Creating more Aussie jobs!

Submission to the

House of Representatives Standing Committee on Education and Employment

National Retail Association

Prepared by the National Retail Association

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1.0 About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

The NRA's membership is comprised of members from all the sub-categories of retail including fashion, groceries, department stores, home wares, hardware, recreational goods, newsagents, fast food, cafes and personal services like hairdressing and beauty. It also includes both large and small businesses, including the majority of national retail chains, as well as independent retailers and franchisees, and other service sector employers. The NRA has represented the interests of retailers and the broader service sector for almost 100 years. The NRA's aim is to help Australian retail businesses grow.

2.0 Overview

The retail sector is one of our nation's largest employers. More than one in ten workers in Australia is employed in the retail sector. The success of the retail sector therefore contributes significantly to the strength of the Australian economy, the revenues collected by governments, and the creation of jobs through growth.

Retailers operate in a quickly evolving space, at the coalface of changing consumer trends. Around Australia, there is no Department of Retail or Minister for Retail, in contrast to the position of many other industries. Nonetheless, retailers, particularly the small businesses which comprise the heart of the retail sector, consistently provide feedback that they are unnecessarily weighed down and distracted by the impacts of red tape on their core business activities.

The retail sector is comparatively reliant on labour, compared with capital inputs, and so has a greater capacity than most other industries for creating jobs through growth, which can in turn reduce pressure on government welfare and other social services expenditure. Notably, retail sector employment typically demonstrates higher than average levels of female employment, youth employment, and entry level or lower-skilled employment. Many retail roles require no formal qualifications as a prerequisite for employment or promotion. The sector also typically demonstrates higher than average levels of part-time and casual employment, and in some cases higher staff turnover. The sector can play a significant role in creating jobs for the unemployed and other job market entrants, new migrants, youth, the secondary income earner in households, those seeking redeployment from shrinking industries and those seeking new career prospects later in their lives.

While there has been welcome steady growth in retail spending in recent months, it remains weak by historical standards due to a range of factors. Retailer viability is threatened because of the convergence of weak demand with rapidly escalating costs of operation including labour costs, rents, utilities costs and other increases across the supply chain.

The retail sector is also undergoing a structural upheaval following advancements in technology, digitalisation and online shopping. Consumer product markets are now essentially global, meaning that Australian retailers are competing against offshore competition. In this context, widespread red tape and compliance burdens present an additional and unnecessary challenge for the sector, and in some cases a distinct competitive disadvantage.

The first major challenge is the GST low-value threshold tax (LVT), which is creating a disadvantage for local retailers as they are forced to compete with overseas retailers who are exempt from paying GST on imports below $1000. Another issue is that of penalty rates – both the level and the times at which they are applied. There is clear evidence that this is causing businesses to close their doors when both customers and staff would like them to be open. Furthermore, retailers are being affected by the red tape surrounding trading hours and packaging and productivity.

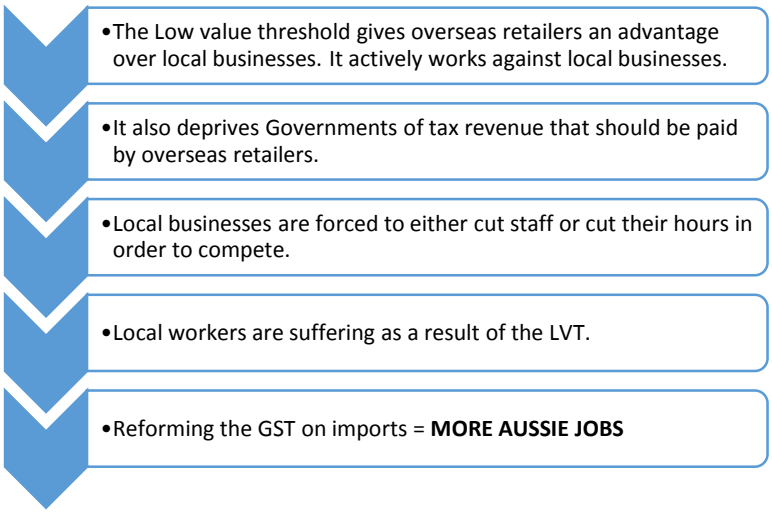
Effectively, the regulatory burden reduces the profitability of a business, and in turn its ability to grow and create more jobs. As the Federal Government confronts a growing unemployment problem in Australia and lower than expected growth in industry and revenues, it must look to address the burden of red tape and regulation that is strangling business and jobs growth.

3.0 The Low Value Threshold

One of the greatest challenges currently confronting Australian retailers today is the ease of which consumers can access imported goods from on-line retailers. While selling with relative ease into the Australian market, these overseas retailers do not contribute in any significant way to employment and economic growth within Australia, nor do they face the challenges of the workplace relations regime as it applies to domestic retailers. Most problematic for Australian businesses, however, is the unfair loophole that currently allows overseas retailers to avoid paying GST on imports valued at less than $1000. This Low Value Threshold (LVT) is allowing offshore web-based businesses to deliver retail goods to consumers in the domestic market without making any contribution to the goods and services tax take. Further, this GST exemption also creates an exemption from tariffs, import duty and customs charges – costs that are borne by suppliers to the Australian retail market and passed on to local retailers. Depending on the product category, these costs can add up to 25 per cent to the wholesale price of local goods.

As well as stripping GST revenue from State Governments, this Low Value Threshold is a major, unfair impediment for local retailers, and is costing jobs right across Australia. The NRA is urging all parties to close the loophole, which was designed for the pre-internet shopping era. Most of the goods currently imported GST free were always intended to be taxable under the intent of the original legislation.

Research conducted by Ernst and Young, and commissioned by the NRA, shows that lost GST revenue to the states will exceed $1 billion in the 2014/15 financial year as a result of this LVT loophole. This amount is projected to grow significantly in the Budget over years. Another report, also by Ernst and Young, estimated the loophole will cost up to 33,400 local retail jobs – most likely the jobs of lower paid or vulnerable workers such as young people, single parents and senior workers returning to the workforce.



Contrary to popular media opinion, this LVT issue is not a matter of on-line verses traditional retail. This impacts Australian-based online retailers in exactly the same way as it impacts local shops. The only retailers able to exploit the loophole are those who operate off-shore, particularly foreign retail giants such as Amazon.com. Small Australian businesses are disadvantaged, regardless of whether they are “clicks” or “bricks” businesses.

This issue is not about increasing either the rate of the GST nor the range of goods and services to which it applies. This is about closing a loophole that rewards and encourages overseas retail, to the detriment of Australian businesses, workers and – ultimately, through reduced local competition – consumers. These are goods and services that, if purchased from an Australian on-line retailer, would attract the GST.

4.0 A better workplace relations regime

Australia's complex, inflexible industrial relations regime is one of the greatest threats to competitiveness and productivity for the nation's retailers. Former Prime Minister Julia Gillard, then in the role of Workplace Relations Minister, made a unambiguous promise to business owners that no-one would be worse off as a result of the award modernisation process set in train by the government following its election in 2007. It is indisputable that the changes introduced in July of 2010 have left tens of thousands of businesses far worse off. This is as evident in retail as it is anywhere else.

As a result of these changes, many small retail businesses are now forced to pay penalty rates at a significantly higher rate than previously, or indeed for the first time ever, with no accompanying productivity gains. The award system has also become far too complex and inflexible for businesses. Compliance is particularly difficult for small businesses who do not have the assistance of industry associations.

Feedback from our members indicates that the current workplace relations regime has prompted a significant proportion of smaller retailers on Sundays and public holidays, either to remain closed or to limit their staffing to proprietors and family members only, to avoid the imposition penalty rates. This trend is notably high in the cafes and restaurants category, as well as fast food and personal services, but it is also evident in many core categories of retail such as fashion, hardware and home wares. While trade and revenues may be higher on Sundays and public holidays, the additional labour costs imposed typically make the day less profitably than normal trading days. When this causes retailers to close, this not only denies staff the opportunity of work, but it also hinders profitability by forcing the business to attempt to recover its fixed costs over a shorter trading period each week.

This rational response by shop owners in the face of higher business costs demonstrates a failure of the modern award process, which runs in direct opposition to the expected role of the Federal Government to cut red tape and assist with economic growth and job creation. The former government's policy in this area has cost jobs and is a handbrake on the creation of future jobs.

This reduction in economic activity also exposes the tautological nature of the award "modernisation" process, in that it fails abjectly to recognise the modern nature of retail consumer demand. More than any other time in history, consumers today have greater market knowledge, more purchasing options and 24-hour, seven-day access to the retail marketplace via online shopping. While confronting this new world, traditional retailers have been forced also to deal with the compliance strictures of the so-called modern award system which effectively penalises businesses for serving their customers outside of the old 9am-5pm, Monday to Friday model.

The NRA also submits that the Fair Work Commission structures themselves are a source of unnecessarily high costs for retail businesses. One of the greatest frustrations the retail industry has with the current system is the wide variance in outcomes and the discrepancies in decision making.

It has been the NRA's experience that decisions flowing from the Fair Work Commission have been inconsistent, confusing and sometimes contradictory. The inconsistency in decision-making from individual Commissioners has led to a reluctance from businesses to utilise mechanisms such as enterprise agreements which are supposed to allow a degree of flexibility in workplace practices. There are many examples where the Commission has eschewed a common sense approach to the

matters before it. Based on our discussions with other industry bodies, we believe this frustration is not limited to the retail sector.

The NRA strongly supports the concept of a new appeal mechanism for the Fair Work jurisdiction to produce some much-needed consistency in the outcomes of Fair Work Commission matters. The need for consistency is particularly compelling in matters relating to workplace productivity – bargaining, scope orders, enterprise agreement approvals and so on.

By way of example, the NRA has direct experiences with almost identical businesses (such as similar franchisees within a franchise banner group) putting forward almost identical proposed agreements and substantiating evidence, being heard by different Commissioners, and resulting in wildly different decisions. The unsuccessful employers generally do not appeal their decisions due to the costs involved in doing so. The uncertainty resulting from such cases is well known within the industry and it is a significant impediment to businesses being willing to take steps to achieve the gains in workplace productivity that are meant to be made possible under the FWC system.

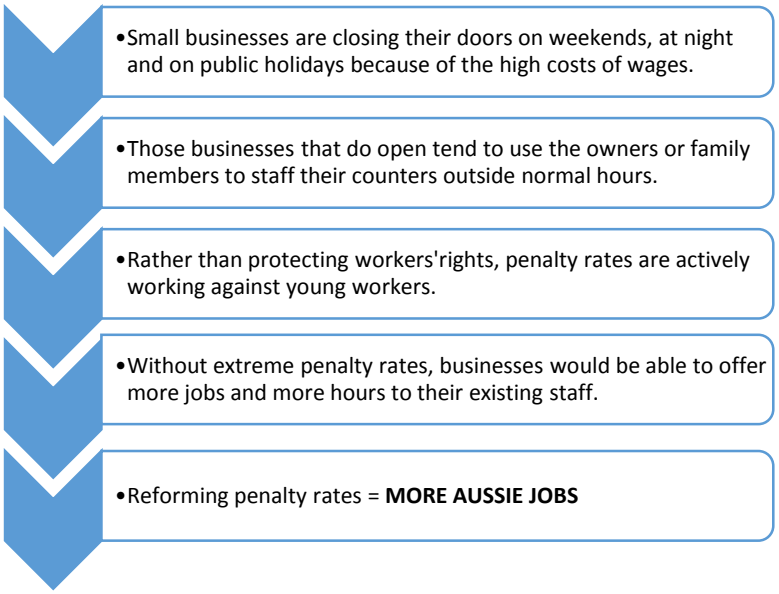
By way of another example, the NRA has directly experienced a situation where a Commissioner refused to certify an agreement, even though they expressly conceded that it passed the *Better Off Overall Test*. The Commissioner asserted that they did not believe the employees genuinely agreed to the terms, despite the employer providing a sworn declaration outlining the steps taken to achieve agreement, as well as an offer to provide statutory declarations from the employees as well. The evidence presented was simply disregarded. The employer did not appeal the decision in this case due to the costs involved in doing so.

It is the view of the NRA that the existence of an expert appeals jurisdiction would not only provide a streamlined option for employers such as those in the above examples to pursue fair outcomes, it would also prompt Commissioners to think twice before making a ruling that is likely to be overturned on appeal. In this way, a new jurisdiction would not only bring better consistency through its own appeal rulings, but would also be likely to inject greater rigor into the original decision making processes throughout the FWC system.

The industrial relations regime as it is presently operating is therefore considered by the retail sector to be a significant source of unnecessary red tape and regulation, and a major deterrent to employment growth.

4.1 Penalty Rates

Without doubt, the single greatest deterrent to employment growth in the retail space is penalty rates – both the level of rates and the times at which they apply. With the advent of the modern award system, employers in the retail space have felt the impact of penalty rates more acutely than many other sectors. Some retailers have been forced to pay penalty rates for the first time, while others have been faced with much higher penalty rates. As outlined above, this additional cost impost makes trade outside normal business hours unprofitable in many cases. In other instances, employers will open their doors but staff the business themselves or with family – in order to avoid the problem.



There is an indisputable link between the cost of wages and a business's ability to hire more workers or give staff additional hours. There is clear evidence that many shops and cafes close their doors on Sundays and public holidays because of the high cost of employing staff at those times, while others will rely on "unpaid" labour such as business owners and their families. Current levels of penalty rates and the times at which they are applied are clearly hurting businesses' ability to create employment.

Many people – such as students – prefer to work outside traditional business hours. These people are being denied opportunities because of the penalty rates associated with this work. It is time for the government to address this issue and look to creating sustainable employment in Australia for the future generations. Scare tactics about workplace reform will not help create more employment. Reforming penalty rates will give workers the most important right – access to *More Aussie Jobs!*

Retail industry associations have engaged *Deloitte Access Economics* to undertake a study of both workers and employers to gauge attitudes to working or operating a retail business outside of standard business hours. The research found:

- Different Australian workers have different preferences, with casual and part-time workers having a stronger preferences for working Sundays. Many workers are unwilling to work atypical hours regardless of penalty rates;
- A strong desire to work hours that suit family or personal routines – e.g. 86 per cent of females aged 25-34 preferred evening or night work. Others (for example, university students) prefer to work on the weekends rather than during "standard" hours as it does not interfere with their other commitments;
- There is declining participation in historically typical weekend activities such as church attendance or weekend sports participation;
- A majority (54 per cent) of Saturday workers indicated they had either no problem or only minor problems with weekend work. A similar percentage of Sunday workers (53%) also reported no or minor problems.

5.0 Product labelling and compliance

Product compliance is one of the biggest 'red tape' issues for the Australian retail sector. The retail industry is littered with examples of packaging and signage requirements which at best can be described as unnecessary. Many of these examples spread across a range of government agencies – customs and imports, weights and measures, standards, health and consumer agencies, to name just a few. The result is a complex and confusing web of regulations and rules which apply to different businesses depending on their different circumstances.

For example, in the fast food sector some states require energy consumption information to be displayed at the point of sale, with no national consistency on this approach. Some states go so far as to stipulate the font and size of in-store sign-writing, but these requirements vary, creating significant administrative expense for businesses. In relation to packaging and product labelling, states are also able to regulate individually on textile labelling (such as fibre content) and care information. This kind of information is also dealt with under the Australian Consumer Law, and – in the case of imported goods – Customs import regulations. And in the case of electrical goods, there is an entirely different approvals regime which varies from state to state, despite recent attempts at harmonisation.

The current, multi-layered and potentially contradictory regime with multiple regulators creates a minefield for retailers – not only in terms of legal compliance but simply in meeting their own desire to give their customers the right information. Some of the regulations for product compliance for domestic sales include:

- Customs laws;
- Trade measurements;
- Australian Consumer Law;
- Therapeutic Goods Administration;
- Australian Pesticides and Veterinary Medicines Authority
- Electrical regulators in each state; and
- The Australian Communications and Media Authority.

In circumstances where the retail sector has been undergoing a significant structural upheaval, following advancements in technology, digitalisation and online shopping, it is important for governments to understand that these changes have led to new consumer behaviours, new retailing models and increased competition through effective globalisation of retail markets. The structural shifts have brought about significant changes in the retail sector in a short period of time, with both challenges and opportunities for retailers.

The effective globalisation of consumer product markets has significant impacts for agencies and regulators seeking to administer or enforce Australian product regulations. Australian consumers are no longer forced to purchase products from retail businesses located within the country. Online and offshore options abound. In turn, in order to remain competitive, a significant number of Australian retailers are increasingly sourcing products from overseas markets where goods are manufactured specifically to be compliant with the product regulations of the world's major consumer markets such as the European Union and North America.

To the extent that Australia's product regulations are harmonised with those of other major consumer markets, Australian retailers are easily able to adapt and compete for the business of Australian consumers. To the extent that Australia's product regulations are different to those in the

EU or North America, Australian retailers must repackage, relabel or alter goods in order to sell to Australian consumers. This will obviously add costs to supplying those products, making Australian retailers less competitive in the global consumer marketplace and leading Australian consumers to consider purchasing from offshore or online competitors that are probably not cognisant or compliant with divergent Australian requirement. The outcome in these instances is that the Australian consumer receives a non-compliant product, the offshore supplier is generally immune from effective enforcement of Australia's regulations, and the Australian retail industry achieved lower turnover than it otherwise would have, sending economic activity, jobs and capital offshore.

The key question is whether Australian product regulations must be different to those of other comparable countries that are major consumer markets. In some instances Australia's unique conditions mandate a different approach. However, for many generic products, it is unnecessary for Australia to have product regulations that diverge from other major consumer markets, especially when there is little suggestion that the product regulations in the EU or North America are in any way deficient or lacking.

Notable examples where Australia's product regulations are divergent from those in other major product markets include:

- Volumetric labelling, such as for cosmetics. Australia's regulations require volumetric labelling to be front of box, when other major consumer markets around the world allow labelling on the back of the package. This difference requires Australian retailers to repackage or relabel or sticker over the products they are sourcing from overseas, which adds unnecessary costs to the supply chain and ultimately means Australian consumers pay more than they otherwise would have;
- The strict requirements (and outrageously high punitive fines) around some very minor formatting requirements in Australia are difficult to reconcile with the approaches of other regulators and agencies within Australia and around the world. Fines in the thousands of dollars for having incorrect capitalisation of the letter k in kg, or for having a measurement written in cm instead of metres, are unable to be justified on public interest grounds, can rarely be linked to any consumer detriment, and ultimately undermine the faith of stakeholders in the priorities and mechanisms of government; and
- Federal regulations for cosmetics that specify information that must be included on the front of a package. If that product is imported, with the correct information on the rear of the package, it must be repackaged or relabelled in Australia to comply with local laws, which require certain information to be displayed on the front of the package.

The NRA recently achieved some success in changing regulations in the area of packaging and labelling. Previous regulations had specified that a pre-packaged towel or bed linen or other fabric sheet, with dimensions of, say, 80cm x 104cm, must instead be labelled as 80cm x 1.04m - with fines potentially applying to any retailer who labelled their product as "104cm" long. Following representations from the NRA and our members, the National Measurement Institute (NMI), to its credit, has listened and has ordered some changes to its regulations to give retailers the freedom to use centimetres to describe these types of products. The change is expected to take effect from 1 July 2014.

While this has now been changed, it is just one of many hundreds of such onerous and unnecessary regulations impacting on retail trade. In our view, these have led to a regime where many small retailers survive on a system of non-compliance and non-enforcement. This is by no means the

universal position of retail businesses, but many clearly struggle to comply with – or even understand – their obligations in this area.

A small business owner simply does not have the time or resources to constantly stay abreast of the latest changes in this space on top of all other areas of operations and regulations. And while industry associations such as the NRA are able to advise our members on these requirements, not all small businesses are members of an industry association, and in any event there is a clear cost impost to businesses that could be reduced through simplification of these rules.

In a similar way to the packaging standards, the laws governing product technical and safety standards are a tangle of bureaucratic red tape. In many cases products that are approved for sale in one state are banned in others. In the case of the electrical industry, there is no national regime for approving and enforcing product safety standards – nor for responding in the case of a failure.

It would be hard to conceive that a child car capsule or a bicycle safety helmet that is approved for use in Germany, for example, would not be fit for use in Australia. However, having such a product certified as safe or approved for use in Australia can be a costly and time-consuming process. If the most common safety and technical standards applicable in Australia were harmonised with our major trading partners, the compliance costs for wholesalers and retailers would be significantly lower.

We recognise that our national trade measurement system is an important cornerstone of our consumer economy. The comments in this submission are not intended to detract from proper administration or enforcement of this system, rather they are directed at sustaining the efficacy and relevance of the system in a new and quickly evolving global marketplace. While these issues are not entirely within the mandate of the Federal Government, the cross-border inconsistencies can only be solved with a genuine national regime, and it is within the Federal Government's power to lead discussions on such a regime.

6.0 Leasing and tenancy

Retail shop leasing arrangements are highly regulated in Australia, almost to the extent of codification. Separate retail shop leasing legislation exists in each of the States and Territories. The retail leasing regimes in each jurisdiction are similar in many respects, but are certainly not identical. Key differences occur between the different state regimes, in many significant areas of leasing administration and operations.

The retail sector is not necessarily adverse to a high level of regulation in the area of leasing and tenancy operations. There is a broad recognition that much of the regulation is predicated on the assumption that landlords and tenants begin in an uneven bargaining position. That assumption does not hold true in some instances, because there exists both small business landlords and large business tenants such retail chains and franchise banner groups. However, almost every piece of real estate is unique in some respects and that poses policy challenges when considering factors such as bargaining and competition.

Nonetheless, there is significant consensus within the retail sector that there are benefits to be obtained through harmonisation of these laws. There is little doubt that public policy can therefore play a significant role in determining retailers' costs in this area.

In 2008, the Productivity Commission completed an investigation into the operation of the retail tenancy market in Australia. That inquiry examined the operation of the market, including the concept of "negotiating imbalance" between landlords and store owners. It also examined planning. That report recommended Federal and/or State Government action to:

- Improve transparency and information accessibility in the retail tenancy market;
- Improve national consistency and administration of lease information to reduce compliance costs;
- Reduce jurisdictional variation in the provisions for unconscionable conduct in retail tenancies;
- Work with stakeholders towards a voluntary national code of conduct for shopping centre leases, with enforcement by the ACCC;
- Remove restrictions in retail tenancy laws that provide no improvement in operational efficiency;
- Develop model retail tenancy legislation to help move towards national consistency, and for this to be adopted in each jurisdiction; and
- Relax state controls that limit competition and restrict retail space and its utilisation.

Disappointingly, many of the recommendations in that report have not been actioned by the appropriate governments and/or agencies. The NRA believes that many of the issues identified by the Commission in 2008 remain relevant and unresolved in the marketplace. In some areas these issues have become more difficult for business owners than was the case six years ago. The NRA therefore recommends that the Commission's 2008 report be revisited and its recommendations be actioned by government.

Of the list of recommendations above, the NRA considers that all continue to be relevant and should be revisited. Each of the recommendations should be actioned, subject to the following updated comments:

- While the ACCC is not the only potential solution for the enforcement or administration of a national code and conduct for shopping centre leases, there remains a clear need for a national approach to facilitate harmonisation, with the involvement of both industry and government.
- The recommendation to remove restrictions in retail tenancy legislation that provide no improvement in operational efficiency remains relevant as a general principle but many jurisdictions have since concluded a subsequent review of their own regimes. These subsequent reviews have to various degrees focused on the potential for cutting red tape. Future deregulatory gains are most likely to be realised through a national approach to facilitate harmonisation.

7.0 Trading Hours

There can be no greater impediment to job creation for a business than being forbidden by Government regulation to open your doors and trade. Yet this is the circumstance many businesses find themselves in. While the NRA recognises that some days of the year are considered sacrosanct, there are many other times when retailers are prohibited from trading simply due to their location, their size, their product range or event their ownership structure.

NRA has long campaigned for greater harmonisation of state trading hour laws. The current rules make business operations difficult for retailers who trade across state borders, oftentimes also for those operating between different regions within a stat, and in some cases for those operating within close proximity to each other. For example, in the state of Queensland there are more than 50 different trading zones, each with different rules. The problems associated with them include:

- rules that run to 98 pages of legislation, regulations and instruments, containing more than 180 legal obligations and prohibitions;
- high compliance costs for businesses;
- approximately $253m in lost trade annually to the Queensland Government;
- the expense of around 3,000 jobs in Queensland;
- reduced convenience, less choice and less free time for Queensland consumers, with particular reference to the impacts on working mothers;
- a Saturday closing time that has not been examined since 1994 – all the while Australians' employment situations and lifestyle choices have changed dramatically over the past two decades;
- a small number of cases in which confusion surrounding the complex rules has led to conflict outside stores at closing times.

Australia-wide, different legislation requirements are problematic for businesses as well as consumers, as they do not take into account the complex and often eclectic needs within each community. The NRA believes it is not in retailers' best interests to be forced to operate under closely-regulated trading hours and that it is the retailers themselves who should be given the chance to participate in this conversation, as they are best-placed to truly understand their consumers' needs, rather than government agencies.

The current regulations are a major cost impost on Australian retailers and a major obstacle to employment growth. That is not to say that full deregulation is automatically the only way forward. There are strong grounds for retaining some public holiday restrictions on community interest grounds and most States do so. In those States which still apply trading hours restrictions on Sundays or at certain times of the day or in certain geographic zones, there are often immediate steps that can be taken, which do not necessarily amount to full deregulation, that can unlock substantial economic benefits. In those situations, incremental reform with a focus on simplifying and harmonising the rules is often the best way forwards, so that retailers can be included in the changes and any harm to individual businesses from structural adjustments can be minimised by allowing sufficient lead times for businesses to adapt.

This issue was addressed in the recent Harper Review, and we urge all levels of government to consider its recommendations.

8.0 Contact information

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