



Parliament of
South Australia

FINAL REPORT

OF THE

SELECT COMMITTEE

ON

RETAIL TRADING HOURS

IN

SOUTH AUSTRALIA

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Second Session, Fiftieth Parliament 2002-2003

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1. INTRODUCTION

1.1 Appointment of the Select Committee

On 29 August 2002 the Legislative Council established two select committees to inquire into and report on shop trading hours in South Australia. To avoid any confusion which may have arisen from simultaneously appointing two committees, the Council resolved that the Select Committee on Retail Trading Hours in South Australia would commence deliberations after the Select Committee on the Shop Trading Hours (Miscellaneous) Amendment Bill 2002 had reported its findings to the Council. That report was tabled in the Legislative Council on 23 October 2002. After further debate the *Shop Trading Hours (Miscellaneous) Amendment Bill 2002* was defeated at the third reading stage on 19 November 2002.

The Select Committee on Retail Trading Hours in South Australia held its first meeting on 28 October 2002.

1.2 Terms of Reference

The terms of reference of this Committee are to inquire into and report on:

- (a) the likely impact of changed retail trading hours on the level of market domination by a small number of retailers and the consequent effect on their competitors and suppliers, in particular –
 - (i) is it likely to be anti-competitive in the longer term?
 - (ii) what is the likely long-term impact on prices?
- (b) the social consequences of the changed trading hours; and
- (b) any other related matter.

1.3 Membership

The Membership of the Select Committee is:

The Hon T G Roberts MLC (Minister for Aboriginal Affairs and Reconciliation)
(Chairperson)

The Hon M J Elliott MLC (resigned 2 December 2002)

The Hon I Gilfillan MLC (appointed 2 December 2002)

The Hon A J Redford MLC

The Hon T J Stephens MLC

The Hon C Zollo MLC

Mr Steve Weir, Research Officer

1.4 Committee Meetings, Evidence and Witnesses

Following its appointment, the Committee arranged for an advertisement to be inserted in *The Advertiser* and *The Weekend Australian* on Saturday 2 November 2002, inviting evidence from interested persons and organisations. An approach was also made to various organisations inviting evidence.

Sixteen written submissions were received by the Committee. The Committee met on twelve occasions. The names of individuals and organisations that made written submissions are listed in Appendix A. Appendix B lists the persons who presented oral evidence to the Committee.

1.5 Tabling of Interim Report and Evidence

Following the Committee's examination of witnesses, an Interim Report releasing the evidence and submissions received by the Committee was tabled in the Legislative Council on 2 June 2003. Although a formal report of this Committee was not tabled before the final consideration of the *Shop Trading Hours (Miscellaneous) Amendment Bill 2003*, the evidence received was accessible to all Members to peruse during debate on the Bill. Access to these submissions and the Committee Members' input during deliberations on this Bill played a significant role in the passing of the legislation.

2. BACKGROUND

The establishment by the Legislative Council of two simultaneous Select Committees in August last year, to inquire into related issues (Shop Trading Hours) was somewhat unusual. The circumstances of the appointment of both Committees were discussed in the Introduction to this report (1.1).

The purposes of the two separate Select Committees were clearly different. The first Committee (Select Committee on the Shop Trading Hours (Miscellaneous) Amendment Bill 2002) can be characterised as an inquiry requiring an immediate outcome and specifically considering the content of a Bill to amend an existing Act of Parliament (Shop Trading Hours Act 1977).

The current Committee (Select Committee on Retail Trading Hours in South Australia) was established to inquire and report on broader issues that would impact on the wider retail industry and consumers in the longer term.

The Final Report of the Select Committee on the Shop Trading Hours (Miscellaneous) Amendment Bill 2002 (October 2002) contained a short history of the regulation of trading hours in this State and a brief summary of the current provisions. It is fair to say that during the last 25 years this legislation has been the subject of much debate, review and substantial amendment, leading to reduced regulation of shopping hour restrictions.

In addition to the two Select Committees appointed last year, in the last nine years three public reviews of various aspects of the legislation have been held. In 1994 and 1998 the Government established general inquiries into shop trading hours (the report of the 1998 inquiry was not publicly released). Both these reviews recommended or discussed the option of a staged deregulation of trading hours in this State. The inquiry undertaken in 2000 was predominantly concerned with the Glenelg Tourist Precinct regulations and resulted in amendments to the Act to allow parts of Glenelg to trade the same hours as permitted in the City (Central Shopping District).

The need to review shop trading hours legislation is also a requirement of South Australia's commitments to the National Competition Policy (NCP). The Shop Trading Hours Act 1977 was one of the Acts listed by the South Australian Government as potentially restrictive on competition. To meet NCP obligations nominated legislation had to undergo an independent, transparent review process and, where appropriate, the necessary reforms. Many of the issues covered by this Committee's Terms of Reference are matters of interest in any NCP review, including the concept of public interest benefit. These matters will be discussed further in this Report.

As can be seen by the above description of recent deliberations on matters relating to shop trading hours, it has been an ongoing political issue for many years and the stakeholders involved and reasons for further review are many and complex.

Shop Trading Hours in South Australia have been regulated for over 100 years now and were initially enacted to protect shop employees against being required to work excessively long hours. The current legislation is generally accepted as being

discriminatory and restrictive to open trade between different retailers. This conclusion is reached because different classes of shops are subject to varying trading hour restrictions depending upon such things as size, location, product range, ownership arrangements, number of employees.

However, it is arguable that the Act does not need to be repealed in a less regulated environment. The question is whether or not there is still sufficient community benefit accruing from the regulation of trading hours to offset the disadvantages of the restrictions imposed.

3. EVIDENCE AND ISSUES IN RELATION TO TERMS OF REFERENCE

- 3.1** This section of the report will provide a summary of the submissions, evidence and other research received by the Committee as they relate to the terms of reference of the Committee. It will attempt to draw together common issues of import to the inquiry.

In general, much of the evidence presented fitted neatly into two distinct groupings. Those in favour of the retention of trading hours regulation and those seeking either the total deregulation of hours or at least seven day trading for all retailers. In most cases their submissions reached diametrically opposed conclusions on the effects and implications of changing trading hours.

Although the retail industry covers a vast array of classes of goods and methods of sales, a large component of submissions concentrated on the market affects of grocery lines such as those commonly sold by supermarkets/mini marts/convenience stores/delis. Similarly when discussing impacts of extended trading hours on shopping locations and types, the comparisons were between larger shopping centres and smaller neighbourhood centres and strip shops.

Many of the submissions provided detailed statistics and graphs to support their views. However, the Committee found this data inconclusive, as it seemed possible for each party to be able to reach completely different findings from similar facts by using diverse assumptions and other variables.

The Committee received evidence from a wide range of interested parties ranging from independent small retailers, academics, retail associations to large national corporations and Government agencies. The Committee members were impressed by the quality of the submissions received and the effort made by all parties to present their particular views.

- 3.2** The likely impact of changed retail trading hours on the level of market domination by a small number of retailers and the consequent effect on their competitors and suppliers in particular -

- (i) is it likely to be anti-competitive in the longer term?
- (ii) what is the likely long-term impact on prices?

3.2.1 Within term of reference (a) the Committee noted the following core issues for its considerations based on evidence presented. In an attempt to better focus on the individual components, the reference has been broken up into three parts – effect of market domination generally, effect on suppliers and impact on prices.

3.2.2 All submissions received commented on the expected impact that extended or deregulated trading hours would have on market share and its effects on competition. As stated above the two distinct trains of thought on these subjects reached different conclusions on the anti-competitiveness of the current Act or justified its retention for other reasons.

A summary of these assertions from each group, without attribution, follows.

3.2.3 Positive impact of extended trading hours:

- The Shop Trading Hours Act 1977 is discriminatory and restricts competition. The removal of anti-competitive practices is desirable. Deregulation benefits businesses, employees and customers. Businesses are innovative and flexible. They can adopt practices to enable them to survive market changes (including increased competition). The main outcome of extended shopping hours is customer convenience, with an expectation of increased jobs and turnover.
- Deregulated hours will bring economic and social benefits to South Australia. Retail sales will increase, creating additional economic activity in the State. Employment at large retailers currently unable to trade extended hours will increase.
- Existing infrastructure (idle during restricted hours) will be better utilised and there will be greater efficiency in the use of retail, transport and public facilities through the smoothing out of retail trading patterns.
- New investment by retailers, suppliers and producers will be stimulated. Many suppliers and producers are small businesses and growth in sales will be beneficial to their operations and business security.
- Consumers will be provided with greater choice over a longer period at competitive prices as efficiency gains deliver lower costs.
- Small retailers located near larger stores will benefit from increased discretionary spending by a larger number of consumers under deregulation.
- Deregulation elsewhere in Australia and overseas has been successful and nowhere are they seeking to return to trading restrictions as a result of economic and social concerns.
- Data does not support the assumptions that deregulation will lead to a decline in small business and increased domination by a small number of retailers. In Victoria the independent grocers are still competitive following deregulation.
- The data used about the market share of Woolworths and Coles is misleading and is not a true indicator of market dominance as it was not collected for this purpose. The best measure of the food market is the Food, Liquor and Grocery share data. This data for South

(Summary of assertions from evidence, without attribution, continued)

Australia (2201/2002) showed that Coles and Woolworths held 49.9% of the market and independents 50.1%. This is a relatively large share by world standards for independents in this market.

- Recent Federal enquiries into anti-competitive behaviour (1999) and pricing (2002) found no evidence of breaches but did recommend some administrative amendments. Other Federal Parliamentary Committees reached similar conclusions.
- Independent retailers are seeking to restrict open competition via trading hour restrictions. They are also seeking to cap market share by large supermarket chains.
- The driver of change for retail hours should be consumers. Lifestyle changes, time pressures and increased workforce participation by women require extended trading hours. Surveys of customers consistently show 60-70% support for Sunday Trading. There has been a rapid take-up of Sunday trading when permitted and its importance as a trading day is increasing.
- Retailers and shopping centres need to be open to compete for consumers leisure time and spending.
- Market size does not necessarily translate into abuse of market power and supermarket retailing is more open to competition than most industries. Large market share does not automatically equate to permanent protection from competitors and any attempt to reduce or cap market shares will reduce the ability to take advantages of economies of scale that benefit the consumer.
- The existing Trade Practices Act provides ample scope for prosecution if major supermarkets are behaving anti-competitively. Trade Practices Act provisions should be applied consistently for all industries in keeping with the universality principle of the NCP.
- Close scrutiny of assertions made by groups representing independent traders are not validated by the data. This applies to the impact of increased market share following deregulation affecting small retailers, viability, prices, employment and turnover.

3.2.4 Negative impact of extended trading hours:

- The push for changes in trading hours is coming from Coles Myer and Woolworths to increase their existing high level of market share, not the public. The increase in market share will come at the expense of small retailers and speciality shops that will not be able to compete on a level playing field. This is anti-competitive.
- Deregulation in Queensland did not increase turnover, but the costs for trading longer hours increased. In most cases the option of not

(Summary of assertions from evidence, without attribution, continued)

trading is not a reality as the small trader would lose market share, thus reducing purchasing power and margins.

- Deregulation inevitably leads to fewer participants in the market and less jobs.
- Restriction of shop trading hour regulations is necessary to maintain the level playing field and avoid the demise of independent and speciality retailers. Smaller shops and independents cannot compete fairly against larger traders in large shopping centres (transport, advertising, cross ownership, rent, anchor tenants).
- Deregulation does not increase retail spending – same expenditure over a longer period. No link between trading hours and sales, increased operating costs.
- No clearly demonstrated benefits of deregulation in terms of employment, investment and prices.
- Deregulation provides the means for transferring turnover and jobs to big business.
- South Australia currently is not disadvantaged and there is no need to dogmatically follow deregulatory demands of the NCP, deregulation will result in less competition, less choice and less shops.
- Deregulation leads to loss of sales, profit and turnover by independents with no corresponding increase in employment by big business.
- Effects of deregulation will be more severely felt in South Australia, due to size of market, small population and number of elderly.
- Experience following deregulation in Victoria did not lead to better employment growth than the non-deregulated States. Survey of small business (VIC) shows detrimental impact on small retailers. Market share of independent grocers in Victoria has fallen from 27.7% in 1996 to 20.1% in 2002.
- Coles and Woolworths are increasing market shares through acquisitions and deregulation of trading hours. Concerns were expressed about these companies retailing activities in the liquor industry and petrol. In 1990 Woolworths, Coles and Franklins held 65% of National market for packaged groceries and by 2002 the share for Woolworths and Coles only, was 76.4%. In South Australia this duopoly had 74.6% of the market in 2002. Overseas the level of concentration of market share is less for large corporations in retailing.

(Summary of assertions from evidence, without attribution, continued)

- Shops in major shopping centres will prosper under deregulation while small retailers in smaller locally owned centres and strip shops will find it increasingly difficult to be viable and this will ultimately disadvantage the public.
- To protect the public interest, a strong third force (independents) in the market with the critical mass necessary to provide vigorous competition to the major chain duopoly is required.
- Due to the size of the Marion Shopping Centre, deregulated hours will have a significant detrimental effect on the surrounding retail areas (including the CBD).
- Larger supermarkets have a labour cost advantage over small competitors (including penalty rates). With extended hours and diversified product ranges they are eroding the profitability of smaller retailers. Larger retailers employ less staff per dollar of turnover than smaller operators and any increase in market share as a result of deregulation will cost jobs. (Estimated 1.6 per \$100,000 in specialised food industry).
- No strong consumer demand for Sunday trading and only supermarkets will access extended hours during the week.
- Concerns have been expressed about large supermarkets behaviour in respect of small retailers and producers. This oligopoly/duopoly situation is reducing competition in retailing.
- It is predicted that extended trading hours allows single income households to make more visits to large shopping centres and that more discretionary expenditure is allocated to planned centres.
- Job losses in small business are expected as a result of supermarkets extending hours. Concern also about full-time jobs being replaced by part-time and casual jobs with larger traders. Many owner-operators will also need to find alternate income if market share shifts to large supermarkets.
- Regulated hours provide a counter balance to the massive advantages the major chains have due to market power, efficiencies and size. A duopoly is not in the best interests of consumers longer term and more weight needs to be given to the small business elements under NCP reviews, particularly in rural and regional communities. Small business needs other protections (ie Trade Practices Act) to deal with the issue of market power and strategic acquisitions by major competitors.

(Summary of assertions from evidence, without attribution, continued)

- Small business is seeking a fair go and a more level playing field through tougher laws against predatory market behaviour and unfair trading practices by big business. Major chain domination of markets leads to job losses, closures of family and small businesses, less choice for consumers and disintegration of rural and regional communities.
- Measures called for by small business advocates to ensure a more level playing field exists between small and large businesses include:
 - Incorporate “effect” tests under misuse of market power provisions of Trade Practices Act.
 - Prohibit anti-competitive creeping acquisitions.
 - Prohibit anti-competitive below cost pricing.
 - Prohibit anti-competitive price discrimination.
 - Vigorous investigations and enforcement of misuse of market power by ACCC in retail grocery industry.
 - Strengthen public interest test under NCP (small business factors).
 - NCP to require preparation of small business impact statement in any review.
 - NCP required to report on how competition is provided in highly concentrated industries.
 - Appoint NCP Deputy President with responsibility for small business.
 - Strengthen purpose test by introducing a list of factors to identify the purpose behind the offending conduct.
 - Allow collective bargaining by small businesses.
 - Increase penalties in the worse cases of anti-competitive behaviour (price fixing and bid rigging).
 - All NCP reviews to be public and conducted by an independent body. Review should include cost and benefit assessments in employment, small business, market dominance planning issues for retail centres, consumer choice and pricing.
 - Mandatory industry codes of conduct.
 - Outlaw “take it or leave it” contracts, where they are unreasonable.
 - Amend Industrial and Employee Relations Act to provide for redress by small businesses for unfair contracts or terms.
- Small traders want guarantees that efficient competitors will be able to survive in the industry before any changes are made. Government economic policies should give consideration to small business. The adoption of the proposed charter will create a business and commercial environment which maximises fair competition by prohibiting conduct that serves to stunt or inhibit the dynamic small business sector.

(Summary of assertions from evidence, without attribution, continued)

- In addition to concerns that market domination by major chains in the grocery, liquor and retail markets concern was expressed about the treatment of service station operations by oil companies and insurance company exploitation of crash repairers.
- Independents need market share to maintain buying power at comparable prices to major chains. A third competitive force will benefit consumers by more choice, better prices, better service and greater innovation.

3.2.5 Effects on Suppliers

Only a few submissions made specific comments about the effects of changed retail hours and market domination on suppliers. Once again disparate views were expressed by the groups advocating extended trading hours and those seeking retention of regulations. Concerns about oligopolies/duopolies behaviour in reducing competition in respect of suppliers were raised and their ability to exert enormous power over these groups, including farmers and growers.

Large retail chains are large purchasers of South Australian primary produce and locally manufactured products. They have long term supply relationships with local suppliers and work cooperatively with them to improve quality, yield and efficiencies of their businesses. Increased retail sales will create more opportunities for suppliers and their employees.

Many suppliers are small businesses and benefit from their relationship with large retailers, some are highly reliant on that business. An expanded retail market will provide more scope for suppliers to engage in product development partnerships and develop systems for interstate supply.

Experience interstate and elsewhere shows deregulated hours will not have major cost impacts on suppliers as warehouse and distribution services would require only minimal adjustments.

Independent supermarkets claim they will only have an impact of price competition if they maintain their market share. To achieve this they need to access products from suppliers at the same level as the duopoly chains. South Australia's grocery prices are the cheapest in Australia, due to the buying power of a strong independent sector.

Some of the evidence highlighted the 2002 ACCC Report to the Federal Senate into the differences in the prices charged by grocery suppliers to the major chains and to the independent sector. This report found that suppliers did not favour any single buyer. However, it did say that Coles and Woolworths had buying power that enabled them to obtain better wholesale prices more often than a comparable independent. Although it did not consider it to be anti-competitive conduct.

(Summary of assertions from evidence, without attribution, continued)

Smaller retail supermarkets believe this clearly showed that the duopoly held the upper hand with suppliers. They also questioned the validity of the findings as only 19 of the 50 suppliers approached forwarded responses. Others were not prepared to reveal the nature of their dealings with the companies.

Large businesses believe this report vindicates their position that their use of buying power due to economies of scale is usual commercial practice, not anti-competitive and is beneficial to the consumer.

The ACCC report also identified other competitive dangers associated with price discrimination:

- the possible subsidisation of lower prices for the two major chains by higher prices to others.
- raising of barriers to entry to the market by new entrants.
- encouraging independent retailers to leave the industry, thus reducing the number of the independents below the critical mass required to be competitive.
- competitive processes reduced with likely outcome of parallel conduct or tacit collusion involving those remaining in the industry.

Some submissions believe this situation justifies the strengthening of the Trade Practices Act to ensure a level playing field for small business competing against powerful corporations.

3.2.6 Impact on Prices

Once again submissions covering the price impact were vastly divergent depending on whether they were advocating deregulation or not. **The following is a summary of the various views expressed:**

- Deregulation does not diminish competition and therefore prices should be unaffected. Many other issues impact on the setting of prices other than hours of trading.
- If deregulation leads to fewer players in the market, this will inevitably reduce competitive pressures and prices will increase. Increased hours of trading will increase operating costs and would put upward pressure on prices to maintain margins.
- It is expected that long term, as competition declines, Adelaide prices will increase to match Melbourne and Sydney, particularly in speciality food areas (eg butchers). If National Competition Policy assumptions regarding competition are correct, Sydney should have lowest prices and not Adelaide which is still regulated. NCP principles do not appear to work in retailing.

(Summary of assertions from evidence, without attribution, continued)

- Prices are lower in Adelaide due to direct competition between the majors, the presence of a strong competition from independents and a wide variety of outlets. Some submissions suggested that Coles and Woolworths do not always compete head to head in some markets.
- There could be downward pressure on prices as a result of extended hours of trading due to the ability to spread fixed overheads over a longer period of trading and from the smoothing out of peaks of high customer demand.
- Convenience stores and some smaller traders have higher prices for products than larger traders. If larger retailers are able to offer longer hours in direct competition to the more expensive traders, it is expected that prices on average will reduce and more expenditure will occur in the lower priced outlets. It is expected that lower prices will result from deregulation as efficiency gains deliver lower costs to retailers.
- A vigorously competitive independent grocery sector in South Australia is required to reward customers with competitive prices and a wide variety of choice. Any diminution of competitiveness of independents will leave the market open to potential abuse by oligopoly chains.
- There is no obvious relationship between prices and increased trading hours from the data interstate.
- Coles and Woolworths strongly compete against other traders and each other. The Australian market is open and competitive as evidenced by the performance of independents in most States and the entry of new large competitors into the market (ALDI). This tends to keep prices competitive to maintain market share and ultimately profits.

3.3 Social Consequences of the Changed Trading Hours

Under this term of reference the Select Committee will examine the social implications of extended trading hours. In this regard the scope of “social consequences” has been given a wide meaning. A wide variety of topics were canvassed in the evidence presented and a **summary of the major issues follows**. Again completely opposite outcomes from the different groups were anticipated as a result of extended trading hours.

- Increased access to shops will assist family life and provide greater variety and flexibility to consumers. This is important with the increased rate of participation of women and two income families in the workplace.

(Summary of assertions from evidence, without attribution, continued)

- Protections for employees were suggested to ensure that employers in the retail sector take account of the impact of hours worked by an employee on the employee's family members.
- Extended hours will not lead to any significant increase in employment by larger retailers and will detrimentally reduce employment in smaller retailers. Larger retailers already employ staff after hours and will adjust rosters to cater for extra hours of trade. Extra hours rostered has a detrimental effect on family lifestyles.
- Changing hours has no negative impact on the community in general and it provides families and individual consumers with greater flexibility of working hours and opportunity to earn extra wages.
- Concerns about safety of employees was raised and the danger of late night trading with limited staff on duty. Also the safety aspects of employees travelling home after late night trading.
- The loss of employment and income in small family businesses will not be fully offset by jobs created in large retailers.
- Extra hours will increase the need for additional child care and this will be an extra cost for the working parent and keep them away longer from their children.
- People need at least one day off per week for rest to balance their lives. Family life would be better off with no Sunday trading. Some members of the community wish Sundays to be reserved for religious pursuits. Deregulated hours will contribute to welfare and family problems through time pressure stresses.
- There is a social element to shopping at your local store and the elderly and less mobile consumers will lose this amenity if small neighbourhood traders close. South Australia has the highest ageing population levels and accessibility of shops for the elderly is important.
- The closure of small local stores will be felt more severely in rural communities and could lead to a decline in some country towns. This would have an effect on families, sporting clubs and social activities and increase unemployment. Such closures increase the dependence on welfare payments by former small business operators. These shops are the hearts of regional communities and provide vital services and employment.
- Special effects on females as one in five females work in retail industry – disruption to family and sporting lives by increased hours and Sunday trading.
- Sunday trading discriminates against Christians who wish to worship regularly on Sundays, if they or family members are required to work.

(Summary of assertions from evidence, without attribution, continued)

- Deregulation does not contribute to employment growth and leads to increased market share by big business with resultant closures by independents with higher shop vacancies, increased consumer travel and higher prices. Shifts in market share to large retailers produce a nett loss of jobs and a drift from full-time positions to part-time and casual jobs.
- Larger retailers and organisations representing them predict that extended trading hours and particularly Sunday trading will increase employment in retailing and associated industries. This has been the experience interstate and any minor employment reductions at affected small retailers will be more than compensated by increased employment at large retailers and by other types of small retailers. Employment in Victoria has increased at a faster rate than the rest of Australia since deregulation.
- Lifestyle changes and especially time pressures are the drivers of change for extended hours. Increasing workforce participation rates of women requires additional seven day a week trading to meet current consumer expectations.
- Increased employment by large retailers will be across all areas of employment – full-time, part-time and casual. It will provide opportunities to all prospective employees to suit their individual requirements for working hours. From casual after-school work to management positions. Major retailers provide employees with a choice of rostering arrangements, particularly voluntary work on Sundays.
- Sunday trading is beneficial to family life. It provides more time to shop as a family and more time to spend at other times to attend to other activities (sport, children’s activities, recreational and educational pursuits and religious worship). Many employees prefer to work on Sundays and evenings to follow other pursuits during “normal” trading hours.
- Tenants of shopping centres do now and should continue to be able to make a choice of whether or not they trade hours outside of core hours, especially on Sundays.

3.4 Other Related Matters

The evidence received by the Select Committee covered a wide variety of topics relating to the effects of extended trading hours. With term of reference (c) - Other Related Matters, the major ancillary issues presented have been aggregated and summarised under the following headings.

3.4.1 National Competition Payments

Following the Hilmer Committee Report on National Competition Policy all nine Governments of Australia (Federal, States and Territories) in 1995 signed the Competition Principles Agreement. This Agreement committed all Governments to undertaking reforms of anti-competitive practices, institutions and laws that were inhibiting economic growth in Australia.

These reforms involved reviews of relevant legislation by State Government and removal of anti-competitive restrictions unless it could be demonstrated that such restrictions were in the public interest (public interest benefit). The reviews undertaken had to be conducted through an independent, transparent, rigorous and objective process. The National Competition Council (NCC) has a role in assessing each Government's progress in implementing the agreed National Competition Policy (NCP). In 2000, after 5 years, the NCP was reviewed and all Governments recommitted for a further 5 year term.

The Shop Trading Hours Act 1977 is legislation that has been identified as containing anti-competitive elements. Governments, including South Australia, have agreed to complete their legislative review programs by 30 June 2003. In the 2002 Report of the NCC, South Australia and Western Australia were assessed as not complying with the Competition Principles Agreement in relation to shop trading hours.

Much of the financial returns flowing from NCP accrue to the Commonwealth Government. In recognition of the State reforms, the Commonwealth provides competition payments annually to the States as a reform dividend. The competition payment to South Australia is currently approximately \$57m per annum.

The NCC conducts assessments on each Government's progress in achieving the reforms agreed and reports annually to the Federal Treasurer. The NCC makes recommendations regarding competition payments, but it is the Federal Treasurer who decides whether a State receives full or partial competition payments.

The deadline for reform of South Australia's shop trading hours laws under the NCP is 30 June 2003 and it is likely that the NCC will recommend some form of penalty to South Australia's competition payments for 2003-2004 if amendments to the laws are not enacted. Although the quantum of any reduction in payments is unknown the NCC recommendation will probably include an amount as a future incentive for the State Government to finalise a review and implement any appropriate reform.

It would not be expected that a major portion of the estimated \$57m would be withheld by the Federal Treasurer, but any reduction in competition payments will have a significant impact on the State Budget.

In view of the inherent obligations of the NCP many submissions urged the Government to undertake the necessary reforms of trading hours and thus avoid reduced competition payments. Others questioned the need for South Australia to dogmatically follow the NCP and sought changes to the review guidelines in relation to the public interest tests, particularly small business elements of the assessment.

(The recent Federal Budget papers indicated that the estimate of South Australia's Competition Payments for the next three years is \$178.4 million, with \$58.5 million for 2003/04)

3.4.2 Investment in Retail Industry

A number of submissions commented upon the investment implications of extended trading hours. On one hand proponents of deregulation claim that investments are being lost to this State by the lack of progress on trading hours. Investors are holding off investing in retail in South Australia until these restrictions are lifted and they can fully utilise their infrastructure.

Similarly to retail investors, evidence was received that shopping centre investment is being diverted away from this State due to trading hours restrictions and the core hour provisions of other legislation.

On the other hand opponents of extended trading hours claim that deregulation will reduce or wipe out the investment of small family businesses by increased market share by large chain operators. The profits and viability will be reduced and therefore the resale value of small business will be less under deregulation. In most cases the sale price is the retirement nest egg of small businesses.

Some submissions also proposed that assistance be given to retailers affected by extended trading to compensate for any losses incurred as a result of deregulated trading. A portion of the Competition Payments received could be used to restructure the industry particularly small family operators.

3.4.3 Planning Issues

A few submissions made reference to planning concerns and related issues associated with extended trading hours. There was an expectation that deregulated trading hours will lead to increased sales by large retailers at the expense of some sectors of small retailers. Similarly parties anticipated a shift in trade towards larger shopping centres to the detriment of small local traders and strip shops. The effect of this will be higher vacancy rates of retail premises in areas outside of large centres and the adverse impact of this on the community. The problem will be worse in rural and regional areas.

Some submissions held that this situation will disadvantage the elderly and the less mobile as they will have difficulty accessing shopping centres that are further away than a neighbourhood shop. Others claim that this is not a problem as most major centres are also transport hubs and community centres and may lead to better access and facilities for disadvantaged groups.

From evidence provided to the Select Committee it would appear that South Australia's planning strategies support the development of large planned shopping centres (regional centres). Other smaller centres throughout the suburbs are also catered for depending upon their facilities and services (District Centres, Neighbourhood Centres and Local Centres). The establishment of bulky goods outlets and how they fit into the planning laws and shopping hour restrictions was also mentioned.

Another important issue was the effect of extended hours of trading on the City precinct. The demographics of South Australia (population and income) currently means there is insufficient demand for shops to open the available hours in the City area. If the metro area was permitted unrestricted trading hours it would impact significantly on the City. The vitality and viability of the City centre would diminish. Some parties advocated the pre-eminence of the City as the State's premier retailing centre and visitor destination that needs to be maintained and enhanced.

Similar concerns were expressed about the possible decline in other tourism precincts on Sundays and public holidays if deregulated hours were introduced. Tourists are not attracted to destinations with high shop vacancies and no diversification in the in-town retailing. In this context some submissions highlighted the fact that other major cities such as New York, London, Tokyo and Toronto have trading hour restrictions. This does not seem to affect their reputation as modern cities or visitor numbers.

3.4.4 Internet Shopping

A number of submissions made mention of internet shopping and other forms of shopping where the consumer does not physically visit a retail premises (television shopping, on-line shopping, catalogue shopping, etc). Some sought greater flexibility in shopping hours so that shops could compete with these new forms of marketing which do not have restricted hours of operation. The success of internet shopping which is growing will lead to a reduction in personal shopping and the hours of trading need to be similar.

This argument is countered by other submissions that believe the time poor consumers are adequately catered for without the need for extra hours by larger retailers, by services provided by on-line shopping and convenient stores. Only a minority of consumers use these services and the other consumers do not wish to share the costs associated with this convenience. Users of these services currently pay a premium for the extra hours in terms of prices of goods.

3.4.5 Implementation of Deregulation

Many submissions addressed the issue of implementing deregulated trading hours, if the decision was made to adopt this policy. Some opponents to extended hours believed that deregulation was inevitable in the longer term and suggested matters that need to be resolved before implementing any changes. Some of these conditional issues were discussed in Section 3.2.4 and were about maintaining a level playing field for small business to counteract the advantages of large retailers.

Small business is seeking a strengthening of the Trade Practices Act to protect against predatory market behaviour and unfair trading practices by big business (including the 'effects test' for misuse of market power). Small business factors should also receive greater weighting under the NCP public interest test. Collective bargaining by small business and a redress for unfair contracts or terms was also part of the package of reforms sought.

The issue of penalty rates paid by small retailers under the Award for Sunday trading and the agreements in place by the large chain stores was raised as an anti-competitive advantage for large retailers. Some parties sought to have a general enterprise agreement in place for small retailers or an award variation to apply equal penalty rates for Sunday trading before implementation of Sunday trading. Other submissions stated that Coles and Woolworths pay higher rates overall than the Retail Award even though their Sunday rate is less.

Small retailers in shopping centres are also calling for rent equalisation between anchor tenants and others. They also seek that the range of products stocked by large retailers to be restricted similar to other lease conditions for some small retailers. These submissions advocate a continuation of the policy of voluntary work by employees on Sundays and public holidays and for Sunday and public holiday trading not to be a compulsory lease condition for retailers. They request that these days be excluded from core hour provisions at a shopping centre and leave it to the individual traders determination on whether to trade or not.

Previous reviews of shopping hours have recommended the phasing-in of deregulation over a given period. In 1994 the State Government report favoured a four year staged implementation of deregulation. Some submissions proposed a short one step process of between 3-6 months to allow adjustment. Others proposed a more lengthy process of implementation based on the general retail lease being 5 years, and allowing this period for any affected retailers to adjust/restructure or systematically leave the industry.

Another consideration if shop trading hours reforms are implemented in stages is the impact on NCP payments to the State. The NCP does not necessarily require deregulation, only the removal of anti-competitive and discriminatory restrictions. The draft Bill introduced by the Government

last year and subsequently defeated in Parliament, sought to incrementally reduce some of the inherent discriminatory restrictions of the current legislation. However, this type of staged reform without a definite end product in the form of approved legislation may not satisfy the progress assessment of the NCC in relation to Competition Payments to South Australia.

The NCC 2002 Assessment of Retail Trading Arrangements in South Australia (Chapter 10) stated the following in relation to the 2002 Bill:

It is difficult to see how the reforms announced on 11 August 2002 address the problems identified above. The extension of week night trading does not cater for consumers who find it convenient to shop after 9pm and although the number of Sunday trading days will be increased, Sunday trading for suburban non-exempt shops is still prohibited on 42 Sundays of the year. The proposed reforms appear to do little to rectify the discrimination against large suburban department stores and supermarkets that are prevented from opening on Sundays while businesses selling similar merchandise in the central business district or Glenelg may open. While electrical goods retailers can now open on Sundays (along with specialist hardware, furniture, floor coverings and motor vehicle parts retailers), suburban department stores which sell similar merchandise are still unable to trade. The proposed reforms also continue the discriminatory treatment of suburban shopping centres, particularly those with department stores (which are unable to open) as 'anchor' tenants.

The reforms announced by South Australia on 11 August 2002 appear to recognise the confusion caused by the State's current complex system of exemptions. In this regard, the Government appears to be proposing future activity to reform the current legislation. At the time of completion of this assessment report, however, the Council had no details (apart from the news release) of the further action being considered by the Government in relation to reforming exemptions and streamlining the current laws. Given this, and that significant restrictions on competition still remain, the Council is unable to conclude that South Australia has complied with its CPA clause 5 obligations in this area. The August 2002 reform package indicates that South Australia intends to further develop its reform program. The Council will complete its 2002 NCP assessment when more details are available.

It would appear that any phased in extension of trading hours reforms would be a significant step forward, but there is a need to remove all discriminatory provisions to fully satisfy the NCP requirements. The NCC would need to assess any incremental changes in the context of the competition policy obligations and make the appropriate recommendations about Competition Payments to the Federal Treasurer based on their assessment of progress.

4. CONCLUSIONS

Throughout this inquiry the Select Committee was presented with conflicting evidence and submissions from parties with long held entrenched views on the impact of less restrictive trading hours. After considering the evidence the Select Committee was unable to conclusively make findings on many of the terms of reference.

Many submissions highlighted the experiences in other States following deregulation of trading hours as examples of the benefits or disadvantages of extended shopping hours. Although relevant to the deliberations of this Select Committee, the unique market and demographics of South Australia made a direct comparison difficult. The Select Committee found that extended trading hours, particularly Sunday trading, would lead to an increased share of the market for the Coles Myer and Woolworths chains, especially in the grocery sector. It was also likely that larger shopping centres would attract additional consumers to their facilities with extended trading hours.

It should not be assumed, however, that such outcomes necessarily mean that extended trading hours result in anti-competitive behaviour in the market. The Select Committee found that the evidence regarding the impact on competitors, suppliers, prices and social issues was inconclusive.

However, in view of the recent enactment of the *Shop Trading Hours (Miscellaneous) Amendment Act 2003* it would be premature for the Select Committee to make recommendations about the long term impact of changed trading hours, when there is no data available on the effect of the substantial increase in hours recently authorised (including Sunday trading).

In these circumstances the Select Committee recommends that consideration be given to re-convening a similar Committee after a period of operation of the new extended trading hours. Alternatively, the Independent Review required by the 2003 Amendment Act could be directed to report on the issues covered by the terms of reference of this Select Committee.

An important area that needs to be monitored in any further inquiry is the impact of the extended hours of trading recently approved on retail growth. The implications of increased market share for large retailers under less restricted trading hours needs to be carefully assessed against the effect on small retailers and the growth of the retail market share of overall expenditure. If overall retail expenditure increases, even with increased market share of sales by large retailers, the impact on small traders may not be as severe as in the case of where retail sales maintain their current share of overall expenditure across all sectors.

The Select Committee would also support a further review to be undertaken by the Australian Competition and Consumer Commission into the growing power of large supermarket chains. Such an inquiry should consider the submissions from the small business sector, which sought a fair go and a more level playing field through tougher laws against predatory market behaviour and unfair trading practices by big businesses (pages 11 and 12).

Hon T G Roberts MLC
Chairperson

Parliament House
ADELAIDE SA 5000
8 July 2003

HON IAN GILFILLAN MLC

SELECT COMMITTEE ON RETAIL TRADING HOURS IN SOUTH AUSTRALIA

DISSENTING STATEMENT

- A. The impact will be detrimental to smaller traders and strip shopping precincts. I am persuaded by the arguments submitted by those witnesses opposed to any further extension or deregulation of shop trading hours.
 - I. It is likely to be anticompetitive as more trade falls to the major players at the expense of small South Australian owned traders.
 - II. The more likely long term effect on prices at best is neutral but more likely, after a brief “honeymoon”, prices will rise as a duopoly controls the market.
- B. The social consequences as described by witnesses opposing the deregulation are plausible and would deprive many of the benefits of a free Sunday. The loss of many local shops will impact detrimentally on those in the community who find it difficult to travel far and who will miss the social contact of shopping at “their” shops.
- C. As the retail trade falls into fewer major and national companies, profits from trading will move from South Australia to other areas and many South Australian Family businesses will be taken over or cease to exist.
- D. The Democrats strongly oppose the Bill that is now an Act. It is clear the Government and Opposition were not prepared to consider the deliberations of this committee, by passing legislation before the committee reported to Parliament.

HON I GILFILLAN

ADELAIDE
8 July 2003

Appendix A**Schedule of Written Submissions**

The Committee has received the following submissions—

Baker, Dr Robert, Senior Lecturer, School of Human and Environmental Studies,
University of New England
Brownsea, John, Executive Director, State Retailers Association of SA Inc.
Burman, Brenton, Technical Director, Planning Policy, Planning SA
Cockburn, Milton, Executive Director, Shopping Centre Council of Australia
Corbett, Roger, Chief Executive Officer, Woolworths Limited
Evans, David, General Manager, Spend-less Shoes
Griff, Stirling, Executive Director, Australian Retailers Association SA
Horne, Ian, Executive Director, Motor Trade Association of SA Inc.
Jeffs, Rohan, Company Secretary, Woolworths Limited
Law, Susan, Chief Executive Officer, City of Adelaide
McKenzie, Alan, Director, National Association of Retail Grocers of Australia
Mara, Chris, Adviser, Government Relations, Coles Myer Limited
Rankin, Christopher, Executive Officer, Newsagents NASA of South Australia Ltd
Rossi, Joe
Such, Hon R B, Member for Fisher
Vaughan, Peter, Chief Executive Officer, Business SA

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| Woolworths Limited– Mr Roger Corbett, Chief Executive Officer Mr Michael Kent, Consultant–Retail Trading Mr Stephen Loosely, Partner, PricewaterhouseCoopers Legal | 181-201 |

