

Workplace Standards Tasmania

**Shop Trading Hours Act 1984
Regulatory Impact Statement**

May 2000

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1 Introduction

1.1 Background

At the meeting of the Council of Australian Governments on 11 April 1995, the Tasmanian Government (along with the Commonwealth and other State and Territory governments) signed three inter-governmental agreements relating to the implementation of National Competition Policy (NCP).

One of these agreements, the Competition Principles Agreement (CPA) requires the State Government to review and, where appropriate, reform by the end of the year 2000 all legislation restricting competition. Accordingly, the State Government developed a Legislation Review Program (LRP), which outlines both a timetable for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new legislative proposals that restrict competition or significantly impact on business are properly justified.

In accordance with the LRP timetable, an independent Shop Trading Hours Review Group (the Review Group) was constituted by the Government to review the *Shop Trading Hours Act 1984* (the Act). Membership of the Review Group is detailed in Appendix 2. This Regulatory Impact Statement (RIS) details the findings of the Review Group and the draft recommendations.

1.2 Principles underpinning the review

The free operation of competitive markets, where there are no restrictions on buyers and sellers, is generally regarded as the most effective way of allocating resources. This encourages efficiency in production, product innovation and the provision of a wide range of goods and services. In turn, it tends to lead to greater output, lower prices and higher employment, compared with the situation where there are major restrictions on competition.

However, there are many cases where it is desirable to restrict competition and to not allow market forces to operate unhindered. Such restrictions may be necessary in cases where:

- ④ decisions by producers or consumers impose costs on others in the community who are not compensated, such as with the pollution of rivers;
- ④ the absence of restrictions would lead to over-exploitation of the resource, eg. open access fishing;
- ④ consumers cannot be expected to have sufficient information about a product or the provider of a good or service to know that it meets quality, safety or hygiene standards;

- ④ competition would be wasteful due to the duplication of infrastructure, such as having two sewerage pipelines or two sets of electricity wires in the same street, in which case it is preferable to have a single, regulated firm to supply the entire market demand; and
- ④ there are certain goods that, due to their special characteristics, are not likely to be provided by the market, such as defence services and street-lighting, where everyone enjoys the benefit, whether or not they 'purchase' the good.

The examples listed above are known as cases of 'market failure' and usually require government regulation in some form, often involving restrictions on competition. It should be pointed out that there is also 'government failure', which occurs when the form of regulation imposed, including the administration of that regulation, leads to greater problems than if the market were left to operate unhindered.

Restrictions on competition are, therefore, not necessarily undesirable, but it is necessary to assess whether they are in the public benefit. For this reason, NCP requires all jurisdictions to examine restrictions on competition to ensure that only those that are in the public benefit remain. This involves examining the costs and benefits associated with the restrictions and assessing whether the community as a whole is better off retaining or removing them.

In considering the 'public benefit', NCP reviews are generally expected to consider employment, social welfare and equity considerations, such as those set out in Clause 3 of the CPA or Section 88 of the *Trade Practices Act 1974*. Appendix 7 provides a list of these factors that are usually considered as part of the assessment of the public benefit.

1.3 Summary of Terms of Reference

The Terms of Reference for the Review of the *Shop Trading Hours Act 1984* are produced in full in Appendix 1. In summary, the Review Group is to review the *Shop Trading Hours Act 1984* having regard to the following guiding principle as specified in the CPA:

"That legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and*
- (b) the objectives of the legislation can only be achieved by restricting competition."*

In order to document the Review Group's evaluation of the Act against this guiding principle, a RIS is to be completed. Amongst other things, this will consider whether the existing restrictions, or any other form of restriction, should be retained by assessing the costs and benefits of the restrictions.

The Review Group has also been asked to examine the following issues:

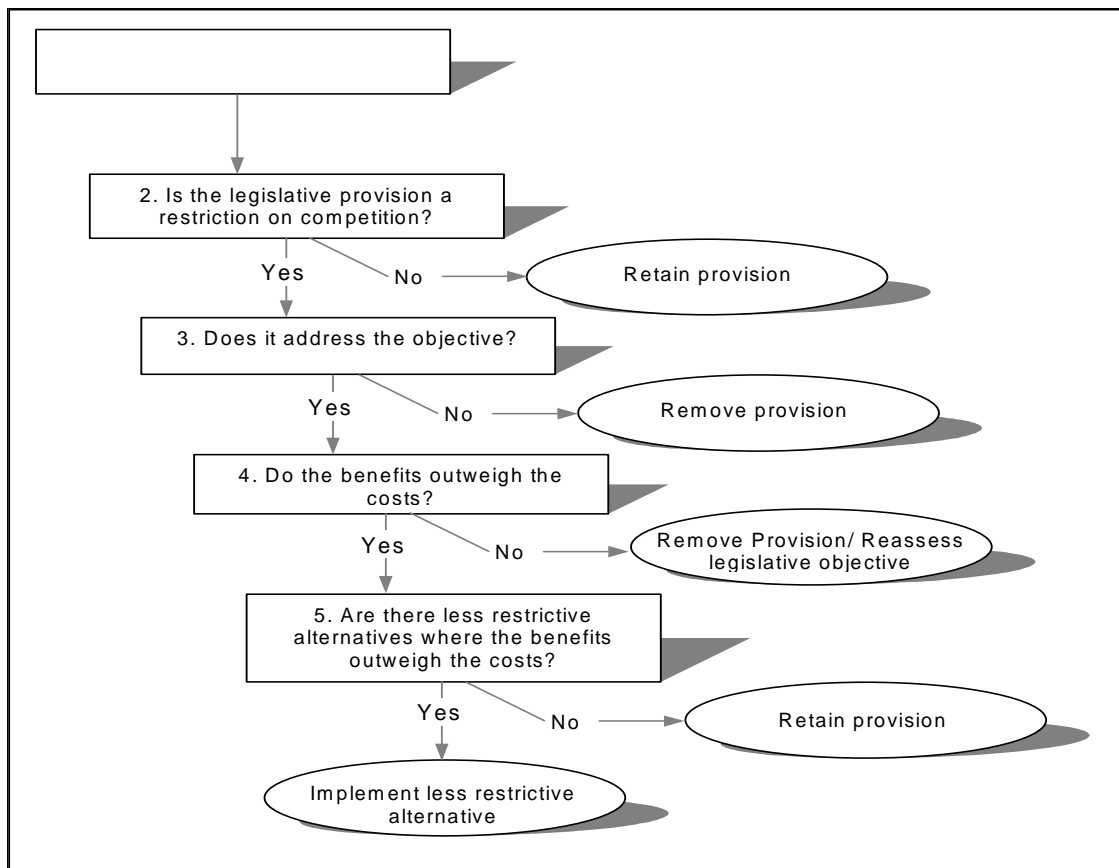
- ④ the likely effect on employment levels of any recommended changes to the legislation; and
- ④ whether any anti-competitive circumstances exist with respect to warehousing and distribution systems.

The Review Group is to provide a Final RIS and Final Review Report to the Minister for Infrastructure, Energy and Resources (Deputy Premier) and the Treasurer.

1.4 Approach and structure of RIS

In order to address the Terms of Reference, the Review Group has followed a formal analytical approach, which, in abstract form, is set out in Figure 1.

Figure 1: Analytical approach to this review



So as to address the Terms of Reference for this review, and also systematically document the Review Group's considerations in relation to each step of the analytical process, the RIS has been structured as follows:

- ④ Section 2 provides a contextual summary, findings and recommendations.
- ④ Section 3 provides an outline of the retail industry in Tasmania. The Review Group believes it is important to document the scale and scope of the industry, recent trends, and the factors which may distinguish the retail sector in Tasmania from that in other jurisdictions.
- ④ Section 4 details the rules that govern the opening hours for retail traders in Tasmania and discusses the way in which these act as a restriction on competition.
- ④ Section 5 analyses the objectives of the legislation and the extent to which the restrictions on competition in the Act meet the objectives in accordance with *Step 3* in Figure 1. This section also examines whether there are market failure issues in Tasmania's retail sector.
- ④ Section 6 presents the 12 key, or headline, issues that have emerged during the consultation process. In relation to these issues, a number of assertions have been made, which, in many cases, are mutually inconsistent. The Review Group has therefore endeavoured to evaluate these assertions and form a judgement in respect to these key issues. The specific Term of Reference in relation to employment impacts is discussed in sections 6.5 and 6.6.
- ④ Having regard to the issues addressed in section 6, and in accordance with *Step 4* of Figure 1, Section 7 weighs up the costs and benefits of the restrictions and presents the Review Group's assessment of whether the legislation is in the overall public benefit.
- ④ Section 8 details the Review Group's draft recommendations and includes the transitional arrangements the Group considers to be appropriate.
- ④ Section 9 outlines the findings of the Review Group on a number of other related issues that are beyond the Terms of Reference but which the Review Group considers may need to be further investigated by Government.

The Review Group's recommendations on whether any anti-competitive circumstances exist with respect to warehousing and distribution systems will be presented in the Final Report. As this is not a matter that relates to the restrictions on competition in the Act, this Term of Reference is not addressed in this RIS.

1.5 Process for undertaking the review

The Review Group has undertaken a comprehensive and highly consultative review of the Act.

To date, the Review Group has produced and circulated a Discussion Paper, which identified the objectives of the legislation and the restrictions on competition in the legislation. The paper also outlined the key issues in relation to the restrictions. On the basis of verbal and written submissions, the Discussion Paper was well received in terms of providing a balanced account of the key issues.

A number of written submissions were received in relation to the Discussion Paper as listed in Appendix 4. Public hearings were held in Burnie, Launceston and Hobart over three half-day periods and many of the attendees used the opportunity to outline their position. A list of those who provided a verbal submission is provided in Appendix 5.

The Review Group then sought further discussions with several key stakeholders in order to obtain additional information, some of which was provided on a commercial-in-confidence basis. Those parties who were consulted as part of this process are listed in Appendix 6.

Consultation to date has been very important in helping the Review Group develop this RIS. It is important to highlight that at this stage the Review Group has developed only draft recommendations. Following consideration of any written submissions received in response to the RIS, a Final Report will be prepared and presented to the Minister for Infrastructure, Energy and Resources and the Treasurer, outlining the Review Group's final findings and recommendations. Cabinet will then consider these recommendations.

1.6 Submissions

The Review Group invites written submissions responding to the RIS. All submissions received will be acknowledged and a copy provided to each member of the Review Group. In preparing a submission, it can be assumed that all material already provided to the Review Group has been reviewed and taken into account in preparing the RIS. Any submission in response to the RIS should therefore seek to provide new material that may further assist the Review Group in its deliberations.

When a submission is lodged, unless indicated otherwise, it becomes a public document. These submissions can (and probably will) be viewed by others and sections may be quoted from or referred to in the Final Report. If it is desired that a submission not be made public or quoted, it is recommended that the author advise Workplace Standards Tasmania in a covering letter with the submission. Under the *Freedom of Information Act 1991*, Workplace Standards Tasmania cannot guarantee the confidentiality of a submission. However, information that is commercial-in-confidence may be exempt from disclosure.

Submissions are to be forwarded to the Review Group at the following address:

Judy Parnell
Executive Officer
Shop Trading Hours Review Group
Workplace Standards Tasmania
30 Gordons Hill Road or PO Box 56
ROSNY PARK TAS 7018

Email: wstinfo@dier.tas.gov.au or fax: (03) 6233 8338

Submissions should be received by 5.00 pm on Friday, 9 June 2000.

2 Executive summary

2.1 Context

The retail industry is undergoing major change as demographic and employment trends result in the traditional distinction between work and leisure time becoming less clear. Other retailing services through TV, catalogues and e-commerce are enabling consumers to shop where and when they choose, unconstrained by their work and leisure patterns and access to shops.

Retailing is a vital and growing sector of the Tasmanian economy, currently accounting for around 8% of GSP, with about 17,000 full time and 12,000 part-time jobs, comprising in aggregate 14.6% of total employment. Within the sector, supermarkets and grocery stores account for about 4,800 jobs (16%) and department stores 2,500 jobs (8.6%).

The *Shop Trading Hours Act 1984* prohibits major retailers from trading during prescribed periods, these being Sundays, public holidays and weekdays after 6:00 pm, other than Thursday and Friday. It applies to businesses that employ more than 250 people, which captures Woolworths, Coles Myer, Harris Scarfe and, by association, other business that form part of these groups such as Dick Smith and Katies. For the purposes of the analysis, the Review Group has proceeded on the basis there is one restriction on competition, namely the inability for some retailers to trade at particular times.

The Act has a significant impact on a range of stakeholders including retailers, consumers, tourists and the economy as a whole and this review has taken full account of such impacts in evaluating the public benefit of the restrictions. It is clear, however, from the submissions received by the Review Group that the grocery segment of the retail sector is where the Act has the more significant and contentious impacts. This sector in Tasmania comprises the 43 major chain supermarkets operated by Woolworths and Coles and around 530 independent supermarkets and convenience stores. Some sections of the RIS therefore focus on the particular impacts of the restrictions on competition in this segment.

2.2 Findings and conclusion

The Review Group has not identified actual or potential market failure as a reason to justify the restrictions on competition in the Act. In this respect the rationale for regulation of shop trading hours is clearly different from the rationale for economic regulation in most other areas. Rather, it is apparent the Act has evolved to its current form in an endeavour to deliver balanced outcomes to a range of competing interests including consumers, employees, small and large retailers.

The Review Group identified 12 key issues from the submissions and other research that are central to the analysis of the costs and benefits of the restrictions. For many of these issues, the Review Group received submissions that made competing or conflicting assertions and

the Review Group has made an assessment based on the best available information. The Review Group's findings in respect of the key issues are set out below.

- ④ The restrictions act as a significant constraint on growth in the retail sector. Relaxation of the restrictions would increase retail expenditure by Tasmanians and visitors, leading to growth in the retail sector as a whole.
- ④ The restrictions do improve the viability of some independent stores, especially in the grocery sector. While the Review Group does not envisage widespread closure of shops if the restrictions were removed, it is acknowledged that their removal would lead to the closure of some marginally viable stores, changes in employment arrangements and diversification of products and services to adjust to a new trading environment. The Review Group found that wholesale services to the independent sector would not be materially affected by removal of the restrictions on shop trading hours.
- ④ The impact of removing restrictions on trading hours on those smaller non-grocery retailers that tend not to trade on Sundays and public holidays would vary, depending on the commercial decisions made by those retailers. It is likely that some retailers would prosper through increased turnover, while others may find an unrestricted trading environment less attractive because of impacts on profitability and their work and leisure preferences. However, the Review Group finds there is considerable potential for net benefits to accrue to this sector.
- ④ The restrictions support employment in the independent grocery sector, while limiting employment for the major chain stores and associated entities which for part of these groups. Removal of the restrictions is not expected to result in a reduction in employment. Instead, it is expected that there would be an increase in gross earnings through additional employment, increased real wages, or a combination of both of these outcomes, as the retail sector expands.
- ④ The restrictions have a neutral effect on the respective levels of permanent and casual employment. The trend towards less casual employment in the retail sector as a whole is not expected to be materially influenced by the removal of the restrictions.
- ④ The restrictions have varying impacts on employees in the retail sector in terms of the way in which the employers offer working conditions, time off and wages. Accordingly removal of the restrictions would not necessarily result in all employees being better off in terms of individual preferences. However the Review Group expects that the welfare of employees in the retail sector as a whole would not be adversely affected by the removal of restrictions and any impacts on employees can be easily managed through normal industrial processes.
- ④ The restrictions impose a major constraint on consumer choice, in respect to when and where consumers shop. This is because a significant percentage of Tasmanian shoppers have indicated in a specially commissioned survey that they would change their

shopping patterns in the event that the restrictions were removed. Almost two thirds of shoppers are in favour of removing all or some of the restrictions on shop trading hours.

- ④ The restrictions do not limit the possibility for anti-competitive conduct arising from the market dominance of the major grocery chains. Therefore, the Review Group believes that the removal of the restrictions would not of itself lead to any greater likelihood of such conduct. Nonetheless, this issue is potentially very important for Tasmania and a specific recommendation has been made in respect to this matter.
- ④ The restrictions do not have a significant impact in Tasmania on grocery prices in the major supermarkets, the independent supermarkets and the convenience stores. However, the restrictions prevent shoppers from exercising their choice to purchase cheaper groceries from major chains at certain times. Furthermore they discourage the entry of a third national supermarket chain into Tasmania, which would lead to lower grocery prices.
- ④ The restrictions have unintended discriminatory impacts that are not related to the objectives of the Act, since certain retailers are restricted from trading at times when direct competitors, that may have very similar retail stores, face no such restrictions.
- ④ The restrictions support access to shopping for some members of the community with special needs. However, access will not be materially affected in the event of removal of the restrictions because the Review Group does not consider there will be widespread closure of shops. In addition, the specially commissioned survey found that a significant proportion of Tasmanian shoppers over 55 are inconvenienced by the current restrictions.
- ④ The restrictions do not effectively promote Sundays and public holidays as days of rest, as employment in retail businesses is permitted, most notably in independent grocery stores. The Review Group considers that any legislation seeking to prescribe recreation days in order to achieve social outcomes (such as days of special religious or national significance) should apply, as much as possible, across the entire retail sector to avoid the discriminatory effects that would otherwise arise.

In addition to these principal findings the Review Group has also found that, from a state-wide perspective the restrictions on shop trading hours do not enhance Tasmania's attractiveness and positioning as a location for young people to live and raise families and develop careers, or as a destination for visitors. In addition they do not promote Tasmania as a tourist destination.

The Review Group has weighed up the costs and benefits to the various key stakeholder groups arising from these findings.

Conclusion and principal draft recommendation

On the basis of the Review Group's evaluation of the cost and benefits of the restrictions, the Group concludes that the restrictions cannot be justified as being in the public interest. The private benefits to selected stakeholders, principally the independent grocery retailers, are assessed as being less than the costs imposed on the Tasmanian community as a whole, particularly consumers, the restricted supermarket chains and the total retail sector.

The Review Group recommends that the Tasmanian Government remove all restrictions on shop trading hours in the *Shop Trading Hours Act 1984*. If the Government chooses to restrict shop trading on days that it considers to be of special significance, which might include Christmas Day, Good Friday and ANZAC Day, the Review Group recommends that these restrictions should apply, as much as possible, to all retailers on a non-discriminatory basis.

2.3 Other recommendations

The Review Group also has a number of other recommendations, as noted below.

- ④ That legislation be introduced to Parliament to remove the restrictions on competition as a priority issue. However, the Review Group considers that all retailers, though principally the independent supermarkets and convenience stores, will require a reasonable amount of time to prepare for an unrestricted trading environment. Therefore, if this legislation is passed in the Spring Session of 2000, unrestricted retail trading in Tasmania should take effect from the 1 January 2002. If the legislation is delayed until the Autumn Session 2001, the restrictions should be removed at a correspondingly later time.
- ④ That appropriate legislative measures be introduced to prevent a landlord from requiring tenant retailers to trade at prescribed times.
- ④ That Government further consider issues associated with the market power of the major supermarket chains, as this is an important issue to Tasmania. The Review Group has found there are mechanisms available to respond to claims of misuse of market power, but there are factors that may impact on the extent to which these mechanisms may be effective.

3 Context for the review

3.1 Introduction

This section provides an outline of forces and trends in society that are considered pertinent to the review, along with an outline of the retail industry in general and, in particular, the retailing sector in Tasmania. The Review Group notes that the Act came into effect in 1984, since when there have been continual changes in lifestyle and work patterns, as well as changes in employment practices and industrial agreements in the retail sector.

Accordingly this section provides a high level overview of:

- ④ lifestyle and demographic forces that are impacting on retailing;
- ④ global and national trends in retailing; and
- ④ the scale and scope of the industry in Tasmania.

The intention is not to give a detailed account of these issues but to provide a broad understanding of the key points relevant to subsequent discussion and analysis in the RIS. Each of these areas will be outlined in turn.

3.2 Lifestyle issues and changes in society

Australian society has undergone major change in the past few decades. The typical image of the two-parent family, with the father employed full-time and the mother at home with the children, is less representative now than it ever has been. There are now many more double income families, sole-parent families and households which contain a single person.

For example, in 1998, of all couple families in Tasmania with children under 15 years of age, 52.9% had both parents employed. Similarly of all single parent families with children under 15 years of age, which accounts for nearly a quarter of all families with children, 48.5% had the parent employed.¹

There has been a reduction in the proportion of employees who work a standard 9am to 5pm week from Monday to Friday. There has been a large increase in part-time work especially, but not solely, by women, such that as at 31 March 2000, 31% of all Tasmanian employees are part-time². At the same time, those in full-time employment appear to be working a larger number of hours, not all of which are formally classified as overtime.

¹ ABS Catalogue 1301.6 (Tasmanian Year Book)

² ABS Catalogue 6271.0

There has been a sharp increase in employment in the telecommunications sector, principally in call centres, some of which are manned around the clock. As Tasmania's tourism sector has expanded, this has led to an increase in employment outside standard working hours.

As a result of these changes, it is becoming less convenient for many households to shop during the standard shopping hours. This is demonstrated by the support that the non-restricted retail outlets tend to receive on Sundays.

3.3 Global and national trends in retailing

Retailing is a dynamic industry. It has undergone significant changes and will continue to evolve. Examples of this evolution include:

- ④ a merging of former retailing specialisations into multiple-product outlets, offering consumers a greater range of products and services and capturing a 'secondary spend', such as convenience stores attached to fuel outlets, which may be up to three times the size of an 'average' convenience store, with around 5,500 product lines, including hot foods;
- ④ supermarkets increasing their market share by providing an increasing range of products and services such as photo processing, fuel and liquor; and
- ④ department stores losing market share, while the diversity and range of small specialty shops grows in product areas such as sporting and camping goods, newspapers, books, photographic, toys and games, pharmacies, antiques, used goods, garden equipment, travel goods and souvenirs.

Fifty years ago, most retail outlets, especially grocery stores, were independently owned. As suburbs developed after the Second World War, self-service stores emerged in the 1950s and 1960s as the dominant retail format. The economies of scale and efficiencies that the major supermarkets were able to offer led to prices that were lower than those in the smaller independent stores. This attracted an increasing proportion of the retail dollar, especially during the high inflation period of the 1970s and 1980s.

As a result, there has been a sharp decline in the number of smaller stores, including butchers, bakers, greengrocers, newsagents and florists. The grocery sector is now characterised by a small number of large businesses typically accounting for around 80% of retail spending on dry goods. In the case of the non-grocery sector, this trend has been less pronounced.

Throughout the 1990s, traditional retailing with a shop front has come under threat from the growth in direct marketing and electronic commerce. Direct marketing through catalogues distributed direct to the home is now a well developed industry that is not constrained by distance or opening hours. For instance, the Review Group is informed that Tasmanians are the most prolific subscribers per capita to the Myer Direct catalogue.

E-commerce is the next major advance in retailing that may pose a significant threat to 'traditional' shopping. The rapid rate at which the Internet is being embraced in Australia is evidenced by the fact that 481,000 adult Australians used the Internet to buy or order goods or services for private use in the period from June to September in 1999 compared with 147,000 for the period from July to September in 1998. As at November 1999, 25.1% of all Australian households had Internet access, up from 18.6% over the 1998 figure³. It is projected that half the population of Australia will be regular or casual users of the Internet in four years' time.

The arrival of e-commerce means that shoppers can make their purchases from anywhere in the world at any time of the day. It is evident to the Review Group that this evolution will have a major impact on traditional forms of retailing, which will be driven to respond to these challenges through innovative measures such as personalised service, improved accessibility, sponsorship of local events and local employment. As consumers embrace these new technologies and shopping opportunities, traditional concepts of shops being open and closed will become less relevant.

3.4 Scale and scope of retailing in Tasmania

The retailing sector in Tasmania is a significant industry. It represents 8.1% of Tasmania's Gross State Product (GSP), compared with 6.5% nationally. Retailing in Tasmania is, therefore, broadly equivalent as a percentage of GSP to other key industries including tourism (7-8%), and business and financial services (7%), and is larger than building and construction (6.3%), energy (5%) and mining and metals (6%)⁴.

The retailing sector in Tasmania comprises 4,685 premises, which include a diverse range of major chain stores, national franchises and specialty shops. The retail industry in Tasmania collectively employed 28,900 as at March 2000, which represents 14.6% of the total Tasmanian workforce.⁵

The major chain retailing entities in Tasmania which are subject to the provisions of the Act are the Woolworths group, including Purity and Roelf Vos supermarkets, the Coles Myer Group, including Coles Supermarkets, Myer, Kmart and Target, and Harris Scarfe. Other smaller stores that are also captured by the Act by virtue of the grouping provisions include Dick Smith and Katies. All of these stores with restricted trading account for around 6,700⁶ employees or 23% of total employment in the retail sector.

³ ABS, Use of the Internet by Householders, Catalogue 8147.0

⁴ State Government Industry Development Plan, 1999

⁵ ABS, Labour Force Australia (Quarterly Series), Catalogue 6271.0

⁶ Workplace Standards Tasmania unpublished employer data

3.5 Summary

Lifestyle and employment trends have resulted in shoppers altering their preferences as to when they choose to shop.

Trends in retailing indicate other media such as direct marketing and e-commerce are challenging traditional shop front retailing. These media are not constrained by opening hours or geographic boundaries, thereby allowing consumers to shop anywhere in the world at any time of the day and have the products arrive at their home shortly thereafter. The indications are that further advances in technology and increasing awareness by consumers will drive rapid growth in these forms of shopping.

The retailing sector is a major component of the Tasmanian economy, accounting for around 8% of GSP and 14.6% of total employment. It is characterised by a diverse range of specialty shops and independent grocery stores along with a significant presence by major national chains, these being Woolworths, Coles Myer and Harris Scarfe, which collectively represent approximately 23% of employment in the retail sector. The Act restricts these major chains by prescribing the hours when they are not permitted to open.

4 The Shop Trading Hours Act

4.1 Introduction

The purpose of this section is to outline, in summary form, the provisions and objectives of the Act and ways the Act restricts competition in the retail sector by prescribing periods when major retailers are not permitted to trade.

4.2 Overview of the Act

Legislation to control shop trading hours was first introduced in Tasmania in 1925. Since then, legislation evolved to the Act that is the subject of this review. For completeness, Appendix 3 outlines the history of shop trading hours legislation. The focus of this section is on the 1984 Act and subsequent amendments.

The key elements of the current legislative arrangements are as follows:

- ④ A person or group of persons carrying on a retail business or businesses at a shop or shops located in Tasmania that has more than 250 employees must comply with the restrictions in the legislation. These persons or groups of persons are defined as *major retailers*⁷.
- ④ Major retailers must not open:
 - before 8.00am – Monday to Saturday;
 - after 6.00pm – Monday to Wednesday and Saturday; and
 - after 9.00pm – Thursday and Friday.
- ④ Late night trading is permitted on Thursday and Friday each week. If a holiday occurs on either or both of these days, the Act allows for late trading on another night, or nights, to maintain trading on two weeknights. Shop trading extensions may be declared at the discretion of the Minister on a Monday, Tuesday or Wednesday until 9.00pm, or on a public holiday or Sunday until 6.00pm.
- ④ Major retailers must not open on the general holidays specified in Part 1 of Schedule 1, eg, Christmas Day and Boxing Day, New Years Day, Anzac Day, Good Friday and Easter Monday.

⁷ The grouping provisions in Schedule 2 of the Act determine whether or not a person or corporation is deemed to be a member of a group. The grouping provisions are in line with those in the *Pay-roll Tax Act 1971* and the *Tobacco Business Franchise Licences Act 1980*.

- ④ Major retailers may not open on regional or local holidays in areas of the State fixed under the *Bank Holidays Act 1919*, eg, People's Day at the Royal Hobart Regatta, the first Monday in November (Recreation Day), Show Day, and a day or part of a day appointed as a bank holiday for a race meeting. Shops may open until 12 noon on a Cup half-holiday.
- ④ The *Shop Trading Hours Act 1984* prohibits major retailers from trading on Sundays. Shop trading extensions permitting Sunday trading may, however, be declared by the Minister for specific events as defined in the legislation, such as cruise ship or warship visits, major cultural, historical or other significant events, or major events that are likely to be of significance to the tourism industry.

4.3 Objectives of the Act

In order to make recommendations on whether the restrictions on competition contained in the *Shop Trading Hours Act 1984* should be removed, retained or modified, the Review Group is required, as part of the Terms of Reference, to clarify the objectives of the legislation. Any restrictions on competition need to be assessed against the defined objectives of the legislation.

The Review Group has reviewed the Act and found that, in broad terms, it has been designed to seek to balance the competing interests of large retail chains, medium and small business, employees and customers. In line with this broad intent, the Review Group has identified the following objectives:

- ④ to assist in maintaining the commercial viability of small and medium-sized retail businesses;
- ④ to foster consumer choice and market competition in the retail sector;
- ④ to provide large retail businesses with what the Government considered to be reasonable opportunities to trade;
- ④ to reinforce the rights of all employees in the retail sector in relation to hours of work;
- ④ to minimise the impact of extended retail trading hours on the quality of life of employees and of small and medium business owners;
- ④ subject to the foregoing, to provide consumers with the opportunity to shop at major retail outlets;
- ④ to provide access to and encourage retail trade when there are major events; and
- ④ to promote Sunday as a day of rest.

The Review Group's analysis of the restrictions against these objectives is documented in Section 5.2.

4.4 Restrictions on competition in the Act

In the introduction to this RIS, an outline of the analytical framework for the review was provided in Figure 1. Step 2 of this framework requires the identification of the restrictions on competition in the *Shop Trading Hours Act 1984*, including all amendments introduced to the present.

In the Discussion Paper prepared as part of this review, the Review Group elected to separately identify the different periods when the restrictions on trading hours apply, ie, Sundays, public holidays and after 6.00 pm on certain days. This was done in order to determine whether there are significant differences in the issues relevant to the consideration of the different time periods when the restrictions apply.

While it is acknowledged that there are some different issues in relation to the various time periods when the restrictions apply, the Review Group has found that they are not critical to the overall question as to whether the restrictions should be retained or removed. This position has been strongly supported in the submissions the Review Group has received to date.

Therefore, it is the view of the Review Group that, at the broadest level, the Act contains a single restriction, namely on the competitive conduct of major retailers by limiting their trading hours. There are three broad occasions when major retailers may not open, these being:

- ④ at certain times on weekdays and Saturdays;
- ④ on certain public holidays; and
- ④ on Sundays.

Major retailers are those with more than 250 employees, taking account of the grouping and franchise provisions.

In subsequent sections of the RIS, major retailers caught by the Act will be referred to as *restricted retailers*, and the retailers that are free to trade when they wish will be referred to as *unrestricted retailers*. Where appropriate, subsequent sections of the RIS will distinguish between the grocery and non-grocery sectors.

5 Evaluation of the restrictions against the Act's objectives

5.1 Introduction

This section aligns with the approach set out in Step 3 of Figure 1. This step in the analytical process requires the Review Group to evaluate the restrictions on competition embodied in the Act and form a view as to whether the restrictions are required to either meet or support the objectives of the legislation. In considering this issue, if the Review Group concludes that the restrictions *do not* support the objectives of the Act, the recommendation would be for the relevant provisions in the Act to be repealed. Alternatively, if the Review Group concludes the restrictions *do* support the objectives of the Act, the costs and benefits of the restrictions would then be evaluated in the next step of the process.

The Act's objectives, as listed in the previous section, were identified by the Review Group in the Discussion Paper. The objectives identified were implicit and narrowly defined and were derived, in large part, from the Act's provisions and the Group's assessment of the impact of the Act, rather than from any explicit statements by the present Government or past governments. Defining the objectives in this way proved to be a useful means of identifying some of the key issues and appeared to assist in the consultation process.

It should be noted that these objectives are in some cases mutually inconsistent. For example, fostering consumer choice is not consistent with denying consumers the option of shopping at major retailers on Sundays. Similarly, promoting Sunday as a day of rest is not consistent with assisting small and medium sized retailers to be commercially viable by allowing them to benefit from Sunday trade.

Other objectives identified are consistent. For example, maintaining the commercial viability of the small and medium-sized retail sector may be seen as consistent with fostering market competition in the sector. Similarly, providing large retail businesses with what the Government considered to be reasonable opportunities to trade is consistent with providing access to retail trade when there are major events.

For these reasons, in analysing the extent to which the restrictions meets the objectives, the Review Group has considered the objectives together rather than by assessing the restrictions against each objective in turn.

5.2 Evaluation of the restrictions against the objectives

Only a handful of submissions were received that specifically addressed the issue of whether the Review Group had correctly identified the objectives.

Discussion tended to focus on the different question as to whether the objectives were in the public benefit. In keeping with most submissions in the Review, respondents were

reasonably polarised in their view about the appropriateness of the objectives in terms of the net public benefit.

Submissions that supported the retention of the restrictions argued that the objectives were appropriate and that, in order to achieve these objectives, the restrictions in the Act would need to remain. On the other hand, submissions that advocated removal of the restrictions argued that some or all of the objectives were ill founded and, even if they were reasonable, the restrictions in the Act were not the best way of achieving these policy outcomes.

In evaluating the restriction against the identified objectives, the Review Group has not found market failure to be a valid basis for the regulation. That is, no reasons have been identified as to why customers, or the community in general, would be obviously disadvantaged by allowing market forces to determine when retailers may trade. In this respect, the rationale for regulation of shop trading hours is clearly different from the rationale for economic regulation in most other areas.

Rather, it is apparent the Act has evolved to its current form in an attempt to deliver balanced outcomes to a range of competing interests.

Given the way that many of the objectives were derived - that is on the basis of the provisions of the Act and the impact of the legislation - it is axiomatic that the legislation supports the achievement of these objectives. Further detailed discussion on this point is, therefore, not required.

The more critical issue is whether the restrictions are assessed as being in the public benefit. This is discussed in Section 6.

6 Evaluation of the key issues

6.1 Introduction

The purpose of this section is to outline and present the Review Group's findings on a number of pivotal or headline issues that have emerged throughout the consultations and in the Review Group's analysis. The findings on these headline issues have led the Review Group to its key recommendations. The Review Group has found that many of the headline issues discussed in this section have more relevance to the grocery sector. This is in no way intended to diminish the importance of other sectors within the retail industry. Rather, the public consultation process has revealed that the restrictions on shop trading hours have the greatest impact in this sector and, consequently, the views of businesses in this sector given to the Review Group are more polarised than in the other sectors.

This section identifies the key assertions that have been made in relation to each of these issues, and, taking into account additional information and research undertaken by or on behalf of the Review Group, presents the Group's findings.

For reasons of exposition, each issue is treated separately. However, it is recognised that in many cases there are strong links between these issues.

The headline issues that have emerged from the consultation process and from the Review Group's analysis are how the restrictions, and alternatively the removal of the restrictions, impact on:

- ④ growth of the retail sector (6.2);
- ④ the viability of unrestricted grocery stores (6.3);
- ④ the unrestricted non-grocery retailers that generally do not trade on Sundays or public holidays (6.4);
- ④ overall employment outcomes (6.5);
- ④ permanent and casual employment (6.6);
- ④ the welfare of employees in the retail sector (6.7);
- ④ consumer choice (6.8);
- ④ the market power of the major supermarket chains (6.9);
- ④ the prices paid for groceries (6.10);
- ④ selected retailers caught by the grouping provisions of the legislation (6.11);

- ④ social outcomes for disadvantaged groups (6.12); and
- ④ Sundays and public holidays – days of rest? (6.13).

Each issue is discussed and assessed by:

- ④ setting out the assertions, which in many cases present competing views on possible outcomes;
- ④ giving an account of the information which has come forward to support the assertions, together with additional information obtained by the Review Group;
- ④ explaining how the Review Group has analysed the information; and
- ④ presenting the Review Group’s findings for each of these issues.

It should be emphasised again, as discussed in section 4.4, that for the purposes of this analysis, the Review Group has proceeded on the basis that there is essentially one restriction, namely the capacity of selected retailers to trade when they choose. This approach focuses the analysis on a single restriction even though the restriction can be separated into its application on Sundays, after hours on weekdays and public holidays.

In assessing the issues listed below, the Review Group has, in the first instance, compared the current arrangements with the alternative of removing all restrictions on shop trading hours for the restricted retailers. This approach is consistent with the analytical framework set out in section 1.4 and provides the opportunity to test the case for complete removal of the restrictions. This approach requires that if this case is not preferred to the status quo, alternative less restrictive models would be considered.

Where appropriate, the Review Group has taken into account some of the wider societal and retailing trends in coming to a view on each issue. For certain issues, namely consumer choice and employment, the Review Group has sought additional independent research to assist in the evaluation.

Through the consultation process, many other issues were raised and assertions made. In some cases, they are linked to the issues identified above and have therefore been included in the assessment. However, the Review Group has not addressed in the RIS a number of other assertions on the basis that such matters were either not relevant to the review or were claims or opinions that were unsubstantiated.

6.2 Impact of the restrictions on growth of the retail sector

6.2.1 The assertions

It has been asserted that the restrictions on shop trading hours have constrained growth of the retail sector, with consequent constraints on employment and investment. It has been argued that relaxation of the restrictions will allow retailing to compete on a more level footing with other sectors of the economy that do not face the same trading constraints.

The competing contention is that customers' retail expenditure will not vary with changes in shopping hours and that any relaxation of the restrictions would only result in the same level of aggregate retail expenditure being spread over more shopping hours per week. It has been argued that relaxation of the restrictions would not lead to a major boost in retail spending, given Tasmania's economic under performance, relative to other States, and its marginally declining population.

6.2.2 Key points from submissions

The Review Group heard that the restrictions on shop trading hours imposes a major cost on the retail sector as a whole by constraining its capacity to compete on an equal footing with other industries for consumers' discretionary expenditure. This implies that retail sales, employment and investment in the sector are lower than they would be in an unregulated environment.

In the case of Tasmanian consumers, the beneficiaries of the restrictions (apart from non-restricted retailers) are generally these other industries in Tasmania, such as entertainment, gambling and restaurants, able to trade during these restricted hours. However, in the case of expenditure by visitors to Tasmania, part of the cost is to Tasmania as a whole, as some visitors spend less during their visit as a result of entire shopping complexes being closed on certain days.

In support of this assertion, the Australian Retailers Association (ARA) has pointed out that since Saturday afternoon trading was legalised in Tasmania, retail turnover in September 1999 was 12.2% higher than in March 1995. In the same period, gross state final demand increased by 11.6%.

Several submissions also suggested that one of the key drivers for growth in the retail sector as a whole could be from tourism, with annual visitor numbers steadily growing and now exceeding 500,000.

It was argued that the provision in the legislation that allows major stores to accommodate cruise ships does not adequately address the tourism issue as these only represent about 5% of visitors to the State. The provision that allows the Minister to grant special trading days where a particular event may warrant such a response is also seen as ineffective as the

processes associated with obtaining this authorisation are administratively cumbersome. The process has meant that some special applications have been unable to be granted, such as for the Interhash 2000 and the Hobart Summer Festival. As a consequence, opportunities for Tasmania's retail sector have been lost.

The City Heart Business Association (City Heart) submission, citing the 1998/99 Tasmanian Visitor Survey (TVS) found that in polling visitors as they depart the State, there is continued dissatisfaction with the lack of shops open on Sundays and public holidays. From a large sample of surveys it was found that criticism over the lack of shopping hours was the most common adverse comment made by visitors.

In response, the City Heart proposed that restricted retailers within the Hobart central business district (CBD) be allowed to open at certain times of the year when, in the rest of Tasmania, the restrictions should continue to apply. The reasoning behind this proposal is that the Hobart CBD receives more visitors than other shopping centres and therefore should be accorded special status in relation to shop trading hours.

The Review Group also heard from several smaller retailers and representative bodies that unrestricted specialty shops, in some locations, depend on the restricted major stores to open and attract customers. As a result, some unrestricted retailers are, in practice, confined to the opening hours of the restricted major retailers.

Experience interstate suggests that growth of the retail sector has been associated with relaxation of restrictions on shop trading hours. In Victoria, following the removal of restrictions in 1996, the trend level of employment in the retail sector expanded from around 245,000 to 250,000-255,000, an increase of between 2% and 4% during the two years to May 1998, while Australia-wide retail employment fell by 1%.⁸

Whilst the Review Group is conscious that other jurisdictions are not directly comparable with Tasmania, it is relevant to note the experiences following deregulation of shop trading hours reported by the City of Greater Bendigo, which has a population of around 85,000. Some of the outcomes reported by the Council include increased visitor numbers, enhanced opportunities to attract conferences and events, entry of new retailers, and a reduction in vacant stores, collectively contributing to a growing sense of confidence in the region's future.

The contrary argument is that growth in the retail sector would be minimal if the restrictions were removed. The Retail Traders Association and the National Council of Women, for example, contends that consumers have a finite level of disposable income with which to do their shopping and any extension of shop trading hours would see the same level of total expenditure spread over a longer period.

⁸ Productivity Commission, *Impact of Competition Policy Reforms on Rural and Regional Australia*, 1999, p 259

Some submissions stated that there has been no demonstrable support from consumers for extended trading hours, when these opportunities are available. Accordingly, whilst there is a restriction, it has little practical impact.

In support of this assertion, the Review Group received a submission from Harris Scarfe, which argued that, on the basis of their experience interstate, there has been a redistribution in shopping patterns. Their experience is that Sunday sales increase but sales during the evening on weeknights and on Saturdays fall to a similar extent. On all occasions when there is been Sunday trading in Tasmania, Harris Scarfe has found the level of trade does not justify the extended trading hours. Other smaller unrestricted speciality stores such as Jenerick raised similar concerns.

6.2.3 Approach to evaluating the issue

To address this issue, the Review Group investigated the possibility of undertaking quantitative economic modelling of the Tasmanian economy with a view to determining the impact of full deregulation on the retailing sector and the flow-on impacts to the economy as a whole. The Review Group was advised that it was not possible to undertake a rigorous analysis of these impacts as the technical data needed for a computer general equilibrium model are not available.

In assessing the Victorian experience, the Review Group noted that association between deregulation and growth in the retail sector does not necessarily imply causality as several other factors may have come into play at the same time, including the general economic recovery experienced in Victoria.

Accordingly, in assessing this issue, the Review Group has relied more on economic principles and the reported findings of the Tasmanian Visitors Survey, and has taken less account of the evidence arising from the 1995 Saturday afternoon shop trading reforms and the outcomes of deregulation in other jurisdictions. In considering the experience in other jurisdictions, the unique features of the Tasmanian environment have not been overlooked.

It should be pointed out that this section discusses the impact of the restrictions on retail spending and does not address the issue of how retailers' costs are affected by the restrictions.

6.2.4 Evaluation and finding

The Review Group believes that a clear position on this issue is important because of the implications for other headline issues such as employment and impacts on smaller retailers.

The Review Group has found that the current restrictions do constrain expenditure in the retail sector as a whole and that removal of the restrictions would provide a significant boost to retail expenditure. The Review Group found that the restrictions, by preventing some

consumers from shopping at their preferred times, effectively increase the real cost of shopping (which includes lack of convenience), with the effect that consumers, both Tasmanian and visitors, have been diverting some expenditure from retailing to other consumption goods and services.

The Review Group's own analysis of the impact of the introduction of Saturday afternoon retail trading in 1995 has confirmed that retail trade increased by more than Gross State Final Demand (GSFD). Between September 1995 and December 1999, retail trade has grown by 9.22% in real terms compared with a 5.43% increase in GSFD.⁹ This suggests there has been some additional retail consumption expenditure from other areas. The Review Group does not consider the difference can be solely attributed to the introduction of Saturday afternoon trading as there may have been a number of other economic impacts that contributed to this outcome. Equally however, the Review Group cannot make a judgement on what the outcome would have been had Saturday afternoon trading not been introduced.

Nevertheless, these outcomes, coupled with experience interstate, suggests that the relaxation of shop trading restrictions has assisted the retail sector to compete on a more even footing, and grow in the face of an increasing range of competing demands for the consumer's dollar.

The Review Group has also not been able to quantify the extent of the increase in retail spending that would arise from removal of the restrictions, and expects that, as with any regulatory change, there would be both winners and losers. However, for the reasons set out in this section and section 6.3 below, the Review Group does not accept the assertion that the only beneficiaries would be the major retail chains and that all the currently unrestricted retailers would be disadvantaged.

This is considered to be most evident in the case of visitor expenditure. Central business districts are clearly disadvantaged by the current shopping hours. The major department stores in the CBDs are required to close at certain times. In addition, many other adjoining shops are also unwilling or unable to open, given the lack of consumers in the CBDs at these times and, in the case of Hobart, the fact that customer pathways to these smaller shops include the major department stores.

Hobart is now the only capital city in Australia that is regularly closed on a Sunday. Most visitors to Tasmania are now accustomed to being able to shop in a deregulated environment, and exit surveys suggest there is an expectation that a similar shopping amenity should be available here.

This has recently become a more significant issue as the average duration of visitors' stays in Tasmania is getting shorter. As a result, these visitors, denied the opportunity to shop on a Sunday or public holiday, have fewer other days available to shop. The Review Group therefore considers that some retail expenditure from visitors is foregone as a result of the restrictions. In addition, it is likely that the extended interstate shopping hours may be a

⁹ ABS Catalogue 8501.0

contributing factor to the decision taken by many Tasmanians to head interstate, particularly to Melbourne, to shop. As a result, retail expenditure, and investment and employment in Tasmania's retail sector, are lower than they otherwise would be.

On the basis of the information provided by the City Heart in quoting their analysis of the Tasmanian Visitors Survey, the Review Group considers that the restrictions on shop trading hours have an adverse impact on Tasmania's attractiveness as a holiday destination.

It has been asserted that when Sunday trading is allowed, consumer interest in Sunday trading has been low and that this reveals how consumers would behave if the restrictions were fully removed. The Review Group does not accept this argument as the two situations are seen as being quite different. Firstly, there is often uncertainty as to when Sunday trading is permitted around the State. With removal of the restrictions, consumers would have greater certainty as to when their preferred shops are able to open. Secondly, there are too few days when this occurs for consumers to adjust their shopping patterns. Thirdly, as discussed in section 6.8, the evidence from interstate and from surveys in Tasmania is that a significant number of consumers do change their shopping pattern when trading hours are changed.

The Review Group considered the reasons behind the proposal to allow special treatment to the Hobart CBD. It found that the reasons put forward by City Heart to allow the Hobart CBD to be open at special times, namely that the current restrictions constrain the Hobart retail sector, are equally valid for other visitor and tourist centres and ultimately for the State as a whole.

Furthermore, the Review Group did not consider that a proposal that gives a competitive advantage to retailers in one area at the expense of retailers in neighbouring areas (such as Eastlands and Glenorchy's Northgate) overcomes the inequity of treatment in the Act. For this reason the Review Group does not support the proposal of City Heart to treat Hobart CBD as a special case.

The Review Group has also considered the outcome of deregulation of shop trading hours in other jurisdictions. The Review Group's overall assessment is consistent with that of the Productivity Commission which found "that on the basis of available evidence, overall retail trade and employment has not declined and has actually increased in jurisdictions where trading hours have been deregulated"¹⁰.

Finding

The Review Group has found that the restrictions act as a significant constraint on growth in the retail sector. Relaxation of the restrictions would increase retail expenditure by Tasmanians and visitors, leading to growth in the retail sector as a whole.

¹⁰ Productivity Commission, op cit p 258

6.3 The viability of unrestricted grocery stores

6.3.1 The assertion

It has been asserted that the restrictions are critical for the viability of the unrestricted supermarkets and convenience stores by limiting competition and therefore allowing them to attain the minimum necessary market share and turnover. Accordingly, relaxation of the restrictions, it is argued, would threaten the viability of these retail businesses and lead to widespread shop closures. Flow-on impacts would be felt in terms of employment and convenience to some customers who rely on these stores.

Allied to this issue is the contention that the wholesale grocery business on which most of the unrestricted grocery businesses rely, namely Tasmanian Independent Wholesalers (TIW), needs a critical level of patronage from these businesses. The contention is that any leakage in patronage to the major supermarket chains would lead to a reduction in the volume of TIW's turnover to the extent that it would impact on TIW's viability. This, in turn, it is argued, would further undermine the viability of the independent supermarkets in their competition with the restricted major supermarket chains.

The competing assertion, from the major grocery retailers and the ARA, is that if the restrictions were removed, the volume of business that the independent grocery sector would lose would be very low. Accordingly, there would be a minimal effect on these businesses and their viability will not be affected.

6.3.2 Key points from submissions

The Review Group received submissions from a number of convenience stores and small supermarkets, which argued that the principal benefit of the restrictions was that they contribute significantly to the viability of their businesses. Many argued that the restrictions compensate for the market advantages, including scale economies, that the major supermarkets can obtain. The Review Group was told by several owners of independent retailer businesses that Sunday generates the highest turnover for their businesses, often accounting for twice the 'normal' turnover for a weekday, or 20-25% of weekly turnover. It was also suggested that the deregulation of Saturday afternoon trading for some unrestricted supermarkets resulted in a loss of turnover of around 20%, part of which has been reclaimed in some shops by product diversification and other innovations.

However, when these owners were asked whether removal of the restrictions would lead to the closure of their businesses, they indicated that turnover would fall and they would reduce employment or the hours worked by their staff but that they would expect to continue to remain in business. These responses were not consistent with the assertions made by the associations of these businesses. It was also pointed out that since Saturday afternoon trading was introduced in 1995, the number of Tasmanian retail food establishments, according to the ABS Business Register, increased by 3% (until September 1998).

The restricted major chain supermarkets pointed out that they do not regard the unrestricted independents supermarkets and other convenience stores as their major competition and the area from which they would attract the greatest share of any growth from further deregulation of shop trading hours. They believe the majority of their growth would stem from growth in the retail sector as a whole as a result of increased retail spending by visitors and locals, who would otherwise spend their disposable funds on other pursuits.

On the contention associated with critical mass of volume to go through TIW, a number of respondents argued for the restrictions on the basis that any appreciable reduction in the turnover of the independent grocery sector would adversely impact on TIW's capacity to negotiate purchasing deals with manufacturers and suppliers. This, it was argued, would reduce the extent to which this sector can compete on price with the major supermarket chains, with the ultimate outcome being higher prices to the consumers and greater profits to the major supermarket chains.

It was pointed out that there are other wholesale suppliers for the Tasmanian grocery sector, such as Davids which operates across Australia and is used by a number of independents supermarkets and at least one bannered independent supermarket chain.

6.3.3 Approach to evaluating the issue

In forming a view on this issue, the Review Group has taken account of the information presented by, or on behalf of, the independent grocery sector throughout the consultation process. Less importance has been placed on the statements from the major supermarket chains and the ARA on how the removal of the restrictions would impact on the independent grocery sector.

In addition, the Review Group has drawn on the outcomes from the extension of Saturday afternoon shop trading hours in Tasmania in 1995 and the experience interstate of the removal of restrictions on trading hours.

6.3.4 Evaluation and finding

On the strength of the information presented by a number of independent store operators, the Review Group considers that, in areas where major chain supermarkets compete with unrestricted convenience stores and smaller supermarkets, the latter derive a significant benefit as a result of the restrictions. It follows, therefore, that relaxation of the restrictions on trading is likely to have an adverse impact on the profitability of convenience stores and smaller supermarkets, particularly in the short term. This was an observed outcome of the 1995 reform.

However, the Review Group found that the 1995 reforms did not result in widespread shop closures, in contrast to the assertions made at that time. It was found that, in response to Saturday afternoon trading, many shops have responded by developing other competitive

advantages including changing the range of goods offered, improving customer service and the quality of product, competitive pricing and service diversification.

The Review Group, therefore, has found that relaxation of the current restrictions may lead to the closure of certain marginally viable operations but will not lead to a widespread closure of those remaining 550 convenience stores and independent supermarkets trading in Tasmania.

It is evident that competition occurs over non-price aspects such as range of products, convenience and the ability to do one-stop shopping. In this respect the major supermarkets have a clear advantage, in most cases, and there is less competition between them and the independent supermarkets. In many cases, however, the independent supermarkets and the corner stores clearly have the advantage of convenience, such as when only one or two items need to be purchased or when proximity to the home or workplace is important.

The Review Group has found that, in areas where the major supermarket chains operate, the viability of the unrestricted grocery sector has been greatly assisted by the lack of strong price competition between these major supermarkets. As discussed below in section 6.10, this lack of price competition has led to supermarket grocery prices being significantly higher in Tasmania than in other States, for reasons that cannot be fully attributed to cost differences. This relatively high grocery price level has assisted the viability of the independent grocery sector, which generally has higher costs as it is not able to obtain major scale economies in retailing.

As discussed below, the Review Group does not expect the level of grocery prices offered by the major supermarket chains to either increase or decrease noticeably should the restrictions on trading hours be removed, provided that the current market structure remains.

Were another major chain to enter Tasmania and this lead to aggressive pricing, the viability of the independent chains would be threatened in some locations. The Review Group considers that this is potentially a far greater threat to the independent sector than the removal of the restrictions of shop trading hours.

The Review Group has found that those retail outlets potentially at risk by the removal of the restrictions are generally not likely to be sustainable in the longer run, even if the restrictions were retained. This is either because they were poor investments and/or are not effectively run or because the general trends in retailing have been unfavourable to these outlets. Therefore, the Review Group has found that the removal of the restrictions is likely to accelerate the closure of some of these retailers but is generally not expected to lead to the closure of otherwise profitable and sustainable retail businesses.

The viability of unrestricted stores is influenced by factors such as capital investment in the premises and the funding mix of the business. It is conceivable that removal of the restrictions could see some stores being taken over by owner-operators on more favourable financial terms, rather than being closed outright.

The Review Group is not convinced that the restrictions have a major impact on the viability of independent stores that operate in some of the more rural regions of Tasmania. This is because the major chains are not represented in, or within easy reach of, some rural regions, and shoppers who wish to shop at a major chain supermarket need to travel significant distances. Therefore, removal of the restrictions is not expected to have a significant impact in the more remote areas as the majority of shoppers in those areas are likely to continue to support local independent stores.

It is expected that removal of the restrictions would be likely to lead to a reduction in the market share of the independent supermarkets, which, in turn, will impact on TIW's turnover. However, the Review Group does not expect that the reduction would be so large as to threaten the viability of TIW or to prevent it from continuing to negotiate purchasing deals with manufacturers and suppliers. It is noted that Statewide Independent Wholesalers is insulated, in part, from the impact of volume loss from the independent grocery sector by also providing wholesale services to the Woolworths group, whose retail sales would increase if the restrictions were removed.

In concluding this important issue, the Review Group is convinced that the restrictions do support unrestricted grocery outlets and there is likely to be an adjustment in that sector in the event that the restrictions are removed. In most cases, this is likely to involve a reduction in turnover, and some decline in the number of hours worked or in employment. Whether the turnover of the business can be restored will depend on the extent to which the store is able to successfully diversify, to adjust to the changing trends in retailing and to position itself in the market. On this point, the Productivity Commission has observed that, while it is clear that many small independent supermarkets and some specialised grocery shops are suffering from the increased competition, there are also examples of others finding a niche and remaining profitable. Meanwhile, it found that consumers are benefiting from lower prices, a larger range of goods and better service.¹¹

In the view of the Review Group, such an adjustment would not be undesirable in the longer term. This is because these businesses have relied on artificial legislative support to operate at their current level. Instead, these businesses will be required to focus more heavily on their business operations and on their customers' needs to remain profitable in the longer term.

Findings

The Review Group has found that the restrictions do improve the viability of some independent stores, especially in the grocery sector. While the Review Group does not envisage widespread closure of shops if the restrictions were removed, it is acknowledged that their removal would lead to the closure of some marginally viable stores, changes in employment arrangements and diversification of products and services to adjust to a new trading environment. The Review Group found that

¹¹ Productivity Commission, op cit p 265

wholesale services to the independent sector would not be materially affected by removal of the restrictions on shop trading hours.

6.4 Impacts on unrestricted non-grocery retailers that generally do not trade on Sundays and public holidays

6.4.1 The assertions

This section addresses the impact of the restrictions and their removal on those non-grocery retailers that are legally permitted to open at any time but tend to be open only when the major department stores and supermarket chains are open. This is either through choice or because their lease conditions, or proximity to a restricted retail outlet, prevent them from being open at this time.

The Review Group heard a range of competing assertions from a number of other unrestricted (non-grocery) retailers. Some operators supporting the retention of the restrictions argued that there is little financial justification to operate for extended hours because of the absence of demonstrable additional demand and the higher employment costs, which can attract in excess of double time under the Retail Trades Award. Some operators also expressed their concern about being forced to open under the terms of their leases, even if they would rather elect not to do so.

On the other hand, some operators argued for removal of the restrictions because they are seen as impeding the retail market and preventing the restricted retailers from making the commercial decision as to trade or not at certain times. Many unrestricted non-grocery retailers are restricted in their choice to trade by virtue of their proximity to the restricted department stores in areas such as the CBD of Hobart. Others are located in shopping centres that are closed when the major supermarkets are not permitted to be open.

It is apparent that these matters impact differently on retailers, depending on the individual circumstances, such as whether a significant turnover is from visitors, and the Review Group has not considered an outcome that will necessarily resolve all these issues.

6.4.2 Key points from submissions

Some smaller retailers informed the Review Group that they are effectively restricted by the current shop trading hours legislation because they need the department stores and supermarkets to be open to attract sufficient shoppers. The Review Group was told that in Hobart the major stores such as Target, Myer and Harris Scarfe are not only retail shops in their own right but also thoroughfares for the entire centre block of Hobart. Therefore, both shoppers and small retailers that operate throughout the central business area are significantly disadvantaged by not being able to move about the shopping precinct outside the permitted trading hours.

In some instances, small retailers are deprived from opening on Sundays, even if they want to do so, where they trade in a shopping centre where a major chain operates. For instance, Habitat is able to open its city store but is prevented from opening in Northgate or Eastlands, even though it would freely choose to do so.

The City Heart represents many unrestricted non-grocery retailers in the Hobart CBD and has expressed concern that its members have been adversely affected by the legislation at times when visitor numbers are high.

Some concern had been expressed that the currently restricted retailers would open for extended hours every day if the restrictions were removed and that this would have undesirable implications for some smaller retailers. However, those restricted retailers seeking a change in the legislation have indicated that, consistent with practice in other States, this outcome is not expected. One major supermarket chain, for example, has indicated it is likely that it would only open from 10 am to 5 pm on Sundays if it were permitted.

In support of the restrictions, the Review Group received submissions from a number of non-grocery small retailers who argued that the restrictions improve their viability by forcing consumers to shop within defined periods. The key points in support of this assertion are:

- ④ there is unlikely to be any growth in the retail sector that will directly benefit them, and when extended hours are available, consumers spread their shopping over a longer period without increasing their total shopping expenditure; and
- ④ retailers pay employees in excess of double time for those periods which are currently restricted, and these labour costs are the major factor impacting on the viability of opening during the currently restricted times.

By way of example, Jenerick, a smaller specialty retailer with one of their stores located in Eastlands, has found that when Sunday trading has been permitted it has not been a profitable exercise because of the low turnover and higher wage costs.

The Review Group was also told that many owner-operators employ few staff and, since extended trading is likely to be marginally profitable, they would be forced to trade and work in the shop themselves, thus impacting on their own recreation and rest time.

The Review Group also received a submission reporting that lease conditions applying in some shopping centres require tenant retailers to open when the centre is open. Under current circumstances, such retailers are required to close because major chain stores located in the shopping centre must close. Similarly, in the event the restrictions were removed, these lease conditions may require smaller retailers to open even if they found it was not profitable for them to do so.

6.4.3 Approach to evaluating the issue

In approaching this issue, the Review Group has considered the competing assertions and made an assessment based on how it anticipates the market would respond to the removal of restrictions on trading hours.

6.4.4 Evaluation and finding

The Review Group considers that retailers themselves are in the best position to determine when they should open, in the light of the market circumstances they face. Equally, they are able to negotiate employees' wages and conditions through enterprise bargaining in the light of their employment requirements.

The impact of the removal of restrictions on the unrestricted non-grocery sector would depend entirely on how these retailers respond to the opportunities that are created. The information obtained by the Review Group strongly suggests that a large proportion of consumers would change their shopping patterns. Whether these retailers are positively or negatively affected by these changes depends on how they respond.

As previously discussed in section 6.2, the Review Group is convinced that removal of the restriction will lead to an expansion of the retail sector as a whole. It is also expected that, of those not directly affected by the legislation, the non-grocery sector is likely to be better placed than the grocery sector.

It was also noted above that the Review Group considers that the experience to date with trading on Sundays and public holidays does not offer a reliable guide to how consumers would respond if a permanent change were made. For this reason the assessment that some of these retailers have made about the returns from operating on Sundays and public holidays may be premature.

In concluding that small non-grocery retailers should be permitted to make their own commercial decision about opening during the periods currently covered by the restrictions, the Review Group understands that staff labour costs do impact on viability. However, industrial agreements recognise that employees currently require some compensation for forgoing their traditional leisure time.

The Review Group considers that the employees wage rates are determined by industrial negotiation and, should the restrictions be removed, a mechanism exists, through awards and enterprise agreements, to adjust to any new arrangement. Already, negotiated outcomes in the retail sector are reflecting the fact that this industry is increasingly being considered as a seven-day occupation.

Equally, the Review Group appreciates that a benefit of the current restrictions is that many smaller owner-operators are not pressured to open on Sundays or public holidays because these days are not generally regarded as shopping days. The removal of restrictions may

result in some owner-operators feeling compelled to trade on those days, in order to maintain a competitive presence in the market, even if they would rather choose not to do so because of their own leisure preferences. Whilst such operators may feel reasonably disadvantaged by the possible removal of the restrictions, the Review Group considers the decision to trade or otherwise should rest with each operator in the light of the market environment it faces.

On the issue that smaller retailers may be forced to open because of their lease agreement, even if they would rather elect not to do so, the Review Group considers that, if the restrictions were removed, new tenancy agreements should not require a shop to be open at any particular time or on a particular day. This recognises that shops should be able to trade when they choose and not be bound by a lease to trade when it may suit the landlord. The Review Group's draft recommendation in relation to dealing with this issue is set out in section 8.

Finding

The Review Group has found that the impact of removing restrictions on trading hours on those smaller non-grocery retailers that tend not to trade on Sundays and public holidays would vary, depending on the commercial decisions made by those retailers. It is likely that some retailers would prosper through increased turnover, while others may find an unrestricted trading environment less attractive because of impacts on profitability and their work and leisure preferences. However, the Review Group finds there is considerable potential for net benefits to accrue to this sector.

6.5 Overall employment outcomes

6.5.1 The assertions

A key assertion advanced by those who support retention of the existing restrictions is that the removal of these restrictions would lead to a loss of employment in the retail sector in Tasmania, largely as a result of the scaling back or closure of small shops.

The contrary view is that removal of the restrictions would result in employment increasing as a result of growth in the restricted sector, especially major supermarkets, and the retail sector as a whole.

One issue that has been raised is whether the removal of the restrictions would lead to more part-time positions and fewer full-time positions. Related to this issue is the extent to which the removal of the current restrictions would lead to a change in the ratio between permanent and casual employees. This is separately discussed in section 6.6.

It should also be noted that one of the specific Terms of Reference for this review required the Review Group to determine the likely effect on employment levels (both permanent and

casual) of any recommended changes to the legislation. This section, along with section 6.6, addresses the Term of Reference.

6.5.2 Key points from submissions

The Review Group received a considerable amount of information from some stakeholders to support the assertion that the restrictions promote higher employment than would be the case in a deregulated environment.

Many submissions received by the Review Group cited the analysis of the Council of Small Business Organisations of Australia (COSBOA), which reported that, nationally, every one new job in a major chain results in 1.7 fewer jobs in a smaller retail outlet. COSBOA also reported that small supermarkets typically employ one person for every \$85,000 of turnover, compared to the major supermarket chains, which employ one person per \$145,000 of turnover.

A number of unrestricted grocery and non-grocery stores asserted that the relaxation of the restrictions would lead to job losses or reductions in hours.

However, the Coles Myer submission states that there is no ABS data on turnover or employment to support this finding and that the figures quoted by COSBOA may only apply to speciality food retailers.

In terms of interstate experiences, it was pointed out that, in Victoria, since the removal of trading hours legislation in 1996, retail employment has increased by 11.6% and retail sales growth was double the national rate.

In reporting the impact of the extension of shop trading hours to Saturday afternoons in Tasmania in 1995, advocates for the restrictions assert that retail jobs in Tasmania reduced by 2,900 during the period from February 1995 to November 1999.

In support of the assertion that retail employment is being stifled by the restrictions, advocates for removal of the restrictions argued that between February 1995 and February 1998 jobs in the retail sector in Tasmania grew by 3,400. Setting aside for a moment the differing time periods covering these competing assertions, the Review Group has had to account for a differential of 6,300 jobs.

The TCCI presented employment outcomes in the retailing sector in Tasmania since the introduction of Saturday afternoon trading in 1995 by reporting ABS data on gross earnings (salaries and wages) in the retail sector, compared with movements in average weekly earnings for the wider Tasmanian workforce. This was suggested as being a good indicator since it does not mask any possible shift in numbers of employment from permanent to part-time and casual positions. This submission reported that in December 1998 gross earnings in the retail sector were 19.4% higher than in March 1995. Over the same period, average weekly earnings for Tasmania had grown by only 9%.

The ARA, in quoting the employment impacts of deregulation of shop trading hours for the restricted major chains, has stated that approximately 714 new jobs would be created if Sunday trading were accepted, comprising 438 full-time jobs, 144 part-time jobs and 132 casuals.

6.5.3 Approach to evaluating the issue

This is one of the most disputed issues considered in this review and is also one of the most important, evidenced by its specific mention in the Terms of Reference.

The Review Group has been provided with a range of statistics relating to the numbers of people employed and the number of businesses in the retail sector in Tasmania since 1995. These point to very different conclusions, depending on the source of the data and the way the data is interpreted. For instance, in referring to the employment impacts since 1995, the competing assertions report a discrepancy of 6,300 employees.

However, all this data refers to experience and does not necessarily offer a guide as to expected future employment trends if the restrictions were removed.

To assist in considering this issue, the Review Group again looked to economic modelling but data constraints limit the reliability of such an approach. Therefore, the Review Group has independently examined the most appropriate data obtained from the ABS in relation to numbers of jobs and gross salaries and wages.

In assessing the possible impacts of removal of the restrictions, the Review Group has ensured that its findings are consistent with its findings on the potential growth of the retail sector if the restrictions were removed.

6.5.4 Evaluation and finding

The Review Group has examined employment in the retail sector and in the labour force as a whole since 1984. This shows retail employment over the period has grown by 37% compared with nearly 14% growth of the total labour force, confirming the relative importance of retailing to the Tasmanian economy¹².

The Review Group has also sought to account for the differential of 6,300 jobs, arising from the competing assertions that have been made in relation to the employment outcomes since the relaxation of the restrictions to allow Saturday afternoon trading in 1995.

In terms of the asserted fall in jobs of 2,900, the Review Group notes that this analysis was based on unpublished ABS Labour Force data on part-time and full-time positions. However, it is noted that the ABS advises that caution should be used in interpreting the data

¹² ABS Catalogue 6271.0

as it has a high standard error and may be unreliable. This is evident from the data series, eg, between the November quarter 1998 and the February quarter 1999, total employment in supermarket and grocery stores is reported to have increased from 5,909 to 7,088, and to have fallen back to 5,983 by August 1999. Part of this can be explained by seasonal fluctuations, though it is not clear why almost 1,200 extra employees were taken on for the 1998 Christmas season, when the data shows that only an additional 680 were employed for the 1997 Christmas season.

In addition, since the data is not seasonally adjusted, the Review Group does not consider that comparisons from the February quarter of one year to the November quarter of a later year provide a reliable guide to underlying employment trends. If the same unpublished data is used to compare employment in February 1995 compared with February 1999, this actually shows a growth in employment of 1,100 from 32,000 to 33,100. This contrasts markedly with the assertion that employment has fallen by 2,900 and clearly shows that seasonal influences are significant in Tasmania.

In terms of the asserted increase in jobs of 3,400, the Review Group notes that this is based on published ABS data¹³, which is considered to be more reliable than the unpublished, raw labour force data discussed above. Though this data is not seasonally adjusted, there is less risk of the change being attributed to seasonal variation as February quarter data is used in both periods.

The Review Group has, therefore accorded more weight to ABS figures showing there has been jobs growth since the introduction of Saturday trading.

The Review Group's own independent analysis shows retail employment has grown by 2.1% from March 1994 to March 2000, though this exceeds growth of 0.8% in total employment over the same period.¹⁴ This analysis clearly supports the contention that the introduction of Saturday afternoon trading in Tasmania in 1995 was not associated with a reduction in employment in the retail sector. In fact, the contrary appears to have occurred, with employment growth in the retail sector of over two and a half times the State average.

This does not provide evidence that the increase in retail employment can be solely attributed to the relaxation of Saturday trading but it can be reasonably concluded that the reform was a contributing factor.

This outcome is also consistent with the ABS figures that indicate the relatively high increase in gross earnings (salaries and wages) in the retail sector, compared with movements in average weekly earnings for the wider Tasmanian workforce.

In terms of employment impacts following deregulation in other jurisdictions, the Review Group considers that the expansion in retail employment in Victoria cannot be solely

¹³ ABS Catalogue 6248.0

¹⁴ ABS Catalogue 6271.0

attributed to the removal of trading hours restrictions, as the economy was expanding over that period. However, the Review Group considers that the Victorian experience is not consistent with a major reduction in employment as a result of the removal of the restrictions.

Turning to the likely employment impacts on the restricted major chains and unrestricted stores, the Review Group has examined the ABS 1991-92 Retail Activity Survey¹⁵ (the most recent to date). This showed that turnover per employee in the small and medium-sized grocery stores (at \$151,776) was almost identical to the turnover per employee in the large supermarket and grocery stores (\$145,080).

While the Review Group has no evidence for expecting that each additional full-time equivalent (FTE) job created in a major supermarket is likely to lead to more than one FTE position lost in the smaller grocery sector, it does anticipate that this is a likely outcome in most cases. However, it does not accept the COSBOA figures and expects that the net impact is much less than the COSBOA figures would imply.

Furthermore, the Review Group has previously concluded in section 6.3 that the restrictions do support the viability of the unrestricted retailers in the grocery sector and hence are likely to permit employment in those stores being higher than would otherwise be. However, the restrictions limit the capacity for the department stores and major supermarket chains to expand their employment and may also constrain employment in the unrestricted non-grocery sector.

Critically, it is important to take into account the potential for the retail sector to grow if the restrictions were removed. As discussed in section 6.2 above, the Review Group considers that the retail sector is constrained by the restrictions, though no quantification of this has been possible.

The Review Group considers that, given that labour productivity is almost certainly higher in the major retailers and that retail turnover as a whole is expected to grow if the restrictions were removed. Accordingly, there is more potential for real wage increases for some employees in the retail sector if the restrictions were removed. The extent to which the employees and their unions would be able to obtain these real wage increases would be determined by the outcome of future industrial agreements.

As discussed below in section 6.7, there is a provision in the Woolworths enterprise agreement for an immediate 2% wage increase if the restrictions are removed, which would result in a weekly wage increase of around \$9. This is consistent with the findings of the Review Group.

In summary, the Review Group expects that the removal of the restrictions would have no adverse impact on the aggregate level of employment in the retail sector. It is noted that

¹⁵ ABS Catalogue 8622.0

there is no evidence from other States to show that such a policy has this effect on employment. Following the removal of the restrictions, it is expected that growth in retail turnover would provide the opportunity for an increase in gross earnings through additional employment, increased real-wage increases for some retail employees or a combination of both of these outcomes.

The Review Group's conclusion on this issue is consistent with the Productivity Commission's finding, as previously noted in section 6.2, and one of the findings of the Koerbin Committee into Tasmanian Shop Trading Hours. The latter noted that " a significant increase in employment could be expected" following a change to the permitted hours of trading.¹⁶

Finding

The Review Group has found that the restrictions support employment in the independent grocery sector, while limiting employment for the major chain stores and associated entities which for part of these groups. Removal of the restrictions is not expected to result in a reduction in employment. Instead, it is expected that there would be an increase in gross earnings through additional employment, increased real wages, or a combination of both of these outcomes, as the retail sector expands.

6.6 Permanent and casual employment

6.6.1 The assertions

This section addresses the issue as to whether removal of the restrictions would change the ratio of permanent and casual employees in the retail sector.

Advocates for the current restrictions argue that the current trading environment fosters a situation where there are likely to be more permanent, "meaningful" jobs and there is less reliance on casual employees. Accordingly, any further deregulation, it is argued, would lead to an increase in "casualisation", particularly within the major chains because of increased flexibility and the lower costs of employing casuals.

The contrary view is that there is a trend within the industry to move to increasing reliance on permanent (full-time or part-time) employees because of the benefits this provides to the employers, staff members and consumers, and the removal of the restrictions would accelerate this trend.

¹⁶ Koerbin, L.A., Inquiry into Tasmanian Shop Trading Hours 1989, (Recommendations p iii)

6.6.2 Key points from the submissions

The Review Group was informed that the major supermarket chains are adjusting the composition of their workforce to increase the number of permanent full-time and permanent part-time positions. This is due to the superior outcomes that such employees are reported to provide to their employers in terms of quality of service, commitment to the business and improved returns on investment in staff training.

By way of example, over the past four years Coles has halved the number of casuals in its national work force to around 30% and has a target to reduce this to 20%. Coles claims that the removal of restrictions in Victoria facilitated this transition. At Coles Langwarrin in Melbourne, a new staffing structure has been piloted (known as Project 38) where casuals represent 1% of total hours worked, full-time employees work 75.5% and permanent part-time employees, 23.5%. Coles has stated that this form of structure has proved to be successful and will be introduced in all States over time.

The Review Group has also been told of the move towards greater employment permanency in the Woolworths group. In the event that the restrictions on trade were removed, it has claimed that its employment of permanent part-time positions would increase from the existing 50% to around 75%, with a corresponding reduction in casual employees.

6.6.3 Approach to evaluating the issue

In order to evaluate this issue, the Review Group has relied on material contained in the submissions, which largely comes down to consideration of claims and counter-claims. However, the Review Group observes that the major supermarket chains have brought forward the more substantive information, which is reflected in the evaluation.

6.6.4 Evaluation and finding

The Review Group has received no convincing evidence that removal of the restrictions would lead to an increase in the use of casual labour in the retail sector. The department stores and major supermarket chains, in particular, could adopt, or have adopted, such an approach if proven to be worthwhile, irrespective of the existence of the restrictions. Furthermore, the Productivity Commission found "claims that such changes have come at the expense of full-time jobs being sacrificed for part-time or casual jobs are difficult to sustain"¹⁷.

All substantive evidence considered by the Review Group points towards a trend to increasing permanent full-time and permanent part-time positions in the restricted retail sector. This trend appears likely to continue because of the commercial benefits that accrue to the employers, such as reduced turnover of staff and greater returns on training.

¹⁷ Productivity op cit p. 259

ABS data considered by the Review Group confirms there has been no shift in employment from full-time to part-time over the period from May 1994 to May 1999 in the retail sector. Over this time, full-time employment has remained constant and there has been a marginal increase in part-time employment by 5.8%.

However, the Review Group is not persuaded that removal of the restrictions would accelerate this trend as the benefits of the reduction in casual employment, as reported by major supermarket chains, appear to be largely independent of the shopping hours legislation.

Finding

The Review Group has found that the restrictions have a neutral effect on the respective levels of permanent and casual employment. The trend towards less casual employment in the retail sector as a whole is not expected to be materially influenced by the removal of the restrictions.

6.7 The welfare of employees in the retail sector

6.7.1 The assertions

This issue is concerned with the extent to which the restrictions protect existing employees in the retail sector, and particularly those employed by the restricted retailers, from being required to work outside 'normal' hours when they would rather choose not to do so. This can presently occur, for example, on Saturdays during late night trading pre-Christmas and on Sundays when cruise ships visit. This is not an issue of the restricted retailers breaching any industrial agreements since employees would be paid the appropriate penalty rate. Rather, it is asserted that the restricted retailers can and do bring pressure to bear on employees to work at times when they would prefer not to work, despite the penalty rates that would apply.

The contrary assertion is that the major chains have little trouble finding employees to work on those occasions when they have been free to open, such as during cruise ship visits and before Christmas.

An associated assertion is that employees in the unrestricted stores are employed under more favourable terms and conditions than those in the restricted stores. Accordingly, it is argued that in the event of any relaxation of the restrictions leading to transfer of employment from the unrestricted stores to the restricted stores, overall employee welfare would be reduced.

6.7.2 Key points from submissions

The Review Group was told that existing employees, by virtue of their membership of the Shop Distributive and Allied Employees Association (SDA), have expressed their preference to not work on Sundays. On occasions when extended hours trading has been permitted, it is alleged there have been instances of coercion on employees to work against their wishes.

The restricted major chains have advised there is considerable demand amongst employees for extra work, because of the attractive penalty rates available. Woolworths has pointed out that 99.9% of its employees are SDA members and that there have not been any documented cases of coercion lodged with the SDA.

In terms of the relative attractiveness of employment in the restricted and unrestricted stores, Woolworths indicated that agreements reached with its staff under enterprise bargaining provide better staff outcomes than those under the State award by \$10-12 per week. Included in the agreement is an immediate 2% pay rise for employees on an average retail wage (around \$9 per week) if deregulated trading occurs.

Woolworths also pointed to significant investment in its employees and the retail industry more generally through its Purity Retail College. Woolworth's reports that since 1996, 1800 employees have undertaken career advancement certificate courses. A further 15 store managers and assistants have attained diplomas, 21 have attained advanced diplomas and two employees are undertaking university studies.

6.7.3 Approach to evaluating the issue

The Review Group's evaluation of this issue has relied on firm evidence rather than on unsubstantiated assertions.

6.7.4 Evaluation and finding

Firstly, it should be pointed out that section 8 of the Shop Trading Hours Act makes it an offence for an employer to require or attempt to persuade an employee to work on a Sunday, public holiday and at some other times against an award or industrial agreement. The Review Group is not aware of any prosecutions under this section. The Review Group has not concerned itself with this provision, which applies equally to all employers in the retail sector.

On the more general issue of the major supermarkets requiring an employee to work when that person would rather not, even if it is within an award or industrial agreement, the Review Group has received no information indicating that this is a material issue. This is not to deny that incidents may have ever occurred. Rather, the isolated nature of such possible incidents and the absence of documentation do not suggest that it is widespread practice amongst the major chains.

On the issue of the relative attractiveness of employment within the restricted and unrestricted stores, the Review Group considers that there is no objective measure and that different working environments and conditions suit different employees. As noted above, some employees who are employed by non-restricted retailers are more likely to be required to work on Sundays and public holidays. The very high proportion of union membership in the retail sector strongly suggests that employee interests are well reflected in the award and enterprise agreement process.

The Review Group considers that it is the responsibility of the SDA to seek to obtain for its members the best terms and conditions of employment. As noted above, the Review Group does consider that the removal of the restrictions provides opportunities for real wage increases across the sector as a whole.

The Review Group appreciates that for some employees, working for retailers covered under the Act may be attractive as there is lower probability of being required to work outside normal working hours. However, against this, others may be attracted to working at times when the hourly rates are substantially higher. The Review group considers that, if the restrictions were removed the potential advantages to retail sector employees as a whole would exceed any disadvantages.

The review group also notes that a considerable proportion of employees in the retail sector already work during periods covered by the restrictions, particularly Sundays, in a wide range of hardware, furniture and electrical and small speciality shops. Any possible removal of the restrictions would therefore not impact on a large number of retail sector employees.

In concluding, the Review Group notes that the SDA has stated that, at a national level, "the major chains enjoy strong support from the SDA. The SDA stated in its submission that the major chains have often taken the lead in improving the pay and conditions of their employees, as well as promoting skills development in the industry"¹⁸. The Review Group has heard little to suggest the situation in Tasmania is any different.

Finding

The Review Group has found that the restrictions have varying impacts on employees in the retail sector in terms of the way in which the employers offer working conditions, time off and wages. Accordingly removal of the restrictions would not necessarily result in all employees being better off in terms of individual preferences. However the Review Group expects that the welfare of employees in the retail sector as a whole would not be adversely affected by the removal of restrictions and any impacts on employees can be easily managed through normal industrial processes.

¹⁸ Joint Select Committee on the Retailing Sector-Fair Market or Market Failure, August 1999, para 3.57

6.8 Consumer choice

6.8.1 The assertions

This issue is concerned with the extent to which the restrictions impose a real cost to consumers in terms of when and where they choose to shop.

It is argued that the restrictions impose a significant inconvenience on a large number of customers and results in them being required to shop either outside their preferred times or at shops which are not their preferred shops.

In support of retaining the current restrictions, it has been asserted that customers generally have sufficient time to shop at the restricted stores. Furthermore, it is asserted that that relaxation of the restrictions would lead to closures of small shops and an increase in the market share of major chains, thereby reducing the shopping choice for consumers.

6.8.2 Key points from submissions

The Review Group has received a number of submissions arguing for the retention of the restrictions on the ground of consumer choice. The key assertion was that the restrictions enhance consumer choice by helping to sustain the viability of smaller retailers, which may otherwise not exist. This, therefore, is said to enhance consumer choice because shoppers have a greater number of outlets in which they can shop. This argument is clearly dependent on establishing a nexus between the removal of the restrictions and closure of smaller unrestricted retailers, which was separately analysed in section 6.3 and 6.4.

A number of organisations or bodies also assert they represent the views of their members, who are in favour of retention of the restrictions. Bodies that have put forward this proposition include the Tasmanian Coalition Against Major Chain Dominance (TCAMCD), the Tasmanian Pensioners Union (TPU), the National Council of Women and the Tasmanian Council of Social Services (TASCOSS).

In support of the argument that consumers should have the right to choose when and where they shop, advocates brought forward information from their own polling.

For instance, a survey commissioned by the Australian Retailers Association found, amongst other things, that 69% of the 602 respondents agreed with the proposition that 'People should have the choice to shop without restriction every day of the week'.

The Review Group has also received information in support of the assertion that shoppers do not favour restrictions on shopping hours, pointing to the outcomes of an Australian Electoral Office poll conducted for the City of Greater Bendigo. The deregulation of shop trading hours in Victoria in 1996 was accompanied by a provision that allowed municipal

councils to re-regulate within their municipal area, if that were the majority wish of the electorate.

The City of Greater Bendigo exercised this option and in 1998 arranged for the Electoral Commission to conduct a resident poll. The poll attracted 72% of eligible voters, and, of these, 77% voted to retain Sunday trading.

In further support of the suggestion that the legislation restricts consumer choice, the Review Group received information to suggest that consumer shopping patterns are changing. Therefore, any relaxation of the existing restriction on trading hours would provide consumers with the additional flexibility to program their shopping outside the hours to which they are current constrained. In support of this argument, the Review Group was told that:

- ④ Sunday is the third largest trading day for Habitat and is the strongest trading day in its Canberra store;
- ④ the City of Greater Bendigo has reported a decisive increase in the level of retail activity, particularly on Sundays, since deregulation of shop trading hours in Victoria;
- ④ Coles Myer has reported that average Sunday turnover as a percentage of total weekly turnover in Coles Supermarkets in Victoria has increased from 1% in 1996 to 12% in 1998; and
- ④ Coles Myer has reported that average Sunday turnover as a percentage of total weekly turnover in Kmart stores in Victoria accounted for 18% in 1998, making it the largest trading day in sales, despite being open for only 7 hours.

6.8.3 Approach to evaluating the issue

In considering this important issue, the Review Group was keen to understand the degree of support among Tasmania consumers for extended shopping hours. There were no submissions from consumers that specifically addressed this issue.

The Review Group considered that the recent Tasmania surveys, such as the one by the Australian Retailers Association, could be regarded as lacking objectivity. Similarly, the Review Group considered that the claims made by the representative bodies that they stood for the views of all their members could not be viewed as representative of shoppers as a whole.

Accordingly, the Review Group chose to commission an independent consumer survey, which reached 806 Tasmanian shoppers. The outcomes of that survey have figured prominently in the Review Group's deliberations on this issue.

On the assertion that the removal of the restrictions would lead to a decline in the range of shops available, due to widespread closure of independent outlets, the Review Group was able to draw on its earlier findings in relation to this issue.

6.8.4 Evaluation and finding

The independent survey commissioned by the Review Group was carried out by Myriad Consultancy in March 2000 and a summary report is reproduced as Appendix 7. The 806 shoppers sampled were selected across the State and from rural and metropolitan locations in accordance with the distribution of the State's population.

The survey was designed to obtain the views of the 'principal shopper' in the house, as opposed to conducting a more general public survey. This was to ensure that the survey captured people who were able to comment with more certainty on their current and intended shopping patterns.

It is not the purpose of this report to provide a commentary on all outcomes of the survey. Instead, the Review Group wishes to confine its remarks to the outcomes of the survey that are most salient to the issue of consumer choice, these being questions 4 and 5.

Question 4 sought to determine whether the shoppers' support or otherwise, for any change to the current restrictions would translate to an actual and material change in shopping patterns. The survey found that for Sundays, public holidays and late nights around 42% were likely to make a significant change to their shopping patterns to do a 'reasonable amount' of shopping at the major chain retailers.

This outcome shows that at least 42% of shoppers would be better off by being given the opportunity to shop with the major restricted retailers at times that are currently restricted. This question was intentionally framed to obtain a conservative estimate of those likely to change their shopping, as it refers to 'a reasonable amount' of shopping, rather than occasional purchases. Of the remaining 58% of shoppers, therefore, at least some are likely to do some shopping at times that are currently not permitted.

Those who choose to not vary their shopping pattern would, of course, be no worse off than they are currently, in that they could continue to shop as they do now.

Question 5 of the survey sought to determine shoppers' support for continuation of the existing restrictions or some form of change, irrespective of whether their shopping patterns would change. The survey found 63% per cent of surveyed shoppers indicated their support for some change to the existing restricted shopping hours in favour of removal of the restrictions, and 50% per cent favoured Sunday trading.

These outcomes from questions 4 and 5 confirm that there is majority support (63%) for the view that there should be some relaxation of the existing restrictions and that this support in

principle would translate to a material change in shopping patterns for around 42% of shoppers.

In relation to questions 4 and 5, the survey found a major difference in the responses between the younger and older age groups. In relation to support for change (question 5), a very high proportion of the younger age groups supported change. For example, of those aged between 18 and 24, 68% supported Sunday trade, 77% supported public holiday trade and 91% favoured more week night trade. In the wider 18 to 39 age group, these figures were 58%, 56% and 69% respectively.

Only 7% of those aged between 18 and 24, and 24% of those between 18 and 39 supported the status quo.

For the older age group of 40 and over, 46% supported Sunday trading, 44% public holiday trading and 50% late night trading. For this group however, only 41 per cent supported the status quo.

In relation to the likelihood of a material change to shopping patterns, almost 46% of the under 40s said they were either very or quite likely to do a reasonable amount of shopping on Sundays, 42% on public holidays and 47% later at night. For the over 40s, the figures were 24% (Sundays), 23% (public holidays) and 21% (more late nights).

The survey clearly reveals that Tasmania's shopping hours do not suit younger Tasmanians. The Review Group considers that Tasmania's attractiveness as a State for younger professionals is not enhanced by its shop trading hours legislation. These people, who are more likely to be 'time poor', appear to be particularly inconvenienced by the restrictions.

The survey also endeavoured to identify any differences in views between shoppers in urban and rural areas and between the three broad regions of Tasmania, these being the North, North-West and South. The survey found southern shoppers to be generally more likely to take advantage of, or support, unrestricted shop trading hours, though not by a significant margin.

In terms of the outcomes in the three regions, question 4 found Southern shoppers (35%) are more likely to change their shopping patterns to include shopping at a major chain retailer on a Sunday, compared with nearly 29% in the North and 27.5% in the North-West. Similarly, in relation to question 5, 67.2% of shoppers in the South voted for some form of change to the status quo, compared with 61.7% in the North and 58.2% in the North-West.

In terms of outcomes in urban and rural areas, question 4 found there was not a great deal of difference in the views of urban and rural shoppers. Approximately 32% of urban shoppers indicated they would do a reasonable amount of their shopping at the major retailers on Sundays, compared with 28% of rural shoppers. The differential was even smaller in relation to question 5, where 63.5% of urban shoppers and 63.7% of rural shoppers indicated their support for some form of change to the status quo.

On the basis of experience in other jurisdictions and the outcomes of the independent survey commissioned by the Review Group, it is clear that the current shop trading hours are not supported by the majority of Tasmanian consumers.

As previously discussed in section 6.3, the Review Group is not persuaded by the assertion that removal of the restrictions will lead to widespread shop closures and, as a consequence, lead to reduced consumer choice.

The Review Group is also inclined to the view that the level of consumer support for unrestricted shopping hours would be greater if deregulation were trialed for a period of time and consumers were then asked whether they would have the restrictions reimposed. Outcomes from the Bendigo poll described in more detail in section 9 support this conclusion.

Finally, the Review Group notes the determination on this issue in a conclusion reached by the Joint Select Committee which found "...the ability of supermarkets or other grocery stores to open on a weekend is a factor welcomed by many consumers".¹⁹

Finding

The Review Group has found that the restrictions impose a major constraint on consumer choice, in respect to when and where consumers shop. This is because a significant percentage of Tasmanian shoppers have indicated in a specially commissioned survey that they would change their shopping patterns in the event that the restrictions were removed. Almost two thirds of shoppers are in favour of removing all or some of the restrictions on shop trading hours.

6.9 Market power of the major supermarket chains

6.9.1 The assertion

It is asserted that the restrictions are in consumers' benefit as they prevent the major supermarket chains from increasing their market share and being able to exercise undue market power over competitors, including potential entrants. It should be pointed out that no such claims were made against the major department stores or other non-grocery retailers restricted by the legislation.

A number of submissions point to the 78% share of the dry goods market held by Coles Myer and the Woolworths group. They argue that the restrictions help to maintain a viable independent grocery sector, which constrains the capacity of these major chains to further exploit their market dominance.

¹⁹ Joint Select Committee, *op cit*, Executive Summary, p 1

Allied to this is the assertion that the major supermarket chains' market power is contributing to higher prices in Tasmania than would be the case if Tasmania had the same level of competition between supermarket chains as in most mainland States. This issue will be separately discussed in the following section.

6.9.2 Key points from submissions

Many submissions, including those from the Retail Traders Association (RTA) and TIW, that advocate retention of the restrictions, argued that the major chain supermarkets already possess an unreasonable level of market share in Tasmania, which creates a situation where competitive forces are not operating freely. It has been alleged that the buying power of these chains has been used to inhibit competition. It has also been asserted that, as the most important tenants in some shopping complexes, they are able to obtain lease contracts that effectively inhibit the landowner from renting out space in that complex to other grocery retailers.

The major chains refute the assertion that they take advantage of their market power to restrict competition in the industry. They also claim that when the full range of products they sell is taken into account, including fresh produce, their market share reduces to around 60% and therefore they do not have the level of dominance that is often quoted. Further, the major chains claim that profits from their Tasmanian operations are not higher than from their mainland operations.

6.9.3 Approach to evaluating the issue

In order to consider this issue, the Review Group has considered the information provided to both this review and to the Commonwealth's Joint Select Committee on the Retailing Sector in 1999.

However, it should be pointed out that the Review Group is not required, under its Terms of Reference to investigate these issues and therefore, has not endeavoured to form a view as to the veracity of the claims in relation to the business practices of the major chains.

Instead, the Review Group has focused on the extent to which any relaxation of the restrictions may increase the possibility of such actions occurring, given the very significant market power currently enjoyed by the two major chains.

6.9.4 Evaluation and findings

The Review Group has found that the market share of the major chains in Tasmania, largely brought about by the absence of a third effective competitor, has created an environment where there is both the incentive and the opportunity for the improper use of market power against potential competitors and suppliers. The risk of this behaviour is greater than would be the case in a more competitive market.

However, this risk of misuse of market power by the major supermarket chains in Tasmania already exists today, with the current restrictions on shop trading hours in place. The Review Group does not consider that, if the restrictions were removed, these supermarket chains would obtain sufficient additional market share to increase the risk of these actions. Accordingly, the Review Group concludes the existing restrictions do not provide an effective mechanism to control the risk of misuse of market power by the major supermarket chains in Tasmania.

The Review Group acknowledges that this is potentially a major issue for Tasmania's grocery retail sector and that the current market structure does not deliver the same benefits of competition to consumers as are enjoyed in other States. Furthermore, the Review Group is not convinced that the major supermarket chains are not operating more profitably in Tasmania than in other mainland States.

However, the Review Group does not see the restrictions on trading hours as an appropriate and effective policy instrument to address this issue. Further discussion on the issue of misuse of market power is provided in section 9.2.

Finding

The Review Group has found that the restrictions do not limit the possibility for anti-competitive conduct arising from the market dominance of the major grocery chains. Therefore, the Review Group believes that the removal of the restrictions would not of itself lead to any greater likelihood of such conduct. Nonetheless, this issue is potentially very important for Tasmania and a specific recommendation has been made in respect to this matter.

6.10 Prices paid for groceries

6.10.1 The assertions

This issue is concerned with the extent to which the restrictions assist in keeping competitive pressure on grocery prices.

In support of the current restrictions, it has been asserted that Tasmanian shoppers already pay excessive prices for groceries in major chain supermarkets, and that without a viable, independent grocery sector, the prices charged by the major supermarket chains would be even higher. The restrictions, therefore, are defended as being in the consumers' long-term interests.

The contrary view is that the level of prices charged by the major supermarket chains is governed by the level of competition in the grocery sector, especially among the larger supermarkets. It is argued that a third major chain, especially one that adopted an aggressive

pricing policy, would lead to downward pressure on prices, regardless of whether the overall market share of the major chains were 70% or 90%.

It is further argued that the pricing policies of the smaller independent supermarket stores do not impact significantly on the pricing practices of the major chains, which generally offer lower prices. It has also been asserted that the restrictions themselves, by impacting on the efficiency of the supermarkets' operations, contribute to the higher prices paid by consumers in Tasmania.

6.10.2 Key points from submissions

The Review Group received many submissions, which argued that the independent supermarkets do compete effectively on price with the major chains and therefore do constrain the prices charged by these major chains. Information provided to the Review Group in support of this contention is limited but a number of submissions have referred to the January 2000 edition of the newsletter prepared by the Federal Member for Denison, titled "The Denison Report", which include a "Price Watch Survey".

The Price Watch Survey, using a regular basket of 36 grocery items as a sample, found Ralph's at Taroona to be the lowest priced supermarket in Hobart at \$69.69, albeit by a small margin of \$0.14 from the next major chain supermarket. The submissions then argue that the restrictions, by supporting the viability of smaller independent stores, assist in maintaining price competition. The major chain supermarkets throughout Hobart occupied positions 2-10 in the survey, and they were all more expensive than Ralph's at Taroona by a range of \$0.14 (0.18%) up to \$2.92 (4.19%). There were no other unrestricted independent supermarkets listed.

Advocates for retention of the restrictions have also pointed out that the prices paid for groceries in Tasmania are relatively high and give the example that prices in Hobart are already the highest in any Australian capital city.

Other submissions considered by the Review Group argued that the prices for representative grocery products in restricted supermarkets in Tasmania were lower than in unrestricted supermarkets because of factors such as their superior buying power and economies of scale.

The Review Group was told by one major supermarket chain that removal of the restrictions would not lead to any appreciable increase or decrease in its prices. It was suggested that there would be some cost savings for the major retailers as they would be able to use their assets for seven days a week rather than six, and there would be less product wastage and more efficient deployment of staff.

However, the major supermarket chains have stated that the general level of their prices is set to derive a fair return and the lack of aggressive price competition prevents downward pressure on their prices.

The major supermarkets did agree that Sunday and public holiday trading would lead to fewer products being marked down in price towards the end of the day – especially Saturday. Therefore, if the restrictions were removed, the range of products for which low prices are charged late on Saturdays would be reduced.

6.10.3 Approach to evaluating the issue

In order to address this issue, the Review Group has not been concerned with the prices paid for groceries in Tasmania relative to mainland centres, since there is an abundance of evidence to confirm the disparity between the prices for groceries here and elsewhere in Australia.

Instead, the Review Group has focussed on the extent to which there is currently price competition between the restricted major chains and the unrestricted independent stores, and whether this degree of competition would be reduced and prices charged by the major supermarkets would increase, if the restrictions were removed.

6.10.4 Evaluation and finding

The Review Group does not consider that the restrictions help to keep down the prices charged by the major retailers.

It is accepted that there is some degree of price competition between the major supermarkets and the independent supermarkets. The Review Group was advised that the major supermarkets regularly monitor prices offered by the larger independent supermarkets and that this information is used in developing the pricing strategies of the major supermarkets. Nonetheless, prices at major supermarkets are generally lower than at the independent supermarkets, as shown by the Choice survey.

In the Choice survey, the grocery basket of items at the five major chain supermarkets in Hobart were all less expensive than the only independent store reported, by a margin ranging from \$3.45 (4.2%) to \$0.98 (1.16%). Likewise, in Launceston, the two surveyed major chain supermarkets were less expensive than the only independent store reported, by a margin ranging of \$3.96 (4.77%) to \$2.21 (2.61%).

To accept the assertion that the restrictions help keep down the prices at the major supermarkets it is necessary to accept at least one of two other assertions;

- ④ that without the restrictions there would be widespread closure of independent supermarkets such that there would be reduced competition in the grocery market which would allow the major supermarkets to increase their prices; or
- ④ that without the restrictions the wholesale pricing arrangements for the independent supermarkets would be substantially affected (for example, case deals would no longer

be available). This would increase the price of many products going into the independent supermarket and the shelf prices would rise accordingly, leading to higher prices in the major supermarkets.

For reasons set out above, the Review Group does not accept either of these assertions. It is considered that, if the restrictions were removed, the independent sector would still remain a force in the grocery sector, because of the range of competitive advantages those shops possess, such as convenience, access and location. Therefore, the capacity the independent supermarket sector now possesses to constrain supermarket prices would not be adversely affected.

The fact that supermarket prices are higher in Tasmania than in other mainland centres is due principally to the number of competing supermarket chains rather than the combined market share of these chains *per se*. In some mainland centres, the total market share of the national supermarkets is similar to the share in Tasmania, but there are 4 or 5 chains and prices are lower due to the more intense competition between them.

It has been argued that the size of the grocery market is too small in Tasmania to encourage a third national supermarket chain, such as Franklins. The Review Group considers that the restrictions on shop trading hours constrain the size of the grocery market for these chains (as they cannot operate on Sundays, public holidays and at other times) and therefore discourage the entry of a third national chain into Tasmania.

The Review Group has found that the restrictions deprive consumers of the opportunity to shop at major chain supermarkets, which usually offer cheaper grocery prices than the independent stores, outside the legislated trading hours.

Therefore consumers, such as those who need to make some purchases on a Sunday, are likely to be paying higher prices on average than they would if the major chains were open at these times.

For these reasons, the Review Group considers that the current restrictions may result in the grocery prices faced by consumers being, on balance, slightly higher than if the restrictions were removed.

Finding

The Review Group has found that the restrictions do not have a significant impact in Tasmania on grocery prices in the major supermarkets, the independent supermarkets and the convenience stores. However, the restrictions prevent shoppers from exercising their choice to purchase cheaper groceries from major chains at certain times. Furthermore, they discourage the entry of a third national supermarket chain into Tasmania, which would lead to lower grocery prices.

6.11 Selected retailers caught by the grouping provisions of the legislation

6.11.1 The assertion

The assertion is that a significant drawback of the current restrictions is that retail outlets that appear to be identical and compete with each other, are treated differently under the legislation.

This assertion arises because the grouping provisions in the Act capture some retail businesses, because of their ownership arrangements with the major supermarket chains or department stores, even though the businesses themselves operate in quite different markets. As a result, it is asserted that this discriminates against selected retailers simply because of the business structures, and may encourage less than optimal ownership arrangements to avoid being caught under the Act.

6.11.2 Key points from submissions

The Review Group received a number of submissions concerning the discriminatory impact of the current legislation. There are a number of businesses precluded from opening when they choose because their ownership arrangement links them to a retail business where the total number of employees is greater than 250. However, there are similar businesses that have the opportunity to trade when they choose. Examples of these anomalies are as follows:

- ④ Tandy is able to trade when it chooses, whereas Dick Smith cannot trade outside the prescribed periods because it is owned by Woolworths;
- ④ Sussan is able to trade when it chooses, whereas Katies cannot trade during the prescribed periods because it forms part of the Coles Myer group;
- ④ Rockmans was unable to trade during the prescribed periods because it was owned by Woolworths, but can now trade because of new ownership arrangements; and
- ④ Harvey Norman and Freedom are able to trade when they choose, whereas Myer and Harris Scarfe cannot trade outside the prescribed periods.

When the Review Group raised this issue with stakeholders, all those who expressed a view concurred that the current legislation is impacting unfairly on certain retailers and thereby giving others a competitive advantage.

6.11.3 Approach to evaluating the issue

In considering this issue, the Review Group examined the information provided by the submissions.

6.11.4 Evaluation and finding

The Review Group concurs with the widely held view that the current restrictions are inequitable and do not promote competition or efficiency, and that these discriminatory impacts are unreasonable and cannot be justified.

Finding

The restrictions have unintended discriminatory impacts that are not related to the objectives of the Act, since certain retailers are restricted from trading at times when direct competitors, that may have very similar retail stores, face no such restrictions.

6.12 Social outcomes for disadvantaged groups

6.12.1 The assertion

Many submissions assert that the restrictions assist in meeting the needs of the disadvantaged and elderly in society. The assertion is that smaller retailers, particularly local convenience stores, are important to some less able members of society because of their locality and close proximity. In addition, such stores generally offer personalised service including free delivery of groceries, and provide a social outlet. It is argued that people with special needs will be further disadvantaged if deregulation leads to closure of shops and loss of services.

6.12.2 Key points from submissions

The Review Group received many submissions arguing that the restrictions are particularly advantageous for the elderly, disadvantaged and less mobile members of our community.

The Pensioners Association and TASCROSS told of their concerns that deregulation would lead to the closure of smaller convenience stores, which are an important source of social interaction for many elderly people. These groups see such stores as more user-friendly for elderly and other less mobile people because of their smaller floor space, personalised service, ease of parking and convenience in terms of location. In addition, the convenience stores in remote communities provide other social and community services such as assisting tourists, responding to emergencies and sponsoring local events.

Proponents of change have not necessarily sought to explicitly address this issue, beyond asserting that the needs of the elderly and disadvantaged would not necessarily be compromised. They argue that any shift in market share to the major chains will largely come from drawing expenditure from other areas, rather than convenience stores, and there will not be widespread closure of small shops.

The major chains also suggest that they are equally good corporate citizens in terms of the services they offer to the elderly and community.

6.12.3 Approach to evaluating the issue

The Review Group's finding on this issue is based on its assessment of the extent to which convenience stores would be forced to close down as a result of removing the restrictions. It also took into account the responses from the survey reported in section 6.3.

6.12.4 Evaluation and finding

The Review Group considers that, the restrictions may marginally assist in enhancing accessibility to convenience shops for some elderly and less mobile members of the community. In section 6.3, the Review Group has previously concluded some more marginally viable convenience stores in the urban areas of Tasmania are at risk, particularly where their cost structures are high. It was considered, however, that these stores may not remain open in the longer term even if the restrictions remain.

It follows, therefore, that some members of the community may be disadvantaged if deregulation were to occur in the event there were some shop closures at the margins. However, the Review Group does not consider these impacts to be significant.

The Review Group also considered that some elderly and less mobile members of the community would benefit from the removal of the restrictions as they will be able to shop at the major supermarkets on days and at times that are not currently allowed.

The customer survey, which was discussed in section 6.8, also provides the Review Group with a clearer understanding of the views of people over 55 years of age. The survey showed that 17% were likely to do a reasonable amount of shopping on Sundays, 15% on public holidays and 21% later at night. It also showed that 45% in this age group support Sunday trading, 43% support public holiday trading and 48% favour more late night trading.

Therefore, a very large number of the more elderly expressed support for the removal of the restrictions. The Review Group considers that it is reasonable to deduce from the survey that many of these people are inconvenienced by the current restrictions.

Finding

The Review Group has found that the restrictions support access to shopping for some members of the community with special needs. However, access will not be materially affected in the event of removal of the restrictions because the Review Group does not consider there will be widespread closure of shops. In addition, the specially commissioned survey found that a significant proportion of Tasmanian shoppers over 55 are inconvenienced by the current restrictions.

6.13 Sundays and public holidays – days of rest?

6.13.1 The assertion

Some submissions asserted that the restrictions contribute to better social outcomes by assisting the community to treat Sundays and public holidays as days of rest.

6.13.2 Key points from submissions

Some submissions from individuals and bodies such as TASCROSS argued that Sunday in particular, has been traditionally regarded as a day of rest, for attending church and for family activities. Accordingly, employees who are required to work on Sundays lose these benefits and this prevents the entire family from being together, particularly when the majority of employees likely to be impacted by any extension of shop trading hours are women.

Interestingly, the Review Group received only one submission from a religious denomination, (the Uniting Church of Deloraine) that expressed concern that Sunday trading would lead to a decline in spiritual values.

Other submissions argued that today's society is very different from that of say, 20-30 years ago, and reference to Sunday as a day of rest are now less relevant. It was noted for example, that the *Sunday Observance Act 1968* was repealed. Submissions also pointed to the fact that many employees in other occupations work as and when required, including Sundays and public holidays, for instance call centre operators, employees in the hospitality industry, police and nursing staff.

Some submissions also asserted that it is not the role of this Act to prescribe how people should spend their time. People should be given the choice to shop or work in the retail industry on Sundays or public holidays if they choose to do so. Equally, people should be able to freely elect to keep Sundays and public holidays for leisure.

6.13.3 Approach to evaluating the issue

In order to assess this issue, the Review Group has taken into account trends in retailing and society in general (as discussed in section 3). The Review Group has also assessed this issue in the context of whether it is appropriate for the legislation to influence how society chooses to allocate time between work and leisure.

6.13.4 Evaluation and finding

The Review Group's own examination of trends in retailing and work patterns, as discussed in section 3 confirms that for many employees in many industries, the traditional distinction between work days as Monday to Friday and leisure days as Saturday, Sunday and public

holidays is less relevant today. It is also noted that a number of retailers in tourist precincts such as Salamanca Place already work on Sundays and public holidays in response to customer demands.

The Review Group also notes that the independent supermarkets and convenience stores trade extensively on Sundays. This is because consumers choose to do a substantial amount of shopping on Sundays, and the survey, as discussed in section 6.8 revealed that consumers are not satisfied with the current range of shops that are open at this time.

The Review Group considers that if the Government wishes to use legislation to affect how society allocates time between work and leisure, or to determine when retailers should be permitted to open, the legislation should apply to the entire retail sector. This would avoid the discriminatory effects of supporting one set of businesses at the expense of another set.

The Review Group notes that the Government may consider it appropriate for certain public holidays to be accorded special status and notes, for example, that Christmas Day, Good Friday and ANZAC Day (before 12:00) are given special recognition in the shop trading legislation in Victoria. While a determination on this matter is beyond the Terms of Reference for this review, the Review Group considers that any restriction on retail trading to acknowledge days of special religious or national significance should be equitably applied to all retailers.

Finding

The Review Group has found that the restrictions do not effectively promote Sundays and public holidays as days of rest, as employment in retail businesses is permitted, most notably in independent grocery stores. The Review Group considers that any legislation seeking to prescribe recreation days in order to achieve social outcomes (such as days of special religious or national significance) should apply, as much as possible, across the entire retail sector to avoid the discriminatory effects that would otherwise arise.

6.14 Summary of major findings

The Review Group's conclusions in relation to each of the discrete headline issues are summarised in the following table.

Table 1: Summary of findings

<i>Key issue</i>	<i>Finding</i>
Growth in the retail sector as a whole (6.2)	The restrictions act as a significant constraint on growth in the retail sector. Relaxation of the restrictions would increase retail expenditure by Tasmanians and visitors, leading to growth in the retail sector as a whole.
The viability of unrestricted grocery stores (6.3)	The restrictions do improve the viability of some independent stores, especially in the grocery sector. While the Review Group does not envisage widespread closure of shops if the restrictions were removed, it is acknowledged that their removal would lead to the closure of some marginally viable stores, changes in employment arrangements and diversification of products and services to adjust to a new trading environment. The Review Group found that wholesale services to the independent sector would not be materially affected by removal of the restrictions on shop trading hours.
Unrestricted (non-grocery) retailers that generally do not trade on Sundays or public holidays (6.4)	The impact of removing restrictions on trading hours on those smaller non-grocery retailers that tend not to trade on Sundays and public holidays would vary, depending on the commercial decisions made by those retailers. It is likely that some retailers would prosper through increased turnover, while others may find an unrestricted trading environment less attractive because of impacts on profitability and their work and leisure preferences. However, the Review Group finds there is considerable potential for net benefits to accrue to this sector.
Overall employment outcomes (6.5)	The restrictions support employment in the independent grocery sector, while limiting employment for the major chain stores and

<i>Key issue</i>	<i>Finding</i>
	associated entities which are part of these groups. Removal of the restrictions is not expected to result in a reduction in employment. Instead, it is expected that there would be an increase in gross earnings through additional employment, increased real wages, or a combination of both of these outcomes, as the retail sector expands.
Permanent and casual employment (6.6)	The restrictions have a neutral effect on the respective levels of permanent and casual employment. The trend towards less casual employment in the retail sector as a whole is not expected to be materially influenced by the removal of the restrictions.
The welfare of employees in the retail sector (6.7)	The restrictions have varying impacts on employees in the retail sector in terms of the way in which the employers offer working conditions, time off and wages. Accordingly removal of the restrictions would not necessarily result in all employees being better off in terms of individual preferences. However the Review Group expects that the welfare of employees in the retail sector as a whole would not be adversely affected by the removal of restrictions and any impacts on employees can be easily managed through normal industrial processes.
Consumer choice (6.8)	The restrictions impose a major constraint on consumer choice, in respect to when and where consumers shop. This is because a significant percentage of Tasmanian shoppers have indicated in a specially commissioned survey that they would change their shopping patterns in the event that the restrictions were removed. Almost two thirds of shoppers are in favour of removing all or some of the restrictions on shop trading hours.
Market power of the major supermarket chains (6.9)	The restrictions do not limit the possibility for anti-competitive conduct arising from the market dominance of the major grocery chains. Therefore, the Review Group believes that the removal of the restrictions would not of itself lead to any greater likelihood of such conduct. Nonetheless, this issue is

<i>Key issue</i>	<i>Finding</i>
	potentially very important for Tasmania and a specific recommendation has been made in respect to this matter.
Price paid for groceries (6.10)	The restrictions do not have a significant impact in Tasmania on grocery prices in the major supermarkets, the independent supermarkets and the convenience stores. However, the restrictions prevent shoppers from exercising their choice to purchase cheaper groceries from major chains at certain times. Furthermore, they discourage the entry of a third national supermarket chain into Tasmania, which would lead to lower grocery prices.
Selected retailers caught by the grouping provisions of the legislation (6.11)	The restrictions have unintended discriminatory impacts that are not related to the objectives of the Act, since certain retailers are restricted from trading at times when direct competitors, that may have very similar retail stores, face no such restrictions.
Social outcomes for disadvantaged groups (6.12)	The restrictions support access to shopping for some members of the community with special needs. However, access will not be materially affected in the event of removal of the restrictions because the Review Group does not consider there will be widespread closure of shops. In addition, the specially commissioned survey found that a significant proportion of Tasmanian shoppers over 55 are inconvenienced by the current restrictions.
Sundays and public holidays - days of rest? (6.13)	The restrictions do not effectively promote Sundays and public holidays as days of rest, as employment in retail businesses is permitted, most notably in independent grocery stores. The Review Group considers that any legislation seeking to prescribe recreation days in order to achieve social outcomes (such as days of special religious or national significance) should apply, as much as possible, across the entire retail sector to avoid the discriminatory effects that would otherwise arise.

7 Evaluation of costs and benefits

7.1 Introduction

In accordance with *Step 4* of the evaluation process shown in Figure 1, this section assesses the costs and benefits of the restrictions and concludes whether the legislation can be regarded as being in the overall public benefit. As discussed above, the costs and benefits of the restrictions have been compared against the alternative of removing all the restrictions. To undertake this assessment, the Review Group has drawn on the findings in relation to each of the discrete headline issues outlined in section 6.

7.2 Evaluation of costs and benefits

The following table presents the Review Group's findings in respect to the major costs and benefits of the current restrictions when compared with full deregulation.

Table 2: Comparison of the costs and benefits of the restrictions

Costs	Benefits
Impose major constraints on when consumers choose to do their shopping	Improve the viability of convenience stores and independent supermarkets
Restrict growth of the retail sector as a whole and does not impact favourably on Tasmania as a tourist destination	Provide a marginal improvement in accessibility to shop for some people with special needs
Restrict some retailers from trading when they choose	
Constrain the potential for greater employment growth in the retail sector and possibility for slightly higher wages in the industry	
Restrict the capacity for shoppers to purchase groceries at lower prices and does not encourage the entry of a third national chain into Tasmania, which would lead to lower grocery prices	
Lead to unintended and discriminatory restrictions on selected retailers	

7.3 Discussion

The Review Group's assessment of the costs and benefits is based on the analysis undertaken in respect to the headline issues, as documented in section 6. It is acknowledged that, in some instances, there are discrete costs and benefits associated with the same restrictions. For example, some unrestricted retailers may prosper with the restrictions removed, while others may find the trading environment less favourable. However, the Review Group's focus in section 6 was to assess the overall benefit or cost with respect to the key issues. Accordingly, in presenting the summary in Table 2, the Review Group has not sought to restate all the discrete costs and benefits of each issue.

On the basis of a high level assessment of the costs and benefits and their relative weighting, the Review Group believes the costs of the restrictions exceed the benefits by a clear margin. The key determining factors underpinning this assessment are the extent to which the restrictions limit consumers' shopping patterns and the impediment the legislation has on the growth in the retail sector as a whole.

The other issues that feature in Table 2 as costs of the restrictions are:

- ④ in areas such as shopping centres and the Hobart CBD, some smaller unrestricted retailers are either legally or commercially constrained to trade only when the restricted supermarket chains and department stores are able to trade, and are therefore unintentionally caught by the legislation;
- ④ employment in the retail sector is artificially constrained in the restricted major chain stores and inflated in the unrestricted grocery sector;
- ④ the inequitable impact of the restrictions on selected smaller retailers who are caught by the legislation solely by virtue of their ownership structure; and
- ④ the pricing outcomes for consumers, to the extent that the restriction prevents shoppers from taking advantage of the relatively lower prices offered by supermarkets when they need to shop outside the hours in which the restricted retailers are permitted to trade.

Though the Review Group has determined there to be a net benefit in respect to the foregoing issues, it is nevertheless recognised that there may be some owner-operators and employees in the retail sector who may be disadvantaged in the events of removal of the restrictions.

For instance there may be some smaller unrestricted retailers, particularly owner-operators who prefer not to trade, even though the legislation allows them to do so, because they find it unprofitable or would rather have the recreation time. In the event of removal of the restrictions, such retailers may feel compelled to open (though not legally required to), in order to maintain a market presence. These retailers may regard themselves as disadvantaged if the restrictions are removed, though the Review Group sees the potential advantages to other smaller retailers as being greater.

Similarly, the Review Group's analysis of employment outcomes suggests that removal of the restrictions would lead to some reduction in employment in the independent grocery supermarkets. However, the Review Group considers any reduction would be outweighed by additional employment in the restricted retail stores and in other retail outlets, due to the growth in the sector as a whole.

On the other side of Table 2, are the benefits of the restrictions. The Review Group considers that significant benefits accrue principally to the unrestricted grocery stores, in terms of improved viability.

The other benefit flowing from the restrictions is the improved access and convenience for some older and less mobile shoppers. The Review Group considers that a small number of shoppers in this category may benefit, as otherwise non-viable or marginally viable convenience stores are able to continue operating.

A number of the Review Group's findings from section 6 do not appear in Table 2. This is because the Review Group believes the restrictions have a neutral impact in relation to these findings and cannot be clearly categorised as a net cost or benefit of the restrictions. The restrictions are assessed as not affecting:

- ④ the proportion of employees who are employed on a casual basis, as opposed to a permanent basis;
- ④ the overall welfare of existing employees, relative to their welfare if there were no restrictions, in terms of the problem of requiring employees to work against their will. Furthermore, there is nothing to suggest that employees who move from unrestricted shops to shops that are currently restricted would necessarily be any worse off. In any event, these outcomes are a matter of choice and for determination through normal commercial and industrial processes;
- ④ the risks of anti-competitive behaviour that may occur with firms with a large market share. Such risks are unlikely to escalate solely as a result of removing the restrictions. Other measures may need to be employed to mitigate such risks and this will be discussed in section 9;
- ④ the overall level of prices either in the restricted stores or the unrestricted stores though, as discussed above, they do prevent consumers from accessing the generally lower prices in some restricted stores at some times; and
- ④ whether Sundays and public holidays are treated as leisure days since there are already a large number of owner-operators and employees in unrestricted shops as well as employees in other industries who currently work on such days.

The Review Group has also considered the public benefit considerations that may be taken into account, such as promoting investment, exports and regional development, as shown in

Appendix 7. The Review Group is unable to point to any of these factors as justification for retention of the restrictions. It is again important to emphasise that the restrictions do not respond to any form of market failure.

Accordingly, the Review Group concludes that the costs of the restrictions exceed the benefits by a clear margin, which leads to the conclusion that the restrictions should be removed.

The Review Group has therefore clearly established that there is a clear case for total removal of all provisions that currently restrict retail trading in Tasmania. On this basis, there is no justification to consider any alternative regulatory model that is less restrictive than the status quo (and therefore more restrictive than total removal of the restrictions), since this is assessed as being an inferior outcome to the total removal of the restrictions.

7.4 Conclusion and principal draft recommendation

On the basis of the Review Group's evaluation of the cost and benefits of the restrictions, the Group concludes that the restrictions cannot be justified as being in the public interest. The private benefits to selected stakeholders, principally the independent grocery retailers, are assessed as being less than the costs imposed on the Tasmanian community as a whole, particularly consumers, the restricted supermarket chains and the total retail sector.

The Review Group recommends that the Tasmanian Government remove all restrictions on shop trading hours in the *Shop Trading Hours Act 1984*. If the Government chooses to restrict shop trading on days that it considers to be of special significance, which might include Christmas Day, Good Friday and ANZAC Day, the Review Group recommends that these restrictions should apply, as much as possible, to all retailers on a non-discriminatory basis.

8 Transitional arrangements

8.1 Introduction

This section presents the Review Group's proposed transitional arrangements in respect to the principal draft recommendation.

8.2 Discussion and recommendation

The Review Group has found in section 6.3 that some retailers, especially non-restricted grocery retailers, receive significant benefits from the current trading arrangements. The Review Group considers it important that these retailers are given sufficient time to adjust to an environment where there would be no restrictions on trading hours.

The Review Group received only a few submissions that specifically addressed the issue of transition. In summary, these included:

- ④ the removal of restrictions should be trialed for a year before a final judgement is made on whether it is appropriate for Tasmania; and
- ④ Sunday trading could commence from the beginning of daylight saving in the spring of 2000, with further restrictions being progressively removed over successive springs from 2001 to 2003.

The Review Group did not support measures where the final outcome is not determined, such as the first proposal, as this would create further uncertainty in the retail sector. In considering the option of a gradual implementation of extended trading, the Review Group was not convinced that this provided a superior alternative to setting a future date at which all restrictions are to be removed.

Key factors that the Review Group has considered in assessing an appropriate adjustment period were:

- ④ fairness for some unrestricted retailers who have entered the industry, made a substantial investment in their business or entered into financial undertakings on the basis of the current regulatory model and in light of the present Government's reported commitment to not remove all the restrictions before 2002;
- ④ the period of time that some unrestricted retailers will need to develop strategies for diversification or to innovate as a response to challenges presented by a unrestricted competitive environment;
- ④ the need to give all retail traders time to plan staff rosters and settle other human resource issues such as recruitment and workplace agreements; and

- ④ the disruption and costs faced by all retailers, and the smaller retailers in adjusting to the implementation of the Goods and Services Tax (GST).

Consumers and the restricted retailers will also need to adjust to an unrestricted trading environment and, on the basis of the information received to date, it would appear that their preference is for an immediate removal of the restrictions. For this reason, the Review Group considers the duration of any transition period need not take into account the specific interests of these groups, beyond acknowledging that the shorter the period, the sooner they, and Tasmania as a whole, would derive the benefits of unrestricted trading hours.

However, several submissions have stated that some retailers have made commercial decisions and investments in their retail businesses on the basis of a reported commitment made by Government that all current restrictions on retail trading would remain in force until 2002. It has therefore been argued that a decision to end the restrictions with immediate effect would lead to significant losses for these retailers. The Review Group appreciates that some retailers may have invested in their businesses on the strength of a reported commitment that the restrictions would be retained until 2002.

Furthermore, the Review Group is conscious of the impact of the introduction of the GST on retailers, especially smaller retailers. This alone is expected to create a significant impost for these businesses.

For all the above reasons, the Review Group considers that an adjustment period of at least one-year is required for retailers to adjust to an unrestricted trading environment.

The Review Group considers that the adjustment period should commence when the legislation to amend or repeal the *Shop Trading Hours Act 1984* has been passed by both Houses of Parliament. The Review Group also considers that since the benefits of these reforms significantly outweigh the costs, the Government should address this issue as a priority in developing its legislative timetable for the Spring Session 2000 or, if this is not possible, the Autumn Session 2001.

In the light of these considerations, it is therefore recommended that amending legislation provide that the restrictions be removed by 1 January 2002. If it is not possible to introduce the legislation until the Autumn Session 2000, a correspondingly later date for the removal of the restrictions is required.

Draft recommendation

The Review Group recommends that legislation be introduced to Parliament to remove the restrictions on competition as a priority issue. If this legislation is passed in the Spring session of 2000, unrestricted retail trading in Tasmania should take effect from the 1 January 2002. If the legislation is delayed until the Autumn Session 2001, the restrictions should be removed at a correspondingly later time.

9 Related issues

9.1 Introduction

This section sets out other key issues the Review Group has considered as part of the review, which are not strictly within the Terms of Reference. These issues are:

- ④ concerns over the market power exercised by the major supermarket chains, regardless of restrictions on trading hours, which may have adverse impacts on prices and the potential for major new retailers to enter the Tasmanian market (9.2);
- ④ whether, at the Local Government level, there should be the capacity to choose whether there should be restrictions on shop trading hours (9.3); and
- ④ whether the provisions in the *Shop Trading Hours Act 1984* that are not related to the restrictions on shop trading hours, which are principally designed to protect employees from working at times outside their award or agreement, remain relevant in the light of more recent legislation and the trend towards enterprise bargaining agreements (9.4).

The Review Group presents preliminary views in relation to these issues. However, as these issues are outside the Terms of Reference for this review, the Review Group considers that they should be the subject of further consideration by Government.

9.2 Issues relating to major chain dominance

Section 6.9 and 6.10 outlined the Review Group's findings in relation to the issue of major chain dominance in Tasmania and the potential impacts of these chains having such a large share of grocery spending in Tasmania. In summary, the Review Group found that the restrictions on shop trading hours for these chains are not an effective mechanism for limiting the risk of misuse of market power. Furthermore, the restrictions do not assist in keeping grocery prices lower than they would be if there were aggressive price competition between major supermarket retailers.

Accordingly, the Review Group has looked at the regulatory arrangements that are in place to prevent the potential misuse of market power and mitigate against the risks associated with the market share dominance of the major supermarket chains in Tasmania. In particular, the Review Group has consulted with the Office of Consumer Affairs and Fair Trading (Consumer Affairs), the Australian Competition and Consumer Commission (ACCC) and the Government Prices Oversight Commission (GPOC).

The Review Group has been advised that the key pieces of legislation are the Commonwealth's *Trade Practices Act 1984* and the (Tasmanian) *Prices Surveillance Act 1983*. However, there are some issues associated with implementation and enforcement of these Acts which may limit their effectiveness, at least in the short term.

On this issue, a Commonwealth Joint Select Committee Inquiry into Australia's retail sector²⁰ has examined the issue of major chain dominance across Australia and has developed a set of recommendations. The Review Group believes that the Government should consider the issue of the market power of major grocery supermarket chains in Tasmania and assess the appropriateness of the recommendations of the Joint Select Committee (except those that require changes to Commonwealth legislation) in light of the circumstances in Tasmania.

Finding

The Review Group has found that the market power of the major supermarket chains is an important issue for Tasmania. While there are mechanisms available to respond to issues arising from possible misuse of market power there are concerns about the extent to which these may be effective. The Review Group recommends that the Government further consider this matter in the light of the recommendations of the Joint Select Committee report.

9.3 Providing Local Government the choice to impose restrictions on shop trading hours

All the evidence the Review Group has received to date has led it to the conclusion that at the State level, the benefits of unrestricted shop trading hours exceed the costs. Furthermore, the Review Group has not found that at a local level an alternative outcome is in the public benefit.

However, the Review Group acknowledges that the Government may decide that local communities may wish to choose whether these restrictions should be imposed, even if they are no longer in force in Tasmania at a State level.

The Review Group has examined the Victorian model, which allows each council to conduct a non-compulsory poll of voters in the municipal area to determine whether the local community wishes to reimpose limits on deregulated shop trading.

To date, the only Victorian Council to have exercised this option is the City of Greater Bendigo. As reported earlier, the poll conducted by the Electoral Office attracted a voluntary turn-out of 72%, of which 77% voted to support the continuance of Sunday trading by the major chains.

The Review Group considers that if the Government does intend to give local communities a say on whether there should be restrictions on shop trading hours, the Government should consider the Victorian model, but only with a view to introducing it after Tasmania has had at least two years' experience of unrestricted shop trading hours.

²⁰ Joint Select Committee, *op cit*, Executive Summary, pp 2-5

It is considered that the Victorian model is preferable to a model that allows the State Government to determine the areas where shop trading hours are to be restricted.

Finding

The Review Group has found that there is no case for expecting that it is in the public benefit for restrictions on shop trading hours to be imposed at the local level, such as at the level of the municipal council. However the Review Group considers that if the Government decides that local communities should be able to choose whether or not these restrictions may be imposed, the Government should consider the approach taken by Victoria on this issue.

9.4 Other provisions of the Act

The *Shop Trading Hours Act 1984* contains a number of other provisions that are not related to the restrictions on shop trading hours and apply to the entire retail sector. In summary:

- ④ section 6 requires the occupier of the shop to keep records of employees;
- ④ section 7 sets out the powers of inspectors to enter shops and carry out authorised inspections;
- ④ section 8 makes it an offence to require a person to work at certain times, contrary to an award or industrial agreement; and
- ④ section 9 sets out the procedures and evidence in respect of offences under the Act.

The Review Group considers that in the light of the recent developments in industrial agreements and the amendments to the *Industrial Relations Act 1984*, the Government should review these provisions to determine whether they remain relevant.

It should be noted that the Review Group has made no assessment on this issue but considers that this should be examined by the Government regardless of whether it decides to remove the provisions that relate to restrictions on shop trading hours.

Finding

The Review Group has found that, in the light of the recent developments in industrial agreements and the amendments to the *Industrial Relations Act 1984*, the Government should review the provisions in the Act that are not related to shop trading hours to determine whether they remain relevant, regardless of whether the shop trading hours provisions are retained or repealed.

Appendix 1: Terms of Reference

Introduction

At the meeting of the Council of Australian Governments (COAG) on 11th April 1995, the Tasmanian Government (along with the Commonwealth and all other State and Territory governments) signed three inter-governmental agreements relating to the implementation of a national competition policy (NCP). The agreements signed were:

- ④ the Conduct Code Agreement;
- ④ the Competition Principles Agreement; and
- ④ the Agreement to Implement the National Competition Policy and Related Reforms.

The Competition Principles Agreement (CPA), among other things, requires the State Government to review and, where appropriate, reform by the year 2000 all legislation restricting competition. This requirement is outlined in clause 5.

The State Government's Legislation Review Program (LRP) meets Tasmania's obligations under clause 5 of the CPA by, *inter alia*, outlining both a timetable for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new legislative proposals that restrict competition or significantly impact on business are properly justified. Further, the LRP details the procedures and guidelines to be followed by agencies, authorities and review bodies in this area. Details of the LRP's requirements are contained in the *Legislative Review Program: 1996-2000 Procedures and Guidelines Manual* (the "Manual").

Terms of Reference

The Shop Trading Hours Review Group shall review the *Shop Trading Hours Act 1984* with the following Terms of Reference:

- 1 clarify the objectives of the legislation;
- 2 identify the nature of the existing restrictions on competition;
- 3 consider whether the existing restrictions, or any other form of restriction, should be retained by:
 - ④ analysing the likely effect of the existing restrictions or any other form of restriction on competition and on the economy generally;
 - ④ assessing and balancing the costs and benefits of the restrictions; and

- ④ considering alternative means for achieving the same result, including non-legislative approaches;
- 4 identify the broader impact of the legislation on business and assess whether this impact is warranted in the public benefit;
- 5 determine whether the basis of discrimination between 'small and large' shops is appropriate;
- 6 examine the legislation and regulatory systems governing shop trading hours in other jurisdictions as well as any relevant reviews of shop trading legislation that have been undertaken in other States;
- 7 determine the likely effect on employment levels (both permanent and casual) of any recommended changes to the legislation; and
- 8 determine whether any anti-competitive circumstances exist with respect to warehousing and distribution systems.

The Shop Trading Hours Review Group shall take other broad policy considerations of the Tasmanian Government into account when determining whether legislative restrictions on competition or significant impacts on business are warranted.

Additional Information in Relation to the Review

The Shop Trading Hours Review Group must complete a Regulatory Impact Statement (RIS) in accordance with the proforma contained in Appendix 4 of the Manual. The RIS should explain:

- ④ the objectives of the legislation;
- ④ the issues surrounding any restrictions on competition;
- ④ the benefits and costs which flow from those restrictions; and
- ④ the broader impact of the legislation on business and whether this impact is warranted in the public benefit.

It is mandatory that the Shop Trading Hours Review Group undertake public consultation on the Regulatory Impact Statement in accordance with the procedures set out in the Manual. The public consultation process should:

- ④ detail the scope of the review;
- ④ provide details of where copies of the RIS may be obtained; and

- ④ invite submissions from interested parties.

The Shop Trading Hours Review Group must seek endorsement from the Department of Treasury and Finance's Regulation Review Unit (RRU) for the completed RIS and the planned consultation process, prior to the public consultation actually being undertaken.

Reporting Requirements

The Shop Trading Hours Review Group must produce a final review report in accordance with the Manual. The final review report must contain:

- ④ a copy of the RIS;
- ④ a summary of public consultation undertaken;
- ④ clear recommendations on the possible actions that can be taken by the Government, including retaining, amending or repealing the specific legislative restrictions on competition in question;
- ④ where retention or amendment is recommended, the report must include a clear demonstration of the benefit to the public;
- ④ clear recommendations on any possible actions that can be taken by the Government in relation to the broader impact of the legislation on business; and
- ④ an outline of any transitional arrangements which may be required under the recommended course of action and the rationale for these arrangements.

The Date of Completion

The Shop Trading Hours Review Group shall provide a copy of both the completed review report and RRU endorsement of the RIS to the Minister for Infrastructure, Energy and Resources and the Minister for Finance by 31 May 2000.

Appendix 2: Review Group Membership

The Review Group, comprises:

- ④ Paul Green - Senior Partner, KPMG (Chair);
- ④ Chris Lock - Director, Economic Policy Branch, Department of Treasury and Finance;
and
- ④ Bob Grierson - Director, Government Support Division, Department of Premier and Cabinet.

Workplace Standards Tasmania provides secretariat support to the Review Group.

Appendix 3: History of shop trading hours legislation

Legislation to control shop trading hours was first introduced in 1925 to prevent the exploitation of staff through excessive working hours. The *Shops Act 1925* and subsequent *Factories, Shops and Offices Act 1965* restricted trading by **all** shops to certain times (6.00am to 6.00pm Monday to Thursday, 6.00am to 9.00pm on Friday, and on Saturday morning in some areas of the State). All shops were required to close on Christmas Day, Good Friday and Anzac Day. Certain shops were permitted to trade outside of these times. A sunset clause in the *Factories, Shops and Offices Act 1965* provided that trading restrictions would expire on 31 December 1967.

From January 1968 until 1981, trading hours were not governed by legislation but were determined by individual retailers and the application of award penalty rates. For several years, trading patterns continued along similar lines to those existing before the legislation expired. Lobbying for legislative restrictions on trading hours by both employers and employees occurred from 1976 to 1980 to protect the old trading hours regime and to prevent Saturday morning trading from extending to the southern part of the State. Saturday morning trading was already a part of the standard pattern in the North.

A committee was formed in 1977 consisting of representatives from the unions, Retail Traders Association, major retailers, the Tasmanian Trades and Labor Council, small supermarkets and the Government. The committee wanted regulated hours, late night shopping on Fridays, but no Saturday trading in the Hobart metropolitan area. Other issues were raised such as the meat industry union's concern that the sale of meat in supermarkets threatened the viability of butchers' shops.

A union rally was held in 1979 to lobby for government controls. Unions were concerned that extensive weekend trading, where substantial use was made of casual labour, had the effect of reducing opportunities for full-time work in the industry. It was also claimed that price rises were inevitable, as penalty rates were payable for Saturday work. Many retailers supported the union view, and felt they would be forced to open to retain their share of the market while, at the same time, it was probable that they would make little profit by opening.

However, consultation with interested parties revealed that an agreed outcome could not be reached. Major chain stores wanted no controls, some department stores and other smaller retailers, together with the unions, wanted similar controls to those that existed earlier. Some retailers did not wish to trade outside established hours. As there was no real unity among retailers the Government was not in favour of the reintroduction of formal legislative controls at that time.

The introduction of Saturday afternoon trading by some supermarkets in September 1980 led to further lobbying by some retailers and unions, together with an increase in industrial disputes. This resulted in new legislation being introduced in 1981 with expiry in 1983 to allow time for industrial relations matters to be resolved.

Although legislative control was intended to be a short-term solution, it became clear to the Government that the traditional trading patterns that had existed in the past would not be suitable in the 1980s. For this reason, in order to regulate the trading hours, a new Act was proclaimed in 1984. Compared to trading hours arrangements in other jurisdictions at that time, the legislation was described as having minimal regulation and minimal administrative involvement.

When introduced in 1984, the Shop Trading Hours Act was a simpler piece of legislation than that which exists today. Shops to which the restricted trading hours applied comprised those falling within the grouping provisions and/or had 100 or more employees.

On the day the principal Act came into force a Bill was introduced into Parliament to prevent a section of the retail industry circumventing the intention of the legislation by taking advantage of the exemption that excluded garden centres. This illustrates the volatility of the issues surrounding the legislation since it was enacted.

In the initial legislation, major retailers could not open on:

- ④ Sundays;
- ④ Christmas Day, Boxing Day and New Year's Day or a day on which the holidays were publicly observed;
- ④ other public holidays as defined in the *Bank Holidays Act 1919*, except for Easter Saturday and Easter Tuesday;
- ④ before 8.00am or after 6.00pm Monday to Wednesday;
- ④ before 8.00am or after 9.00pm Thursday and Friday; and
- ④ before 8.00am or after 12 noon on Saturday, except for the two Saturdays immediately prior to Christmas when trading was permitted until 6.00pm.

The legislation did not provide for either the Governor or the Minister to vary the times or days when major shops had to remain closed. The Act did, however, provide for alternative late night shopping if a holiday occurred on a Thursday or Friday. It also provided that a person could not be required to work contrary to an award or industrial agreement.

The major retailers subject to restrictions in 1984 were Coles, Myer, Woolworths (Purity and Roelf Vos) and FitzGerald's, together with any subsidiaries of the above.

In Tasmania there are distinct groups affected by shop trading hours regulation. Competition exists between the large supermarket chains and the smaller independent supermarkets chains and grocery stores. There is also competition between national department store

chains that are subject to the legislation and either locally owned stores or franchised stores not covered by the Act.

Amendments over the last 15 years reflected changing attitudes to shop trading controls, while maintaining a desire by the government to balance the respective interest groups.

Specific provisions in relation to franchise arrangements were introduced in 1987, preventing a major retailer in Tasmania from franchising any of its shops in order to circumvent the legislation.

Generally, however, legislative amendments have resulted in less restrictive provisions in the Act.

In 1992, extended trading days, declared by the Minister, were included for a number of defined events or types of event. Certain defined events and types of events may qualify for extended shop trading hours in certain areas. In such cases, shops may be permitted to open between the hours of:

- ④ 6.00pm and 9.00pm – Monday to Wednesday; and
- ④ 8.00am and 6.00pm – holidays and Sundays.
- ④ defined events for which extensions may be declared comprise:
 - ④ the Launceston Festivale;
 - ④ cruise ship visits where the ship has a capacity to carry more than 500 passengers, provided that the ship visits the State on less than 10 occasions per year;
 - ④ warship visits where there are more than 500 personnel on board; and
 - ④ a day on which the majority of vehicles entered in Targa Tasmania are scheduled to be in a particular city.

Shop trading extensions may also be declared for events of a major cultural, historical or other significance to the State, a city or a municipal area, and for events that are likely to be of major benefit to the tourism industry.

In 1994 the definition of the application of restrictions under the legislation was changed (ie those who are subject to the restrictions in the Act) from 100 to 250 employees. The Government believed that the current law was too restrictive and stifled development. It therefore agreed to a compromise aimed at gradually easing the restrictive provisions of the Act to provide an incentive for development and expansion by retailers while recognising realities of prevailing attitudes. In 1994, a provision was inserted in the legislation to allow Saturday afternoon trading as from April 1995.

Appendix 4: Schedule of written submissions

1. Evenhuis, Chris
2. Vickers General Store, Zeehan (P D & LN Vickers)
3. Shorewell Supermarket, Burnie (W Cobbing)
4. Lindisfarne Value Plus (Brett Mackey)
5. TCCI
6. Hobart City Council
7. Pharmacy Guild (Tasmanian Branch)
8. National Meat Association
 - 8.1 Supplementary Information
9. National Council Of Women of Tasmania
10. Property Council of Australia
 - 10.1 Supplementary Information (Employment Statistics)
11. Narga (Retail Grocers) Australia (with KPMG)
12. Australian Federation of University Women (Tas)
13. Devonport Commercial Promotions
14. Retail Traders Association (Tas)
15. Shedden, Andrew
16. SDA, Shop Distributive & Allied Employees Association
 - 16.1 Supplementary Submission
17. Coles Myer Ltd
 - 17.1 Survey of Sunday Trading Hours, December 1999 (Provided in confidence)
 - 17.2 Submission to (Cwlth) JSC on Retailing Sector March 1999
 - 17.3 Retail Jobs
18. Tasmanian Independent Wholesalers
 - 18.1 Supplementary Submission
 - 18.2 TIW Submission to (Tas) Select Committee on Grocery Markets and Prices. February 1997
 - 18.3 SIW Submission to (Tas) Select Committee on Grocery Markets and Prices. February 1997
 - 18.4 TIW/Narga Submission to Productivity Commission. July 1999
19. City Heart Business Association
20. Tasmanian Coalition Against Major Chain Dominance
 - 20.1 Supplementary Submission
 - 20.2 Media Release by Senator Andrew Murray: *Retail competition and jobs threatened by push for trading hours deregulation.*
 - 20.3 Letter from Purity/Roelf Vos to suppliers. 1999
21. Australian Retailers Association
 - 21.1 Supplementary Information. Survey by Harrison Market Research. March 1999

22. Legana Newsagency, General Store & Post Office
23. Bicheno General Store (RV & VM Waldren)
24. Tasmanian Small Business Council
25. Soroptimist International
26. Purity-Roelf Vos
27. TasCOSS (Tas Council of Social Services)
28. St Marys Top Shop
29. *[Tasmanian Independent Wholesalers - copy sent to Minister and Premier]*
30. 4 Square Norwood (Robin McKendrick)
31. Housewives Association (Kath Venn)
32. Mary's Lingerie (Mary Jackson)
33. Noble, June
34. Jenerick (Jeff Rumbold)
35. O'Brien, Paul
36. Little's Corner Shop (R J Gould and H J Osbourne)
37. Harris Scarfe
38. Tasmanian Pensioners Union
39. Womens Electoral Lobby
40. Uniting Church in Australia - Deloraine-Mole Creek

Appendix 5: Schedule of verbal submissions-public hearings

BURNIE - 9 February 2000

Name	Organisation
Matthew Eastwood Alwyn Boyd	West Park Grove Store
Mary Jackson	Mary's Lingerie, Burnie
Tony Lacey	Somerset 4 Square
Wayne Cobbing	Shorewell Supermarket
Sam Richardson	Tas Independent Wholesalers

LAUNCESTON - 10 February 2000

Name	Organisation
Sam Richardson	Tas Independent Wholesalers
George Brookes	Lton City Council
Robin McKendrick	Norwood 4 Square Supermarket
Noel Wilson	TASCOSS
Graeme Beams	Former business owner
Paul Griffin	Shop Distributive & Allied Employees Association (SDA)

HOBART - 11 February 2000

Name	Organisation
Brett Mackay	Lindisfarne Value Plus
Paul O'Brien	Former sales representative
Carrie Donaldson Lou Cox	City Heart Business Association
Duncan McDougall	Australian Retailers Assoc
Tony Steven	Retail Traders Association
Tony Smithies	Property Council of Australia
Kath Venn	Housewives Association
Louise Sullivan Katrina Drake Mundy	Coalition Against Major Chain Dominance National Meat Council/Coalition
Ethel Grey	Tas Pensioners Union
Paul Griffin	SDA
Robert Parker	Your Habitat
Tim Abey	TCCI
Greg Barrett	Wholesaler

Appendix 6: Schedule of individual submissions

HOBART 21-23 February 2000

NAME	ORGANISATION
Duncan McDougall	Australian Retailers Association
Sam Richardson	Tasmanian Independent Wholesalers
Michael Kent	Purity/Roelf Vos
Chris Mara	Coles Myer
Peter Monachetti (Myer)	
Peter Spiers (Coles)	
Paul Griffin	Shop Distributive & Allied Employees Association
Katrina Drake-Mundy	National Meat Association
George Balyck	
Tony Steven	Retail Traders Association
Rudie Sypkes	Chickenfeed
Tim Abey	TCCI
Nick Behrens	
Louise Sullivan	Coalition Against Major Chain Dominance
Ethel Grey	
Noel Wilson	
Katrina Drake-Munday	
Carrie Donaldson	City Heart Business Association
Russell Morse	

Appendix 7: Criteria to be considered when applying the public benefit test

Matters to be considered when applying the Public Benefit Test

The following matters are listed in subclause 1(3) of the CPA as possible issues governments may take into account when assessing whether a course of action is in the public benefit:

- ④ government legislation and policies relating to ecologically sustainable development;
- ④ social welfare and equity considerations, including community service obligations;
- ④ government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- ④ economic and regional development, including employment and investment growth;
- ④ the interests of consumers generally or a class of consumers;
- ④ the competitiveness of Australian businesses; and
- ④ the efficient allocation of resources.

Criteria used by the Australian Competition and Consumer Commission for assessing the Public Benefit

Agencies and Authorities may find it useful when applying the public benefit test to have regard to the criteria used by the ACCC in the assessment of applications for authorisations under section 88 of the TPA. Such applications request the Commission to "authorise" certain activities that would otherwise be held to be in breach of the restrictive trade practices provisions of the TPA.

The ACCC assesses the public benefit by determining whether the restriction:

- ④ promotes competition in an industry;
- ④ assists economic development (for example, in natural resources through the encouragement of exploration, research and capital investment);
- ④ fosters business efficiency, especially where this results in improved international competitiveness;
- ④ encourages industry rationalisation, resulting in a more efficient allocation of resources and lower, or contained, unit production costs;

- ④ expands employment growth or prevents unemployment in efficient industries and employment growth in particular regions;
- ④ fosters industry harmony;
- ④ assists efficiency in small business (for example, by providing guidance on costing and pricing or marketing initiatives which promote competitiveness);
- ④ improves the quality and safety of goods and services and expands consumer choice;
- ④ supplies better information to consumers and business, thereby permitting more informed choices in their dealings at a lower cost;
- ④ promotes equitable dealings in the market;
- ④ promotes industry cost savings, resulting in contained or lower prices at all levels of the supply chain;
- ④ encourages the development of import replacements;
- ④ encourages growth in export markets;
- ④ implements desirable community standards with a minimum impact on competition in the marketplace; or
- ④ implements steps to protect the environment.

Appendix 8: Customer survey