

SDA Submission

Competition Policy Review

Ian Blandthorn

National Assistant Secretary
National Office
6th Floor
53 Queen Street
Melbourne 3000

PH: (03) 8611 7000
Email: ian@sda.org.au



COMPETITION POLICY REVIEW

1. The Shop, Distributive and Allied Employees' Association (SDA) is Australia's largest trade union with over 213,000 members. These members are, with few exceptions, low income earners and most live in low income families. The majority of SDA members are women. The SDA covers workers in retail, fast food, wholesaling, hairdressing, modelling, warehousing and the drugs industry.

Families

2. In our view government policy and action in all areas should be underpinned by a commitment to the following core principles:
 - ✧ recognition that the family is the fundamental group unit of society;
 - ✧ a standard of living consistent with human dignity is a fundamental right of all Australians;
3. Most Australians live in families and most think those families are important. The centrality of the family is recognised in the Universal Declaration of Human Rights.
4. Government has a key role to support families. Policy makers who ignore this simple point do so at their peril. In framing policy, government must start from the position of seeking to protect and strengthen Australian families.
5. Strong families are important.
6. Families are the building blocks of strong communities. The effective functioning of families is clearly and widely recognised as being critical to the well-being of society.
7. As such, there is an overwhelming need for government to put in place strategies to support families.
8. To function effectively a family must be able to live decently with dignity.
9. Families are consumers. A large proportion of overall consumption is by and through families.

10. It is imperative that the interests of families is properly taken into account in any review of competition policy.
11. This review must be about more than economic theory. It must take real families into full account.
12. As the SDA is the retail union our comments in this submission are henceforth confined to key retail industry related matters raised in the Issues paper.

Trading Hours

13. There is a clear linkage between employment and economic security.
14. "An almost certain protective factor to avoiding poverty is for a family to have at least one member employed full time"¹.
15. People work to live, not live to work.
16. The Issues Paper has raised the issue of shop trading hours.
17. The SDA is totally opposed to any further deregulation of shop trading hours.
18. There is limited public support for extended trading hours. In the most recent public vote on this matter extended trading hours were opposed by a majority of the people.
19. There was a referendum in WA (2005) where a substantial majority of the population voted against longer trading hours. . The WA population had a direct vote on when they wanted shops to open. There can be no more accurate reflection on community views than a referendum. If people have elected not to have longer trading hours, then this is the pertinent view of the people/consumers.
20. A more recent and specific examination of Trading Hours was conducted in South Australia. The findings of this can be found in the 'Report of the 2006/07 Review of the Shop Trading Hours Act 1977' by Alan Moss.
21. The Review of the South Australian Shop Trading Hours Act, concluded that "[t]here is no clear evidence of public demand for further extension of shopping hours."²

¹ Ben Phillips, Poverty, Social Exclusion and Disadvantage in Australia, NATSEM, Canberra, 2013

22. Further, the findings of an independent report from the South Australian Centre for Economic Studies concludes:-
23. "Based on the experience of the previous extension of shopping hours, there is no evidence to suggest that further liberalisation would increase either state income or employment levels."³
24. Furthermore, the SA Centre for Economic Studies concludes any potential net benefit for the state [SA] of increased retail expenditure will come at the expense of household savings. And, "ABS data on retail turnover provides no evidence of a benefit, in that there has been no apparent increase in rate of growth of retail employment in South Australia [since further liberalisation of trading hours]."⁴
25. The Moss Review also concluded that [f]urther deregulation of shopping hours would further erode the leisure time and quality of life of operators of small retail businesses.⁵
26. The 2006/07 Moss review also examined in some detail the likely effect of deregulation on the community and society:
 - . *"While it is a primary duty of governments to grow their communities' economies it is not their only duty. Governments also have a duty to nurture and preserve their social and community fabric and institutions. It does not serve us well if, in the end, we become materially wealthy and spiritually impoverished. I have noticed that those arguing in favour of deregulation, or extension, of shopping hours, very often describe their proposals as "reforms", in the sense that adoption of their proposals would be a change for the better. Of course changes are only reforms in that sense if they benefit the community as a whole. If the changes have the potential to benefit some members of the community at the expense of others, then they are unlikely to be reforms.*

² Moss, Alan Report of the 2006/07 Review of the Shop Trading Hours Act 1977, p 51

³ The Potential Economic Impact of Liberalisation of Shop Trading Hours, The SA Centre for Economic Studies, September 2006

⁴ The Potential Economic Impact of Liberalisation of Shop Trading Hours, The SA Centre for Economic Studies, September 2006

⁵ Moss, Alan Report of the 2006/07 Review of the Shop Trading Hours Act 1977, p 51

- . *Governments should only pass laws which have this potential if it is clearly in the interests of the vast majority of the community. At the end of the day there are more important human activities than shopping.*
29. Clearly there is no significant consumer/community demand for or benefit from further extending trading hours.
 30. Retailers, voting with their feet have recognised this.
 31. Retailers claim that they want longer trading hours but often do not use the hours available to them.
 32. Very few retailers open all of the hours available to them. For example most do not open at 2 am on a Tuesday or midnight on a Saturday.
 33. The ACT has no restrictions on trading hours. Yet, for much of the extended hours most retailers stoically remain shut!
 34. Extended trading hours has adverse effects on employees and small business operators.
 35. Extended trading hours leads to a reduction in full-time employment and an increase in part-time and casual employment in order to staff the stores across the new span of opening each week.
 36. Retailers naturally require shop assistants to work at times of opening. In some cases the retailers may have originally agreed to voluntary work at extended hours times of opening in order to secure Government acceptance of the longer trading hours. Once longer hours are in place however retailers want their best performing staff to work at whatever hours are required, even if they are “unsocial” hours.
 37. Overseas retailers do not impinge on their employees’ Christmas or New Year celebrations as they have their post-Christmas sales in January, not the day after Christmas. This is a far more rational and economic position.

⁶ Moss, Alan Report of the 2006/07 Review of the Shop Trading Hours Act 1977, p 51

38. Longer opening hours leads to an increase in costs to retailers in staffing their stores over the expanded hours but often to little or no increase in retail sales. This means the profit margins enjoyed by retailers are reduced or prices are increased (or both).
39. If one retailer manages to increase sales as a result of longer opening hours, it is at the expense of other retailers who previously had this business. As a result, some retailers, usually small businesses, are driven out of the industry.
40. As a result retailers attack penalty rates in order to reduce their costs even if they originally agreed to keep these penalty rates as a means of securing Government agreement to legislate longer shop opening hours. To the extent that retailers are successful in reducing penalty rates, shop assistants lose income as a result.
41. The very fabric of our society is held together by engaging with friends, family and the wider community and these times frequently occur in the evenings, on weekends and on public holidays. For those who work during these times, regardless of whether or not they have elected or been required to, they are deserving of recompense for missing out on valued and valuable social times, *especially* when they are amongst the lowest-paid workers in the country.
42. The Harvester Judgement of 1907 (*Ex Parte H. V. McKay*) laid an important foundation in the building of Australia's industrial relations system. When Justice Higgins declared that a "fair and reasonable" wage would meet the "normal needs of the average employee, regarded as a human being living in a civilized community," he made a ground-breaking decision that entitled a worker to a decent minimum wage. Over the course of time, other industrial standards have developed to ensure a fair safety net for workers, including the emergence of penalty rates for weekend and evening work.
43. Penalty rates were noted by Drake-Brockman J, in the "South Australian Railways Case" (1935) 35 CAR, as playing the role of "discouraging employers from employing men under conditions likely to impair their health, or for the purpose of discouraging certain kinds of work, or working under particular conditions," citing overtime as an example of this.

44. Twelve years later, the “Weekend Penalty Rates Case” (1947) 58 C.A.R. set the standard for time and a quarter on Saturdays and double time on Sundays across a wide range of industries. In that matter penalty rates were acknowledged in the “Weekend Penalty Rates Case” by the industrial umpire to also be compensatory in their nature.
45. Penalty rates are not a prehistoric concept to be derided or discarded because they have existed for the better part of a century. Indeed, penalty rates in retail have been recently retested and once again, found to be appropriate and fair.
46. Less than a decade ago in 2003 and following “several years” of proceedings, the Full Bench of the Australian Industrial Relations Commission (“AIRC”) found the appropriate penalty for Sunday work in retail under the *Shop, Distributive and Allied Employees’ Association – Victorian Shops Interim Award 2000* to be double-time. This decision was made following “a greater incidence of Sunday trading in Victoria,” which, in the Commission’s view, “does not affect the disabilities endured by employees working on Sundays. As such, we think the double time remains appropriate.” The case presented at the time by the employers called for time and a half on a Sunday. It is important to note that when considering the rate for Sunday work, trading on a Sunday was no longer restricted in Victoria. The AIRC found that despite widespread trade on this day, employees were still entitled to double time rate as compensation for giving up the common day of rest for the majority of the public.
47. The majority of Australians polled in a 2012 poll overwhelmingly supported penalty rates in one form or another.
48. An Essential Research survey published on 10 April 2012 asked the question, ‘Do you think workers should get a higher hourly rate for working on weekends or should the weekend rate be the same as the weekday rate?’ 78 percent stated that the weekend rate should be higher and only 18 percent believed they should be the same – 4 percent were unsure. Of those surveyed who were part-time, 86 percent supported a higher hourly rate for working on weekends. Essential Research commented that “There were no significant differences across income groups.”

49. Irrespective of the socio-economic status of the surveyed individuals, nearly 80% of all respondents believed that penalty rates for weekend work were reasonable and fair.
50. Clearly, Australians believe penalty rates to be fair and appropriate for those who work at times when the majority does not.
51. Penalty rates belong in a society which values employees as people with responsibilities and needs outside of their workplace. They compensate employees for working at times when many others are relaxing, socialising or even sleeping!
52. Reducing the take-home pay of some of the lowest-paid workers would have a devastating effect on their standard of living and on the economy as a whole.

Fair Playing Field

53. The retail industry in Australia is facing a significant disadvantage against overseas on-line retailers.
54. Australian retailers are required to pay G.S.T. on all merchandise they handle, plus pay any import duty on this merchandise.
55. Overseas-based on-line retailers do not pay the G.S.T. on merchandise priced under \$1,000. They do not pay import duty. This gives them a price advantage of up to 20% over Australian-based retailers who must pay both the G.S.T. and any import duty.
56. Therefore, we have an uneven playing field. This is unfair competition.
57. The magnitude of the disadvantage suffered by Australian retailers is substantial for an industry where profit margins are generally quite small. It is not a sustainable situation.
58. International on line in retail should not be given preferential treatment at the expense of Australian workers and businesses.
59. Overseas operators are taking advantage of the unfair competitive environment to grow their business. It is not uncommon for overseas operators to ensure GST and import duties are avoided. For example, if an order is over \$1000, it is automatically

split into two orders to fall below the \$1000 threshold. A system that actively and willingly condones such approaches is wrong.

60. Having inefficiencies that give overseas competitors an advantage in that they can avoid GST and import duties is something that the Australian retail industry should not have to contend with.
61. Many countries deliberately protect domestic companies from overseas competition. Here, we are doing the opposite. Government policy actually penalises Australian retailers against their overseas on-line competitors.
62. The Australian Retail Industry is already a modern and competitive industry with an extremely flexible workforce and an efficient mode of operation. It is as advanced as any retail industry in North American or Western Europe.
63. The Government legislates to impose various taxes and duties. In doing so, it has an obligation to the retail industry and its employees to ensure that this taxation regime does not disadvantage any companies, whether domestic or foreign. It has a duty to ensure there is a level playing field.
64. Overseas on-line retailers should pay the same taxes and duties as their Australian-based competitors.
