



Reform of Shop Trading Hours in NSW

Coles Group Limited
Submission to

The New South Wales Government
Better Regulation Office

September 07

Contents

more efficient and responsive retailing	- introduction	3
Coles' contribution to New South Wales	- background	4
unnecessarily complex	- the legislation	5
people like shopping on Sunday	- customer behaviour	6
case studies		
exemptions	- Sunday trading approvals	8
a lack of clarity	- opening times	9
issues paper questions		
uncertain	- public holidays	10
issues paper questions		
discriminatory and unresponsive	- precinct provisions	12
complex and inconsistent	- exempt shops categories	13
issues paper questions		
Coles' recommendations	- summary	14

Coles Group Limited contacts

Ms Joy Allen, Compliance Manager NSW/ACT Supermarket Operations
65 Hume Highway, Chullora NSW 2190 Telephone 02 9795 7296

Mr Pat Wilson, Government Affairs Adviser, Coles Group Communications,
800 Toorak Rd, Tooranga, Vic 3146, Telephone 03 9829 4547

more efficient and responsive retailing - introduction

Coles Group Limited welcomes the Government initiative to review trading hours in NSW to cut red tape and encourage more efficient and responsive retailing to meet customer demands and encourage economic activity.

As indicated in the issues paper, NSW was one of the first States in Australia to encourage a retail sector more responsive to customer and community need by reducing restrictions on trading hours. However NSW is no longer a leader in this area. Its regulatory regime now looks dated and cumbersome in comparison to some other States, notably Victoria and Tasmania. Restrictions on Sunday trading are honoured more by the exception than by the rule and the Ministerial order system for resolving trading and non-trading public holidays creates uncertainty for companies and employees and confusion for the general public.

Recent decisions by the Government have given a clear indication of the Government's desire to simplify processes and add certainty. Limiting the non-trading day to the actual day of the public holiday rather than the weekday it is observed, is one example.

Coles encourages the Government to develop a new streamlined regulatory framework that encourages greater certainty, efficiency and responsiveness in the retail sector and enables greater consumer choice as to where and when they may shop.

There is no doubt that consumer expectations and shopping habits have changed since the legislation was last amended. Coles has found that people tend to shop more frequently, often just for the evening meal, and expect more ready-to-eat meals. We expect that buying habits will continue to change, so the legislative regime needs to be able to cater for and encourage continued innovation.

We believe the Tasmanian retail legislation provides a good model for consideration. It specifies the few non-negotiable public holidays on which non-exempt shops may not trade, is silent on trading hours and simplifies the definition of exempt stores.

Further, Coles believes that the trading hours legislation is often complicated by considerations relating to support for small retailers and concern for the welfare of retail employees. Coles believes these legitimate issues are more rightly handled directly through processes designed for those purposes, such as occupational health and safety legislation or the various government support programs.

Beyond normal health and safety concerns, there should be as few regulatory impediments as possible inhibiting the customers' ability to purchase goods and services, and the retailers' ability to supply them in a manner desired by the purchaser.

Coles' contribution to New South Wales

Coles Group Limited makes a significant contribution to NSW as a major participant in the State's retail sector. Millions of people each week choose to buy their food, clothing, fuel, liquor, office, school and/or household needs at a Coles' supermarkets, or department, convenience/fuel, liquor and specialist stores. Coles' supermarkets alone typically handle in the order of three million transactions a week in NSW.

To help meet this demand the company employs over 45,000 people in NSW, draws on tens-of-thousands of suppliers across Australia and overseas, including 18,800 suppliers in NSW, and schedules thousands of deliveries a week. Typically the company directly invests in the order of \$300 million a year in new stores and refurbishments and is associated with millions more as an anchor tenant in new developments. Table 1 has a breakdown of Coles Group Limited business in NSW for the 2005/06 financial year.

Coles' presence also ensures that NSW consumers continue to benefit from the strong competition the company provides to other retailers, large and small.

table 1

business	stores/DCs	employees
Coles & BiLo Supermarkets	225	25,483
Coles Express	185	1,376
Kmart (including Tyre & Auto)	121	7,286
Target/Target Country	82	6,211
Coles Liquor Group	261	2,151
Officeworks	32	1,312
supply chain	6	1,848
Coles Online	1	8
retail support		143
total	914	45,922

shareholders 85,691

suppliers 18,788

State & Local Government taxes

land tax & rates \$25,712,237

payroll tax \$72,248,474

stamp duty \$8,406,355

bank debit tax \$0

unnecessarily complex - the legislation

While large retailers in New South Wales have considerable freedom compared to some other States, notably Western Australia and South Australia, the *Shops and Industries Act 1962 (NSW)* is unnecessarily complex, and some of its provisions have been superseded by current practices and are detrimental to both efficient retailing and government administration.

Coles submits that the fundamental premise should be that an efficient and effective retail process is one that places as few barriers as possible between the consumer and the retailer. Beyond issues of public safety and health, consumer preferences and retailers' ability to anticipate and adapt quickly to meet consumer preferences should not be distorted by unnecessary regulation.

Additionally Coles' business model, like many in retailing, is low-margin-high-turnover. The company operates in a very competitive market. To achieve efficiencies it is vital to bring together the right products and service at the right time and price.

Greater certainty in planning our operation gives us more scope to deliver the products at a lower price and provide greater certainty for our customers, employees and our suppliers.

The current NSW trading hours legislation creates considerable uncertainty around:

- conflicts/relationship with *The Environmental Planning & Assessment Act 1979*
- public holidays, particularly when the non-trading public holiday falls on a weekend, and
- tourist resort precincts and CBD areas

These elements are discussed in more detail later in this submission.

The Act is complex in that it defines:

- small shops (corner stores)
- scheduled shops (eg cooked food)
- tourist resort areas and CBD areas
- public holidays – non-trading – also making the a distinction with public holidays gazetted under the *Banks and Banks Holidays Act 1912*
- ministerial exemptions/orders
 - sundays
 - public holidays
 - non-trading days in lieu of public holidays
- trading hours – for Sunday trading
- the various offences and penalties for non-compliance.

The NSW Act is some 35 pages; 30% larger than the Victorian Act and more than double the Tasmanian legislation. The retail sectors of the Australian Capital Territory and the Northern Territory function well without specific trading hour legislation.

While it is difficult to quantify the cost of complying with the NSW legislation, the need to apply for exemption to trade on Sundays for each store and clarify the relevant provisions is a cost to the business and must be an administrative cost to the State.

people like shopping on Sunday

Sunday trading is well established and is now normal practice in NSW. Its popularity has vindicated NSW's decision 15 years ago to permit stores to trade. However a system that requires an exemption to trade on Sundays is no longer in sync with this reality nor the most expedient approach.

Most areas in NSW have had Sunday trading for more than 15 years, firstly opening from 10am to 4pm, and then being granted exemption to trade from 8am to 8pm some 10 years ago.

Our transaction figures indicated that on a typical Sunday in New South Wales in the order of 400,000 people shop at Coles' supermarkets. Given our share of the market is approximately 23%, this suggests that more than 1.6 million people shop in NSW supermarkets each Sunday. It seems logical that more than this number shop at other types of stores on the day.

Our data also indicates that in NSW, Victoria and Tasmania where Sunday trading is freely available, there is a fairly even spread of sales across the seven days. Between 13% and 14% of the sales occur on Sunday, with between 14% and 15% for the other days. The exceptions being the lead-up to Christmas, where Sunday trading can outstrip other days considerably.

States with more restrictive Sunday trading regimes, experience more severe peak-time congestion on other days of the week. An extreme example occurs in Western Australia below the 26th parallel and some other designated areas in WA where non-exempt stores, such as Coles are prohibited from trading on Sunday. Each Saturday and Thursday trading typically accounts for 18%-19% of the week's trading and Monday trading levels are typically around 16% - all significantly higher than NSW levels on those days. When averaged across our non-exempt Western Australian stores, this means there is an additional 500 people at each store's checkouts and seeking to find car parks on Thursday and Saturdays. This suggests that from a customer convenience and efficient use of resources perspective, NSW made the right decision in allowing the expansion of Sunday trading many years ago.

The case in support of Sunday trading in NSW has well and truly been proven.

Case study 1 – Tamworth

The regional city of Tamworth was granted permanent exemption to trade on Sundays on 27 January 2004 after trial Sunday trading from July 2000. It was one of the last regional locations in NSW to be granted Sunday trading.

Coles Tamworth customer statistics for the week 10-16 September 2007 show that:

- Sundays accounts for 12% of weekly customers despite only trading 8am to 8pm (other days trade 6am to 12 midnight) OR SAY
- Almost 3,000 customers shop at Coles Tamworth on Sundays

Case Study 2 – Broadway Sydney CBD

Coles Supermarket at Broadway, Sydney, has CBD store status (as opposed to Tourist Resort status). It was granted exemption under Section 78A of the Act from provisions of Sections 84 and 85 in 1998). Hence it may trade 24 hours a day, seven days a week and it can open those days when Ministerial orders allow trading on Boxing Day and Easter Sunday.

The store currently trades 6am –12 midnight seven days a week.

Customer statistics for the week 10-16 September 2007 show that:

- Sunday is the second busiest trading day of the week based on customer counts
- Sunday is the highest trading day of the week based on dollar sales
- Sunday is the busiest day of the week in terms of number of items sold, accounting for almost 20% of products.

Case Study 3 – Dubbo

Dubbo and district residents and visitors have enjoyed the opportunity to shop at major retailers on Sundays, for more than 7 years. The regional city was one of the last major towns in NSW to be granted Sunday trading. Permanent exemption to trade on Sundays was granted on 27 May 2002, after a very successful Sunday trading trial from 7 June 2000. Sunday trading continues to be extremely popular for locals, for residents who live in more remote communities and farming areas west of Dubbo and who travel to Dubbo for medical, sporting and recreational services, as well as tourists.

Dubbo promotes itself as a major regional tourism destination and has the added bonus of being about halfway between Melbourne and Brisbane. According to Dubbo Tourism, the city has *“...about 530,000 visitors a year... is big-hearted, confident and on the go, Dubbo is a popular tourist destination and home to one of the world's finest open range zoos. The city is blessed with long summers, fine food and wine, expansive parklands and a non-stop calendar of events and festivals – additionally, it boasts ... a vibrant shopping and administrative hub of 40,000 people.”*

exemptions – from Sunday trading

The ongoing need to apply for exemption to trade on Sunday seems unnecessary, particularly when:

- Millions of people in NSW shop on Sunday
- Sunday trading is no longer novel or the sole provenance of the small retailer
- Most areas of the State have had general Sunday trading for more than 10 years
- The vast majority of exemptions are for 8am to 8pm trading (of the 240 Coles & BiLo Supermarkets in NSW, less than 5 have an exemption of 10am to 4pm trading)
- The unclear and inconsistent application of the trading hour requirement. The hours covered by the exemption can be apparently overridden through the *Environmental Planning and Assessment Act 1979*. For example, the Sunday trading exempted hours for Tumut in southern NSW are 10am to 4pm, but it is understood the local council approved 8am to 8pm Sunday trading hours for a competitor's supermarket.
- Applications for exemption are rarely, if ever, refused. Coles has not had any Sunday trading applications refused since the regional centres of Tamworth, Armidale and Dubbo were granted Sunday trading in 2000-2001.
- The cost to business of the application fee and more particularly the provision of the relevant information and record storing
- The likelihood of an administrative cost to Government
- Sunday trading helps reduce retail congestion and is a more efficient use of resources.

The exemption process has become an unnecessary bureaucratic process. As a matter of procedure, Coles applies for the exemption for every new store because people now expect and want to shop on Sunday. The company generally applies for the exemptions once a year, to cover new stores due to open in the following 12 months. This is an attempt to reduce the administrative burden for both Coles and government departmental staff. Further, the exemptions are not required to be displayed at the retail store, and are simply stored in administration files at a state office location. To our knowledge, no inspector or departmental official has ever requested to sight any exemptions in the past eight years.

Coles recommends that Government remove the requirements for exemptions and specified trading hours for Sunday.

a lack of clarity - opening times

The relationship between the *Shops & Industries Act 1962 (NSW)* and the *Environmental Planning & Assessment Act 1979* is confusing with the processes sending conflicting signals.

Under the *Environmental Planning and Assessment Act 1979* a local council may include reference to trading hours when considering Development Application approvals for new stores. For example, a council may specify that a supermarket can trade 6am to 12 midnight seven days a week. However, the *Shops & Industries Act* generally grants an exemption to trade 8am to 8pm on Sunday.

The *Shops & Industries Act* regards Monday to Saturday trading as unrestricted yet under the *Environmental Planning and Assessment Act* Councils can and do place restrictions on weekday trading hours, so in some municipalities for some stores, weekday hours are not deregulated.

This in itself creates confusion for consumers and retailers, with stores unable to offer consistent pattern of trading hours to consumers.

One council asked Coles to trade extended hours to give added movement, activity and security to a town's CBD. Some other councils do not consider that shop trading hours need any restrictions, thereby technically allowing the stores to trade continuously - 24 hours a day, seven days a week.

Coles naturally supports the view of allowing the market to decide when to trade in response to consumer demand. In NSW, Coles has opted to reduce trading hours in some sites due to a lack of customer demand, especially late at night. In other States where 24 hour trading is permitted few sites warrant that level of trading but some do or have other factors that shift their trading hours outside the norm.

issue paper specific questions - Sunday trading

Does the regulation of Sunday trading continue to provide benefits to retail employees and small shop owners?

No, Sunday trading is well-established and wide spread with loadings for working Sunday.

Do the costs of the restrictions outweigh the benefits?

Yes, there are no benefits from the restrictions and considerable confusion and cost.

What would be the implications of removing the Sunday trading prohibition altogether?

Greater certainty and choice for customers, employees, suppliers and retailers, less cost and time wasted on bureaucratic red tape.

If the restriction is retained, can the exemption process be streamlined or simplified?

The exemption process should be abandoned completely.

Uncertain - public holidays

The issues paper indicates the sector is reliant on the Minister ruling each year which days will be non-trading days on and around the Easter and Christmas-New Year period for non-exempt shops and in which areas it will apply.

This creates uncertainty for the scheduling of deliveries and supplier coordination, staff rostering, pre-planning of promotional and marketing activities plus other inefficiencies. Additionally, there are the compliance issues of ensuring that the decision is known, understood and conveyed to store managers. A typical Coles supermarket stocks more than 25,000 items, employs 150 people and serves 30,000 people a day. Team members are employed under enterprise agreements, which include loadings for public holidays and stipulate that working on public holidays is voluntary.

Until the Minister's ruling is made each Easter and Christmas-New year period, it is unclear which stores will trade on what days, and consequently it is unclear what the stock or staff requirements will be. Typically, the rulings have been made only a few weeks before the holiday occurs, not only making rostering difficult (rostering is generally done 4 weeks in advance for the benefit of staff with added time required for pre-planning), but also throwing marketing plans into chaos. Typically, logistical and marketing arms of the supermarket business, require lockdown of Christmas trading before September each year at the latest, to allow suppliers to gear up for the peak trading demand.

Further, it is an offence from retailers to misrepresent the product, its price and availability in advertising. The closer the ministerial decision is made to the given holiday period, the greater the risk of error and accidental misrepresentation in marketing materials, particularly when some areas are exempt from trading and others not.

When a company trades nationally, the problem is exacerbated by the lack of uniformity across jurisdictions.

The recent trend towards the non-trading day being the day on which the actual public holiday occurs, rather than the observed day, is welcome. However even with this tendency to declare the actual day of the holiday a non-trading day when it falls on the weekend, and permit trading on the day the public holiday is *observed* in the following week, adds uncertainty and costs. The manner in which the Government declares the day in lieu, influences whether or not employees will receive penalty payments for working a public holiday.

At present, until the government decision is announced, it is unclear whether the store can trade, how much it will cost and how many people will need to be rostered-on.

NSW has 6 ½ non-trading public holidays, which need to be confirmed each year, while Victoria and Tasmania have 3 ½, and 2 ½ non-trading public holidays respectively that are confined to the calendar day on which the public holiday falls. In Victoria a number of municipalities have successfully applied for exemption from trading restrictions on Easter Sunday reducing their non-trading days to 2 ½.

The Victorian and Tasmanian approach provides clarity and certainty and minimal disruption to customers, employees, suppliers and retailers. The fewer non-trading public holidays provides greater continuity of supply and choice for consumers and financial benefit for Coles' employees and shareholders.

Again Coles' transaction data clearly indicates that sales before and immediately after non-trading days can be 10% busier than normal. Shopping is a very popular activity during this period. (This is apart from the success of the Boxing Day sales in those areas where trading is permitted). This highlights the need for customers to squeeze their shopping needs into fewer days around non-trading days.

If the Government's current practice of limiting the non-trading period to the actual public holiday day is reversed, there could be periods around Christmas and New Year where none of the major stores are open for days at a time and then only a few open days they are open before another non-trading period. This would exacerbate congestion and inconvenience problems for consumers.

Apart from fuel outlets, Coles' stores do not trade on Good Friday, Christmas Day or before 1pm on ANZAC day in areas where there are no restrictions on trading hours (the ACT, the Northern Territory and parts of Western Australia above the 26th parallel). Most large retailers voluntarily close on those days, indicating that the market is capable of resolving these issues without regulation.

Coles strongly recommends that, as a bare minimum, Government amend the legislation to clearly set the non-trading days as those on which the actual public holiday falls, and remove the need for an annual Ministerial determination.

Additionally, while Coles sees no need for regulation on this issue at all, it encourages the Government to seriously consider reducing the number of non-trading public holidays to Good Friday, Christmas Day and before 1pm on ANZAC Day.

issue paper specific questions – public holidays

Which particular public holidays should be subject to shop trading prohibitions, if any?

If any, Good Friday, Christmas Day and before 1pm on ANZAC Day.

If the public holidays for those particular occasions are observed on the following closest weekday, should that weekday also be subject to shop trading prohibitions?

No, the non-trading day should be on the actual day.

What would be the implications of removing the public holiday trading prohibition altogether?

Experience in Australia's unregulated areas clearly shows most stores will not trade on Christmas Day, Good Friday and before 1pm on ANZAC Day.

discriminatory and unresponsive - precinct provisions

The need for the discriminatory and unresponsive system of specifically designated tourist resort areas and CBD classification is removed if Sunday trading restrictions are removed, public holiday non-trading days are reduced and the provisions for public holidays and exempt store descriptions are simplified.

The current precinct provisions are discriminatory and do not allow a market-determined even playing field to NSW towns and regions. NSW regional centres are experiencing and benefiting from very successful tourist campaigns, attracting visitors from intrastate, interstate and overseas.

The recent APEC public holiday in Sydney resulted in significant tourism boosts to the Central West, Hunter and other regional areas of NSW, not necessarily regarded as tourist destinations under the Shops Act. (Refer to the news paper article)

The local government area (LGA) of Lake Macquarie is a prime example of a significant tourist area that does not have such classification under the Act. Its web site states that Lake Macquarie "...welcomes 900,000 visitors per year...has over 100 accommodation outlets ... and that ...tourist operators report an occupancy rate of 75% in peak periods. All of which indicate that the LGA has a thriving tourism industry, yet its main industry, retailing, which provides 17% of the LGA's employment, does not have the flexibility afforded to designated tourist areas.

Similarly, the Hunter Valley towns of Singleton, Maitland, Rutherford and Cessnock are not regarded as tourist resorts under the Act, yet they attract millions of tourists each year.

Additionally NSW School holidays are built around Easter (Term1-2). Removing tourist resort classifications would provide considerable benefits for many areas of NSW during this major holiday period time for NSW families, particularly if the prohibition of trading on Easter Sunday is lifted.

Coles seeks removal of the exemption for tourist resort and CBD classifications to allow consumer demand and market forces to determine trading hours and viability.

Wednesday, 12 September 2007

APEC bonus long weekend a huge success for Parkes

Parkes Shire took part in a major campaign that was run by Tourism New South Wales, promoting the 'bonus' long weekend as an opportunity to invite Sydneysiders to "take a break", escape work pressures and explore regional destinations. According to Parkes Tourism Spokesperson Kelly Atkinson, visitor numbers rose significantly over the weekend. "Most people surveyed came from the Sydney metropolitan area which is not generally one of our strongest markets", Kelly said. Two local tourism operators, The Radio Telescope Discovery Centre and the brand new Station Hotel took the opportunity to participate in the campaign with Tourism NSW, and enjoyed huge results. "The Telescope Discovery Centre recorded more than double the number of visitors over this special weekend, than they would have expected without the APEC holiday and Tourism NSW promotion. 'As a result, the Dish Café performed very well throughout the "Bonus Long Weekend" period of Friday to Sunday.



complex and inconsistent - exempt shops categories

The NSW legislation has an extensive list of shop types that are exempt from the shop trading provisions of the legislation. As the issues paper notes, coverage is inconsistent with the apparent purpose and might be inadvertently capturing business it is meant to exclude, while blind to others it is meant to capture.

While the intent of the regulation is not clear, its effect is to exclude large retailers from operating in certain areas, at certain times on certain days.

Such a provision is unnecessary for Sunday trading, given that it is no longer the provenance of small traders and millions of people in NSW shop on Sundays.

Such specific provisions are even less relevant if:

- trading hour restrictions on Sunday are removed
- clarity and certainty around non-trading days is adopted
- the number of mandatory non-trading days is reduced.

With the above in mind, a less prescriptive exemption could apply for the remaining public holidays. The Tasmanian legislation describes a non-exempt store as one that is part of a company, franchise or group that employs over 250 people in total across the State. The strong indication is that exempt stores are those that are not in this group. It also has a very short list of exempt business types.

While such an approach resolves most of the issues, it does not address the inconsistency raised in the issues paper that supermarkets are subject to regulation while confectioners, fish shops and fruit and vegetable shops are not.

Coles suggests that given large stores close on the three major public holidays in any case, no special exempt shop category is required, and certainly any exempt category need not be as prescriptive.

issues paper specific questions – coverage of the regulation

Can the definition of small shop be improved to more accurately achieve its intended coverage?

While its intended coverage is unclear, if its intention is to exclude large businesses, then the Tasmanian approach is appropriate, however the need for such exemptions at all is questionable in a deregulated market.

Does the list of scheduled shops and otherwise exempt shops appropriately target its intended coverage?

The exclusion of supermarkets and some department stores is inconsistent with providing every day needs.

Could the definitional categories within the Act be reformed so as to simplify its future operation?

As above

Coles' recommendations – summary

Coles encourages the Government to develop a new streamlined regulatory framework that encourages greater certainty, efficiency and responsiveness in the retail sector and enables greater consumer choice regarding where and when they may shop.

The fundamental premise should be that an efficient and effective retail process is one that places as few barriers as possible between the consumer and the retailer.

The case in support of Sunday trading in NSW has well and truly been proven.

Coles recommends Government:

- **remove the requirements for exemptions and specified trading hours for Sunday**
 - **amend the legislation to clearly set the non-trading days as those on which the actual public holiday falls, and remove the need for an annual Ministerial determination.**
 - **reduce the number of non-trading public holidays to Good Friday, Christmas Day and before 1pm on ANZAC Day.**
 - **deregulate to remove the need for tourist resort area and CBD exemption classifications, to allow consumer demand and market forces to determine trading hours and viability.**
 - **Simplify the definitions of stores to which the Act does not apply.**
-