

# 21 Retail trading arrangements

## Shop trading hours

Historically, governments have restricted shop trading hours for a number of reasons including observance of the Sabbath, protection of small businesses and to reduce the need for shop employees to work outside traditional working hours. Pressure to change laws restricting trading hours has arisen from a range of sources from retail business owners to consumer groups. A significant driver of reform is changing social and work patterns such as increasing numbers of dual income households and more flexible and longer working hours.

## Legislative restrictions on competition

Shop trading hours vary significantly across Australia. Some States and Territories have minimal restrictions, while others have various arrangements, including designated days for late night shopping and restrictions on Sunday trading. Often, central city and tourist precincts have fewer restrictions than do suburban and rural areas; for example, Queensland prohibits most types of Sunday trading outside major cities and tourist areas and Western Australia prohibits Sunday trading outside tourism precincts.

Shopping hours legislation contains the following major restrictions on competition.

- Queensland restricts Monday-to-Saturday trading hours for some stores and prohibits these stores from trading on Sunday if they are outside major cities and tourist precincts. Sunday trading hours are restricted in those areas. Hardware stores are allowed to trade on Sundays between prescribed hours.
- Western Australia restricts Monday-to-Saturday trading hours and Sunday trading is allowed only within tourism precincts between prescribed hours. Restrictions do not apply above the 26th parallel.
- South Australia's main legislation restricts Monday-to-Saturday trading hours and prohibits Sunday trading in Adelaide outside the central business district. Sunday trading hours in the central business district are

limited. The situation is further complicated by discrimination between different shops on the basis of location, size and product sold.

- Tasmania restricts Monday-to-Sunday trading hours and prohibits Sunday trading for major retailers (defined as those employing more than 250 people in total).

## Regulating in the public interest

Reviews of trading hours have found both widespread benefits from removing restrictions and the absence of a compelling public benefit argument for retaining restrictions. Victoria's review found that removal of restrictions would result in increased consumer convenience, benefits to traders (who would be free to open at times they thought appropriate) and additional retail activity (Government of Victoria 1996, p. 4). Tasmania's review found that restrictions impose a major constraint on consumer choice and anticipated that their removal would result in additional employment, increased real wages or a combination of these outcomes as the retail sector expands (Workplace Standards Tasmania 2000, p. 8).

## Review and reform activity

Current restrictions on trading hours in each jurisdiction and review and reform activity to date are summarised in Table 21.1. In addition to restrictions on trading hours, some governments also legislate to restrict trading hours for particular activities. The Council has identified several examples, which are summarised in table 21.2.

**Table 21.1:** Review and reform of legislation regulating shop trading hours

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Factories, Shops and Industries Act 1962</i> (part 4 covers trading hours)	No restrictions on Monday-to-Saturday trading hours. Restrictions exist on Sunday trading and public holiday trading but exemptions are readily granted. .	Review of part 4 completed. New South Wales has advised that a comprehensive public benefit test is in place for assessment of any remaining assessments.	Widespread granting of exemptions has reduced the impact of restrictions.	Council to assess progress in 2002.
Victoria	<i>Shop Trading Act 1987</i> and the <i>Capital City (Shop Trading) Act 1992</i>	Restrictions on Saturday and Sunday trading hours depending on shop type and location.	Review completed 1996.	<i>Shop Trading Reform Act 1996</i> removed restrictions except for Christmas Day, Good Friday and ANZAC day.	Meets CPA obligations (June 1999).
Queensland	<i>Trading (Allowable Hours) Act 1990</i> and Regulations	Restrictions on Monday-to-Saturday trading hours for 'nonexempt' stores (that is, shops employing more than prescribed numbers of employees and shops not predominantly selling nominated products).  Sunday trading by nonexempt stores prohibited outside major cities and some tourist areas. Hardware stores excepted (but have restricted Sunday trading hours). Other stores allowed to open on Sundays.	Review not undertaken. The Queensland Industrial Relations Commission determines applications for extended trading hours.	Recent decisions of the Queensland Industrial Relations Commission to liberalise trading hours have resulted in the removal of some restrictions.  In 2000 and 2001, the Queensland Government provided details of its policy approach to the Queensland Industrial Relations Commission, drawing its attention to the need to take account of NCP public interest criteria in making its decisions.	Council to assess progress in 2002.

*(continued)*

Table 21.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Retail Trading Hours Act 1987</i> and Regulations	Restrictions on Monday-to-Saturday trading. Sunday trading prohibited outside tourism precincts, where it is restricted. No restrictions above the 26th parallel.	Review completed in 1999. Review report not publicly available.		Council to assess progress in 2002.
South Australia	<i>Shop Trading Hours Act 1977</i>	Significant restrictions, including: controls on the hours during which shops may open; variation in allowed opening hours based on the day of the week; and variation in permitted opening hours vary depending on shop location, size and products sold.  Monday-to-Saturday trading hours are restricted. Sunday trading is prohibited in Adelaide outside the central business district, where hours are restricted.	Review completed in 1998. Review report not publicly available.	Limited changes took effect from June 1999. Key restrictions were retained.	Council to assess progress in 2002.
Tasmania	<i>Shop Trading Hours Act 1984</i>	Major retailers (shops employing more than 250 people) are prohibited from trading during prescribed periods (these being Sundays, public holidays and weekdays after 6:00 p.m., other than Thursday and Friday).	Review completed, recommending substantial removal of restrictions.		Council to assess progress in 2002.
ACT	No specific shop trading hours legislation	No restrictions on Monday-to-Sunday trading hours.		<i>Trading Hours Act 1962</i> repealed in 1997 due to lack of community support for trading hours restrictions.	Meets CPA obligations (June 1999).
Northern Territory	No specific shop trading hours legislation	No restrictions on Monday-to-Sunday trading hours.	Not required.	Not required.	Meets CPA obligations.

**Table 21.2:** Review and reform of trading-related legislation

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Funeral Services Industry (Days of Operation) Act 1990</i>	Regulates the days of operation of businesses providing funeral, burial or cremation services.		Repealed.	Meets CPA obligations (June 2001).
Queensland	<i>Hawkers Act 1994</i> and <i>Hawkers Regulation 1994</i>	Prevents hawkers operating between 6 pm and 7 am.	Reduced NCP review completed. Draft report under consideration.		Council to assess progress in 2002.
Tasmania	<i>Sunday Observance Act 1968</i>	Restricts a number of business activities on Sunday.		Repealed.	Meets CPA obligations (June 2001).
	<i>Bank Holidays Act 1919</i>	Restricts bank trading days.		Reformed consistent with NCP principles.	Meets CPA obligations (June 2001).
	<i>Door to Door Trading Act 1986</i>	Restricts the hours in which door to door sellers can operate.	Not scheduled for review.		Council to assess progress in 2002.
ACT	<i>Door to Door Trading Act 1991</i> .	Restricts the hours in which door-to-door sellers can operate.	Intradepartmental review in draft form.		Council to assess progress in 2002.
Northern Territory	<i>Hawkers Act</i>	Restricts selling by hawkers on land that is reserved or dedicated as a public road.		Bill to repeal passed November 2000. Act to be brought into effect 2001.	Meets CPA obligations (June 2001).

## Liquor licensing

Governments have historically sought to limit excessive consumption of alcohol by limiting its availability. In particular, restrictions have applied to the number and type of licensed premises and the hours during which people could buy alcohol.

Many of these restrictions have been relaxed over the past few decades because community attitudes to where alcohol can be bought and consumed have changed considerably. Further, experience has shown that misuse of alcohol is often better addressed via more relaxed drinking environments and targeting of problem areas — for example through campaigns against drink-driving and under-age drinking. However, vestiges of earlier approaches remain embodied in legislation in some jurisdictions, significantly restricting competition in liquor retailing.

### Legislative restrictions on competition

Legislation governing the sale of liquor involves three broad categories of restrictions. First, some restrictions limit entry by potential sellers; for example, several jurisdictions apply a public needs or proof-of-needs test. Such a test restricts competition because it requires applicants for new licences to demonstrate that a particular area is not already adequately served by existing outlets. In effect, the test operates to protect existing outlets from new entrants.

A second category of restrictions discriminates between different types of sellers of packaged (take-away) liquor. In Queensland, only the holders of a general (hotel) licence can sell packaged liquor to the public. In Tasmania, the '9 litre rule' prevents non-hotel sellers of packaged liquor selling less than 9 litres of liquor in any one sale (except for Tasmanian wine, which may be sold in any quantity). Tasmania also prohibits supermarkets from holding a liquor licence. Victoria has the '8 per cent rule' which prevents a licensee from holding more than 8 per cent of the total number of packaged liquor licences. This may restrict the activities of the major supermarket chains.

A third category of restriction regulates the market conduct of licence holders. In Queensland, hotels are limited to a maximum of three bottle shops, which must be detached from the hotel premises. Each bottle shop must not have more than 100 square metres of display space, and drive-in facilities are prohibited. In South Australia, liquor must be sold from premises that are exclusively used for that purpose.

## Regulating in the public interest

The public interest objective of regulation should be to minimise the harm from alcohol consumption, implying that some limitations will always be necessary on the sale of alcohol. The provisions in licensing laws that support the objective of harm minimisation must be carefully differentiated from those that serve to restrict competition without minimising harm.

On one hand, licensing laws prescribe the legal minimum age for drinking and require liquor retailers to be suitable persons with an adequate knowledge of the relevant Act. They also place limits on trading hours, forbid practices that encourage excessive consumption and prevent the sale of alcohol to intoxicated persons. These regulations have a clear public benefit rationale and have been supported in NCP reviews. Ideally, regulations of this type should apply to all sectors of the liquor industry similarly, with licences granted to those who meet the prescribed standards.

On the other hand, regulations that prevent responsible sellers from entering the industry, discriminate between sellers of similar products/services and impose arbitrary restrictions on seller behaviour are irrelevant to harm minimisation. This requires careful analysis of the evidence. As an example, one argument frequently raised to support limitations on entry is that increased availability of alcohol equals increased consumption which leads to increased alcohol-related problems. However, evidence shows no clear relationship between the availability of liquor (number of outlets) and the level of consumption. Australia, Canada and New Zealand are among many developed countries to have experienced a general downward trend in average consumption levels since the late 1970s. This trend occurred at a time of considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages, and increased numbers of liquor outlets (Roche 1999, p. 39).

Victoria's recent experience has been static or declining per capita consumption despite the increases in availability in the State following licensing reforms in the 1980s and 1990s (Government of Victoria 1998, p. 19). Similarly, the number of liquor licences in Queensland increased during the 1990s while per capita consumption remained unchanged (Department of Tourism, Sport and Racing 1999, p. 20). Research also suggests that the pattern of alcohol use, particularly the environment in which drinking occurs, rather than the number of outlets and level of consumption, is the most important determinant of the level of harm (Government of Victoria 1998, pp. 100–2).

## Review and reform activity

Table 21.3 summarises jurisdictions' progress in reviewing and reforming liquor licensing legislation.

**Table 21.3:** Review and reform of legislation regulating liquor licensing

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Registered Clubs Act 1976</i> <i>Liquor Act 1982</i>	Contains a public needs test whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence.	Review underway. Draft report in preparation		Council to assess progress in 2002.
Victoria	<i>Liquor Control Act 1987</i> <i>Liquor Control Reform Act 1998</i>	Despite implementing significant pro-competitive reforms, Victoria retains the '8 per cent rule', under which no liquor licensee can own more than 8 per cent of general or packaged liquor licences.	Initial review completed in 1998.  A further review of the '8 per cent rule' reported to the Government in June 2000.	Pro-competition changes were implemented through the Liquor Control Reform Act.  In January 2001 the Government announced that it would introduce a gradual phase-out of the 8 per cent cap from the end of 2003.	Meets CPA obligations (June 2001).
Queensland	<i>Liquor Act 1992</i>	Restrictions include: <ul style="list-style-type: none"> <li>• a public needs test (whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence);</li> <li>• a restriction that only hotel licensees may sell packaged liquor to the public;</li> <li>• limits on the number of bottle shops that any one hotel can establish; and</li> <li>• restrictions on the size and configuration of bottle shops.</li> </ul>	Review completed in 1999 and endorsed by Cabinet in February 2000. Review recommended retention of key restrictions and removal of some other restrictions.	<i>Liquor Amendment Act 2001</i> replaces the public needs test with a public interest test which will examine social, health, community and regional development impacts of licensing proposals. However, the licensing authority must still collect data on liquor outlets in the relevant locality although the Government stated that it did not intend to use the new public interest test to restrict competition. The Act also proposes to retain the hotel monopoly on the sale of packaged liquor to the public and restrictions on the ownership, location and configuration of bottle shops.	Council to assess progress in 2002.

*(continued)*

Table 21.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Liquor Licensing Act 1988</i> and Regulations	Contains a public needs test whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence.	Review hearings completed and submissions considered.		Council to assess progress in 2002.
South Australia	<i>Liquor Licensing Act 1997</i> (which retained certain restrictions from the earlier <i>Liquor Licensing Act 1985</i> )	Review recommendations accepted by Government include: <ul style="list-style-type: none"> <li>the proof-of-need test requiring licence applicants to demonstrate that a consumer need exists for the grant of a licence; and</li> <li>the requirement that only hotels and retail liquor stores devoted to sale of liquor exclusively may sell liquor.</li> </ul>	Review completed 1996 and changes implemented 1997. Government has undertaken to review the proof-of-need test in 2001.		Council to assess progress in 2002.
Tasmania	<i>Liquor and Accommodation Act 1990</i>	The '9 litre rule' prevents non-hotel sellers of packaged liquor selling liquor (except for Tasmanian wine) in quantities less than 9 litres in any one sale. Supermarkets cannot hold a liquor licence.	Review commenced in March 2001.		Council to assess progress in 2002.
ACT	<i>Liquor Act 1975</i> except sub-sections 41E(2) and 42E(4)	Does not appear to contain significant restrictions on competition.	Review underway.		Council to assess progress in 2002.
Northern Territory	<i>Liquor Act</i>	Legislation contains a public needs test whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence.	Review hearings completed and submissions considered.		Council to assess progress in 2002.

## Petrol retailing

Western Australia, South Australia and the ACT have legislation that restricts competition in petrol retailing. Western Australia imposes a series of measures that restrict price competition among petrol retailers and South Australia restricts the entry of new sellers into petrol retailing if their entry would provide unfair and unreasonable competition for existing sellers. The ACT's *Fair Trading (Fuel Prices) Act 1993* allows the relevant Minister to regulate the prices of certain fuels if the market were acting in a collusive or anticompetitive manner. The Act has not been used.

The Commonwealth has established a national level inquiry into the feasibility of placing limitations on petrol and diesel retail petrol price fluctuations. The inquiry is being conducted by the Australian Competition and Consumer Commission, which will consult with industry members, consumer groups and State governments. The inquiry is expected to report late in 2001.

### Review and reform activity

Table 21.4 summarises jurisdictions' progress in reviewing and reforming petrol retailing legislation.

**Table 21.4:** Review and reform of legislation regulating petrol retailing

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Petroleum Products Pricing Amendment Act 2000</i>	Allows Government regulation of fuel prices.	Review by Ministry of Fair Trading underway.		Council to assess progress in 2002.
	<i>Petroleum Legislation Amendment Bill 2001</i>	As above.	As above.		Council to assess progress in 2002
South Australia	<i>Petrol Products Regulation Act 1995</i>	The Minister may withhold new retail petroleum licences if they provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet.	Review underway.		Council to assess progress in 2002.
ACT	<i>Fair Trading (Fuel Prices) Act 1993</i>	Allows the Government to impose price controls on fuels in certain circumstances.	Intradepartmental review recommended retention of restrictions on public interest grounds. Review argued that provisions would be exercised only at times of widespread anticompetitive behaviour.	Restrictive provisions retained.	Meets CPA obligations (June 2001).
	<i>Fair Trading (Petroleum Retail Marketing) Act 1995</i>		Review completed.	Act repealed.	Meets CPA obligations (June 2001).