

SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

THURSDAY 1 OCTOBER 2015

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SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY INTO WORKPLACE RELATIONS

The Shopping Centre Council has lodged a third [submission](#) to the Productivity Commission's Inquiry into the workplace relations framework, most recently providing comments on the Commission's draft report ([Shop Talk 6/8/15](#)). Our contribution remains largely relevant to the issue of weekend penalty rates. Our analysis of foot traffic data – which demonstrates that Sunday is becoming a preferred trading day - has been referenced by the Commission in its draft report to give context to its proposed recommendation that Sunday penalty rates that are not part of overtime or shift work should be set at Saturday rates for the hospitality, entertainment, retail, restaurants and café industries. Our most recent submission reinforces this earlier contribution, and provides additional analysis which demonstrates that, where offered the opportunity during extended trading periods (eg. in extended trading hours in the pre-Christmas period in South Australia, normal trading hours are 11am to 5pm), consumers are even choosing to visit shopping centres early on Sunday mornings. For example, an average of 13% of daily customer foot traffic occurred in the extended 9am to 11am period. Although the Commission's inquiry does not extend to the regulation of trading hours (although the Harper Panel's Competition Policy Review Report does – see next article) this data reinforces the premise that Sunday is an increasingly popular and regular day for consumers to shop. Pleasingly, it also demonstrates that the Commission is taking an evidenced based approach to determining customer trends and preferences in considering its draft and final recommendations. The Commission's final report is expected in November and the Government's response will, presumably, be led by the recently appointed Treasurer, Scott Morrison (Mr Morrison's predecessor, Joe Hockey, established the inquiry in December 2014) and the new Minister for Employment, Michaelia Cash. Ms Cash has stated publically that any changes to the Fair Work framework would be "taken to the next election to seek a mandate from the Australian people".

SECTION 46 IS NOT THE ONLY ISSUE IN THE HARPER PANEL'S COMPETITION POLICY REPORT

One would think, judging from media coverage, that the Harper Panel's competition review was really an inquiry into the operation of section 46 of the *Competition and Consumer Act*. In fact the recommendation to change the operation of the current prohibition on the misuse of market power from a 'purpose test' to an 'effects test' (with specific safeguards) is only one of 56 recommendations made by the Harper Panel ([Shop Talk 1/4/15](#)). Unfortunately, the remainder of the Harper recommendations appear to be on the backburner while 'big business' and 'small business' interests slug it out over this issue. The Chairman of the Productivity Commission, Peter Harris, expressed frustration recently when he pointed out the efficiency gains from the section 46 recommendations are minor compared to the vast productivity gains which can flow from the many other Harper recommendations. (The appointment of a new Federal Treasurer and Small Business Minister may see the Harper Panel's suite of recommendations revisited in full.) It is also concerning that the coverage seems to have drawn attention away from another far more extensive proposed law which is hardly being discussed. The extension of the unfair contract terms law to 'small business contracts' will have widespread economic ramifications for Australian businesses. This is particularly the case given the recent actions of the Senate to try and see these protections go well beyond 'small businesses' ([Shop Talk 17/9/15](#)). Effectively, determinations about the 'fairness' of business decision making and negotiations is being handed over to the ACCC and Federal Court judges, with hardly a murmur from the wider business community or the financial media. None of the countries with which Australia compares itself is regulating business contracts in this manner yet the law is on the verge of being passed with no examination by the Harper Review Panel, or by the Productivity Commission, and with the conclusions of the relevant Senate Committee having been ignored.

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