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15 February 2011

Ms Vicki Telfer  
Executive Director  
NSW Industrial Relations  
Department of Services, Technology & Administration  
Level 23, McKell Building  
2-24 Rawson Place  
Sydney NSW 2000

Dear Ms Telfer,

**RE: Proposed amendment to *Retail Trading Regulation 2009* and other related matters**

The Australian National Retailers Association (ANRA) represents the leading national retailers in Australia, across the full range of retail products and services. Members of the Association include Australia's most trusted household names in supermarket chains, department stores and specialty retailers. Combined ANRA members employ over 450,000 people and account for around \$100 billion in annual turnover.

ANRA welcomes the opportunity to provide feedback on the proposed amendments to the *Retail Trading Regulation 2009* (the Regulation), as discussed during our meeting at your offices on February 10, 2011.

ANRA members support initiatives that provide greater scope for procedural fairness in application of the Regulation and therefore welcome the proposed reduction in the public comment period - under clause 4(1) - from 21 to 14 days. A shorter application-to-decision process also has obvious benefits to members from an operational perspective.

ANRA members recognize that improved communication and understanding between applicants and administrators of the Regulation will benefit all parties concerned. ANRA members also support the intention to introduce technology that streamlines the application and decision notification processes for trading exemptions under section 10 of the *Retail Trading Act 2008* (the Act).

In terms of the amended application form, ANRA members will only endorse the provision of additional information - within reasonable limitations - if this is matched by a greater understanding of how the Regulation is likely to be applied. More specifically, ANRA members remain concerned that the additional information requirements of the amended application form will result in a prohibitively high effective application cost with little, if any, additional benefit in light of the Administrative Decision Tribunal's interpretation of 'exceptional circumstances'.

This is particularly the case when a large number of stores are concerned. Some ANRA members have privately indicated a reluctance to lodge applications for trading exemptions in the future, given the likely significant information requirements and, in light of past experience, low likelihood of gaining a trading exemption. Furthermore, this places ANRA members in a position that forces the business to choose between using valuable resources to lodge applications with a very low likelihood of success, or not bothering to make an application, at the cost of not taking a course of action that reflects discontent with the current Regulations.

ANRA members acknowledge your guidance on the nature of 'exceptional circumstances' and the distinction between 'exceptional' and 'special' circumstances. However, ANRA members remain of the view that the current interpretation of 'exceptional circumstances' is far too stringent and results in significant economic costs to non-exempt retailers and consumers.

Indeed, ANRA members believe the current Regulation no longer reflects the New South Wales Government's originally stated intentions for the Act – of clearing up unnecessary red tape for retailers and having trading hours that reflect modern community expectations.<sup>1</sup>

The mismatch between consumer needs and trading restrictions on large retailers threatens to become particularly evident over the upcoming Easter / Anzac Day break. Households will have limited to no opportunity to shop for basic food items (such as fresh bread for an Anzac Day lunch) or provisions for holiday-related activities (for example, hardware or recreational goods) from the full range of potential suppliers.

Turning to the employees' perspective, opponents of further liberalisation of retail trading restrictions often suggest that this would be detrimental for employees. However, this has not been the experience of ANRA members on other public holidays or in other jurisdictions that allow trading on the public holidays in question. ANRA members report that they use volunteers in their stores and that they do not have a shortage of staff that are willing to work. In contrast, employees are attracted to the high penalty rates they can earn on public holidays and members also report employee frustration at not being able to access the high penalty rates on offer. This is particularly the case for those employees who work on a part-time basis (such as students or young adults with quite flexible lifestyles) or that do not have religious beliefs that are aligned with the holiday being observed.

It is also important to highlight the significant distortions the current Regulation creates in the competitive landscape. As you are no doubt aware, the numerous trading exemption zones (often based on arbitrary geographic boundaries) that exist across New South Wales can result in the loss of trade for those retailers not located within the designated boundaries. This effect will only be compounded by the absence of trading restrictions on Easter Sunday and Boxing Day in bordering states like Victoria. ANRA members would prefer to see a 'level playing field' in this respect – which only serves to increase competition on what are days where there is potentially heightened demand from shoppers.

I also draw your attention to the current debate over the impact of internet retailing on traditional 'bricks-and-mortar' retailers. Online retailers enjoy a distinct advantage over their traditional counterparts, in that consumers can shop online at a time of their choosing. The more days that traditional retailers are prevented from trading, the greater the potential loss of business to online competitors – many of which may be interstate or international firms.

Finally, ANRA members would like to highlight their continued objection to the enforcement - under clause 18 of the Act - of 'closed shops'. It is quite perverse that ANRA member employees are denied the opportunity to make the business ready for trade in anticipation of the resumption of trading. This constraint has at least three negative consequences. Firstly, volunteer staff, notably part-time and those with religious beliefs not aligned with the holiday being observed, are denied the opportunity to work when rates of pay are particularly attractive.

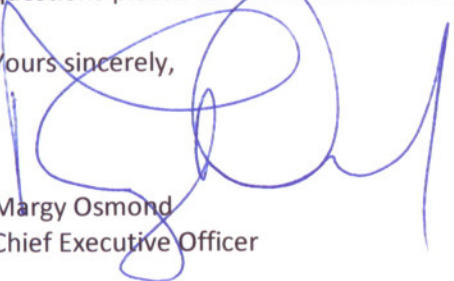
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<sup>1</sup> Tripodi, J. (2008), *Legal Sunday Trading on the Way*, ministerial media release (27/06/2008).

Secondly, ANRA members are anticipating that, in the context of the upcoming Easter / Anzac Day weekend break, the practical limitations of preparing fresh food (such as in-store prepared meals and baked goods) means that some customers will not be able to make their intended purchases until later than they had otherwise planned. Thirdly, the constraints of this clause has also meant that ANRA member employees could be expected to arrive at their place of business to allow contractors - including security or cleaning professionals - to perform their duties but are not permitted to make constructive use of their time by readying the business for trade.

Thank you for seeking ANRA's involvement in the development of the Regulation. If you have any further questions please contact Mr Russell Goss, Policy Manager, on (02) 8249 4520 or at [rgoss@anra.com.au](mailto:rgoss@anra.com.au).

Yours sincerely,

  
Margy Osmond  
Chief Executive Officer