



Australian Retailers Association

IPART Investigation into the burden of regulation and improving regulatory efficiency – Draft Report

ARA Submission

July 2006

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1. Scope of the Submission

- 1.1. This submission is provided by the Australian Retailers Association on behalf of its retail members. This submission is in response to the Independent Pricing and Regulatory Tribunal's draft report on the investigation into the burden of regulation and improving regulatory efficiency in New South Wales.
- 1.2. This submission will provide comments on the draft findings and recommendations in the report.

2 About the ARA

2.1 Background

- The Australian Retailers Association is an employer association. Established in June 1996, the ARA is registered as an organisation under the *Workplace Relations Act 1996* and is the peak organisation for retail employers in Australia.
- The ARA represents the retail industry in Australia, which consists of more than 100,000 retail businesses, employing hundreds of thousands of Australians.
- The ARA's National and State members comprise a diversity of sizes and types of retailers, reflecting the profile of the retail industry, ranging from the large household names to one-person operators.
- However the ARA predominantly consists of small retail members, with some 90% of the ARA membership consisting of employers with less than 20 employees. The ARA is therefore also an advocate for small retail businesses as well as the retail industry generally.
- The ARA provides comprehensive services to its members in employment related areas providing industry level industrial relations advocacy, representation in award matters, assistance in employment policy development, representation in unfair dismissal and equal opportunity matters, assistance in agreement making, as well as providing occupational health and safety, WorkCover and privacy advice to members.

2.2 Our National and State Retail Members

- ARA's Associations comprise ARA Victoria, ARA New South Wales, ARA South Australia, ARA Tasmania, and Northern Territory Retailers are affiliated with the ARA.
- These state offices and affiliates have a membership in excess of 12,000 members.

- ARA members transact 75 percent of Australia's retail sales and employ three quarters of the nation's retail workforce.
- The Australian retail industry is Australia's largest employer and retailing contributes almost 8 percent of Australia's Gross Domestic Product (GDP).

2.3 Governance

The ARA is governed by a National Council which is elected biannually by its membership. So as to ensure that the National Council is representative of the Association's diverse membership (and the diverse nature of the retail industry) its composition is of national and small retailers.

2.4 ARA's Mission

To be the pre-eminent nationwide organisation to provide leadership in solutions which improve the long-term viability, productivity and visibility of the retail industry; and proactively and effectively deals with government, media and regulators.

3 **Supporting Good Regulation**

IPART's recommendations to strengthen the role of the Minister for Regulatory Reform, establish the Better Regulation Office, prepare a consultation policy and extend the consultation period for RIS's are supported by the ARA. The ARA also supports recommendation for nationally consistent guidelines for regulatory impact statement preparation. In ensuring good regulation performance monitoring and public reporting against policy objectives of regulations is essential, as this will assist in ensuring accountability to those departments that introduce regulation and in ensuring policy objectives are being met through regulation.

In addition to the above recommendations, the ARA submits that the Better Regulation Office should consult with industry, government and the community on standards required for RIS's and in developing a consultation policy. This will assist in ensuring the standards and policies set will meet community and industry expectations. The Better Regulation Office should also contain a complaints handling function to which industry and the community can put forward issues with consultation and quality of regulatory impact statements.

The ARA also supports the extension of consultation period to a minimum of 42 days. This will ensure that interested parties will have the ability to respond to the proposed regulation. This is particularly important for associations who need to consult with members on proposed regulations.

The ARA also supports the inclusion of regulatory impact statements on proposed regulation that will pose an appreciable burden or significant impact

on any sector of the public and post implementation reviews of such regulation. Such regulatory impact statements should be consistent with the proposed revisions of the NSW best practice regulation guidelines.

The ARA also supports the formation of cross-jurisdictional forums to consult on proposed and existing regulation, as well as mutual recognition or harmonisation opportunities in the development stage of regulation and the formation of national standard drafting protocols and terminology to be adopted across jurisdictions. In addition to this regulatory impact statements need to address consistency with regulations in other states to ensure the issue of harmonisation is being addressed.

Government departments introducing new regulation need to ensure that sufficient and useful information is provided to the public for consultation. This ensures that all interested parties are able to make informed decisions and recommendations on any proposed regulation. The suggestions put forward by IPART, and additional suggestions as outlined above, will assist in providing a framework through which this can occur.

4 Harmonisation and Reducing Burden

4.1 Payroll Tax

The ARA supports harmonisation of payroll tax administration, including reducing the definitional differences between employee and contractor and standardizing fringe benefits tax provisions. Cross jurisdiction differences in payroll tax administration cause an unnecessary burden on employers, in particular small employers. This burden may be a disincentive for businesses to expand across jurisdictions. While this issue is currently being addressed by the Office of State Revenue this process should be further expanded and prioritized to ensure harmonisation in the near future. The ARA also supports consistency between workers compensation and payroll tax definitions as such it is necessary for workers compensation to be harmonized to ensure this consistency.

4.2 Privacy

The ARA supports a review of the Workplace Surveillance Act within two years. Such a review should take into consideration emerging legislation in other jurisdictions and address issues of OH&S and fraud detection. Such a review should be conducted with the view of harmonisation across jurisdictions. The review should take into account businesses need to conduct covert surveillance in certain circumstances, this is particularly the case in retail loss prevention, and the increased compliance costs associated with obtaining approval to conduct such surveillance.

The ARA also supports provisions for resources and training to promote obligations under the Act and develop useful tools for small business implementation.

The ARA would also support a review of the National Do Not Call Register Act and its implications for both small and large businesses in Australia. This

would address further burdens in relation to privacy legislation throughout Australia.

4.3 *Retail Leases*

IPART has recommended that the Government should as part of its next review of the Retail Leases Act 1994:

- a) Clearly define the objectives of the Act and ensure the regulatory requirements are necessary and efficient for achieving those objectives
- b) Ensure the regulation is proportionate to the market failure it is seeking to address and aims to achieve minimum effective standards
- c) Consider whether disclosure requirements can be simplified and if waiver provisions for 'major tenants' (as recently introduced in Queensland) would be desirable
- d) Consider whether less prescriptive, alternative mechanisms are available to regulate retail leases

In each of the reviews that have taken place since the Act was introduced in 1994 the aims of the Act have been clearly defined. The increased regulatory requirements that have been introduced have been the result of parties seeking to circumvent the provisions of the Act for their own benefit.

Prior to 1994 there existed an alternative mechanism to regulate retail leases, which was a voluntary code between then Building Owners and Managers Association and the Retail Traders Association of New South Wales. The Code failed as many of the parties to the Code did not adhere to it or they only used those sections of the Code that suited their purpose.

The market that exists in retail leases especially in the shopping centre market is controlled by an oligopoly that has been created by the strict planning laws in this State. The market is heavily weighted in favour of the landlord.

Much of what was claimed to be excessive information in the submissions outlined by AMP is not as a result of having to comply with the Disclosure Statement but as a result of the controls that they have put on a tenant to meet their requirements of entering into a lease within a shopping centre. The owners of strip shops have no such complaints about the Disclosure Statement, as they do not seek to impose such conditions. If the major landlords expect a tenant to comply with these requirements it is only fair and equitable that they are disclosed in full detail prior to the tenant being required to enter into the lease.

In all the previous reviews the matter of waiver has been fully explored. One of the principle aims and objectives of the Act has been to have a consistent behavior in how negotiations are conducted between landlord and tenant for a retail lease. Experience has shown that if there is an ability to contract outside the Act the behavior of the landlord changes significantly in how the lessee is treated.

Whilst the recommendation may be admirable in theory in practice it is flawed and would see the industry return to the pre 1994 conditions and a greater number of disputes.

4.4a Workers Compensation - NSW Specific Issues

IPART has recommended that the definition of a worker provisions under NSW Workers Compensation legislation be subject to post implementation review. The ARA supports this recommendation as it is in the best interests of industry, government and workers to understand and clearly classify who is and is not a worker for workers compensation purposes. Such clarification can be further sought from such a review.

4.4b Workers Compensation - Cross Jurisdictional Issues

The ARA supports consistency between states for Workers Compensation in support of the position put forward by COAG and the ASCC. The multiple schemes currently operating increase ambiguity reduce the lack of certainty and increase costs on industries operating across state boundaries. This issue is important for both large and small retailers. Reform in the area of Workers Compensation should extend to ensure complete consistency throughout Australia and not solely address the issues of return to work, definition of worker and wages, premium payments and self-insurance arrangements. While consistency in these areas would be an improvement, the ultimate benefit would be from forming one system for the regulation of Workers Compensation in Australia.

4.5 Occupational Health and Safety

The ARA supports the review of the Occupational, Health and Safety Regulation 2001 next year. Such a review should be conducted with the aim of achieving national consistency and harmonisation of OH&S. Such a review needs to take into account the commitment given by COAG in February 2006 of ensuring the harmonisation of key areas of state OH&S Acts and the increased emphasis upon national OH&S standards.

Any such review must be inline with any work undertaken by the ASCC, as the ASCC is the national tripartite body for considering OH&S. Any review of the Occupational Health and Safety Regulation 2001 must consider best practice models from other states as identified by the ASCC and must put politics aside. By reviewing the Regulation with best practice models in mind both business and workers stand to gain from being in workplaces that have the same OH&S model across the country.

The ARA also supports public consultation and cost benefit analysis of OH&S codes of practice to ensure the codes of practice are practical, useful and do not create unnecessary burden on industry and workers.

4.6 Trading Hours

The ARA represents both large and small retail members who can be classified as general, small and special shops. The ARA supports the deregulation of trading hours in New South Wales, in particular of Sunday and public holiday trade restrictions and exemption requirements.

The ARA supports a review of the current regulation of Sunday trade and in particular requirements for trade exemption certificates. Sunday trading in NSW is a popular practice and it provides increased employment opportunities for students and return to work candidates. Allowing trade for general shops on Sundays is also consistent with the Shop Employees (State) Award that allows employees of general shops to work on Sundays. As previously submitted by the ARA, the ARA supports the deregulation of shop trading hours and as a consequence of this the ARA also supports the removal of the requirement for Sunday trade exemption certificates for general shops.

An unintended impact of the current trading hours regulation for shops is that it provides an incentive for retailers to remain classified as a small shop; that is it does not encourage growth. Small shops, under the *Act*, can trade on an unrestricted basis, and thus this status grants discretion to shop owners concerning trading on Sundays. Such an incentive could have a negative effect on the growth and development of retail business in NSW, as expansion and significant growth are difficult whilst still remaining within the restrictions of a small shop.

In terms of preparation and planning the ARA also reiterates our previous submission that an unnecessary burden is created through the current method of regulating permitted opening hours on public holidays in NSW. The ARA supports the deregulation of public holiday trading however should the government continue to operate under this regime more sufficient notice of restrictions needs to be provided to ensure businesses can adequately prepare.

The ARA NSW advocates a system of market-based regulation for Sunday and public holiday trading in NSW. That is, general shops should be able to trade unrestrictedly on Sundays and public holidays, in the same way as small and scheduled stores. This system will clearly deliver the greatest benefit to retailers, and the broader market, through allowing discretion to retailers in attempting to maximize profitability, in turn stimulating market growth, employment opportunities and expansion. Competition will also be stimulated through such a system of regulation, which could lead to better service and prices for customers, and greater efficiency for retailers. The removal of requirements for Sunday trade exemption certificates will also remove administrative burden and costs.

Recommendation 5.25 should be extended to include a review of public holiday trade restrictions.

5 Conclusions

- 5.1 Frameworks that provide consistent and adequate information for any proposed regulation are supported by the ARA.

- 5.2 The ARA believes that national consistency in regulation will achieve the greatest outcome for industry in Australia. Deregulation and harmonisation will assist both small and large retailers to more efficiently operate.
- 5.3 Deregulation and harmonisation across jurisdictions may also stimulate retail growth across state boundaries, this is particularly important for smaller retailers looking to expand.
- 5.4 The ARA supports addressing the key areas of payroll tax, workers compensation and occupational health and safety as a matter of urgency. Such a review should take into account harmonisation and adoption of best practice models.
- 5.5 The ARA feels that the Retail Leases Act has on a number of occasions been reviewed and attempted to address the recommendations that have been outlined. The ARA does not support the draft recommendation as put forward by IPART.
- 5.6 The ARA strongly supports a review of shop trading hours restrictions in NSW with the aims of deregulation. Such a review should take into account both Sunday and public holiday trading.

6. ARA Contact

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