

EVALUATION OF THE TWO NEW PUBLIC HOLIDAYS IN VICTORIA

**Submission to the Honourable Philip Dalidakis
Minister for Small Business, Innovation and Trade**



January, 2016

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About the Submitter

The National Retail Association

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. NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets nationwide.

The NRA exists to help retail and service sector businesses comply with an ever changing and growing regulatory environment. The Association provides professional services and critical information to businesses right across the retail industry whose membership base includes the majority of national retail chains, as well as thousands of small businesses, independent retailers, franchisees and other service sector employers.

Members are drawn from all sub-categories of retail including fashion, groceries, department stores, home wares, hardware, fast food, cafes and personal services like hairdressing and beauty.

The NRA has represented the interests of retailers and the broader service sector for almost 100 years and has the core aim of assisting Australian retail businesses grow.

Outline of Submissions

The National Retail Association (“NRA”) thanks the Minister for this opportunity to participate in the evaluation process regarding the Victorian Government’s decision in 2015 to declare two new additional public holidays in Victoria, namely Easter Sunday and the Friday before AFL Grand Final Day.

Despite having made detailed submissions setting out our reasons for opposing the introduction to these holidays (as did numerous other employer bodies and groups), we were very disappointed that the decision to implement these holidays was made, seemingly without regard to the negative impact that this would have on business, productivity and employment.

Given the current Victorian Government’s steadfast determination to proceed with its decision based on election commitments, we are not optimistic that any submissions that we, or any other group may make about this issue will influence the Government to depart from any further decisions that it has already made about this issue. Nevertheless, we have made some brief submissions in the hope that the Government will reconsider its current stance about this matter.

We once again rely on the matters set out in the joint submissions that we made (together with the Hardware Association Victoria and Tasmania and the Hairdressing and Beauty Industry Association) to the Department of Economic Development, Jobs, Transport and Resources in August 2015 as to why these additional public holidays should not become a fixture in the Victorian calendar. For the sake of convenience we have incorporated those submissions in this document.

Anecdotal evidence demonstrates that from a productivity and profitability perspective, these public holidays have been disastrous for the majority of our members in Victoria. The general feedback that we have received from is that they have experienced reduced profits and trade as a result of the introduction of these further holidays. Smaller businesses in particular, have been forced to shut down on these days as it has not been commercially viable for them to pay their staff public holiday penalty rates for working on these days. We understand that the experience for most businesses in other industries has been the same, particularly those in rural areas.

Given the negative economic consequences that these additional public holidays appear to have had (and will continue to have), for business, employees and the Victorian Government itself, we respectfully submit that the Victorian Government should carefully consider whether it would be responsible for these additional holidays to continue to operate in Victoria.

For these reasons, the NRA calls upon the Victorian Government to immediately scrap these additional public holidays.

The Government's Rationale for the Two Additional Public Holidays

In its 2014 Election Platform, the Labor Party made the following statements about public holidays in Victoria:

Labor recognises that public holidays represent significant religious, national, state and local occasions. They provide the opportunity for families and friends to take a break from normal work or studies and join together as a community with common ideals. Public holidays perform an important role in uniting the community and providing people with family and leisure time.

The Coalition Government changed the laws in relation to Easter Sunday. However they refused to provide fair pay to those now forced to work on Easter Sunday by failing to declare it a public holiday.

Labor will:

- *Restore fairness and declare Easter Sunday a public holiday in Victoria.*
- *Declare the Friday before the AFL Grand Final Day as a public holiday in Victoria.*
- ...

According to the PricewaterhouseCoopers Australia Report titled *Regulatory Impact Statement on proposed new public holidays in Victoria* dated July 2015 ("**PWC Report**") prepared for the Department of Economic Development, Jobs, Transport and Resources, the following principles arising out of the above election platform were taken to be the government's objectives:

- 1) *providing fair pay to those working on Easter Sunday ("**First Objective**")*;
- 2) *increasing opportunities for Victorians to enjoy coordinated leisure time ("**Second Objective**")*;
- 3) *enhancing the important role performed by public holidays on significant religious and state occasions in uniting the community ("**Third Objective**").*

An analysis of the rationale behind each of these objectives is set out below.

First Objective: Providing fair pay to those working on Easter Sunday

Clearly, this objective only relates to the proposed Easter Sunday public holiday.

The statement about the Coalition Government having "changed the laws in relation to Easter Sunday" appears to be a reference to the lifting of a ban on Easter Sunday trading in 2011 by the Baillieu government. It is argued that the failure by that government to also declare Easter Sunday to be a public holiday has resulted in a refusal to provide "fair pay to those now forced to work on Easter Sunday". However, prior to the lifting of that ban, the restrictions did not apply to "exempt shops", namely businesses which:

- had 20 or fewer persons employed in the shop at any time during a restricted trading day; or
- in combination with their related entities, employed no more than 100 persons at any time during the seven days immediately before the restricted trading day.

Inasmuch as it was fair to pay Sunday rates to employees who worked in the "exempt shops" category on Easter Sundays, it has continued to be fair to pay Sunday rates to employees of those businesses who did not fall under this category when the ban on Easter Sunday trading was lifted.

Currently, the only state in Australia which has declared Easter Sunday to be a public holiday, is New South Wales, which is the exception to the rule. Therefore, from a fairness perspective, Victorian employees are receiving the same pay for working on Easter Sunday as employees who work on this day in almost every other state and territory throughout Australia.

For these reasons, together with the further reasons set out below, we submit that the rationale behind the Government's objective of seeking to provide "fair pay" to those working on Easter Sunday by declaring the day to be a public holiday, to be unsound.

Second objective: Increasing opportunities for Victorians to enjoy coordinated leisure time

Victorians currently enjoy 11 public holidays each year. Increasing this to 13 would result in Victoria having the highest number of public holidays in Australia. By virtue of the National Employment Standards in the *Fair Work Act 2009*, full-time and part-time employees are entitled to a minimum of total of 20 working days' paid annual leave each year, on a cumulative basis. Moreover, a significant proportion of long-term employees in Victoria have an entitlement to take at least 13 weeks of long service leave. It would therefore be fair to state that the majority of Victorian employees have ample opportunities to enjoy leisure time.

It appears that the Government's aim is not merely to add two new public holidays to the calendar for the sake of increasing opportunities for Victorians to have leisure time, but rather to do so on a coordinated basis. If this were not the case, it would have proposed to hold these additional holidays on any other day of the year that did not hold any particular significance. However, the Government's motives for seeking to add these new public holidays on a coordinated basis are not clear.

The basis for this position seems to arise from the Labor Party's 2014 Election Platform, in which it made the following statements about public holidays:

Labor recognises that public holidays represent significant religious, national, state and local occasions. They provide the opportunity for families and friends to take a break from normal work or studies and join together as a community with common ideals. Public holidays perform an important role in uniting the community and providing people with family and leisure time.

Given the diversity of faiths and cultures in Victoria, the degree to which Victorians consider Easter Sunday or the AFL Grand Final to be significant religious or state occasions respectively, is debatable. Although any public holiday, irrespective of its significance, would result in Victorians enjoying additional leisure time, because of the diverse nature of Victorian society, it cannot be said that the proposed new holidays will necessarily result in people joining together as a community with common ideals, or that they will necessarily unite the community. If anything, we consider that these proposed holidays are likely to have the effect of dividing members of the community, particularly:

- those people who are not of the Christian faith (in relation to the proposed Easter Sunday holiday); and
- those people who do not share the same enthusiasm for footy as others (in relation to the proposed AFL Grand Final public holiday).

For these reasons, together with the further reasons set out in these submissions, we do not consider that either of the proposed additional public holidays will be likely to achieve the Government's Second Objective.

Third Objective: Enhancing the important role performed by public holidays on significant religious and state occasions in uniting the community

The only segments of the community that may be united by the proposed holiday are those which are of the Christian faith (in relation to the proposed Easter Sunday public holiday) and those who are staunch supporters of footy (in relation to the proposed AFL Grand Final public holiday). Even then, it would be reasonable to say that:

- there are many Christians who do not necessarily observe religious days such as Easter Sunday, or that their religious calendar does not coincide with the Anglican calendar (such as the Greek Orthodox calendar); and
- there are many sports fans who do not necessarily follow the AFL Grand Final, particularly if their team has not succeeded in making it to the final.

Our views and submissions about this Third Objective are essentially the same as those set out in relation to the Second Objective referred to above, which we repeat.

For these reasons, together with the further reasons set out in these submissions, we do not consider that either of the proposed additional public holidays will be likely to achieve the Government's Third Objective.

Issues arising out of the PricewaterhouseCoopers Australia Report

We have set out below the key issues that we consider arise out of the PWC Report.

Economic costs of implementing the two new proposed public holidays

The most noteworthy aspect of the PWC Report into the effects of the Government implementing the two new proposed public holidays is that overall, the economic costs of lost production (which are estimated to be between \$717 million and \$898 million annually) will outweigh the quantified benefits (of between \$156 million and \$312 million annually – excluding any benefits associated with coordinated leisure time).

The PWC Report could not provide any estimate in respect of the benefits associated with coordinated leisure time. For the reasons that we have set out above, we do not consider that the proposed public holidays will enable the Government to achieve its objective of increasing opportunities for Victorians to enjoy coordinated leisure time. However, even if we were to assume that it would be able to do so, we consider these benefits would not justify the substantial economic loss that these holidays will cause to not only our members, but to the Victorian economy in general.

Given the very delicate state of the Australian economy at present, particularly in our industries (as is demonstrated later in these submissions), we are of the view that it would be reckless and irresponsible to declare these new holidays in circumstances where the PWC Report clearly indicates that the economic costs would outweigh the quantified benefits.

Purported benefits

The Government's official website which promotes Victoria, namely www.visitvictoria.com, seeks to encourage tourism by, amongst other matters, boasting about the diverse shopping and restaurant experiences that visitors can expect.

According to the PWC Report there is potential for other benefits to arise out of the proposed new public holidays in the form of increased tourism and related expenditure. We question this view given that:

- any benefits that may arise from increased tourism are likely to be concentrated around specific areas in Victoria that tourists will frequent on these days, such as the Melbourne CBD and general tourist attractions in Victoria; and
- many of our members, particularly those who are not located in Melbourne, or who are not in close proximity to tourist areas have indicated that if these days are declared as public holidays that they will:
 - not open; or
 - utilise a combination of strategies as a way of countering the increase labour costs such as: open for reduced hours; engage fewer employees; roster less experienced junior staff to work on those days; and for those employers who are able to do so, pass on the increased labour costs to their customers by way of a surcharge; and
 - be obliged to inform their customers of their reasons for having to take the above measures (including by way of signage on their shopfronts and messages on their websites).

We consider that this will have negative implications for tourism in Victoria in that:

- international tourists who are accustomed to retail businesses being open throughout most of the year and who will have high expectations of Victoria and Melbourne, particularly given representations such as those contained in www.visitvictoria.com, are likely to be disappointed by:
 - a large number of businesses being closed or being open part of the day – which will be a common scenario particularly if those tourists are travelling outside of the Melbourne CBD on these days;
 - a reduced number of employees working on these days, or being replaced by less experienced junior staff, which is likely to result in reduced service levels;
 - having to bear these increased labour costs in the form of surcharges; and
 - the negative perception caused by public communications that businesses will be obliged to make in order to explain to their customers their reasons for having to take the above measures;
- the above matters will contribute to an overall negative experience for tourists on these particular public holidays, particularly given their high expectations of Victoria and Melbourne as cosmopolitan destinations. Because of this, we consider that the long term effects of these holidays will be to discourage repeat tourism on these public holidays and will also discourage prospective tourists who may learn about these negative experiences (particularly by way of social media) from visiting Victoria on those particular days.

Increased likelihood of absenteeism

The PWC Report concludes by referring to certain “research” that was conducted in 2010 by one Glen Stansberry, and states that this research:

... has identified that countries with relatively high numbers of paid days off for workers also have relatively high productivity per worker. These findings suggest that providing additional paid time off through a public holiday has the potential to provide some direct benefits to employees and indirect benefits to businesses in terms of increased worker productivity.

We note that the above “research” that PWC seeks to rely on is that of an unknown individual, namely Glen Stansberry on an American Express Open Forum. On this Forum Mr Stansberry describes himself as being the “Co-founder of Gentlemint”. A general internet search of Gentlemint comes up with a website which states that it is “a community for sharing and discussing all things manly”. Given this information, we question the Mr Stansberry’s credentials and the legitimacy of his “research” that the PWC seeks to rely on.

Extracts from Mr Stansberry’s “research” that the PWC Report relies on contained on the American Express Open Forum are set out below:

In a previous article, I wrote about why Germans are more productive but still have more vacation time. While researching the article, I found plenty of examples of other countries that still kick the pants off Americans in terms of workplace productivity, despite also taking more vacation and often working less hours.

...

In 2009, the consulting firm Mercer ran a study to determine the most competitive countries based on their gross domestic product (GDP). In terms of competitiveness, the U.S. is still the best in the world.

However, if you look a little closer at the numbers and compare them with other labor statistics, we find that it ranks below other countries in terms of gross domestic product per hours worked.

In layman's terms: We're not as productive as other countries that take longer vacations.

A 2009 study by Expedia found that the United States ranks last with an average of 10 days of vacation a year. Here are a few successful countries that thrive while giving more vacation than the U.S. (data taken from a BusinessWeek article).

Finland — Finland workers have an average of 40 vacation days a year, and rank 6th on the Global Competitiveness scale.

France — France workers also have an average of 40 vacation days, and are 98.2 percent as effective as the U.S. in terms of GDP per hours worked.

Austria — Austrians average 38 vacation days a year, and 35 working hours a week. Despite all the "downtime," they still rank 14th of the Global Competitiveness scale and an unemployment rate of 4.3 percent. (At the time of this writing, the U.S. is at 9.2 percent unemployment.)

Sweden — 36 vacation days a year and still ranked 4th on the Global Competitiveness scale. What do these countries prove? While the U.S. is still king in terms of competitiveness (as of 2009), other countries are working less hours per week are still nearly as productive (if not more) than the U.S., while taking more vacation.

Without in any way accepting the legitimacy of Mr Glen Stansberry's "research" that the PWC Report seeks to rely on, we point out that this "research" does not specify how many of the "vacation days" that each of the four countries he refers to constitute public holidays. Insofar as a general internet search may be relied on as constituting legitimate research, we too have conducted a Google search which indicates that of these countries, Sweden has the most public holidays (15) followed by Finland and France (13 each) and Austria (11). The remaining days relate to annual leave entitlements.

Comparing Victoria's current public holidays with those in each of the above countries, we note that it is on a par with Austria and not far behind Finland and France. The PWC Report has not addressed the specific industrial arrangements within each of those countries relating to payment to workers on public holidays and the circumstances which will entitle them to take annual leave, which is a further relevant consideration.

Insofar as the issue of the totality of annual leave and public holidays is concerned, there has been no analysis as to whether employees of each of these four countries receive annual leave loading or long service leave entitlements.

All of the above matters are relevant if one seeks to draw a fair comparison if the information in Mr Stansberry's "research" is to be relied upon for the purposes of the PWC Report. If issues such as annual leave loading and long service leave entitlements are included in this analysis, we submit that Victorian employees who receive these leave entitlements effectively have the one of the highest "vacation day" entitlements in the world (including public holidays). To put this into numerical context, an Award covered employee in each of our industries with 10 years' continuous service in Victoria and who has not taken annual leave in the 10th year of his employment is currently entitled to a total of

96 “vacation days” in the following year, together with annual leave loading of 17.5% of their base salary. If one includes the two additional public holidays proposed by the Government, this will increase the total to 98 “vacation days”.

Continuing with this topic, the PWC Report also states that:

The above findings also have potential implications for workplace absenteeism. Where workers are not offered paid time off, the literature indicates that they may be more likely to take absence from work to get an extended break. This would reduce the overall productivity of that employee within the business.

Research on worker absenteeism suggests that workers are more likely to take sick leave on a Monday or a Friday in order to achieve a longer weekend. In Australia it was found that workers were three times as likely to take a sick day on a Monday compared to a Wednesday, with Fridays the next most likely after Mondays.

Currently in Victoria there is a significant period through the latter-half of the year where no public holidays occur on the calendar. After the Queen’s Birthday holiday in mid-June, there are no public holidays for almost five months until Melbourne Cup Day in November. A new public holiday in the latter half of the year between June and November would provide many workers with an additional paid day off and a long weekend. This could potentially influence workers’ decisions around unplanned leave in that period.

It is not clear from the PWC Report what “literature” is relied upon in support for the statement that workers are more likely to take absence from work to get an extended break if they are not offered paid time off. Insofar as this statement suggests that workers take these “absences” from work because they are not offered paid time off work we disagree with this view.

Anecdotal evidence from our members indicates that many workers are more likely to take advantage of public holidays that occur on either side of a weekend, or during a weekend by feigning illness on the remaining working days for the sake of taking an extended paid break on consecutive days. This is consistent with the statement in the PWC Report about workers being more likely to take “sick leave” on a Monday or a Friday in order to achieve a longer weekend.

The PWC report notes that there is a significant period through the latter-half of the year where no public holidays occur on the calendar. However, it fails to acknowledge the corollary to this position – namely that of the current 11 public holidays in Victoria, eight fall in the first half of the year. By adding two more additional holidays to the calendar, one in the first half (namely the proposed Easter Sunday public holiday) and the other in the second half (namely the AFL Grand Final public holiday) the current proportion of public holidays will remain the same. Employees will therefore derive the benefit of not only an additional public holiday in the second half of the year but in the first half of the year as well.

The additional public holidays will not only add to the burden of employers who decide to trade on these days by not only having to manage increased labour costs but also having to effectively roster suitable staff and ensure that adequate staff will be on standby (given the propensity of many employees to take “sick leave” over this period).

In light of the above matters we consider that there will be a higher likelihood of increased employee absenteeism during the weekends over which the public holidays are proposed to be held which will result in decreased productivity and will further negatively impact the Victorian economy.

Alternative Option

According to the PWC Report three alternatives to the Government's proposed public holidays, which are consistent with its 2014 Election Platform have been considered as required by the Subordinate Legislation Act 1994.

The PWC Report does not, however, appear to have taken into account the further alternative of the AFL Grand Final Public holiday being held on the Monday after the AFL Grand Final instead of the Friday, as is currently being proposed. Although we are by no means in favour of this public holiday being declared at all, if it were to be declared, we submit that the disruption to our members' business by having this day on the Monday instead of the Friday will be substantially reduced. This is because many of our members report that Fridays, and particularly the Friday before the AFL Grand Final, are among their busiest days, whereas Mondays are not as busy.

Given that the Government has not provided any particular reason for seeking to declare the AFL Grand Final public holiday to take place on a Friday, we submit that declaring this day to take place on a Monday would be consistent with its objectives and, because of the matters set out above, reduce the negative economic impact that would arise by having this day on a Friday.

We submit that an analysis of the above alternative would be relevant in determining the cost of lost production to businesses and the concomitant economic cost to the Government. It would therefore be premature for the Government to make any decisions about the proposed public holidays until such time as a further Regulatory Impact Statement has been prepared addressing this alternative option.

Additional considerations

We note that the PWC Report recognises that these public holidays will result in increased labour costs, particularly for industries that operate across the entire week and that the proposed AFL Grand Final public holiday will have a greater negative impact on the economy given that more employers are expected to trade on Friday, compared with Easter Sunday.

The PWC Report does not appear to have taken into account the economic impact for the Government as a result of the effect that each of the proposed holidays will have on:

- businesses located in urban and rural areas of Victoria; and
- business which will incur additional labour costs as a result of:
 - pending decisions of the Fair Work Commission's four yearly review of Modern Awards, which commenced in 2014 pursuant to s.154 of the *Fair Work Act 2009*;
 - the Government's proposals to introduce portability of Long Service Leave in Victoria (which is currently under consideration by the Economic, Education, Jobs and Skills Committee)

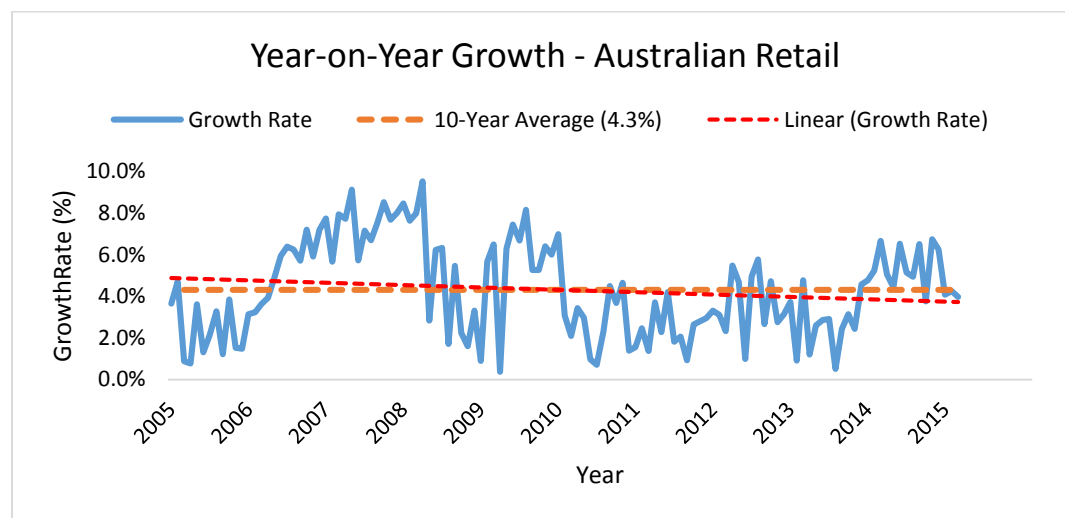
("Additional Considerations").

We submit that an analysis of these Additional Considerations would be relevant in determining the cost of lost production to businesses and the concomitant economic cost to the Government. It would therefore be premature for the Government to make any decisions about the proposed public holidays until such time as a further Regulatory Impact Statement has been prepared addressing the Additional Considerations.

The General Performance of the Retail Service Sector throughout Australia

According to the PWC Report into the effects of the Government implementing the two new proposed public holidays the economic costs of lost production will outweigh the quantified benefits.

An analysis by the NRA of the long-term performance of the Australian retail sector suggests that business operators have faced incredibly challenging economic conditions for a protracted period of time. For the past ten years, a clear, downward trend has become evident in the retail trade turnover data, released by the Australian Bureau of Statistics. Although strong growth was experienced throughout 2006 and 2007, the Australian Retail industry has had sustained periods of poor sales performance, only recently returning to above average sales growth. However, our analysis indicates that this trend may not continue into 2015, with the possibility of a return to below average sales growth.

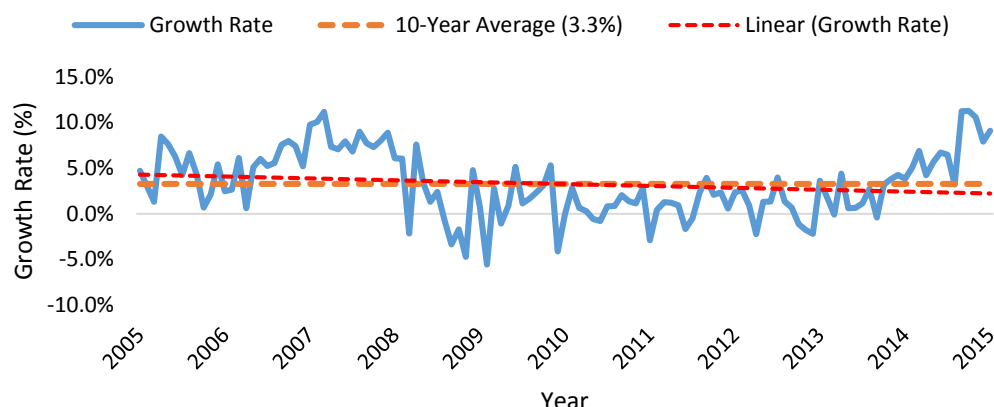


Source: ABS 8501.0 – Retail Trade, Australia, Jan 2015

The downwards trend in retail trade turnover is reflected in a number of category sub-divisions, which are key to the Australian Retail industry. In particular, those businesses that are largely dependent on discretionary expenditure, have experienced a clear downward trend in sales growth across the past ten years. While recent retail trade turnover data suggests short-term improvement, especially for household goods retailing (See below), it is uncertain whether this will develop into a sustained growth trend through 2015. Regardless, most categories in the Australian Retail industry are currently experiencing significant challenges in achieving sales growth that exceeds the 10-year average.

We submit that the Government's proposals to add two new public holidays to the Victorian calendar will not assist the retail industry and related industries in achieving such sales growth.

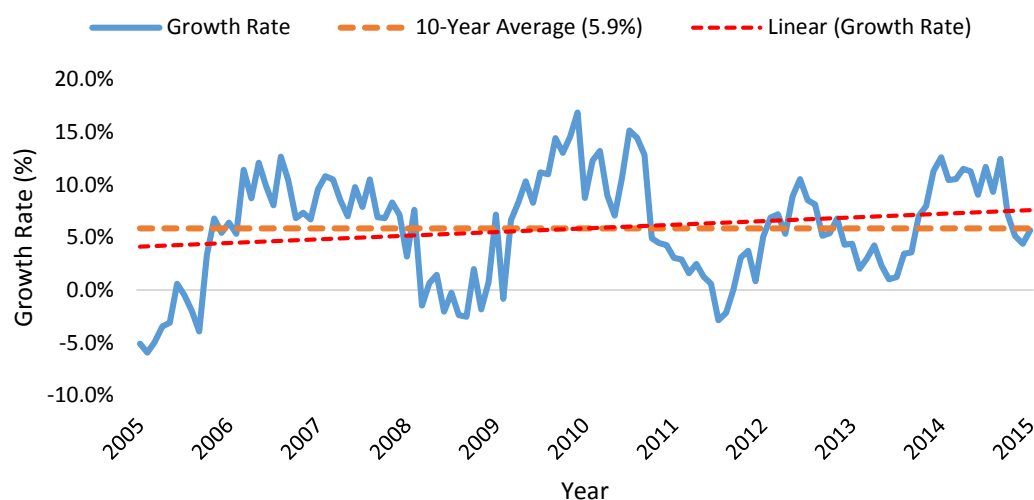
Year-on-Year Growth - Household Goods Retailing



Source: ABS 8501.0 – Retail Trade, Australia, Jan 2015

At present, the only Retail category experiencing a positive, long-term trend in sales growth is cafes, restaurants and takeaway food services. With a 10-year average growth rate of 5.9 per cent, this category experienced double-digit growth, at multiple time points, across the past five years, relative to other industries, which have been growing at an average of less than 3.5 per cent.

Year-on-Year Growth - Cafes, Restaurants & Takeaway



Source: ABS 8501.0 – Retail Trade, Australia, Jan 2015

Research conducted by the National Retail Association also indicates that, relative to historical standards, consumer spending is weak. Indeed, as a result of reduced consumer confidence, the viability of many retail businesses have been impacted by a decline in consumer demand, and increases in operating costs including labour, rents, and utilities.

Business data available from the Australian Bureau of Statistics indicates that 3.1 per cent of retail businesses ceased trading in the twelve months to June 2013, with all of these closures occurring in small business (1-19 employees)¹.

¹ 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2009 to June 2013

Service industry employment now dominates the Australian economy. In 1966 46% of all employed persons in Australia worked in production industries. Today 77% of all employment is attributable to the service sector, rising from 54% in 1966.

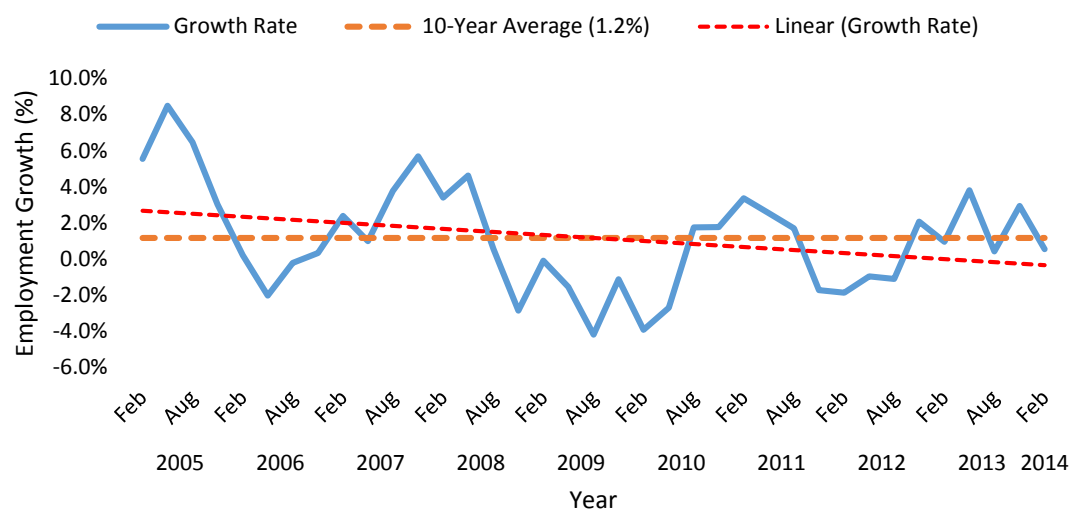
In the 1960s, Australia was evolving from a nation of largely primary industries – of sheep, cattle and wheat – to one of manufacturing. By the late 1960s refrigerators, washing machines, vacuum cleaners and cars had become increasingly available to Australians. This is reflected in the industries which employed most people in August 1966; Manufacturing (26%) and Wholesale and retail trade (21%).

In August 2011, manufacturing was a relatively much smaller component of the economy than it was in the past (accounting for just 8% of employed people). The Health care and social assistance industry was the largest industry (employing 12%), followed by Retail trade (11%) and Construction (9%), while Agriculture and Mining only accounted for 3% and 2% respectively of all employed people.

The growth in some service industries also reflected a changing Australia; some 77% more people worked in the child care industry compared with just 10 years ago. [ABS 4102.0 Australian Social Trends, December 2011]

The Australian Retail industry, however, has experienced a sustained, long-term decline in employment growth across the past ten years. Analysis conducted by the National Retail Association reveals a 10-year average growth rate of 1.2 per cent, which ranks the Retail industry as one of the lowest performing sectors in terms of employment growth, and well below the national average of 2.6 per cent for all other industries. While the sheer size of the retail workforce means that any growth means significant numbers of new jobs, nonetheless the declining rate of growth should be a significant concern for policy makers.

Employment Growth - Australian Retail

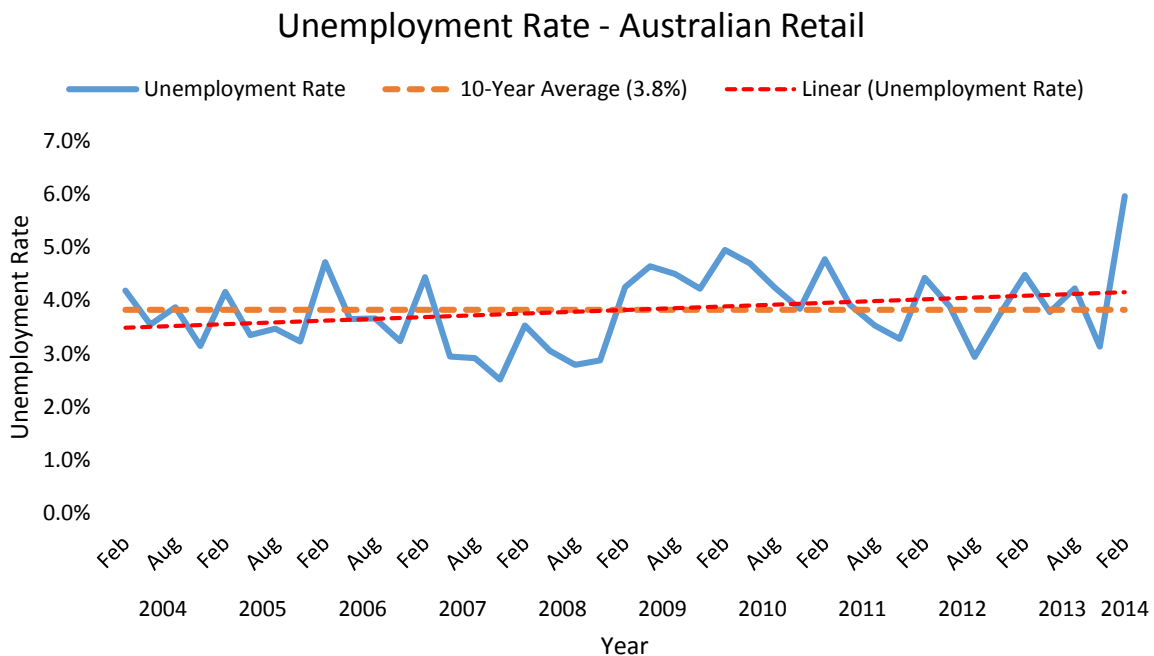


6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Feb 2014

Unemployment statistics for the Australian Retail industry also suggest a linear trend towards an increased number of retail workers that are unemployed. Analysis conducted by the National Retail Association indicates that across the past ten years, the Retail industry has had the fourth highest

average unemployment rate, at 3.8 per cent, which is higher than the national average for all other industries (3.1 per cent)².

This evidence, combined with a decline in consumer spending, increase in operating costs, and a contracting rate of employment growth, highlights the sustained economic pressure that has been placed on retail businesses in the past ten years.



6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Feb 2014

These challenging trends for the industry are certainly partially attributable to the structural changes and pressures being experienced in the Australian retail sector. Many of these structural changes have been well-documented in previous reports by the Productivity Commission, such as the Economic Structure and Performance of the Australian Retail Industry (2011) and Relative Costs of Doing Business in Australia: Retail Trade (2014).

For example, in recent years, the Australian Retail industry has also experienced an increased level of competition from online, overseas-based retail businesses, which operate in low-wage economies. It is extremely difficult for business owners to pass on any additional wage cost to customers, particularly in an environment where heavy discounting has become the norm in recent years.

Additionally, unlike production or manufacturing, demand is considerably more dynamic where operational requirements are significantly influenced by fluctuations in demand, changing consumer preferences and seasonal factors.

Finally employment is geared towards the young and dominated by casual engagements.

Given the above factors, we submit that declaring any additional public holidays in Victoria will merely serve to increase the challenges that our members' face in improving profitability and employing additional staff.

² The industry unemployment rate was calculated using unemployed people who were employed in an identified industry within the past two years. It does not include people that have been unemployed for more than two years, or have never been in the labour market. As a result, within industry unemployment figures will be lower than the labour force-wide unemployment rate.

Practical Considerations

Leaving aside the economic impact to the Government of the proposed public holidays (which will also negatively impact our members) we submit that the proposed public holidays will have a number of unintended consequences for businesses at a practical level, some of which are outlined below.

Unbudgeted labour costs increases

Most of our members have budgeted for their annual business costs by taking into account 11 paid public holidays in Victoria, not 13 as the Government is currently proposing. The inclusion of two new additional public holidays in Victoria (one of which has already been temporarily gazetted in respect of Easter Sunday in 2015) will negatively impact on our members' profit projections for both the 2015 and the 2016 financial periods.

Unstable and uncompetitive business environment

In order to remain competitive, Victorian businesses need to be able to plan their business strategies in the context of a stable environment. The Government's proposals to declare two new public holidays in Victoria, together with its planned introduction of a portable Long Service Leave scheme serves to create uncertainty and instability for businesses.

From an investment perspective, we consider that these factors that will also contribute towards discouraging prospective businesses from investing in Victoria.

Negative impact of the Easter Sunday holiday on employees

The practical effect of this the proposed Easter Sunday public holiday will be that many permanent employees on employees who usually work on Sundays will not be rostered to work on this day. Although they will be entitled to receive payment for that day at their ordinary rate of pay, they will lose the opportunity to receive payment at Sunday penalty rates.

Member comments

We have **attached** extracts of some of our members' comments regarding their views about the proposed new public holidays, particularly in relation to the proposed AFL Grand Final Public Holiday which reflect our members' concerns about this matter.

We also set out below an extract from a letter that Mr Greg Pownall, the President of the Hardware Association of Victoria & Tasmania wrote to the Hon. Adem Somyurek MLC, Minister for Small Business, Innovation and Trade dated 13th May 2015:

The direct and indirect costs to Industry as a whole of public holidays, is well documented as being hundreds of millions of dollars per occasion. For the hardware industry specifically, being an industry that is predominantly small businesses and particularly service and advice based, the costs associated with trading on public holidays are making it unviable for businesses to open and trade.

As an example; for a small hardware store with 4 staff, opening on the Easter Sunday public holiday adds an extra \$1,100 in wages. The average Sunday sales for a small hardware business are \$3,000. Working on a gross margin of 30% this means for this store to open and breakeven, sales for the day would have to achieve an unrealistic minimum of 222% of normal

sales or \$6,666 in sales for the day. It would be therefore no longer viable for this business to trade on these public holidays. If the business chooses not to open on this day they still have the fixed costs of a least \$500 per day for this business.

We trust that the above, together with the attached comments will give the Government a better appreciation of the serious consequences that the proposed public holidays will have on our members and, as a result, on the Victorian economy as a whole.

Impact of the new public holidays on retailers in Victoria

Because of the Government's apparent disregard of the submissions that we, together with numerous employer organisations made in August 2015 about this matter, and its dogged determination to meet election commitments it became evident to us that there would be very little utility in providing the Government with further evidence of the negative consequences of these holidays on our members in Victoria. For this reason, we have relied upon anecdotal evidence and general feedback from our members about these matters.

The majority of our members have expressed the view that both of these holidays are detrimental to their business for the reasons that we have identified in our submissions above. The mere fact that trading restrictions were not imposed on businesses on these days did very little to assist businesses, many of which decided that it was not viable to trade on those days, or who operated at reduced staffing levels in an attempt to minimise labour costs given the exorbitant public holiday penalty rates that they would have to pay staff. Feedback from our members is that they will be obliged to do the same again if those holidays become a permanent fixture.

A random sample of newspaper reports about the impact of the AFL Grand Final Eve public holiday describe it as a "failed experiment" (The Bendigo Advertiser – 3 October 2015) and corroborate the decision of many traders not being able to afford to open on that day and that for some that did open "the holiday cost the business more than a day's trade" (The Ararat Advertiser – 5 October 2015). It is likely that this scenario was repeated for most businesses throughout Victoria.

Overall, these new public holidays have been detrimental to the members that we represent in our industry and will continue to negatively impact them if these holidays are made fixtures in the Victorian public holiday calendar.

Conclusion and final submissions

For the reasons set out above and the relatively poor economic outlook for businesses in the industries that we represent, we strongly oppose the continuation of these new public holidays in Victoria.

If, however, the Government persists in making these two holidays permanent fixtures in the Victorian public holiday calendar, we reluctantly make the following submissions (in order of preference):

1. only one of the two days should be a public holiday, with our preference being AFL Grand Final day. In that event, this holiday should be declared to take place on the Monday after the AFL Grand Final day and not on the Friday before that day;
2. it should replace the existing Easter Saturday public holiday with the proposed Easter Sunday public holiday (as suggested in the PWC Report);
3. if the Government is not inclined to adopt any of our abovementioned alternative proposals and elects to declare both of the proposed new public holidays (in addition to the existing 11 public holidays):
 - a. at the very least the proposed AFL Grand Final day public holiday should be held on the Monday after the AFL Grand Final day and not on the Friday before that day; and
 - b. it should make a temporary declaration of these public holidays until a further Regulatory Impact Statement has been prepared which takes into account the alternative option of the AFL Grand Final Public holiday being held on the Monday after the AFL Grand Final and the Additional Considerations set out in these submissions.

These alternative proposals are by no means our preferred position. They are only presented as options to seek to minimise as much as possible the disruption and substantial economic loss that both our members and the Government will sustain should it proceed with its proposed course of action.

We trust that the Honourable Minister will give careful consideration to the matters set out in this submission.



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