would be better to exempt stallholders in temporary markets from the Act.

### *Holiday resorts*

There are three holiday resorts designated by Ministerial order; Wanneroo, Rockingham and Rottnest Island. Historically general retail shops located in these holiday resorts enjoyed more liberal trading hours than those applied to similar shops located in the Perth metropolitan area, with unique and extended trading hours applying during school holidays and other holiday periods.

When the Government introduced Sunday trading for all general retail shops located throughout the Perth metropolitan area, the trading hours for the Wanneroo and Rockingham holiday resorts were aligned with those that apply in the rest of the metropolitan area. The Retail Trading Hours (Rottnest Island Holiday Resort) Order 2007 permits general retail shops on the island to trade from 7am to 9:30pm on every day of the year.

As the concept of a holiday resort is now largely redundant it is proposed to repeal all relevant provisions in the Act and associated orders and to exempt Rottnest Island from the provisions of the Act. This will allow shops on Rottnest Island to trade at whatever times they choose.

This will simplify the legislation and as Rottnest Island is isolated from Perth will not adversely affect other retailers.

## **Proposals for further reforms**

In accordance with its policy of making incremental changes to retail trading hours the Government plans to make a series of further amendments to the Act and Regulations. These are identified below.

### Extension of trading hours for general retail shops located in the Perth metropolitan area

The Government has taken note of recommendations for further deregulation of trading hours for general retail shops. While it does not consider it is time for full deregulation it does think that there are good reasons to allow general retail shops to open earlier than 8am and proposes to allow all general retail shops in the Perth metropolitan area to open from 7am Monday to Saturday. It also proposes to allow general retail shops to trade until 6pm on Saturdays rather than 5pm.

Allowing general retail shops to open an hour earlier from Monday to Saturday and an hour later on Saturday will provide more flexibility for them without a major reduction in competitive advantage for small and special retail shops.

The proposed change will reduce the distinction between special and general retail shops. This is not a major issue for most types of special retail shop but has become a significant matter for domestic development shops, particularly hardware shops where the trend is to provide a wider range of products than is currently prescribed. Allowing earlier opening for general retail shops will particularly assist tradespeople by providing them with more choice about where to purchase supplies at more convenient times. Lessening this distinction may also allow special retail shops that wish to expand their product range beyond the prescribed products to make the change to being a general retail shop more easily.

Allowing general retail shops to open earlier also opens the way for shops that wish to cater for commuters to do so.

### Removal of the distinction between the types of filling stations and modernising the list of products which can be sold by filling stations

Section 14 of the Act allows all types of filling stations (petrol stations) to open at any time to sell fuel and motoring accessories and sections 14A and 14B limit the types of other goods that may be sold outside the trading hours for general retail shops. The Act and Regulations also designate three types of filling station; filling stations, small filling stations and prescribed small filling stations.

It is proposed to amend the Act and Regulations by removing all distinctions between filling stations as they are now redundant and modernising the types of goods that may be sold outside general retail trading hours.

### Repeal holiday resort provisions and exempt Rottneest Island from the Act

Section 12A of the Act provides the Minister with the power to make an order which sets trading hours for general retail shops located in holiday resorts. Under the Retail Trading Hours (Holiday Resorts) Regulations 2012, holiday resorts are the Rockingham holiday resort (District of Rockingham), the Wanneroo holiday resort (localities of Two Rocks and Yanchep) and the Rottneest Island holiday resort.

When the Government introduced Sunday trading for all general retail shops located throughout the Perth metropolitan area, the trading hours for the Wanneroo and Rockingham holiday resorts were aligned with those that apply in the rest of the metropolitan area. Rottnest Island operates under the Retail Trading Hours (Rottnest Island Holiday Resort) Order 2007 which permits general retail shops on the island to trade from 7am to 9:30pm on every day of the year.

As the concept of a holiday resort is now largely redundant it is proposed to repeal all relevant provisions in the Act and associated orders and to exempt Rottnest Island from the provisions of the Act. This will allow shops on Rottnest Island to trade at whatever times they choose.

The reform is consistent with the Government's policy of simplifying the regulatory regime and removing anomalies.

### Exempt shops located in temporary markets from the Act

In a relatively new development, many temporary markets have sprung up over the last few years. There are now 25 – 29 temporary markets operating. Typically, these markets are demountable and set up on a morning and then packed up that same day in the afternoon.

Stallholders in these markets are usually very small operators who qualify as a small or special retail shop and these people may have stalls in several markets that operate on different days.

Under the Act these stallholders must have a small or special retail shop certificate to trade in each market if the market operates outside trading hours for general retail shops. As the Act relates to the location of the shop it is not possible to provide a certificate that can apply to all temporary markets that a stallholder may operate in and so the stallholder must apply on every occasion and the Department must assess each application. This is time consuming and costly for both the stallholders and government and serves no useful purpose.

After giving careful consideration to this matter the Government has decided that the administrative costs of regulating stallholders within temporary markets cannot be justified on public interest grounds and that it would be better to exempt stallholders in temporary markets from the Act.

Accordingly, it is proposed to amend the Act to define temporary markets and to exempt shops within them from the Act. The Retail Trading Hours (Temporary Markets) Exemption Order 1992 would be revoked as it would no longer be needed. Amendments to the Act will also include appropriate safeguards so that established general retail shops cannot regularly trade from car parks or other open space adjacent to their shops prior to 11am on Sundays and public holidays by claiming these stalls constitute temporary markets.

### Possible longer term reform options

The Government has adopted a policy of making moderate, incremental changes to the retail trading hour regulatory regime. This has resulted in different and potentially discriminatory trading hour arrangements occurring between different categories of retail shops, between the Perth metropolitan area and regional areas, and between regional areas.

Due to the highly prescriptive nature of the current regulatory regime, this makes it difficult to amend the legislation without creating new anomalies. The Government recognises that this will make it very difficult to correct all trading hour anomalies and in the longer term it may be necessary to repeal the Act to achieve that outcome.

The Government has previously acknowledged that the regulatory regime could benefit from further reforms and in the longer term this could include replacing the Act with modern, less prescriptive legislation that is simpler to understand and easier and cheaper to administer.

Essentially there are two basic options for reforming retail trading hours in the longer term – full deregulation or minimum regulation.

### *Full deregulation*

This involves repealing all trading hour laws across the state, allowing all retailers to choose their own trading hours and decide when they wish to remain closed. Full deregulation is consistent with the approach adopted in the Northern Territory, the Australian Capital Territory and Western Australia above the 26<sup>th</sup> parallel.

Full deregulation is the preferred option of the Productivity Commission, the Institute of Public Affairs, the Chamber of Commerce and Industry, the Shopping Centre Council of Australia, the Retail Traders' Association, the Property Council of Australia, and many large retailers including national and international retailers. These stakeholders argue that trading hours should be determined by consumer demand and the market place, not government, and retailers are best placed to decide whether or not they open for trade and what goods and services should be supplied or offered for sale.

The Chamber of Commerce reports that their quarterly Consumer Confidence surveys record that almost 60 per cent of those surveyed said they would support full deregulation of trading hours and 41 per cent said they supported and would use this extra service. Of those surveyed, 65 per cent of men support full deregulation compared to 53 per cent of women. Sixty six per cent of people aged between 18-39 support full deregulation with 54 per cent support from those people aged over 40 years.

Approximately 66 per cent of consumers, business and industry associations that responded to an issues paper released by the Department of Commerce in 2010 on Sunday trading in bulky goods and other consumer durables expressed a preference for full deregulation over other regulatory models advanced.

Stakeholders such as the Independent Grocers Association, and some other small retailers, who are concerned that they may lose market share or not be able to compete with larger competitors if the latter remain open for extended hours, are opposed to full deregulation. A survey conducted in April 2014 on behalf of the IGA indicated that 65 per cent of retailers were opposed to full deregulation or an extension of trading hours. In September 2014 the Motor Trade Association reported a survey of its members on its website in which 91 per cent wanted no change to retail trading hours for motor vehicle shops.

There would be no administrative costs to government and no compliance costs imposed on business if retail trading hours were fully deregulated.

### *Minimal regulatory model*

This involves removing all trading hour regulations and restrictions with the exception that most shops would be required to close on Christmas Day, Good Friday and ANZAC Day. This regulatory model does not prescribe specific hours when retail shops may trade or must remain closed and is consistent with the approach adopted in Victoria and Tasmania and not dissimilar to the regime operating in New South Wales, except that the latter has additional public holidays upon which some shops must remain closed. This is the preferred option of the Australian National Retailers Association and has been advocated by the Economic Regulation Authority's Inquiry into Microeconomic Reform in Western Australia 2014.

Another variant of this model is to prescribe trading hour restrictions for general retail shops on limited days only. For example general retail shops might only be permitted to trade for a limited number of trading hours on Sundays and most public holidays but otherwise would be permitted to trade at any time of their choice.

This option may be viewed as a compromise between full deregulation and the current restricted model. It is likely to be broadly acceptable to most retailers, industry associations and consumers but would be opposed by those that prefer trading hours to be more heavily regulated. A number of retailers and industry associations have made public submissions to the Productivity Commission and the Economic Regulation Authority suggesting that the Victoria's minimal regulatory model should be adopted by all states and applied in a uniform manner across the whole of Australia.

A minimal regulatory model would be relatively simple and easy to administer and impose only minimal costs on government and a minority of retailers, principally larger retailers or general retail shops. No compliance costs would be imposed on small retail shops.

## Appendix 1

### Surveys of Western Australian consumers' attitudes towards extended shop trading hours

A number of surveys have been undertaken to find out consumer attitudes to extended trading hours. These have usually been carried-out by research and survey organisations on behalf of industry associations or the Government. These include:

- Curtin School of Business - Chamber of Commerce and Industry Survey of Consumer Confidence (September 2014). The September quarter survey found that the majority of consumers support extending retail trading hours on Saturday, Sunday and weekdays and would support full deregulation.
- Patterson Research Group conducted on behalf of the Independent Grocers Association – survey of consumer satisfaction with current trading hours laws (April 2014). The survey found that consumers believed that the existing trading hours were adequate for their needs.
- Patterson Market Research for the Chamber of Commerce and Industry (July 2010) to assess consumer support for late night trading and explore the shopping experience of respondents who shopped in the extended trading periods. 67 per cent of consumer supported extended trading hours in the Perth metropolitan area compared to 60 per cent in February 2009. 69 per cent supported Sunday trading compared to 63 per cent in 2009. 41 per cent of consumers surveyed shopped in the extended trading period. Of those consumers that shopped in the extended trading period 78 per cent of consumers shopped for food and groceries.
- City of Bunbury – Retail Trading Hours Survey Report (February 2008) to determine the level of support for seven day trading in Bunbury. 71.4 per cent supported with most favouring trading on all Sundays and public holidays excluding Christmas Day, Easter Sunday and ANZAC Day. Business Survey Report – 52.1 per cent favoured changing trading hours with most supporting trading as above. Retail Survey Support – 65.6 per cent opposed change. Service Businesses Survey report 70.7 per cent favoured extended trading hours as above.
- Luscombe and Associates on behalf of the Western Australian Department of the Premier and Cabinet (August 2008) survey to assess the attitudes of consumers to test options for reform including weeknight trading to 7pm, trading in outer metropolitan areas and deregulation of shop trading hours in the Perth tourism precinct. The survey found strong support for extended weeknight trading until 7pm, Sunday trading and for the full deregulation of shop trading hours in the Perth Tourism Precinct.

## Appendix 2

### **Some major published reports, policy papers and submissions on retail trading hours that assess the costs and benefits of retail trading hour laws, the effect of deregulation and extended trading hours on retailers and the community.**

A number of reports, policy papers and submissions have been published which assess the costs, benefits of retail trading hour laws and the effect deregulation and extended trading hours may have on retailers and the community. These include:

- Productivity Commission - Relative Costs of Doing Business in Australia: Retail Trade (October 2014). This research report commented that study participants raised retail trading hours as a priority reform as it continued to restrain economic activity and consumer choice.
- The Commonwealth Government Harper Review into Competition Policy and Reforms – the Draft Report of 22 September 2014 recommended that retail trading hours should be deregulated except for Christmas Day, Good Friday and the morning of ANZAC Day. A final report is expected March 2015.
- Shopping Centre Council of Australia – Perth Sunday Trading reforms – Snapshot: Two Years On (August 2014). A survey of Shopping Centre Council members to assess the impact of Sunday trading two years after introduction provided to the Minister for Consumer Protection. Respondents reported increased participation by speciality and small retailers, increased sales and strong consumer support.
- Economic Regulation Authority WA - Inquiry into Microeconomic Reform in Western Australia: Final Report (June 2014) recommended that trading hours should be deregulated at all times with the exception of Christmas Day, Good Friday and the morning of ANZAC Day during which time only filling stations and retailers that employ eighteen or less staff may remain open.
- Independent Grocers Association – The Lights Are Out on Extended Trading Hours: a look at the effects of Weeknight and Sunday Trading on Small Retail Businesses in WA (July 2014). The publication concluded that the extension of weeknight and Sunday trading hours has benefited the major national chains at the expense of small independent businesses and their owners and that further changes will only weaken small business, deprive consumers of choice and increase the market share and dominance of the big retailers.
- The Institute of Public Affairs Report – Consumer-first supermarket reform: the market, not the Government knows how best to meet consumers' demand (January 2013). The report recommended that trading hours should be fully deregulated and that the Government should act in the consumers' interests, not as an industry regulator that advances the interests of supermarkets, as deregulation leads to more competition, choice and cheaper prices.

- Tracey Atkins, Consumer Research Unit, University of Western Australia – Shop Trading Hours in Western Australia: A Research Report (November 2011). The report found that shop trading hours deregulation best accords with an approach that respects economic and personal freedom, including the freedom to choose without unnecessary government restraint or distortion. It concluded that the long-term consumer interest is served by the deregulation of shop trading hours.
- The Productivity Commission's Inquiry Report into the Economic Structures and Performance of the Australian Retail Industry (November 2011) – which recommended that trading hours should be fully deregulated (including on all public holidays) as this benefits retailers, promotes economic activity, employment and sales.
- Department of Commerce Issues Paper – Whitegoods and other consumer durables (October 2010). The issues paper identified a number of regulatory options and models for implementing Sunday trading in durable goods. Feedback from public consultations on the issues paper demonstrated that most retailers opposed the introduction of Sunday trading for durable goods. Instead most retailers and consumers expressed a preference for Sunday trading for all shops and in all goods. Approximately 70 per cent of respondents' first preference was for total or full deregulation of trading hours although this was not advanced as an option in the issues paper.
- Institute of Public Affairs (Chris Berg and Christopher Murn) - Over-ruled: How excessive regulation and legislation is holding back Western Australia (June 2009). The report found that WA has lagged behind other jurisdictions and needs to reduce red tape. The report asserts that trading hour legislation has many unintended consequences and forces small retailers to remain small to secure extended trading hours. The increase in female labour force participation and double income families makes restricted trading hours impractical and does not promote work-life balance.
- ACIL Tasman on behalf of the Retail Traders Association – Assessment of how Australian independent supermarkets and grocers have performed under liberalising trading hours (April 2008). The report found that liberalising trading hours has had a positive impact on retailers and consumers and increased turnover and employment in all States except SA. Independent grocers are in good health and also benefited with ABS data sales from smaller stores rising faster than sales in larger stores.
- City of Geraldton-Greenough: Economic Impact of Deregulation of Retail Trading Hours – Final Report (September 2009). The report found that consumers will benefit from choice and deregulation but it does not guarantee a balanced retail offering in Geraldton-Greenough. Deregulation may lead to a rationalisation and increased concentration of retail activity primarily around centres but it is unclear as to whether overall expenditure levels will vary to any great extent.
- The Australian Competition and Consumer Commission's Inquiry into the Competitiveness of Retail Prices for Standard Groceries (2008). The Inquiry found that the groceries industry was workably competitive.

- PriceWaterhouseCoopers – on behalf of the National Association for Retail Grocers in Australia (June 2007) - the economic contribution of small to medium-sized (SME) grocery retailers to the Australian economy, with particular focus on Western Australia. The report found SMEs had 32.5 per cent of grocery turnover in WA compared to national average of 20 per cent. SMEs source a greater percentage of products locally, employ more people and make a greater contribution to local economies than major grocery retailers.

## Appendix 3

### Regional trading hours in Western Australia

The Retail Trading Hours Act does not apply above the 26<sup>th</sup> parallel which means that shops located in those regions are not regulated and may choose their own trading hours. This includes the following:

#### Regional local government areas above the 26<sup>th</sup> parallel

Ashburton	Broome
Carnarvon	Derby - West Kimberley
East Pilbara	Exmouth
Halls Creek	Ngaanyatjarraku
Port Headland	Roebourne
Upper Gascoyne	Wiluna
Wyndham -East Kimberley	

#### Regional local government areas below the 26<sup>th</sup> parallel which have deregulated trading hours

The following local government areas have fully deregulated trading hours across the area or in centres within the area.

Augusta - Margaret River	Dardanup
Dundas – Norseman town site	Gingin - Guilderton, Seabird, Ledger Point, Lancelin and Gingin town sites
Kalgoorlie-Boulder – Burt Street precinct	Mingenew – Mingenew town site
Murray – Pinjarra town site	Narembeen

#### Regional local government areas located below the 26<sup>th</sup> parallel which have more restrictive long term trading hour arrangements than standard hours prescribed by the Act.

Three local government areas operate under regional variation orders which are more restrictive than the trading hours that generally apply under section 12(1) of the Act do not permitted general retail shops to trade after 1pm on Saturdays.

Boyup Brook	Kulin	Moora
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Regional local government areas which usually operate under standard regional trading hours

The following local government areas usually operate under standard trading hours prescribed for regions under section 12(1) of the Act. This means that general retail shops must remain closed on all weekdays prior to 8am and after 6pm with the exception of Thursday when they must close by 9pm, on Saturday prior to 8am and after 5pm, and remain closed all day on all Sundays and public holidays.

Beverley	Boddington	Bridgetown Greenbushes	- Brookton
Broomehill Tambellup	- Bruce Rock	Carnamah	Chapman Valley
Chittering	Coorow	Corrigin	Cranbrook
Cuballing	Cue	Cunderdin	Dalwallinu
Dowerin	Dumbleyung	Esperance*	Geraldton
Gnowangerup	Goomalling	Jerramungup	Katanning
Kellerberrin	Kent	Kojonup	Kondinin
Koorda	Lake Grace	Laverton	Leonora
Meekatharra	Menzies	Merredin	Morawa
Mount Magnet	Mount Marshall	Mukinbudin	Mullewa
Murchison	Nannup	Narrogin	Nungarin
Perenjori	Pingelly	Quairading	Ravensthorpe
Sandstone	Tammin	Three Springs	Toodyay
Trayning	Victoria Plains	Wagin	Wandering
Waroona	West Arthur	Westonia	Wickepin
Williams	Wongan - Ballidu	Woodanilling	Wyalkatchem
Yalgoo	Yilgarn		

\* Esperance has a Christmas trading variation in place, but applies standard trading hours at other times

Regional local government areas which operate under long term regional trading hour variation orders

<b>Local government area or city</b>	<b>Location</b>	<b>Variation</b>
Albany	Original Farm Fresh Food Market only	Saturday and Sunday trading from 8am to 6pm other than Good Friday, ANZAC Day (until 12 noon) and Christmas Day on which shops are closed.
Augusta – Margaret River	Shire boundaries	Deregulated
Boyup Brook	Shire boundaries	Trading prohibited on Saturdays after 1.00pm.
Bunbury	City boundaries	Deregulated other than on Good Friday, ANZAC Day and Christmas Day on which shops are closed.
Busselton	Town site of Busselton	8.00am to 9.00pm daily, other than on Christmas Day and Good Friday on which shops are closed. Trading on ANZAC Day is from 1.00pm to 9.00pm.
	Town site of Dunsborough	Trading each day from 8.00am to 9.00pm.
Capel	Shire boundaries	8.00am to 9.00pm daily, other than on Christmas Day and Good Friday on which shops are closed. Trading on ANZAC Day is from 1.00pm to 9.00pm
Collie	Shire boundaries	Trading 8.00am to 9.00pm Monday to Friday, 8.00am to 6.00pm on Saturday, 11.00am to 5.00pm on Sundays and public holidays other than on Good Friday, ANZAC Day and Christmas Day on which shops are closed.
Coolgardie	Shire boundaries	8.00am to 9.00pm Monday to Friday, 8.00am to 6.00pm on Saturday, 11.00am to 5.00pm on Sundays and public holidays other than on Good Friday, ANZAC Day and Christmas Day on which shops are closed.
Dandaragan	Town sites of Cervantes and Jurien	During school holidays and long weekends (prescribed periods) each day including public holidays (other than on Good Friday, ANZAC Day and Christmas Day on which shops are closed) trading from 8am to 9.00pm.
Dardanup	Shire boundaries	Deregulated

Local government area or city	Location	Variation
Denmark	Shire boundaries	Trading each day from 8.00am to 9.00pm.
Donnybrook-Balingup	Town site of Donnybrook	Sunday trading (other than on public holidays).
Dundas	Town site of Norseman	Deregulated
Esperance	Shire boundaries	From the second Sunday in December to 23 December, Friday trading to 9.00pm and 10.00am to 4.00pm Sunday trading.  From the Sunday before 23 December to 23 December weeknight trading is to 9.00pm.
Gingin	Town sites of Guilderton, Seabird, Ledge Point, Lancelin and town site of Gingin	Deregulated
Harvey	Australind shopping centre and Mardo commercial complex  Treendale shopping centre	Trading 7.00am to 8.00pm Monday, Tuesday, Wednesday and Friday; 7.00am to 9.00pm on Thursday; 8.00am to 6.00pm Saturday and Sundays (other than on Good Friday, ANZAC Day and Christmas Day on which shops are closed).  As for Australind shopping centre – above.
Irwin	Town sites of Dongara and Port Denison	Trading during school holidays and long weekends (prescribed periods) each day including public holidays (other than on Good Friday, ANZAC Day and Christmas Day on which shops are closed) from 8am to 9.00pm.
Kalgoorlie – Boulder	City boundaries other than in Burt Street precinct	Trading 7.00am to 7.00pm Monday, Tuesday, Wednesday and Friday; 7.00am to 9.00pm on Thursday; 7.00am to 6.00pm Saturday.  Sundays and public holidays closed.
	Burt Street precinct only	Deregulated

<b>Local government area or city</b>	<b>Location</b>	<b>Variation</b>
Kulin	Shire boundaries	Trading prohibited on Saturdays after 1.00pm.
Leonora	Leonora supermarket and hardware only	Trading Sunday and public holiday trading, from 10.00am to 3.00pm, other than on Christmas Day, Good Friday and ANZAC Day on which shops are closed.
Mandurah	City boundaries	Trading Monday, Tuesday, Wednesday, Friday and Saturday 8.00am to 6.00pm; Thursday 8.00am to 9.00pm; Saturday, Sundays and public holidays 10.00am to 5.00pm (other than on Christmas Day, Good Friday and ANZAC Day on which shops are closed).
Manjimup	Town site of Manjimup	Trading 8.00am to 9.00pm Monday to Friday, 8.00am to 5.00pm on Saturday, 11am to 5.00pm on Sundays and public holidays (other than on Christmas Day, Good Friday and ANZAC Day on which shops are closed).
	Town site of Pemberton	During school holidays and long weekends (prescribed periods) each day including public holidays 8.00am to 9.00pm (other than on Christmas Day, Good Friday and ANZAC Day on which shops are closed).
Mingenew	Town site of Mingeneew	Deregulated
Moora	Shire boundaries	Trading prohibited on Saturdays after 1.00pm
Murray	Town site of Pinjarra	Deregulated
Narembeen	Shire boundaries	Deregulated
Northam	Shire boundaries	Monday to Friday 8.00am to 9.00pm; Saturdays and Sundays 8.00am to 5.00pm – these hours also apply on public holidays other than Christmas Day, New Year's Day, Good Friday and ANZAC Day.

Local government area or city	Location	Variation
Northampton	Town sites of Port Gregory, Kalbarri, Northampton and Horrocks Beach	Each day from 8.00am to 9.00pm.
Plantagenet	Shire boundaries	Trading from 9.00am to 3.00pm on Sundays throughout the year, other than on public holidays.
York	Town site of York	Trading each day from 8.00am to 9.00pm.

## Appendix 4

### Prescribed goods that may be sold by special retail shops

#### Regulation 7 of the Retail Trading Hours Regulations 1988

##### 7. *Special retail shops — categories, goods and services*

- (1) The categories of shops set out in column 1 of the Table to this regulation are prescribed for the purposes of section 10(4)(a) of the Act.
- (2) The goods and services set out in column 2 of the Table to this regulation opposite a category of special retail shops are, for the purposes of section 10(4)(b) of the Act, goods and services that are prescribed in relation to a special retail shop of that category.

Table

Column 1 Shop Categories	Column 2 Goods and Services
1. Art and craft (shops engaged in the sale of art and craft works)	Original art and craft works; prints and reproductions of original works; art and craft supplies; art and craft related reading materials; calico or similar re-useable shopping bags.
2. Souvenirs (Shops offering items of tourism significance)	Souvenirs featuring Australian flora, fauna, locations, characteristics or events or national significance; souvenirs projecting the flavour of the pioneering era or Aboriginal culture; original Australian art and craft works, reading materials and video cassettes or tourism significance; souvenirs and jewellery featuring Australian minerals and pearls; souvenirs crafted from unique Australian woods, hides or skins; Australian coins; calico or similar re-useable shopping bags.
3. Pharmacy	Goods and services that may be sold or provided at a pharmacy in accordance with the <i>Pharmacy Act 2010</i> ; calico or similar re-usable shopping bags.
4. Domestic development shops (shops offering items for domestic improvements, construction and maintenance, floral arrangements and products for the establishment and maintenance of gardens)	Swimming pools; spas; patios; garages; garden sheds; home additions; household fixtures and fittings (excluding free standing furniture other than shelving units, carpets and electrical items other than ceiling fans); ready to assemble raw timber and finished timber household furniture, and kitchen cupboard panels, sold in flat pack form; desk fans; indoor television antennae; floor mats and rugs; synthetic rolled matting, synthetic grass and marine carpeting; flowers; greenstocks; seeds bulbs; reticulation equipment; hoses, sprinklers and fittings; fertilizers, pesticides, herbicides and applicators; compost tumblers; landscaping and garden decorative products; plant containers and household items for the display of garden produce; construction, maintenance and garden related books and video cassettes; domestic construction and maintenance materials; paint and wallpaper products  and accessories; tools; outdoor furniture and accessories; household cleaning products (excluding powered equipment); swimming pool chemicals and accessories; extension cords and electrical fittings (excluding decorative

<b>Column 1 Shop Categories</b>	<b>Column 2 Goods and Services</b>
	light fittings); computer cables; barbecues; kitchenware (excluding electrical items); solid fuel space heaters; outdoor lighting; water heaters; gas powered camping equipment and accessories; awnings and blinds; personal safety equipment (excluding clothing except overalls); playground equipment; auto body filler and spray putty; auto surface primer and body black; art and craft supplies; calico or similar re-useable shopping bags.
5. Marine Craft (shops engaged in the sale of marine craft)	Marine craft and vessels associated spare parts and accessories, boating related books and video cassettes; calico or similar re-useable shopping bags.
6. Video shops	Digital video disks, video cassette tapes and video head cleaning products; promotional items relating to any video; confectionery and savouries; calico or similar re-useable shopping bags.
7. Duty Free Shops (shops which trade only as inwards duty free shops or outwards duty free shops as defined under the <i>Customs Act 1901</i> of the Commonwealth in respect of which permission is granted under section 96A(2) or 96B(3) of that Act)	Goods offered for sale duty free under the terms of the permission granted; calico or similar re-useable shopping bags.
8. Motor Vehicle Spare Parts Shops (shops other than shops located on premises on which motor vehicles are sold)	Motor vehicle spare parts accessories and lubricants; tools; motor vehicle related books and video cassettes; boating equipment limited to flares, anchors, life jackets, boat drainage bungs, navigation lights, fuel line bulbs, outboard motor water pump impellers, outboard motor service parts (filters, points, etc.), zinc anodes, outboard motor fuel tanks, outboard motor pull cords, and outboard motor shear pins; calico or similar re-useable shopping bags.
9. Sports Venue Shops (shops located at special sports participation venues)	Sporting goods and associated equipment relevant to the sports activities at each applicant venue; calico or similar re-useable shopping bags.
10. Newsagencies and book shops	Newspapers, books and stationery requisites; magazines and periodicals; greeting cards; educational requisites; educational toys (excluding mains operated computer games and equipment); photograph albums; sheet music; playing cards; paper plates, cups, doilies; lottery tickets; party decorations; smoker's requisites; small replacement items of sporting equipment (fishing hooks, table tennis balls, darts, etc.); calico or similar re-useable shopping bags.
11. Hotel Tourist shops (shops catering for tourist requirements in hotels classified as "4" star or "5"	Newspapers, books and stationery; haberdashery; clothing; sporting equipment; giftware; photographic equipment; cassette tapes, records and compact discs; toys; original art and craft works; prints and reproductions

<b>Column 1 Shop Categories</b>	<b>Column 2 Goods and Services</b>
<p>star under a scheme of classification approved by the Minister or any hotel that is in the opinion of the chief executive officer<sup>3</sup> of an equivalent standard)</p>	<p>of original works; souvenirs featuring Australian flora, fauna, locations, characteristics or events of national significance; souvenirs projecting the flavour of the pioneering era or aboriginal culture; souvenirs and jewellery featuring Australian minerals and pearls; souvenirs crafted from unique Australian woods, hides or skins; Australian coins and stamps; first aid requisites; toilet and cosmetic requisites; smokers requisites; hairdressing services; flowers and floral arrangements; travel goods; calico or similar re-useable shopping bags.</p>

## **Department of Commerce**

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