



Tasmania

Legislation Review Program

Review of the *Shop Trading Hours Act 1984*

DISCUSSION PAPER

DECEMBER 1999

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Review of the *Shop Trading Hours Act 1984*

1. Introduction

1.1 Overview

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). The agreements signed were:

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

Appendix 2 provides a brief background to the NCP Agreements and the financial arrangements underpinning these Agreements.

The Competition Principles Agreement (CPA), among other things, requires the State Government to review and, where appropriate, reform by the end of the year 2000 all legislation restricting competition.

The State Government's Legislation Review Program (LRP) 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 the review of the *Shop Trading Hours Act 1984* and its associated subordinate legislation has commenced in 1999.

The purpose of this Discussion Paper is to assist the public consultation process for the review by:

- providing an overview of the objectives of the *Shop Trading Hours Act 1984* and the context in which the Act evolved;
 - identifying and discussing the major restrictions on competition inherent within the *Shop Trading Hours Act 1984*;
 - briefly outlining the legislative and other arrangements governing trading hours in other States and Territories; and
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- highlighting a set of issues relevant to this Act.

1.2 Shop Trading Hours Review Group

The Review Group, constituted by the Government, comprises:

Paul Green - Senior Partner, KPMG (Chair);

Chris Lock - Director, Economic Policy Branch, Department of Treasury and Finance; and

Bob Grierson - Director, Government Support Division, Department of Premier and Cabinet.

Secretariat support is provided by Workplace Standards Tasmania.

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 Shop Trading Hours 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.”*

Without limiting the scope of the review, the Shop Trading Hours Review Group is to examine the costs and benefits associated with the following restrictions in the Act, with a view to determining if such restrictions are justifiable in the public benefit. In broad terms the restrictions relate to shop trading hours for major retailers.

The Review Group is also required to examine the following issues:

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

The Shop Trading Hours Review Group is to complete a Regulatory Impact Statement (RIS) that will:

- clarify the objectives of the *Shop Trading Hours Act 1984*;
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- identify the nature of the existing restrictions on competition;
 - consider whether the existing restrictions, or any other form of restriction, should be retained by:
 - analysing the likely effect of the existing restrictions or any other form of restriction on competition and on the economy generally;
 - assessing and balancing the costs and benefits of the restrictions; and
 - considering alternative means for achieving the same result, including non-legislative approaches; and
 - identify the broader impact of the *Shop Trading Hours Act 1984* on business and assess whether this impact is warranted in the public benefit.

It is mandatory for the Shop Trading Hours Review Group to undertake public consultation on the RIS.

The Shop Trading Hours Review Group is to provide a Final Review Report to the Minister for Infrastructure, Energy and Resources by 31 May 2000.

1.4 Discussion Paper

To assist in the preparation of an RIS, the Shop Trading Hours Review Group has produced this Discussion Paper and is calling for submissions based on the issues raised in this Paper.

This Discussion Paper simply seeks to highlight the issues that need to be examined in this review and provides interested parties with an opportunity to participate in the review process from an early stage.

This Discussion Paper has a different purpose than, and is separate from, the RIS that the Shop Trading Hours Review Group must subsequently prepare in accordance with the Terms of Reference. However, when preparing the RIS, the Shop Trading Hours Review Group will have due regard to submissions received on the basis of this Discussion Paper.

1.5 Analytical Approach

Under the NCP agreement, the Shop Trading Hours Review Group must examine the restrictions to competition in the *Shop Trading Hours Act 1984* and determine if they are in the public interest.

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. This, in turn, tends to lead to greater output, lower prices and higher employment, compared with the situation where there are major restrictions on competition.

Restrictions on competition contained within legislation therefore impact on the operation of markets in which buyers and sellers operate. They also often provide a benefit to one set of market participants, often one group of sellers, at the cost of other participants, such as buyers or potential entrants who are not able to enter the industry.

However, there are many cases where it is not desirable to have no restrictions on competition and to allow market forces to operate unhindered. These include where:

- private decisions impose costs or benefits on others in the community which are not compensated, such as pollution of rivers;
- one group, such as customers, cannot be expected to have sufficient information about a product or the provider of a service;
- competition would be wasteful due to the duplication of infrastructure, such as have two sewerage pipelines or two sets of electricity wires in the same street, such that it is cheaper for a single firm to supply the entire market demand; and
- 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.

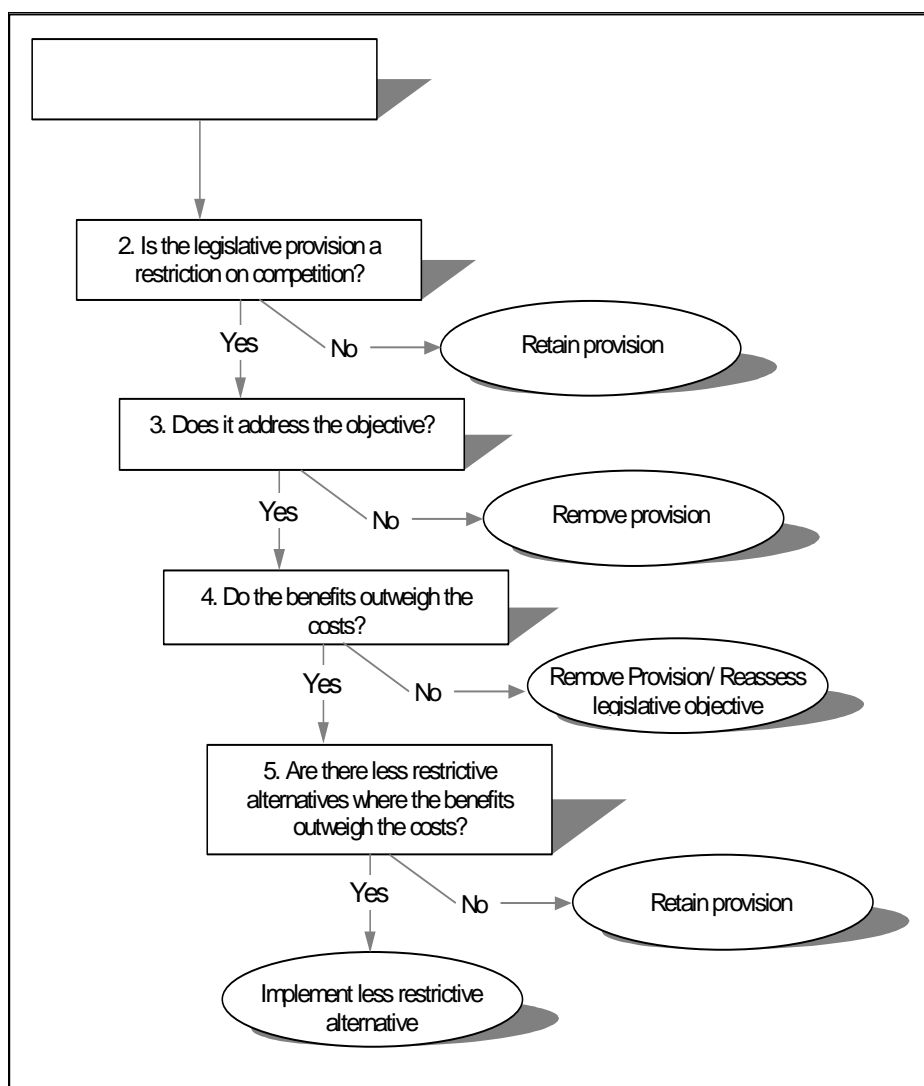
Therefore, restrictions to competition are not necessarily undesirable but it is necessary to assess whether they are in the public benefit.

For this reason, the National Competition Policy 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 these restrictions and assessing whether the community as a whole is better off retaining or removing them.

In considering the restrictions on competition inherent in the legislation, the Review Group is following the analytical approach set out in Figure 1 and described in more detail below.

Step 1: ***Determine the objectives of the legislation.*** The Review Group has considered these in detail and presents its findings in Section 3 of the Discussion Paper. This Discussion Paper is seeking feedback as to whether the objectives as interpreted by the Review Group are appropriate or whether stakeholders consider that the legislation has further/alternate objectives.

- Step 2: ***Are the legislative provisions restrictions on competition?*** The Review Group has considered in detail the existing legislation relating to shop trading hours, and has identified a range of provisions which it believes have an impact on competition. These are listed in detail in Section 4 of the Discussion Paper.
- Step 3: ***Do the restrictions address the objective?*** In Section 4 the Review Group has posed a series of questions in order to gain feedback as to how these restrictions relate to the defined objectives. In light of feedback obtained, the Review Group will assess whether the restrictions address the objectives and therefore should be considered for retention. For a restriction to be considered for retention it needs to be justified.
- Step 4: ***Do the benefits outweigh the costs?*** The Review Group is required to prepare a Regulatory Impact Statement which identifies the costs and benefits of restrictions on competition. This document will be released as a draft for public comment and input, before a final Regulatory Impact Statement is prepared.
- Step 5: ***Are there less restrictive alternatives where the benefits outweigh the costs?*** A requirement of the review process is to consider alternative methods of achieving the same outcome. In Section 4 of this Discussion Paper a series of questions have been posed in relation to each of the identified restrictions. One of the purposes of these questions is to obtain feedback as to whether there are other, less restrictive, ways of achieving the desired outcomes, and what are the views of the community in respect of those alternatives.
- Step 6: ***Develop recommendations for amending the legislation.*** This is the final step for The Review Group in concluding their analysis and will include consideration of the employment impact of any recommendations.
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Figure 1: Analytical Approach To This Review

1.6 Useful Information on Making a Submission

By making a public submission you can tell the Review Group your opinions, make suggestions and hence contribute to the review and assist the Review Group in preparing recommendations to Government on changes to the Act. Your point of view is important and having decided to make such a submission, the following information and tips are provided to assist you in getting your point of view across as effectively as possible. These guidelines and tips offer suggestions only on how you might comment on the *Shop Trading Hours Act 1984*.

Tips on Making an Effective Submission

- Remember - the framework for the review of the Shop Trading Hours Act is determined by the Terms of Reference. Issues raised outside those terms of Reference including those provisions in the legislation that are outside the Terms of Reference will **not** be taken into account for the purpose of the review.
- Your submission does not need to be long or complex. Your opinions, the reasons for them and your suggestions on alternatives to improve the situation are the most important part.
- Without limiting the discussion, questions have been developed to assist you in addressing the issues in the paper. It would be helpful to the Review Group if, as a minimum, you provide responses to the questions raised.
- A well-reasoned submission that raises valid issues and offers constructive suggestions can be very helpful and effective.
- Each submission is important; however, those submissions which substantiate their points of view, concerns or argument with evidence or examples are likely to be more effective.

In Brief - To Make Your Submission Effective:

- ☞ State clearly and simply your point of view and the reasons for it;
- ☞ Provide evidence to substantiate your views;
- ☞ Provide source references to any factual data such as reports or statistics. This should include (where possible) the name and date of the publication, the author's name and page references where the information or article can be located; and
- ☞ If your submission is long, summarise the main points in an Executive summary at the beginning of the submission.

Important Information about Your Submission

When you lodge your submission it is important to realise that, unless you indicate otherwise, it becomes a public document.

As such your submission can (and probably will) be viewed by others or used to quote from for the review. If you do not want your submission to be made public or quoted, advise Workplace Standards Tasmania of your wishes in a covering letter with your submission. You should be aware that under the *Freedom of Information Act 1991* Workplace Standards Tasmania cannot guarantee the confidentiality

of your submission. However information that is commercial-in-confidence may be exempt from disclosure.

All submissions received will be acknowledged and a copy provided to each member of the Shop Trading Hours Review Group. Submissions should, where possible, address the list of questions raised in this Discussion Paper. Submissions are to be forwarded to the Shop Trading Hours Review Group at the following address:

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

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

Submissions should be received by 5.00 pm on 21 January 2000.

Following the receipt of submissions, the Review Group will hold public hearings in Burnie, Launceston and Hobart in February 2000. Further details concerning dates, locations and times will be provided in local newspapers in late January.

2. Shop Trading Legislation in Tasmania

2.1 Historical Background

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 in 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.

2.2 Legislative Provisions in 1984

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:

- Sundays;
- Christmas Day, Boxing Day and New Year's Day or a day on which the holidays were publicly observed;
- other public holidays as defined in the *Bank Holidays Act 1919*, except for Easter Saturday and Easter Tuesday;
- before 8.00am or after 6.00pm Monday to Wednesday;
- before 8.00am or after 9.00pm Thursday and Friday; and
- 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 FitzGeralds together with any subsidiaries of the above.

2.3 Developments Since 1984

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 that are not covered by the Act.

Amendments over the last fifteen 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.

Extended Shop Trading Days

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:

- 6.00pm and 9.00pm – Monday to Wednesday; and
- 8.00am and 6.00pm – holidays and Sundays.

Defined events for which extensions may be declared comprise:

- the Launceston Festivale;
 - 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 ten occasions per year;
 - warship visits where there are more than 500 personnel on board; and
 - a day on which the majority of vehicles entered in Targa Tasmania are scheduled to be in a particular city.
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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 (i.e 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.

2.4 Current Situation

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.

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*.

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.

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, on a holiday or on a Sunday.

Part 1 of Schedule 1 provides that major retailers must not open on the following general holidays:

- New Year's Day;
 - 26 January (Australia Day);
 - Labour Day (first Monday in March);
 - Good Friday;
 - Easter Monday;
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- Anzac Day;
- Queen's Birthday;
- Christmas Day; and
- Boxing Day.

When New Year's Day, Christmas Day and Boxing Day occur on a weekend the substitute holidays are non-trading days as well. When Australia Day falls on a Saturday or Sunday the following Monday is a non-trading day.

Major retailers may not open on the following regional or local holidays in areas of the State fixed under the *Bank Holidays Act 1919*:

- 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.

The *Shop Trading Hours Act 1984* prohibits major retailers from trading on Sundays. Shop trading extensions permitting Sunday trading may 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.

2.5 Trends in Retailing

Over the last two decades or so, major retail chains established themselves in competition with local, often family-run businesses. Gradually many of the locally-owned, family-controlled stores have disappeared, either closing permanently or being taken over by interstate companies. Currently, many stores regarded as small shops are, in fact, subsidiaries of major national retail chains.

Since Saturday afternoon trading was introduced in 1995, market forces have determined the optimum trading hours, within the allowable span of hours, on Saturdays. Some stores do not open before 10.00am and many close around 4.00pm. Many stores in shopping centres do not take advantage of late night shopping arrangements on Thursdays and Fridays, even though major retailers trade until 9.00pm.

Emerging trends in retailing are increasingly focusing on providing services to meet changed consumer preferences arising from:

- changed shopping patterns by families;
 - electronic commerce and the availability of Internet shopping;
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- the growth in female part-time employment; and
 - changes to the industrial relations framework allowing more flexible working arrangements to be agreed between employers and employees.

Current and likely future changes in the retail sector, which are in part a response to retailing trends, include:

- entry of foreign mega-retailers;
- further expansion of retailers into new areas;
- use of evolving technology for greater efficiencies;
- expansion of major supermarket chains into petrol retailing;
- provision of more services and an increasing range of products other than groceries in supermarkets, e.g. banking services, flowers, magazines, books, petroleum products, batteries, clothes, cosmetics, hardware, pet supplies, garden supplies, etc;
- expansion of petrol companies into grocery retailing; and
- banking facilities in major chain stores.

2.6 Other Jurisdictions

A range of shop trading hours restrictions exists in other jurisdictions ranging from no restrictions in the Northern Territory and the ACT to varying degrees of regulation in other States.

As highlighted above, the National Competition Policy requires all jurisdictions to review legislation with shop trading restrictions. By way of background to this Review, information on the current situation in respect of shop trading regulation in other States and Territories and the progress of legislative reform is contained in Appendix 3.

3. Objectives of the Legislation

3.1 The Objectives of the *Shop Trading Hours Act 1984*

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 considers 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:

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

The provisions in the Act that reinforce the rights of employees in the retail sector apply across the entire retail sector and are not related to the restrictions imposed on major retailers. For this reason, there is no further discussion of this objective in the remainder of the Discussion Paper.

QUESTIONS

1. Do you consider that the Review Group has identified the objectives of the current Act?
2. If not, what do you think they are?

4 Restrictions on Competition

4.1 Introduction

In the introduction to this paper an outline of the analytical framework for this review was provided. 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.

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 certain retailers by limiting their trading hours. Nonetheless, for the

purpose of assisting the public consultation process, the Review Group believes it is useful to separate this restriction into three component parts, based around the differing time periods when the restriction applies.

In this regard, the Group has defined these three component parts of the restriction as follows:

- major retailers may not open at certain times on weekdays and Saturdays;
- major retailers may not open on certain holidays; and
- major retailers may not open on Sundays.

The reason for analysing the restriction in this way is the Review Group's belief that the issues relevant to assessing the costs and benefits of the restriction differ somewhat across the differing time periods.

The current legislation applies the restriction to the same retailers in each of the time periods, namely those retailers with an excess of 250 employees, taking account of the grouping and franchise provisions. The issue is generic to each of the three time periods being considered and, given this, the Review Group sees merit in addressing this matter as a separate issue.

In other words, to simplify the analysis we are seeking the separate issues associated with the "*retailers restricted by the legislation*" from those issues associated with the "*hours when the restrictions apply*".

In the remainder of this section we identify some issues associated with the class of retailers affected by the legislation, and then examine the issues surrounding the hours when these restrictions apply.

In presenting this, the Review Group has sought to:

- provide details of the legislation;
- identify the reasons for the provision; and
- identify the disadvantages from a competition perspective.

At the conclusion of each sub-section of this analysis we also pose a series of questions to prompt consideration of the issues.

4.2 Retailers restricted by the Legislation

As noted above, retailers with more than 250 employees, (taking account of the grouping and franchise provisions of the legislation) have restricted trading hours. This appears to place these retailers at a competitive disadvantage, relative to those that have unrestricted trading hours.

It can be argued that this restriction leads to inefficiency in the operations of major retailers as well as creating inconvenience for some customers. Major retailers may like to open outside their permitted hours and some customers (for reasons such as price, convenience, and range of goods) may prefer to shop during these hours. The Act, however, prevents this, requiring instead that:

- these customers either shop in these outlets at other, less convenient, times or shop at non-preferred outlets not covered by the restrictions instead; and
- large supermarkets and department stores have their capital (in the form of their shop and inventory) idle during these hours when it could be otherwise be profitably used.

Over the longer term, it could be argued that this restriction effectively prevents the retail market from evolving to meet customers' needs by enshrining the non-affected retail outlets with a set of apparent artificial advantages. However, it should be pointed out that the traditional corner store faces many more threats than just major supermarkets. One example is the proliferation of convenience stores associated with, or located in, petrol stations that may be open for much longer hours than most corner stores or even larger supermarkets.

It is also argued that the basis for determining the retailers to whom restricted hours apply creates anomalies. For example the Act has the effect of discriminating against some retailers that are very similar to, and in some cases indistinguishable from, other retailers not affected by the legislation. This is the outcome of the grouping and franchise provisions in the Act. As a result of these provisions, one ladies' clothing shop, independently owned, may not be affected by the Act. An adjacent clothing shop, however, that happens to be owned by the same parent company that owns a major department store is restricted by the hours in the Act.

This again appears to provide an artificial advantage to some retailers merely on the basis of ownership and therefore does not establish a 'level playing field', which is generally considered necessary for competition to flourish. It may also encourage forms of ownership that are not the most efficient, and therefore are not the most cost effective, but have the benefit of avoiding the restrictions in the Act.

In response to the above, those that support the restrictions in the Act argue that there is a range of wider community benefits from assisting smaller retailers that are in competition with major retailers and that these benefits justify the retention of the restrictions.

QUESTIONS

3. Do you think that any retailers should have restricted trading hours? Why/Why Not?
4. If you consider that restrictions on trading hours of some retailers are necessary, do you believe that the current basis for determining the class of retailers to whom restrictions apply is appropriate? If not, what basis should be used to determine those retailers who should have restricted trading hours?

4.3 Hours when the Restrictions Apply

As discussed in section 4.1, the Review Group believes it is useful to separate trading hours restriction into three component parts, based around the differing time periods when the restriction applies. This will allow the Review Group to analyse the issues surrounding each time period separately.

4.3.1 Major Retailers May Not Open at Certain Times on Weekdays and Saturdays*Restriction*

The Act provides that 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.

Late night trading is permitted on Thursday and Friday each week. Shop trading extensions may be declared at the discretion of the Minister on a Monday, Tuesday or Wednesday until 9.00pm, or on a holiday or Sunday until 6.00pm.

Reasons for the Restriction

- It compensates small and medium sized retailers for the competitive advantage of large stores and, through this, helps maintain a diverse retail sector.
- It restricts the requirement for employees in the retail sector to work outside normal working hours.
- It is viewed as promoting full-time employment in the retail sector rather than the use of casual labour.
- The trading hours are considered by the Government to provide sufficient opportunities to shop at major retail outlets during the week.

Disadvantages of the Restriction

- It discriminates against major retailers and prevents them from trading when their customers may want them to trade.
- It imposes constraints on when consumers can do their shopping.
- It discriminates against some franchise outlets and provides artificial benefits to other franchises and small and medium-sized shops, even when the size of the shop and range of products sold are the same.
- It discriminates against those seeking employment, including part-time or casual employment, outside normal working hours.

QUESTIONS

5. Is this restriction necessary to meet the objectives of the legislation?
6. Are there reasons for, or disadvantages of, the restriction that are not included above?
7. Please explain whether you consider that the reasons for the restrictions outweigh the disadvantages of the restriction.
8. Are there less restrictive alternatives that achieve the same outcome?
9. Do you think the current weekday and Saturday trading hours for the major retailers are satisfactory?
10. If not, what changes would you recommend?

4.3.2 Major Retailers May Not Open on Certain Holidays

Restriction

Major retailers may not open on those holidays defined in Schedule 1 of the *Shop Trading Hours Act 1984*, as set out in section 2.4. When New Year's Day, Christmas Day and Boxing Day occur on a weekend the substitute holidays are non-trading days as well. These retailers must close from 12 noon in the area declared as a Cup half-holiday.

Reasons for the Restriction

- Retail employees and small and medium-size business owners are able to enjoy holidays available to the majority of the workers in the community.
 - It provides some support for community events as many shops will be closed.
 - It reflects community attitudes about the activities that are appropriate on certain days (such as Anzac Day).
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- It compensates small and medium-sized retailers for the competitive advantage of large stores and through this helps maintain a diverse retail sector.
 - It promotes family activities and, in some cases, religious observance, on days that are holidays.

Disadvantages of the Restriction

- It discriminates against major retailers and prevents them from trading when their customers may want them to trade.
- It imposes constraints on when consumers can do their shopping.
- It discriminates against some franchise outlets and provides artificial benefits to other franchises and small and medium-sized shops, even when the size of the shop and range of products sold are the same.
- It adversely affects the tourism industry, as tourists may be confronted with a city closed for business.
- It discriminates against those seeking employment, including part-time or casual employment, on days that are holidays.

QUESTIONS

11. Is the restriction necessary to meet the objectives of the legislation?
12. Are there reasons for, or disadvantages of, the restriction that are not included above?
13. Please explain whether you consider that the reasons for the restriction outweigh the disadvantages of the restriction.
14. Are there less restrictive alternatives for achieving the objectives where the benefits outweigh the costs?
15. Do you think the holiday trading arrangements for major retailers are satisfactory? Why, Why/Not?

4.3.3 Major Retailers May Not Open on Sundays

Restriction

The *Shop Trading Hours Act 1984* prohibits major retailers from trading on Sundays. From time to time shop trading extensions permitting Sunday trading may be declared by the Minister for specific events as defined in the legislation. These include cruise ship or warship visits, major cultural, historical or other significant events or events likely to be of significance to the tourism industry.

Reasons for the Restriction

- It restricts the requirement for employees in the retail sector, and small and medium-sized business owners, to work on Sunday.
- It is viewed as promoting full-time employment in the retail sector rather than the use of casual labour.
- It assists in maintaining the financial viability of medium and small business.
- It promotes rest, recreation and family activities on Sundays.
- It provides greater opportunities for religious observance on Sundays.

Disadvantages of the Restriction

- It discriminates against major retailers and prevents them from trading when their customers want them to trade.
- It imposes constraints on when consumers can do their shopping.
- It discriminates against some franchise outlets and provides artificial benefits to other franchises or small or medium-sized shops, even when the size of the shop and range of products sold are the same.
- It adversely affects the tourism industry as weekend tourists may be confronted with a city closed for business on a Sunday.
- It discriminates against those seeking employment, including part-time or casual employment, on Sundays.

QUESTIONS

16. Is the restriction necessary to meet the objectives of the legislation?
 17. Are there reasons for, or disadvantages of, the restriction that are not included above?
 18. Please explain whether you consider that the reasons for the restriction outweigh the disadvantages of the restriction.
 19. Are there less restrictive alternatives for achieving the objectives where the benefits outweigh the costs?
 20. Do you think that the traditional reasons for restricting trading on Sundays are still relevant?
 21. Do you think that there should be restrictions on Sunday trading for all shops?
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5. Other Terms of Reference

Under the Terms of Reference the Review Group is required to determine the likely effect on employment levels (both permanent and casual) of any recommended changes to the legislation and to determine whether any anti-competitive circumstances exist with respect to warehousing and distribution systems.

5.1 Likely Effect on Employment Levels of Any Legislative Change

When the *Shop Trading Hours Act* was introduced in 1984, a volatile industrial climate existed. The union view was that without controlled trading hours, extensive weekend trading would result in further casualisation of employment and reduced opportunities for full time work in the retail sector. Some employers did not wish to trade outside of normal hours when they would be required to pay penalty rates. Legislative provisions ensured that provisions in awards and agreements were strictly observed.

The industrial climate has changed since the early 1980s with the emergence of alternatives to the traditional industrial awards. The ability of employers and employees to negotiate workplace agreements that are specific to their industry requirements has had a major influence on employment in the retail sector.

The Review Group is interested in receiving your views on what impact the changes in trading hours for major retailers have had on employment levels and whether they have affected permanent or casual, full-time or part-time employees.

QUESTIONS

22. Do you consider the current restrictions promote permanent and/or full time employment?
23. If the Government were to reduce or eliminate trading hours controls, such as in the Northern Territory, how do you think this would impact on the nature of employment in the retail sector? Please provide any evidence or reasons in support of your view.

5.2 Warehousing and Distribution Systems

The grocery wholesale and distribution network in Tasmania has evolved from one administered by a number of local wholesalers to one involving national wholesale and retail organisations.

A number of combined warehousing and distribution centres currently supply the grocery trade in Tasmania. One national retailing chain has

in place a system that not only supplies their supermarkets throughout the State, but also supplies a large number of independently owned supermarkets and small grocery stores trading under a wide range of banners.

Retailers not in the grocery sector generally operate their own warehousing and/or distribution systems.

The Review Group is interested in receiving your views on the operation of the current warehousing and distribution systems in the State. The Review Group is particularly interested in the views of industry and recognises that a number of other stakeholders will not have opinions on this issue.

QUESTION

24. Do you believe that the current warehousing and distribution arrangements adversely impact on competition in the retail sector?

Appendix 1 - Terms of Reference for the Review of the *Shop Trading Hours Act 1984*

Introduction

At the meeting of the Council of Australian Governments (COAG) on 11 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:

- the Conduct Code Agreement;
- the Competition Principles Agreement; and
- 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:
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- (a) analysing the likely effect of the existing restrictions or any other form of restriction on competition and on the economy generally;
 - (b) assessing and balancing the costs and benefits of the restrictions; and
 - (c) 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

Format of 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:

- the objectives of the legislation;
- the issues surrounding any restrictions on competition;
- the benefits and costs which flow from those restrictions; and
- 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:

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

- 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:

- a copy of the RIS;
- a summary of public consultation undertaken;
- 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;
- where retention or amendment is recommended, the report must include a clear demonstration of the benefit to the public;
- 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
- 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 - National Competition Policy

Background to National Competition Policy

In October 1992, following the agreement of all Australian governments, the Prime Minister established a Committee of Inquiry to investigate and report on a recommended course of action to achieve consistent competition rules across Australia. The Committee was chaired by Professor Fred Hilmer and its final report was released in August 1993.

The Hilmer Report recommended that a number of steps be taken to achieve the universal application of the Commonwealth's *Trade Practices Act 1974* to both private and public business enterprises and that a series of "additional policy elements" be implemented by governments. These additional policy elements include:

- the structural reform of public monopolies;
- the application of competitive neutrality principles to public sector businesses;
- processes for reviewing anti-competitive legislation;
- the establishment of State-based prices oversight regimes to apply to public sector monopolies; and
- guaranteed third party access to essential infrastructure facilities.

The Hilmer Report also recommended the establishment of two national bodies to oversee the administration of the NCP framework, namely the Australian Competition and Consumer Commission (ACCC) and the National Competition Council (NCC).

The recommendations contained in the Hilmer Report were the subject of discussion and negotiation between the Commonwealth, State and Territory governments for nearly two years. At the Council of Australian Governments meeting on 11 April 1995, the parties agreed on the elements of NCP, which are to be progressively implemented over time to boost the competitiveness and growth prospects of the national economy.

As outlined in section 1.1 of this Discussion Paper, three inter-governmental agreements have been signed to form the NCP package.

The Benefits of National Competition Policy

The general aim of NCP is to promote free and open competition where this is in the public benefit and therefore increase efficiency and productivity in the economy.

The benefits of greater competition extend to all participants in the economy:

- to consumers - through lower prices, more product choice and better service;
- to businesses - through cheaper inputs, better service from input suppliers, greater choice of suppliers and access to improved technology, all of which lead to greater competitiveness;
- to governments - through increased revenue from expanding the economy, lower expenditure and improvements in government services; and
- to the economy as a whole - through lower inflation, increased growth, improved international competitiveness, greater investment, a greater choice of jobs and improved standards of living.

Financial Arrangements

The *Agreement to Implement National Competition Policy and Related Reforms* sets out the details associated with the Commonwealth's undertaking to provide additional financial assistance to the States and Territories, conditional on satisfactory progress being made with the implementation of NCP and related reforms. The Agreement provides for a sharing of the benefits flowing from the Commonwealth as a result of the States and Territories agreeing to implement NCP and related reforms.

Under this Agreement, the Commonwealth will firstly maintain the existing real per capita guarantee on Financial Assistance Grants (FAGs) on a rolling three year basis. This means that each year the guarantee will be extended for a further year, providing the States and Territories with a continuous guaranteed FAG pool for three years ahead. The real per capita guarantee was introduced at the 1994 Premiers' Conference and also applies to Commonwealth general purpose payments to Local Government.

In addition to this guarantee, the Agreement provides for additional 'competition' payments to be made to the States and Territories. These will be provided in three 'tranches' which, together with the per capita guarantee component of the FAG pool, will be dependent on the States

and Territories implementing the agreed reforms. If a State or Territory has not undertaken the required action within the specified time frame, its share of the per capita guarantee on FAGs and of the NCP payments will be forfeited to the Commonwealth.

The NCC has been charged with the task of assessing compliance by each State and Territory with the conditions governing competition payments.

Tasmania received the 1997-98 component of the first tranche payment in June 1997, totalling \$12.3 million. By June 1999, the State received the 1998-99 component of Tasmania's first tranche assessment, which comprised \$5.4 million in competition payments and \$15.4 million in FAG payments.

The Commonwealth Treasurer has accepted the recommendation of the NCC that Tasmania receive the full share of the 1999-00 component of the second tranche of NCP payments. This payment is expected to total around \$34.5 million.

Subject to Tasmania's continued compliance with its NCP obligations, the State is expecting to receive a payment of around \$10.6 million as its share of the 2000 - 01 component of the second tranche of competition payments. This component will not include a FAG payment as these payments will be replaced by the national tax reform measures, which include the allocation of GST revenues between the States and the Commonwealth.

**Table A2 Estimated NCP Payments at June 1999
Real Terms (1999-00 dollars*)**

Year	Per Capita FAG Guarantee		Competition Payments		
	National Total	Tasmanian Share	National Total	Tasmanian Share	Total Payments to Tasmania
	\$m	\$m	\$m	\$m	\$m
1997-98 actual	175.51	6.88	213.03	5.40	12.27
1998-99 actual	396.89	15.36	215.68	5.39	20.75
1999-2000	598.58	23.71	438.91	10.81	34.52
2000-01[#]			438.91	10.65	10.65
2001-02[#]			658.37	15.74	15.74
2002-03[#] onwards			658.37	15.51	15.51

Note: *Except for actual payments in 1997-98 and 1998-99, these figures have been updated since the publication of the Tasmanian Government's *National Competition Policy Progress Report, April 1999* on the basis of advice received from the Commonwealth Government in June 1999.

Given that FAGs will be replaced by a GST regime, the inclusion of the FAGs-related payments in the above table is no longer relevant after 1999-2000.

A detailed account of Tasmania's progress in implementing the NCP Agreements is provided in Tasmania's most recent report to the NCC

entitled, *National Competition Policy Progress Report, April 1999*. A copy is available as part of the Government's 1999-00 Budget Papers from its Internet site at <http://www.tas.gov.au>.

Appendix 3 - Shop Trading Regulation in Other States and Territories

Table A3 summarises the legislative and other governing arrangements in other States and Territories for shop trading hours. It is evident from Table A3 that all States and Territories are either fully deregulated, working towards deregulation, or examining the merits of a regulated industry.

Table A3.1 - The Extent of Shop Trading Hours Regulation in Other States and Territories

State/Territory	Extent of Regulation
Australian Capital Territory	After a period of liberal trading arrangements, the Government reintroduced restrictions on trading hours in larger shopping centres in 1996. Subsequent consumer surveys found that the costs of regulation clearly outweighed the benefits and the decision was reversed.
New South Wales	Legislation divides shops into scheduled, small and general categories. There are no hours restrictions for scheduled or small shops. No restrictions apply to general shops from Monday to Saturday. General shops may not open on Sundays (except the two before Christmas) and some public holidays, however exemptions may be granted.
Northern Territory	There is no current legislation governing retail trading hours.
Queensland	Legislation provides for exempt shops, independent retail shops and non-exempt shops. Exempt shops are unrestricted. Independent retail shops are those run by a single operator or private company where less than 20 persons engage in the shop at any one time or, if a number of shops are operated, a maximum of 60 persons throughout the State. They must close on Christmas Day, Good Friday and part of Anzac Day. Non-exempt shops are allowed to trade between 8.00am and 9.00pm from Monday to Friday and between 8.00am and 5.00pm on Saturday. Some tourist areas may trade on Sundays and certain public holidays.
South Australia	The Act regulates the trading hours of some shops in some areas of South Australia. Shops are only regulated if they are situated within a shopping district. Closing times are 7.00pm on weekdays (9.00pm Thursdays), 5.00pm on Saturday. Shops in Adelaide City may trade until 9.00pm on weekdays and from 11.00am to 5.00pm on Sundays. An exemption or licence may be granted for Sunday trading and non-exempt shops may trade on six Sundays a year, four of which are immediately prior to Christmas.
Victoria	All shops are free to open without restrictions except on days of special significance - Christmas Day, Good Friday and Anzac Day. Legislation prohibits leases from containing provisions requiring shops to open after 5.00pm on Saturday or on Sundays. Local councils may restrict Sunday trading if the residents vote in favour, but further polls are required at least once every three years.
Western Australia	Retail trading hours cover four categories - general retail shops, exempted general retail shops (small shops), special retail shops and service stations. Standard hours for general retail shops are 8.00am-6.00pm on weekdays (9.00pm Wednesday), 8.00am-5.00pm on Saturdays. Sunday trading is permitted in Perth and Fremantle tourism precincts. Trading hours for special shops are 6.00am-11.30pm seven days a week. There are no trading hours restrictions for small shops or service stations.

Table A3.2 - Current Status of Review and Reform Program

Jurisdiction	Legislation	Review Status
South Australia	<i>Shop Trading Hours Act 1977</i>	Review completed 1998 and limited changes announced on 21 October 1998 with effect from 8 June 1999
Tasmania	<i>Shop Trading Hours Act 1984</i>	Review scheduled to commence late 1999
ACT	<i>Trading Hours Act 1962</i>	Trading Hours Act repealed in 1997 due to lack of community support for trading hours restrictions
Northern Territory	No specific 'shop trading hours' legislation	No review required
New South Wales	<i>Factories, Shops and Industries Act 1962</i>	Review has not commenced
Victoria	<i>Shop Trading Act 1987 and Capital City (Shop Trading) Act 1992 [Both repealed]</i> <i>Shop Trading Reform Act 1997</i>	Review completed 1997
Queensland	<i>Trading (Allowable Hours) Act 1990 (and regulations)</i>	Review to commence in July 1999
Western Australia	<i>Retail Trading Hours Act 1987 (and regulations)</i>	Review completed 1999. Report not yet available

Source: National Competition Council's *Second Tranche Assessment of Governments' Progress with Implementing National Competition Policy and Related Reforms*, 30 June 1999