



Government of **Western Australia**
Department of **Commerce**

Department of **Commerce**

Issues Paper

Whitegoods and other consumer durables

October 2010



WHITEGOODS AND OTHER CONSUMER DURABLES

ISSUES PAPER

OPTIONS TO AMEND THE *RETAIL TRADING HOURS ACT 1987* TO ALLOW SUNDAY TRADING IN “WHITEGOODS” AND CERTAIN OTHER “BULKY GOODS” OR “DURABLE CONSUMER GOODS”

INTRODUCTION



I am pleased to release an Issues Paper of proposed Sunday trading in ‘Whitegoods and Other Consumer Durables’ for public comment. I am committed to developing a retail trading hours regime for the Perth metropolitan area that provides choice and flexibility for consumers and encourages competition, investment and growth. The release of this Issues Paper is an important step in that process, and I encourage all interested parties to respond to it.

The Government has embarked on an incremental reform of trading hours in Western Australia. I believe this approach is in accordance with the changing attitudes and busy lifestyles of Western Australian families.

I encourage you to put forward your views on the proposal to allow the sale of certain important household items on Sundays. Often these purchases involve consideration and comparisons by more than one member of a family. I believe having the option to shop for these goods on Sundays, will be welcomed by many.

Of particular interest to me, as the Minister responsible for creating the relevant retail trading laws, is the definition of what goods will be traded on a Sunday. This paper outlines a suggested position on Page 17. I invite you all to express your views.

BILL MARMION MLA
MINISTER FOR COMMERCE

How to respond to this *Issues Paper*

The Government is interested in receiving feedback on the issues presented in this paper from: consumers, retailers, organisations representing consumers or retailers, local government bodies, universities and any other persons with knowledge of retail trading.

Please provide your comments on the issues listed in paragraph 8 to: The Director, Legislation and Policy, Consumer Protection Division, Department of Commerce, Locked Bag 14, Cloisters Square, Perth, WA 6850 or by email to responses@commerce.wa.gov.au

The deadline for submissions is 1 November 2010.

Additional copies may be downloaded from www.commerce.wa.gov.au, or collected from reception at Consumer Protection, The Forrest Centre, Level 7, 219 St George's Terrace, Perth.

Telephone queries may be directed to 1300 136 237, or (08) 9282 0777.

Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission.

Submissions made in response to this *Issues Paper* may be published on the Consumer Protection website and will be subject to freedom of information requests. Please do not include any personal or confidential information in your submission that you do not wish to become available to the public.

The *Retail Trading Hours Act 1987* and Regulations

The discussion in this paper centres on the *Retail Trading Hours Act 1987* and its Regulations. The Act and Regulations can be accessed online by visiting the Parliament of Western Australia website and following the link to Legislation: <http://www.parliament.wa.gov.au/index.htm>

Alternatively, you can purchase a hard copy of the Act or Regulations from the State Law Publisher, 10 William Street, Perth WA 6000, <http://www.slp.wa.gov.au/Index.html>

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Objective of this paper

1. The objective of this *Issues Paper* is to set out for public discussion a range of alternative options to permit trading in “whitegoods” and certain other “bulky” or “durable consumer” goods on Sundays. As “whitegoods” are a type of “bulky good” or “durable good”, the latter terms are used throughout this *Issues Paper* to capture these goods, while ensuring broad conceptual discussion.
2. There are two major issues for consideration and decision:
 - the *definition of the goods* in which it is appropriate to allow Sunday trading; and
 - the *legislative model* by which such trading is permitted.
3. The concepts of “bulky” or “durable” consumer goods have no universally accepted, detailed definitions. Indeed, the question of what concept (if any) should be applied by the law is one of the key issues to be considered during this public consultation. This *Issues Paper* therefore uses the term **bulky/durable goods** when a generic concept including both types of goods is intended, and the terms **bulky goods** and **durable goods** when they are meant to be considered separately.
4. The differences and similarities between the concepts of “bulky” and “durable” consumer goods, and whether these terms or another term might be adopted and/or defined by the legislation, are important issues that will be discussed further, below. The Government’s view is that the terms durable goods and bulky goods are useful as a starting point for discussion, but may not be the final terms used in any changes to the regulatory regime governing retail trading hours.
5. In addition to issues of terminology and definition, the remaining major issue is what legislative method should be adopted for permitting the sale of such goods.
6. Different combinations of definition and methods, will result in different outcomes for retailers and consumers.
7. Following consultation with industry stakeholders and the community through the release of this *Issues Paper* and analysis of responses, the Department of Commerce will make a recommendation to the Minister for Commerce, who will then seek Cabinet approval for any legislative or regulatory amendments as required.

Scope of this consultation

8. This *Issues Paper* discusses and seeks feedback on the following issues:
 - Should Sunday trading in whitegoods and certain other “bulky” or “durable” goods be permitted?
 - What definition should be adopted for the purposes of allowing trade in those goods?
 - What legislative model should be adopted to implement Sunday trading in such goods?
9. In the Government’s view, if trading in some range of whitegoods and certain other bulky/durable goods is permitted, the legal mechanism that permits this trade must meet two key criteria to be effective. It must be:
 - based on a definition of the goods that is both legally precise and workable in practice; and
 - implemented via a legislative model that is fair, practical, sensible and enforceable.
10. Note that the question of Sunday trading in certain bulky or durable goods is a separate question to whether Sunday trading in all types of goods should be permitted. The Government’s view is that it is premature to discuss the broader issue of Sunday trading for general retail shops in metropolitan Perth.
11. In the context of 9pm trading for general retail shops in the metropolitan area, the Premier (Hon Colin Barnett MLA) and the Leader of the Opposition (Hon Eric Ripper MLA) agreed in late June 2010 that the narrower issue of Sunday trading in whitegoods and certain other bulky/durable goods should be addressed, and to look at how the law could be changed to permit some form of Sunday trading in these goods. At the time of release of this *Issues Paper*, legislation permitting optional 9pm weeknight trading for general retail shops in the metropolitan area has been passed by the Parliament, and is soon to become operational.
12. This *Issues Paper* is confined to the question of finding the best regulatory model for permitting Sunday trading in such goods. Feedback on this *Issues Paper* should therefore be focussed on the issues highlighted throughout the paper and summarised in paragraph 8 above.
13. The Government is aware that there are many views in the community and retail sector about how retail trading hours might be reformed. Some believe that there should be fewer restrictions on shop trading hours, or on the goods that shops may sell at certain times, and others believe there should be no restrictions at all. Others believe that there should be no further relaxation of retail trading hours or that the political parties should stick to the outcomes of the 2005 referendum. Yet others argue that the current Act contains anomalies that create market distortions that should be fixed.

14. This paper does not attempt to address these questions. It has a specific focus on whether general retail shops or a new category of shops under the Act should be allowed to sell whitegoods and certain other “durable” or “bulky” goods on Sundays, and if so, which such goods should be available for sale and by what legislative method. This approach implements the Government’s commitment to examine this issue, in response to a request from the State Opposition during June 2010, mentioned in paragraph 11 above.
15. In relation to the design of the legal mechanism that permits trading of such goods on Sundays, this *Issue Paper* will discuss both elements described in paragraphs 2 and 9 above. It is conceivable that various outcomes could result from different combinations of these elements.
16. The Minister through the Department of Commerce intends to subsequently commence a statutory review of the operation and effectiveness of the *Retail Trading Hours Act 1987* (“the Act”), as required by section 41(1) of the Act. During that review, a wider range of issues will be considered.
17. Views and opinions on retail trading hours issues outside of the subject of this paper will be addressed by the Government through other means, including the forthcoming statutory review of the Act. In particular, the following issues are not addressed by this paper:
 - Sunday trading for all shops within the “general retail shop” category.
 - New special trading precincts, or changes to the boundaries of existing precincts.
 - Changes to the trading hours regime for small retail shops, special retail shops, and motor vehicle shops.
 - Christmas season trading hours.

Current legislative regime: overview

18. Retail trading hours have been regulated by statute law in Western Australia since 1898. The current configuration of the regulatory regime for retail trading, established by the *Retail Trading Hours Act 1987* and Retail Trading Hours Regulations 1988, is described in **Appendix A**.
19. The Act does not apply to restaurants, cafes, take-away food shops, veterinary clinics; or retail shops located in operational public passenger transport terminals or stations. Further, the Act does not apply to the sale of liquor at licensed premises.
20. There are features of the current regime, which influence how any option for Sunday trading in bulky or durable goods may be implemented. These include:
 - The regime establishes four categories of shops, provides closing times for those shops and, in some cases, defines the types of goods that those shops can trade in. A summary of these shop categories is provided in Table 1.
 - The different treatment of the Perth metropolitan area in comparison with the rest of the State. The Act applies only to that part of the State south of the 26th parallel. Further, flexibility already exists in regional areas for trading hours to be varied as local communities determine. (The Government's current practice is to vary trading times in regional areas by Ministerial order, in response to requests from local communities via their local government representatives.)
 - The provision of geographically-defined exceptions to the trading hours for general retail shops, where general retail shops within "special trading precincts" and "holiday resorts" can trade for extended hours.
21. This *Issues Paper* is concerned only with the legal rules controlling trading in whitegoods and certain other bulky/durable goods, outside of the special trading precincts.
22. The current legislative regime could be modified in alternative ways to permit Sunday trading in such goods. For example, shops which fall into the "special retail shop" category already enjoy longer trading hours than general retail shops, including the ability to trade on Sundays. This category could be modified to include bulky/durable goods retailers as a type of special retail shop. Alternatively, a new type of geographical area analogous to a special trading precinct (e.g. a "bulky goods precinct" or "durable goods precinct") could be established under the Act and prescribed by the Regulations, and have Sunday trading permissions attached to it.

Table 1: Shop categories, their explanations and trading hours

Category	Explanation	Trading times
General retail shops	<p>The default category for retail shop.</p> <p>Unless a shop meets the requirements for “small” or “special” retail shop, “filling station”, or “motor vehicle shop”, it is a general retail shop.</p>	<p>May trade:</p> <ul style="list-style-type: none">Monday to Wednesday, and Friday: 8:00am to 6:00pmThursday: 8:00am to 9:00pmSaturday: 8:00am to 5:00pm <p>Closed on Sundays and public holidays.</p>
Small retail shops	<p>The Act sets out various requirements for “small retail shops”, including that no more than 13 people may work in the shop at any one time, including owners and operators but excluding apprentices. The shop must be operated for the benefit of its owners, who are all personally and actively engaged in the shop, and the shop may not be owned by:</p> <ul style="list-style-type: none">more than 6 eligible persons;eligible persons who together or individually own more than 3 retail shops; ora person who owns or operates another retail shop, together with a person who is outside the group of persons who own or operate the small retail shop.	<p>May trade 24 hours a day, every day of the year including Sundays and public holidays</p>
Special retail shops	<p>Special retail shop categories (such as pharmaceutical shops, video shops and domestic development shops) are prescribed in the Regulations.</p> <p>Special retail shops may only sell the goods or services prescribed for their category, at any time. Any sale of goods or services outside the range prescribed for that category results in cancellation of the shop’s special status and certificate, and the shop reverts to a general retail shop, permitted to trade only during general retail trading hours.</p>	<p>May trade from 6am to 11:30pm, every day of the year including Sundays and public holidays.</p> <p>(This category further explained in Appendix B).</p>
Filling stations	<p>Filling stations are broadly those shops that sell fuel as part of their business.</p> <p>Filling stations are allowed to sell any goods during general retail trading hours, however, are only permitted to sell fuel and certain prescribed goods in the hours outside the trading hours of general retail shops. This means that filling stations are not permitted to sell some goods, such as canned goods, that are sold by general retail shops, when those general retail shops are closed.</p>	<p>In the metropolitan area may trade in fuel and other goods at any time, but may not trade in certain goods outside general retail shop hours.</p>
Motor vehicle shops	<p>Not strictly a separate category under the Act – part of the general shop category.</p> <p>A motor vehicle shop is defined in the Act as a type of general retail shop or portion of a general retail shop, which retails in motor vehicles, or spare parts in conjunction with the retail sale of motor vehicles.</p>	<p>May trade:</p> <ul style="list-style-type: none">Monday, Tuesday, and Thursday, Friday: 8:00am to 6:00pmWednesday: 8:00am to 9:00pmSaturday: 8:00am to 1:00pm <p>Closed on Sundays and public holidays.</p>

23. The traders who would be able to widen their hours of trade if the sale of whitegoods and certain other bulky/durable goods is permitted on Sundays, are those traders that:
- (a) currently fall into the general retail shop category; and
 - (b) are located outside any of the special trading precincts.
24. Some special retail shops can already sell certain bulky or durable goods on a Sunday, provided that the goods fall into a category to which that shop's certificate applies (see **Appendix B**). Also, small retail shops can already sell any goods (including whitegoods and bulky/durable goods) at any time. In practice, many furniture, whitegoods and electrical goods retailers – the type of retailers who trade in the main categories of bulky/durable goods – tend not to be special or small retail shops, but it is important to note that very limited trade in such goods is possible on Sundays under the law as it currently stands. This is presented in **Table 2**.
25. The purpose of this paper is therefore to offer for public consultation some possible models for amending the Act to allow some traders currently categorised as general retail shops, to trade in whitegoods and certain other bulky or durable goods on Sundays.

Table 2: Who can sell whitegoods and certain other bulky/durable goods at present?

Shop Category	All goods?	Bulky goods?	Comments
General retail shop	Yes	Yes	No restrictions on the types of goods sold during general shop trading hours.
Special retail shop	No	Limited. Only a few special retail shop categories are prescribed, and these have restrictions on the range of goods that may be sold.	Special retail shops are restricted to the ranges of goods defined by the Retail Trading Hours Regulations 1988. (See Appendix B)
Small retail shop	Yes	Yes but limited in practice.	It is unlikely that most small retail shops have the buying power or floor space to trade competitively in whitegoods and other bulky/durable goods unless they operate as franchises.

Policy development: background

26. The Government acknowledges that the making of changes to the retail trading hours regime in Western Australia is contentious and often polarises sentiment in the community. Since mid-2009, the Government has promoted a number of modest, incremental changes to the regime, each of which has attracted mixed reactions from retailers, and generally strong support from affected consumers.
27. The most frequently-voiced objections to changes to the regime have included the following:
 - that changes unfairly redistribute the market shares of current participants in the retail marketplace, for example by allowing extended trading for some businesses but not for all;
 - that changes introduce additional artificial or anti-competitive distortions into the retail marketplace, such as preventing retailers from stocking the full range of goods desired by their customers; and
 - that the results of the 2005 referendum on extended trading hours should be upheld.
28. In relation to these criticisms, the Government's position is that:
 - The Government's long term goal is to progressively simplify the regime regulating retail trading hours in metropolitan Perth, however, in the short term the Government is taking modest steps to promote flexibility and choice for consumers and retailers, including investigating the introduction of extended trading hours for whitegoods and certain other bulky or durable goods.
 - The laws governing retail trading must keep pace with social changes. Since the time of the 2005 referendum both the size of metropolitan Perth and its population have grown, and consumers and retailers are demanding more flexibility and choice, which requires legislative change. In particular, high employment levels and participation rates mean that working consumers are often time-poor and increasingly need flexible retail trading hours to provide them with opportunities to do their shopping. And the increasing size of the metropolitan area means that many people are finding themselves further away from districts where extended trading hours apply (special trading precincts). Recent surveys have shown substantial support for further relaxing the restrictions on retail trading hours.
 - Compared to the 2005 referendum result (41% support for extended weeknight trading, 39% support for Sunday trading), there appears an increase in the number of people supporting extended trading hours. An August 2010 survey by the Chamber of Commerce and Industry showed 67% support for extended weeknight trading and 68% support for Sunday trading.

- Additional research indicates growing support for extensions to retail trading hours. The Committee for Perth's FACTBase Bulletin 8, *The retail trading industry of Western Australia* (June 2010), indicates that demographic trends and changing social values lend support to the Liberal Government's approach to reforming retail trading hours. The Bulletin notes that of the 2005 referendum results, "yes" responses to both extended weeknight trading and Sunday trading were significantly correlated with the proportion of couple families where both partners are employed.
 - Further, FACTBase Bulletin 7, *The impacts of retail trade deregulation: A review of evidence from other jurisdictions* (June 2010), indicates that support for deregulation increases with increased home-to-work travel times, increasing numbers of working females and dual-income families, and a high proportion of shift workers in the population. It is relevant to note that evidence from the Australian Bureau of Statistics shows that Western Australia had the highest workforce participation rate and the second highest female participation rate in Australia in the 2009/10 financial year.
29. The Government's investigation of the possibility of allowing Sunday trading in certain bulky or durable goods is also made against the following background :
- In June 2009, the Government introduced the *Retail Trading Hours Bill 2009* into the Parliament. The purpose of this Bill is to introduce 9pm weeknight closing for general retail shops in the Perth metropolitan area. The Bill did not progress through Parliament at that time because of a lack of multi-party support. In June 2010, the Leader of the Opposition (Hon Eric Ripper MLA) announced that the Opposition would support the Bill on certain conditions, one of which is that Sunday trading for "durable consumer goods including whitegoods" be addressed. At the time of release of this *Issues Paper*, the legislation permitting optional 9pm weeknight trading for general retail shops in the metropolitan area has been passed by the Parliament, and is soon to become operational.
 - The Government has received submissions from certain interested industry stakeholder groups suggesting the establishment of a category in the Act of "bulky goods" or "durable goods" shops, or of exemptions from regular trading times for "bulky goods precincts". "Bulky goods" and "durable goods" are related concepts, but have some differences that will be explained in the next section of the paper.

Sunday trading in whitegoods and certain other bulky/durable goods: the Government's position

30. The Liberal Government's preliminary position is that an option for whitegoods and certain other bulky or durable goods to be traded on Sundays, should be permitted throughout the Perth metropolitan area.
31. Any permitted Sunday trading in such goods would be optional, and not mandatory. That is, individual retailers would have the option of whether or not to open for Sunday trade in such goods - the decision would rest with individual businesses.
32. The advantages of optional Sunday trading for such goods include that, for purchases that are often high-value (that is, for expensive items) and complex (that is, involve extensive comparison between items and sometimes visits to multiple shops), couples, housemates and family groups will be best able to shop together at a time that is more likely to be free of other commitments such as work or sport. Single people too may work extended hours or have evening or Saturday sporting or family commitments, and may prefer the option to buy such goods on Sundays. It is also likely that the introduction of Sunday trading will create additional part-time or casual jobs in the whitegoods and other bulky/durable goods retail sector.
33. The disadvantages of optional Sunday trading for these goods include that it may place pressure on some businesses to open for longer hours in order to avoid losing business to competitors, and may increase the costs and overheads of such businesses, including wages. Over time, if such businesses close because of such pressure, the range of choice available to consumers may diminish. Some workers may be pressured to work additional shifts and face a rearrangement of leisure time. In addition, some people are of the view that any expansion of Sunday trading would be detrimental to family and community life.

ISSUE 1: *Should optional Sunday trading in whitegoods and certain other bulky/durable goods be permitted?*

Do you think the law should be changed to permit optional Sunday trading in whitegoods and certain other bulky/durable goods?

If so, should Sunday trading in such goods be restricted to the Perth metropolitan area, or should it also be permitted in regional areas?

Or, do you think the law should stay as it is, meaning that no retailers can sell such goods on Sundays unless they are already permitted to do so by the Act, for example because they are located in a special trading precinct, or in a regional area where a Ministerial order has already permitted Sunday trading?

Definitions of “Bulky Goods” and “Durable Goods”

34. “Durable goods” are generally defined by reference to time, for example durable goods are:
- “products that aren't consumed or quickly disposed of, and can be used for several years”;¹ or
 - “those that are not consumed immediately, but which gradually wear out during the period they are used”.²
35. Currently, there are no definitions of “bulky goods” or “durable goods” provided by the Act.
36. In the discussions that have occurred in the community and in the retail sector, both of these terms have been used. In the field of economics, “durable goods” usually means long-lasting household items, including both large items, such as furniture, and smaller items, such as clock radios. In town planning, “bulky” goods usually refers to large consumer items that require vehicular transport, such as furniture, but not smaller items like clock radios. This distinction is important, because a larger range of items falls into “durable” goods than “bulky” goods. However, the two concepts overlap, and there is no official definition of either one, for the purposes of Western Australian retail trading laws.
37. To introduce Sunday trading in whitegoods and certain other bulky/durable goods, a definition of relevant goods may need to be inserted into the Act or the Regulations. This definition could either provide a conceptual definition, or be linked to a list of goods – such a list would probably appear in the Regulations. Various arrangements could then be implemented. For example:
- (1) a new “special shop category” of “bulky/durable goods shop” (or some other term) could be created in the Regulations, enabling such shops to trade in certain goods under existing special retail shop trading hours, which include Sundays (Option 1 below), or
 - (2) the Act could be amended to provide a new shop category (or a new sub-category of “general retail shop”) of “bulky/durable goods shop” (or some other term), with trading hours which include some hours of Sunday trading (Option 2 and Option 3 below); or
 - (3) the Act could be amended to allow all general retail shops (an existing category of shop) to trade in certain listed goods on Sundays, and incidentally in other goods (Option 4 below); or

¹ InvestorWords.com, available at http://www.investorwords.com/1600/durable_goods.html, accessed 4 August 2010.

² Reference for Business, available at <http://www.referenceforbusiness.com/encyclopedia/Dev-Eco/Durable-Goods.html>, accessed 4 August 2010.

- (4) the Act could be amended to define a new type of “bulky goods” or “durable goods” precinct, and geographical areas for those precincts prescribed in the regulations (Option 5 below).
38. For legal purposes, the adopted definition to capture whitegoods and certain other bulky/durable goods will need to be both precise and practical in order to operate effectively within the Act. A legal definition of such goods, that includes an excessively wide range of things, or things that are extremely different in nature, would probably be too problematic to use and implement effectively. Framing an appropriate, workable definition of relevant goods is therefore a crucial element of the reform explored by this paper.
39. Whatever term is adopted, its definition will need to be broad enough to minimise confusion and disruption to traders who stock a mix of permitted and non-permitted goods.
40. The concept of “durable goods” used by the Australian Bureau of Statistics (“ABS”), the concept of “bulky goods retailer” suggested by the Retail Traders’ Association of WA (“RTA”), and the concept of “durable consumer goods” proposed by the Bulky Goods Retailers Association (“BGRA”), are set out in **Appendix C**. These definitions are presented as a starting point for discussion. The definitions have differences and similarities, and comparing them illustrates some of the problems involved in attempting to satisfactorily define a class of such goods.
41. The RTA’s definition of “bulky goods” is constructed by means of a list of appropriate retailers, and is set out in full in **Appendix C**. Rather than provide a textual definition of bulky/durable goods, the RTA has suggested a representative list of retailers, and therefore goods and services, commonly provided at “bulky goods” or “big box” centres.
42. The RTA points out that although the list contains various products not necessarily intended to be included in a definition of goods able to be traded on Sundays, the reality is that such goods exist and are stocked by those retailers.
43. The RTA has additionally submitted that:
- all retailers located in a shopping centre in which a bulky goods store is present should be permitted to trade at the same time; and
 - retailers that stock at least 70% bulky goods lines should be able to sell their other lines also. (This idea is known as the “predominance test” and is discussed in Option 3 of the legislative models, which is based on the predominance test, discussed below.)

44. While some categories indicated by the RTA may be appropriate for inclusion in the goods appropriate for trading on Sundays, the Government's view is that not all of the categories of items sold by retailers suggested by the RTA are appropriate. This is because the current regulatory regime for retail trading already deals with certain of the goods suggested. The "special retail shop" certification system described in **Appendix B** already allows specialist retailers to trade in, for example, video hire, domestic improvement items, and motor vehicle parts.
45. To the extent that the RTA's proposal contains items not included in any final list appropriate goods, the sale of those items by retailers on Sundays might still be permitted to a limited degree if Options Three or Four of the legislative models discussed below is implemented. (Under those options, bulky/durable goods retailers would be permitted to trade in some non-bulky/durable goods on Sundays.)
46. The BGRA defines bulky goods retailers primarily in terms of their trading premises. The BGRA proposes a definition of "bulky goods retailers" as "a premises which satisfies the following:
 - (a) a large area for handling, display or storage; or
 - (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items onto their vehicle after purchase or hire, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale of bulky goods..."
47. The Government is not convinced that this definition is satisfactory because it could unnecessarily exclude many sellers of bulky/durable goods which operate from smaller premises, or from premises not located in dedicated bulky goods centres - for example, household furniture and electrical equipment retailers located within malls or shopping centres where direct vehicular access is not available.
48. The Government's view is that some of the categories of retailers (such as party supplies, office supplies and pet and animal supplies) proposed by the BGRA, if included, could make the concept of a bulky/durable goods retailer too broad. However, instead of adding these categories of goods to an adopted whitegoods and bulky/durable goods concept, it may be possible to permit Sunday trading in such goods by adding them to the categories of goods that special retail shops are permitted to trade in (**Appendix B**). That possibility is outside the scope of this discussion paper, but will be considered during the statutory review of the Act mentioned in paragraph 16 above.

49. The BGRA alternatively proposes a definition of bulky/durable goods retailers, as having “premises used predominantly for the sale or hire of” and provides a list of bulky/durable goods categories set out in **Appendix C**.
- In this regard, the BGRA has submitted that a “predominance” test should be applied to determining whether a retailer qualifies as a bulky goods retailer. That is, if the retailer uses its premises predominantly for the sale of durable goods, then the sale by the retailer of non-durable goods should be disregarded. (The predominance test is further discussed in Option Three of the legislative models, discussed below.)
50. CEBAS Pty Ltd (the long-term franchisee operating Perth’s IKEA store) has proposed that a broad definition of “durable consumer goods” be introduced, and should further be based on a list of specific exclusions rather than a detailed list of included products.

Definition of relevant goods: The Government's position

51. The preference is that a definition for the purposes of trading in whitegoods and certain other durable or bulky goods on Sundays should refer to a list of goods to be prescribed by Regulations.
52. The types of goods that could be traded on Sundays under this approach would primarily be the following:
 - white goods (e.g. fridges and washing machines);
 - “brown goods” (e.g. televisions and home entertainment systems);
 - household furniture (e.g. bedroom furniture, lounge furniture; home office furniture); and
 - household floor coverings (e.g. loose rugs, fixed carpets, timber, vinyl and tile).
53. The Government would also give consideration to including other goods that are traditionally sold in conjunction with the goods listed above. For example, most white goods retailers would sell small kitchen appliances (e.g. kettles, toasters) as well as electronic and electrical goods (e.g. personal computers and other consumer electronics). These allied goods might be included within a list of goods within Regulations. They might also be encompassed within the Government's preferred legislative model (Option 3), which is described later in this paper.
54. The Government does not believe that the following should be included within a definition and/or list of relevant goods:
 - groceries; and
 - clothing and footwear.
55. In advancing its preference, the Government is conscious of the information set out in **Appendix C** derived from the ABS, and received from the BGRA and the RTA. The Government is also mindful to preserve wherever possible the existing system for licensing special retail shops and motor vehicle shops already provided by the Act as described in **Appendices A and B**, and the goods that may be sold by such shops.

ISSUE TWO – *Which definition of relevant goods should be adopted?*

If retailers are legally permitted to trade in whitegoods and certain other bulky/durable goods, what definition of any such term should be adopted?

What goods are relevant for inclusion in such a definition?

Should the definition:

- * be limited to household furnishings and whitegoods?
- * be limited to large household goods that require transportation by vehicle, i.e. “bulky” goods? or
- * include all or most “durable” (i.e. long lasting) household goods, including those that are not “bulky”? or
- * include other items that are not “durable” or “bulky”?
- * be as broad as possible, or narrow?

Implementation Methods

Legislative Models: Five Options

56. As explained in paragraphs 2 and 9 above, the other necessary component of a working bulky/durable goods Sunday trading regime, apart from the definition of such goods, is an appropriate legislative mechanism that implements that regime. Below, five alternative models for such a legislative mechanism are set out for discussion. A table setting out the key features of each option for comparison purposes is included at the end of this section.

Option One – the “special shop category” model

A new “whitegoods and bulky/durable goods” special shop category could be created in the Regulations, so that:

- ***only those retailers who sell the prescribed bulky/durable goods are newly permitted to sell those goods for extended hours, including on Sundays; and***
- ***this new category of retailer may not sell any non-bulky/durable goods at any other time.***

57. This option would be implemented via the creation of a new category of “special retail shop” (see **Appendix B**) within the Regulations.

58. As explained in Table 1, shops within the “special retail shop” categories may trade from 6am to 11:30 pm every day, but may only sell the goods or services prescribed for their category, at any time.

59. Retailers meeting the new criteria for the new type of special retail shop, would therefore be permitted to stock and sell only the goods prescribed in the statutory definition of “bulky/durable goods”, at all times. Such retailers would be permitted to trade on Sundays in addition to the extended Monday to Saturday (including public holiday) trading hours currently allowed to special retail shops under the Act.

60. Administratively, such retailers would apply to the Department of Commerce for certification as meeting the special shop category requirements of the Regulations, prior to being permitted to trade on Sundays. (This is consistent with the current arrangements in practise for other special shop categories).

61. The advantages of this “special shop category” model are that it is easy to implement and enforce, and gives good clarity to retailers as to whether or not they are permitted to trade on Sundays.

- Application and assessment processes for special shop category certificates are already established. The existing processes could be expanded to apply to a new special shops category, meaning extended trade for such shops could be implemented to commence quickly.
- In addition, this Option would be implemented by publication in the *Government Gazette* of an amendment to Regulations, which would be faster than passing an amendment Act through the Parliament.

- Enforcement would also be efficient –inspectors would be immediately able to spot any non-prescribed stock, when visiting a certified bulky/durable goods shop.
62. The main disadvantage of this model is that it would create a dilemma for existing retailers who currently trade in both bulky/durable goods and non-bulky/durable goods. In order to qualify as a “special retail shop”, retailers would be required to stop selling any lines of non-bulky/durable stock, or to set up separate shops to separate their bulky/durable and non-bulky/durable stock.
63. Depending on the breadth of the prescribed list of allowable goods, this model:
- may impose significant costs on some retailers, who may adjust their existing product ranges to qualify for the special shop certificate. Alternatively, if those retailers chose to continue selling goods not listed as “bulky/durable goods” at any time, they would not qualify to trade the extended hours, including Sundays;
 - could cause frustration to consumers to discover that they may now buy some items but not other related items from the same retailer, e.g. they may buy a bed but not a bed sheet. Alternatively, consumers’ preferred bulky/durable goods traders may be unable to open on Sundays, should the retailers elect to not become bulky/durable goods special retail shops;
 - would introduce new anti-competitive impacts into trade for bulky/durable goods. Retailers that continue to trade in both bulky/durable and non-bulky/durable goods, would be unable to trade their bulky/durable goods during extended hours, including on Sundays. Retailers that trade only in bulky/durable goods, would enjoy the option to open for longer hours;
 - may distort the market, with some traders adjusting their product lines to enable Sunday opening.

Option Two – the “filling station” model

A new “whitegoods and certain other bulky/durable goods shop” category could be created in the Act. On Sundays, these shops could only sell prescribed bulky/durable goods. At other times, these shops could sell both bulky/durable and non-bulky/durable goods.

64. This option could be implemented by amending the Act to create a new shop category, and prescribing a list of goods able to be traded on Sundays by shops within that category. (Such a list would be placed in Regulations made under the Act.)
65. This option could operate in a similar manner to the current provisions controlling retail sales by filling stations.

66. As explained in Table 1, during general retail trading hours filling stations are allowed to sell a range of goods also sold by general retail shops. However, outside general retail trading hours, filling stations are only permitted to sell fuel and certain other goods prescribed in the Regulations. In effect, filling stations are not permitted to sell some goods, such as canned goods, that are sold by general retail shops, when those general retail shops are closed.
67. In the filling station model, sections of the store containing goods not permitted to be sold in extended hours are roped off or the goods otherwise made unavailable to consumers. While it would not, strictly speaking, be necessary to quarantine non-bulky/durable goods in this way, in practice it probably would be a sensible requirement, to avoid confusion in the minds of consumers and retail staff about what goods can and cannot be sold.
68. This practice of shutting down parts of shops already occurs voluntarily in some parts of the retail market, e.g. supermarkets that close their delicatessen section at certain off-peak times.
69. The main advantages of this model are that it would:
- be relatively easy to enforce and administer, although not as easy as Option One; and
 - not introduce significant new anti-competitive impacts in trade. All retailers trading in prescribed bulky/durable goods, would be permitted to trade these goods on Sundays, and would not be permitted to trade their non-prescribed goods on Sundays.
70. The main disadvantages of this model are that it:
- could force retailers to restructure their displays of goods and possibly entirely reorganise their premises. This may be costly to retailers.
 - For example, a retailer that occupies a multi-level building and that has prescribed goods dispersed throughout different floors may have to reorganise its displays to concentrate the prescribed goods on the ground floor, which could remain open when the rest of the shop is closed. In terms of overheads, it would be costly for every level of the building to remain staffed and open if goods on those floors cannot be sold. From a marketing perspective, it may also have a negative impact on sales if prescribed goods are collocated at the entrance of shops. Such reorganisation of stock may not be feasible for many retailers.
 - In circumstances where many separate retailers share a floor, each retailer could be required to quarantine a section of its stock and floor space, and would be unable to trade in those quarantined items on Sundays.
 - could also cause frustration to consumers, as they would be able to enter shops stocking items they wished to buy, but would be unable to purchase on Sundays; and

- could cause significant difficulties for staff within stores having quarantined sections. Staff would have to adequately explain to frustrated consumers why quarantined objects cannot be purchased, and pressure might be placed on staff to trade in those items illegally.

Option Three – the “predominance test” model

The Act could be amended so that general retail shops which predominantly sell prescribed bulky/durable goods, could be permitted to sell both bulky/durable and non-bulky/durable goods on Sundays.

71. This option would be implemented by creating a new category or sub-category of “bulky/durable goods shop” in the Act, and prescribing a list of the permitted goods traded by such shops in the Regulations. Retailers who predominantly trade in the prescribed goods, would meet the Act’s definition of “bulky/durable goods shop”, and would be permitted to trade all of their stock (including non-bulky/durable stock) on Sundays.
72. Administratively, such retailers would register with the Department of Commerce as meeting the predominance test requirements of the Act, prior to being permitted to trade on Sundays.
73. A version of this option is proposed by the BGRA, which suggests that bulky/durable goods retailers are those with “premises used predominantly for the sale or hire of” certain listed goods.
74. The RTA has proposed that, due to the multitude of products and services stocked and sold by retailers, retailers should be permitted to trade their full product range, in cases where 70% of their product range meets the definition of bulky/durable goods.
75. CEBAS Pty Ltd has proposed that Sunday trading be permitted for those retail businesses deriving 80% or more of their total revenue from the sale of durable goods. (CEBAS has noted its preference for full deregulation of trading hours, but otherwise supports a model involving Sunday trading for retailers predominantly involved in the sale of “durable consumer goods”, similar to the one currently in place in South Australia.)
76. A predominance test is currently used in South Australia to permit shops that sell one of four specified categories of goods, and which are located in geographically defined shopping districts, to trade on Sundays between 9:00am and 5:00pm.³ The South Australian statutory scheme is summarised in **Appendix D**, and aspects of it are discussed below.
77. The predominance test model raises two significant questions, both concerned with how “predominantly” should be defined in practise:

³ Section 13(5f)(a) and (b), *Shop Trading Hours Act 1977 (SA)*.

- what threshold should be applied ? (eg, thresholds of 70%, 80% or 90% would each result in different shops meeting the requirements for predominance);
 - what measure should be used ? (eg, if the relevant measure is whitegoods and certain bulky/durable goods' proportion of annual turnover, proportion of monthly sales revenue, proportionate number of product lines stocked, or proportionate area of shelf or floor space dedicated those goods, different shops would again meet these different criteria).
 - These ratios will probably fluctuate, making them difficult to measure. There is therefore the further question of the timeframe over which predominance should be considered, or whether any timeframe should apply at all.
78. In determining whether a shop “predominantly” sells bulky/durable goods, different answers to these two important questions will yield different results.
79. In South Australia, the predominance test is applied by comparing the turnover for each category of goods (durable versus non-durable) in dollars.
- A shop can only trade extended hours (on Sundays) if, in the previous seven consecutive trading days, its sales of specified goods meet the set proportion in terms of dollar value.
 - The proportion of dollar value is set at 80% for furniture, floor coverings, and motor vehicle parts and accessories, and at 20% for hardware and building material sales.⁴
80. The main advantage of the predominance test model is that it would provide a greater degree of freedom to recognised bulky/durable goods retailers, and more flexibility for consumers, in Sunday trading.
81. The costs associated with Options 1 and 2, in terms of artificially restricting retailers' product lines or product displays and sale times, would not occur under the predominance test model. Although an adjustment in product lines might still be made in some cases to achieve a threshold, this would be expected to occur only minimally under this Option 3.
82. The main disadvantages of the predominance test model are that it:
- could be difficult to enforce, where questions arise about shops meeting the threshold. Inspectors would have to examine sales and revenue records, or floor space ratios, in detail to determine whether each retailer met the threshold. It may also be necessary to re-examine whether particular retailers continue to meet the threshold, over time;
 - the means of obtaining approval to open would be streamlined, ideally with a declaration process in which retailers provide audited statements to the Department of Commerce, to prove their initial and periodic meeting of the required threshold;

⁴ Section 13(5f) (a) and (b), *Shop Trading Hours Act 1977* (SA), and r.5 of the *Shop Trading Hours Regulations 2003*.

- may be difficult to define the threshold or the measure for “predominantly” in a workable manner;
- could introduce new anti-competitive impacts in Sunday trade for both bulky/durable and non-bulky/durable goods. Retailers that trade in some bulky/durable goods, but not enough to pass the “predominance test”, would be unable to trade their bulky/durable or non-bulky/durable goods on Sundays, whereas “bulky/durable goods shops” would be able to trade in all items and product lines; and
- may be frustrating for consumers, as their preferred supplier may be unable to open on Sundays.

Option Four – the “incidental test” model

The Act could be amended so that general retail shops which sell any prescribed bulky/durable goods during general shop trading hours, can also sell those goods on Sundays, and can also incidentally sell non-bulky/durable goods on Sundays, if the non-bulky/durable goods are sold to the same customer and in connection with a sale of bulky/durable goods.

83. This option would work in similar fashion to the rule that applies to the sale of alcoholic drinks by restaurants in many jurisdictions, where a restaurant may sell alcohol only to a customer who also orders a substantial meal.
84. If this model were to be applied, a person who buys a bed (or other prescribed bulky/durable good) could also buy accessories for the bed that are not classed as bulky/durable goods (e.g. bed sheets) on Sundays. However, retailers could not sell a customer the non-bulky/durable accessories *alone*. Customers would be required to purchase a prescribed bulky/durable item, in order to purchase incidental non-bulky/durable items.
85. This option could be implemented by amending the Act to allow Sunday trading in certain goods, and prescribing a list of those goods in the Regulations. This option would not require a new category of shops, or their location in special areas. All shops could sell non-listed goods, incidentally with their sales of listed goods.
86. The main advantages of this model are that it:
 - is more flexible in that it will not require retailers to adjust their stocklines or product displays;
 - may not impose the same type of arbitrary and artificial restrictions on retailers, as those imposed by Options One and Two; and
 - is the least anti-competitive of all the options. All retailers who sell any listed goods would have the option to trade on Sundays.

87. The main disadvantages of this model are that it:

- would impose significant arbitrary and artificial restrictions on consumers. This option may be frustrating for consumers who do not wish to purchase a bulky/durable good, but who do wish to, but are unable to, purchase related goods;
- may be difficult for staff within stores to adequately explain to frustrated consumers why non-bulky/durable goods cannot be purchased alone, and pressure might be placed on staff to trade in those items illegally; and
- would be difficult to enforce. Enforcement will be more challenging than for Options One or Two, but not impossible. (A Government inspector would be required to look at cash register receipts, to determine whether sales of non-bulky/durable goods have been made to customers separate to sales of bulky/durable goods).

Option Five – the “bulky goods precincts” model

The Act could be amended so that retailers located in geographically defined “bulky goods precincts” can trade on Sundays, whether or not they sell bulky/durable goods. The areas of individual bulky goods precincts could then be prescribed in the Regulations.

88. This option would be implemented in a similar manner to the existing system of “special trading precincts” and “holiday resorts” under the Act. The Act names and defines certain precincts, and the particular areas of the precincts are prescribed in the Regulations.
89. Administratively, retailers would not be required to apply to the Department of Commerce prior to being permitted to trade on Sundays. Following amendment of the Act and prescription of certain areas as “bulky goods precincts”, all stores within those geographical areas would have the option to open for trade on Sundays.
90. The designation of the bulky goods precinct areas would most likely occur in consultation with local governments. (Given the wider variety of “durable” goods, it may not be feasible to have designated “durable goods areas”).
91. The designation of relevant precincts would not pre-empt planning regulations in any way. Similarly as currently occurs with “special trading precincts” under the Act, if an area is defined for retail trading hours purposes as a “bulky goods precinct” that would not, by itself, allow a bulky goods concern to be started up in that area independent of planning rules and local by-laws and schemes.
92. Planning documents increasingly refer to bulky goods retailing, and envision the clustering of such retailers.

93. Bulky goods precincts would be areas made up chiefly of retailers predominantly selling bulky/durable goods. However, all retailers in a prescribed bulky goods precinct would be allowed to open. (Thus, the precincts may include some retailers who do not predominantly sell bulky/durable goods.)
94. The BGRA has suggested that if some retailers, but not all, within a precinct were allowed to open, this would leave an incomplete shopping experience for the public. (This means, in practice, that either the definition of “bulky/durable goods” be so widely drawn as to encompass all retailers likely to be situated within the bulky goods precincts, or alternatively, that other retailers located within the precinct should also be allowed to trade on Sunday, even if they do not predominantly sell bulky goods.)
95. Similarly the RTA proposes that all retailers located within “bulky goods” or “big box” centres should be allowed to open. The RTA notes that unless all the retailers, including the non-bulky/durable retailers, within a centre are able to open, the viability of marketing and opening the centre would be reduced.
96. Two major issues that would need to be resolved before this option could be implemented are:
- identifying suitable areas to become bulky goods precincts. A test of some kind would need to be applied to determine which precincts were “bulky goods precincts”. For example, if the majority (51% or a higher percentage) of shops in an area are “bulky goods shops”, then the whole area could be designated as a bulky goods precinct; and
 - identifying shops as bulky goods shops. A predominance test could be applied for this purpose.
97. The main advantage of this option is its simplicity of concept. Retailers and consumers alike would be clear as to whether certain retailers were allowed to open on Sundays, by virtue of their geographic location. Once a precinct was permitted to open, all goods within all shops in the precinct, would be able to be traded.
98. The main disadvantages of this option are that it:
- may be difficult to isolate bulky goods shops into distinct precincts;
 - will introduce new anti-competitive impacts in Sunday trade for both bulky/durable and non-bulky/durable goods. Some non-bulky/durable goods retailers will receive advantages simply because they are located in bulky goods precincts. In contrast, those bulky/durable goods retailers not located in distinct clusters will be disadvantaged, as they will not be able to open for trade;
 - may distort the value of shop leases within bulky goods precincts, given that any type of shop within the precincts will have the ability to trade on Sundays; and
 - may result in a complex system that includes a large number of mini-precincts, which may be difficult and costly to administer and police.

Comparison of Legislative Models

(Table 3 compares the implementation methods outlined above. In Table 3, “bulky/durable goods” refers to the new category of goods to be permitted to be sold on Sundays, whether called “bulky” or “durable” goods, or some other term.)

Table 3: Comparison of legislative models				
Shop category	All goods able to be sold on Sundays ?	Bulky/durable goods able to be sold on Sundays ?	Extended trading hours	Comments
OPTION ONE: New category of “special retail shop”	No	Yes, prescribed bulky/durable goods only	Same times as currently provided, 6:30am to 11:00pm every day, including Sundays and public holidays	Non-prescribed bulky/durable goods cannot be sold by such shops on any day of the week.
OPTION TWO: “Filling station” model	No	Yes, prescribed bulky/durable goods only	Bulky/durable goods only, to be sold on Sundays. All goods may be sold Monday to Saturday as normal	Non-bulky/durable goods to be withdrawn from display, or from sale, on Sundays.
OPTION THREE: “Predominance test” model	Yes, but only where the retailer predominantly sells bulky/durable goods	Yes	Normal hours Monday to Saturday. Extended hours Sunday.	Suggested predominance test is a percentage of annual sales revenue (averaged over one year) in dollars being gained from prescribed bulky/durable goods
OPTION FOUR: “Incidental test” model	Yes, but only if incidental or associated with a bulky/durable good purchase	Yes	As above	Incidental sale of non-bulky/durable goods would be permitted
OPTION FIVE: “Bulky goods precincts” model	Yes, All retailers both bulky/durable and non-bulky/durable within the precinct would be permitted to open, and to sell all stocklines.	Yes.	As above	Would operate similar to special trading precincts .

Preferred implementation method: Government's position

99. The Liberal Government's preliminary view is that the predominance test model (**Option 3**) would deliver the greatest benefits to consumers and retailers when combined with the Government's preferred definition of relevant goods identified above (see paragraph 52). Although this model may not be the option that would be easiest to implement and enforce, such concerns could be addressed by identifying a streamlined approval model (to be determined) such as the submission of audited statements to the Department of Commerce attesting the proportion of durable goods turnover, so that retailers may prove their initial and annual meeting of the relevant threshold for predominance.
100. The special shop category model (Option 1) could cause substantial difficulties and costs for retailers, who would be unable to sell non-bulky/durable goods *at any time*, and who may therefore be required to substantially adjust their stocklines to be permitted to trade on Sundays. The filling station model (Option 2) could also lead to substantial costs to retailers, who would be required to re-arrange or rope off their displays, or otherwise make non-bulky/durable goods unavailable for sale outside standard trading hours. The incidental test model (Option 4) has many of the disadvantages of the filling station model (Option 2), but could be more frustrating to consumers as, unless a consumer purchased a prescribed durable good, they would be unable to purchase any item. The bulky goods precincts model (Option 5) may result in the creation of significant numbers of mini-precincts, which would impose a substantial administrative burden on the Government.
101. The Liberal Government's preliminary preference is therefore for Option 3, that:
- bulky/durable goods shops (or some other term) be added as a new type of "general retail shop", or as an entirely new category of retail shop, defined by the Act;
 - bulky/durable goods shops be defined by a predominance test of, for example, 80% of annual sales revenue in dollars (averaged over the preceeding year) being attributable to sales of relevant goods (a list of which would be prescribed in the Regulations); and
 - those shops meeting that definition, to register with the Department of Commerce as a "bulky/durable goods" shop, prior to exercising the option to trade on Sundays.

ISSUE THREE – *What implementation method should be adopted to allow Sunday trading in whitegoods and certain other bulky/durable goods?*

What implementation method should be adopted to allow retailing of whitegoods and certain other bulky/durable goods on Sundays?

The legislative model that is adopted could be one of the five options described above, or another option that you may wish to propose.

In commenting on the options, you may wish to include feedback on the following issues in particular:

Option 1: How costly would it be for retailers to restrict or amend their product lines in order to gain a special shop certificate? How likely is it that retailers would maintain their current stock lines and therefore forfeit the right to trade on Sundays? How would these decisions impact consumers?

Option 2: How costly would it be for retailers to reorganise their product displays, and quarantine non-bulky/durable items from sale on Sundays? How would consumers be affected by being unable to purchase, on Sundays, some items usually sold by a particular shop?

Option 3: What is a reasonable threshold for “predominance”? (eg 70%, 80%, 90%?) To what measure should the predominance test be applied? (eg should predominance be measured by reference to annual sales revenue, to number of product lines stocked, or some other measure?) Should the measure be averaged over a number of years, to avoid possible loss of the right to trade on Sundays, based on one year’s sales? How costly would it be for retailers to provide an audited annual statement to prove they meet the required threshold? What alternative proof could retailers provide?

Option 4: How appropriate would it be, to only allow sale of non-bulky/durable goods, incidental to sales of bulky/durable goods? Would this be frustrating for consumers?

Option 5: How would bulky goods precincts be identified? (eg, what is an appropriate percentage of bulky goods shops, required to make up a bulky goods precinct?) Would it be appropriate to use a predominance test on individual shops within a proposed precinct, to determine their character? What would be the competitive impacts, on retailers outside those precincts, of the “bulky goods precincts” model?

Completion of this consultation process

102. Following the receipt and analysis of public comments on this paper, the Government will look at developing appropriate amendments to the Act and/or the Regulations to allow Sunday trading in bulky/durable goods.

103. The proposed amendments would require drafting and:

- if they are amendments to the Act, introduction and passage through the Parliament, prior to commencement; and
- amendments to the Regulations would require endorsement by the Governor in Executive Council and publication in the Government Gazette.

104. Please provide submissions in response to the issues raised in this *Issues Paper* (and outlined in paragraph 8 above) to the address provided on page 2, before the close of the consultation period on 1 November 2010.

APPENDIX A

SUMMARY OF THE CURRENT REGULATORY REGIME FOR RETAIL TRADING HOURS

The *Retail Trading Hours Act 1987* (the Act) currently regulates retail trading hours in the following manner.

1. The Act applies only to shops in the part of the State south of the 26th parallel of South Latitude: 4(1). It also does not apply to certain categories of shops described in section 4(3), including restaurants, cafes and take-away food shops.
2. The Act categorises retail shops into different classes, namely general, small, special and filling stations: s 10(1), with general retail shop (GRS) being the default category: s 10(2). General retail shop has a sub-category of motor vehicle shop: see section 3(1). Motor vehicle shops have special trading times assigned to them: s 12B.
3. There is an elaborate definition of “small retail shop”, which applies to most small supermarkets, defining such shops - among other criteria - as ones having no more than 13 persons working at any one time (including the owners or operators but excluding apprentices), and whose owner or operator does not own or operate a total of more than three shops: s 10(3) to (3d). Large, national-chain supermarkets such as Coles and Woolworths stores fail these tests and are GRSs.
4. Subject to certain qualifications, explained below, the Act describes the retail hours that apply to each class of shop. For GRSs, see 12(1); for motor vehicle shops, see s 12B; for small retail shops, see s 12C; for special retail shops, see s 12D. The Act also restricts the types of goods that can be sold by filling stations: s 14A, and sets filling station retail hours: s14.
5. The first relevant qualification that applies to the retail trading hours of all classes of shops, is that the Minister may vary such hours by an order made under s 12E(1), which permits the Minister to authorise shops to be open at times when they would otherwise be required to be closed: s 12E(1)(b). Section 12E(2) limits the scope of these orders, and effectively provides that, *in the metropolitan area*, such orders can only be made to compensate traders for losses of trading time caused by public holidays, in relation to GRSs, except during the 28-day period preceding New Year’s Day every year.
6. “Metropolitan area” is defined by s 3(4) as “the part of the State within the area described in the regulations”. Regulation 4 of the Retail Trading Hours Regulations 1988 provides: “For the purposes of the Act the metropolitan area means the region described in the *Planning and Development Act 2005*, Schedule 3”. The Minister is not restricted in making orders under section 12E in relation to general retail shops in locations outside the metropolitan area, and a number of such orders have been made at the request of relevant local government authorities granting such shops extended trading hours.

7. The second relevant qualification that applies to the retail trading hours of all classes of shops is provided by s 12(2) of the Act, which identifies certain geographical zones, namely “special trading precincts” and “holiday resorts”, for which special hours can be set by the Minister, by order, under s 12A. Certain holiday resorts and special trading precincts, namely the Perth, Fremantle and Joondalup special trading precincts, and the Rockingham, Rottnest Island and Wanneroo holiday resorts, are named in s 12A(4), but their precise boundaries are not given there. In each case, the named resort or precinct is described as “the area or areas prescribed for the purposes of this definition”.
8. The Retail Trading Hours (Special Trading Precincts and Holiday Resorts) Regulations 2010 supply the missing details to complete the identification of these areas, as follows:
 - (1) The Fremantle, Perth and Joondalup special trading precincts are defined by the description of an area. Maps are included for illustrative purposes.
 - (2) The Rockingham, Rottnest Island and Wanneroo holiday resorts are defined by Regulation 5, by reference to descriptions set out in a schedule, without illustrative maps.

SPECIAL RETAIL SHOPS CATEGORIES (REPRODUCED FROM THE RETAIL TRADING HOURS REGULATIONS 1988)

The *Retail Trading Hours Act 1987* (the Act) currently provides a system for allowing retailers who specialise in sales of defined types of goods to trade over longer hours (from 6:00am to 11:30pm every day) through the system of “special retail shop” certificates established under section 11 of the Act.

A number of categories of special retail shops are prescribed by the Retail Trading Hours Regulations 1988 for the purpose of this certification system.

Following is a copy of Regulation 7 at the time of publication of this *Issues Paper*.

7. *Special retail shops — categories, goods and services*

- (1) The categories of shops set out in column 1 of the Table to this regulation are prescribed for the purposes of section 10(4)(a) of the Act.
- (2) The goods and services set out in column 2 of the Table to this regulation opposite a category of special retail shops are, for the purposes of section 10(4)(b) of the Act, goods and services that are prescribed in relation to a special retail shop of that category.

Table

Column 1 Shop Categories	Column 2 Goods and Services
1. Art and craft (shops engaged in the sale of art and craft works)	Original art and craft works; prints and reproductions of original works; art and craft supplies; art and craft related reading materials; calico or similar re-useable shopping bags.
2. Souvenirs (Shops offering items of tourism significance)	Souvenirs featuring Australian flora, fauna, locations, characteristics or events or national significance; souvenirs projecting the flavour of the pioneering era or Aboriginal culture; original Australian art and craft works, reading materials and video cassettes or tourism significance; souvenirs and jewellery featuring Australian minerals and pearls; souvenirs crafted from unique Australian woods, hides or skins; Australian coins; calico or similar re-useable shopping bags.
3. Pharmaceutical (shops from which the principal activity involves the dispensing of medical prescriptions)	Goods and services which may be sold or provided in a pharmacy under section 40A of the <i>Pharmacy Act 1964</i> ; calico or similar re-useable shopping bags.
4. Domestic development shops (shops offering items for domestic improvements, construction and maintenance, floral arrangements and products for the establishment and	Swimming pools; spas; patios; garages; garden sheds; home additions; household fixtures and fittings (excluding free standing furniture other than shelving units, carpets and electrical items other than ceiling fans); ready to assemble raw timber and finished timber household furniture, and kitchen cupboard panels, sold in flat pack form; desk fans; indoor television antennae;

Column 1 Shop Categories	Column 2 Goods and Services
maintenance of gardens)	<p>floor mats and rugs; synthetic rolled matting, synthetic grass and marine carpeting; flowers; greenstocks; seeds bulbs; reticulation equipment; hoses, sprinklers and fittings; fertilizers, pesticides, herbicides and applicators; compost tumblers; landscaping and garden decorative products; plant containers and household items for the display of garden produce; construction, maintenance and garden related books and video cassettes; domestic construction and maintenance materials; paint and wallpaper products</p> <p>and accessories; tools; outdoor furniture and accessories; household cleaning products (excluding powered equipment); swimming pool chemicals and accessories; extension cords and electrical fittings (excluding decorative light fittings); computer cables; barbecues; kitchenware (excluding electrical items); solid fuel space heaters; outdoor lighting; water heaters; gas powered camping equipment and accessories; awnings and blinds; personal safety equipment (excluding clothing except overalls); playground equipment; auto body filler and spray putty; auto surface primer and body black; art and craft supplies; calico or similar re-useable shopping bags.</p>
5. Marine Craft (shops engaged in the sale of marine craft)	Marine craft and vessels associated spare parts and accessories, boating related books and video cassettes; calico or similar re-useable shopping bags.
6. Video shops	Digital video disks, video cassette tapes and video head cleaning products; promotional items relating to any video; confectionery and savouries; calico or similar re-useable shopping bags.
7. Duty Free Shops (shops which trade only as inwards duty free shops or outwards duty free shops as defined under the <i>Customs Act 1901</i> of the Commonwealth in respect of which permission is granted under section 96A(2) or 96B(3) of that Act)	Goods offered for sale duty free under the terms of the permission granted; calico or similar re-useable shopping bags.
8. Motor Vehicle Spare Parts Shops (shops other than shops located on premises on which motor vehicles are sold)	Motor vehicle spare parts accessories and lubricants; tools; motor vehicle related books and video cassettes; boating equipment limited to flares, anchors, life jackets, boat drainage bungs, navigation lights, fuel line bulbs, outboard motor water pump impellers, outboard motor service parts (filters, points, etc.), zinc anodes, outboard motor fuel tanks, outboard motor pull cords, and outboard motor shear pins; calico or similar re-useable shopping bags.
9. Sports Venue Shops (shops located at special sports participation venues)	Sporting goods and associated equipment relevant to the sports activities at each applicant venue; calico or similar re-useable shopping bags.

Column 1 Shop Categories	Column 2 Goods and Services
10. Newsagencies and book shops	Newspapers, books and stationery requisites; magazines and periodicals; greeting cards; educational requisites; educational toys (excluding mains operated computer games and equipment); photograph albums; sheet music; playing cards; paper plates, cups, doilies; lottery tickets; party decorations; smoker's requisites; small replacement items of sporting equipment (fishing hooks, table tennis balls, darts, etc.); calico or similar re-useable shopping bags.
11. Hotel Tourist shops (shops catering for tourist requirements in hotels classified as "4" star or "5" star under a scheme of classification approved by the Minister or any hotel that is in the opinion of the chief executive officer ³ of an equivalent standard)	Newspapers, books and stationery; haberdashery; clothing; sporting equipment; giftware; photographic equipment; cassette tapes, records and compact discs; toys; original art and craft works; prints and reproductions of original works; souvenirs featuring Australian flora, fauna, locations, characteristics or events of national significance; souvenirs projecting the flavour of the pioneering era or aboriginal culture; souvenirs and jewellery featuring Australian minerals and pearls; souvenirs crafted from unique Australian woods, hides or skins; Australian coins and stamps; first aid requisites; toilet and cosmetic requisites; smokers requisites; hairdressing services; flowers and floral arrangements; travel goods; calico or similar re-useable shopping bags.

RELEVANT DEFINITIONS OF “BULKY GOODS” AND “DURABLE GOODS”

A. The Australian Bureau of Statistics working concept

1. The ABS provides no written, descriptive definition of “durable goods”.
2. The Australian Bureau of Statistics (“ABS”) notes as a guiding temporal principle that:⁵
 - a. Non-durables, such as food, tend to be consumed soon after their acquisition. Their economic value may be thought of in terms of their current market or purchase price.
 - b. Durable goods are often consumed over a long period of time. The economic value of the services provided by durable goods, within (a) given reference period, is not the current market value or purchase cost.
3. Differences in the ABS’s information-collection methods for its *Household Expenditure Survey*⁶ may give some indication as to whether a good is “durable” or “non-durable”.
4. These ABS information-collection methods generate a list of likely durable goods which includes the following categories of items:
 - household furnishings - including indoor and outdoor furniture, fixed and loose floor coverings, household appliances such as whitegoods, and tools and other household durables;
 - transport – including vehicles and equipment, such as motor cars, motor cycles, caravans and trailers; and
 - recreation – including recreational and educational equipment such as CD players, video cameras, radios, sound systems, and set top boxes.
5. The ABS concept of durable goods excludes the following categories of items:
 - food and beverages, clothing and footwear, and personal care items;
 - some household furnishings and equipment – such as linen, blankets, towels, curtains, pillows and cushions, tableware, glassware, cutlery and cooking utensils;
 - tools and household durables such as lawnmowers, and transport items such as motor vehicle items fuels, oils and batteries; and

⁵ *Measuring Wellbeing: Frameworks for Australian Social Statistics 2001* (cat #4160.0), available at <http://www.abs.gov.au/AUSSTATS/ABS@.NSF/0/284D03E997F0AE74CA2571B9001760BE?opendocument> Last accessed 12 July 2010.

⁶ (cat #6530.0), last released in 2003-04

- some recreational and educational equipment such as art and craft materials, sporting and camping equipment, blank video disks, TV games and computer software.
6. Looking at the classes of items included and excluded from the ABS's concept of durable goods, the Government's view is that the "ABS-included" classes generally appear appropriate. However:
- motor vehicle parts and accessories, and motor vehicle dealers, are already specifically treated in the Act and Regulations. The Government would prefer to retain the current treatment of these retailers;
 - it may be difficult or impractical to ban durable goods retailers from selling the items in the "ABS excluded" list. For example, a person who buys a bed (mattress and base) would also reasonably expect to be able to buy bed linen and pillows from the same retailer. Similarly, someone who buys a table would reasonably expect to also be permitted to buy table linen and cutlery.
7. CEBAS Pty Ltd (the long-term franchisee operating Perth's IKEA store) has proposed⁷ that a broad definition of "durable consumer goods" be introduced, and should further be based on a list of specific exclusions rather than a detailed list of included products.

The Bulky Goods Retailers Association definition

8. The Bulky Goods Retailers Association (BGRA) defines bulky goods retailers primarily in terms of their trading premises.
9. The BGRA proposes⁸ a definition of "durable consumer goods" with respect to the premises of the retailers of the goods. The BGRA's suggests that "durable consumer goods" be defined in line with the BGRA's standard definition, which is as follows:

"...Premises used predominantly for the sale or hire of:

- (a) automotive parts and accessories;*
- (b) furniture;*
- (c) floor coverings;*
- (d) window coverings;*
- (e) household appliances and household electrical goods;*
- (f) appliances or electronic equipment;*
- (g) home entertainment goods;*
- (h) lighting and electric light fittings;*
- (i) curtains and fabric;*
- (j) bedding, furnishings, fabric and manchester;*
- (k) party supplies;*
- (l) animal and pet supplies;*
- (m) camping and outdoor equipment and recreation supplies;*
- (n) hardware;*

⁷ In a letter to the Premier and the Minister for Commerce dated 4 August 2010

⁸ In a letter to the Premier dated 29 June 2010

- (o) garden plants;
- (p) office equipment and stationary supplies;
- (q) baby equipment and accessories;
- (r) sporting, bicycles, fitness, recreational equipment and accessories;
- (s) homewares;
- (t) children's play equipment;
- (u) swimming pools and swimming pool supplies".

10. The BGRA alternatively proposes a definition of bulky goods retailers, as having "a premises which satisfies the following:

(a) a large area for handling, display or storage; or

(b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items onto their vehicle after purchase or hire, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale of bulky goods..."

11. The BGRA's list of durable goods categories closely matches the ABS inclusive list summarised above in paragraph 4 of this Appendix, except that the BGRA would include as bulky goods retailers, premises used predominantly for the sale or hire of the following categories of items excluded or not specifically mentioned by the ABS:

- automotive parts and accessories;
- curtains and fabric;
- party supplies;
- animal and pet supplies;
- camping and outdoor equipment;
- plants and gardening items;
- office equipment and stationery; and
- children's play equipment.

The Retail Traders Association definition

11. The Retail Traders Association (RTA) have proposed⁹ a definition of "bulky goods", tailored to those retailers (and therefore those goods and services) contained in "bulky goods" or "big box" centres.

12. The RTA's suggested list of bulky goods retailers and products sold is as follows:

(a) Harvey Norman, The Good Guys, Retravisio, Clive Antonys, WOW Sight and Sound, Clive Peters, Rick Hart, JB Hi-Fi, Betta Electrical, Dick Smith.

⁹ In a letter to the Director General of the Department of Commerce, dated 19 July 2010

Hi-fi, radios, computers, computer software and accessories, TV and accessories, games consoles and games software, mobile phones and accessories, music CDs and film DVDs, amplifiers, digital cameras, digital prints, intercom, security systems, electrical appliances (toasters, kettles, irons, vacuum cleaners, etc) room heaters, air-conditioning, refrigeration, washing machines, ovens, microwave ovens, hotplates and exhaust fans/extractors, furniture and accessories, bedding, manchester, rugs

- (b) *Freedom, Early Settler, Fantastic Furniture, Furniture Spot, Domayne, Super Amart, Ikea, Dare Gallery, The Outdoor Furniture Specialists*

Dining room, lounge room, bedroom, kitchen, outdoor, laundry and office furniture; bedding; homewares – kitchen knockdown, hardware, equipment, eating plates and utensils, bathroom and laundry accessories, wall hangings, framed pictures and other home decorative items and artifacts; lighting, accessories and attachments; all with accessories – lamps, rugs, cushions, pillows, all towels, bathmats and manchester (sheets, pillow cases, doonas, blankets etc), curtains and blinds

- (c) *Bed Sheet, Beds 'r' Us, Forty Winks, Snooze, Sleepy's*

Full bedding and accessories, full manchester range

- (d) *Adairs*

Full manchester range covering bedroom, bathroom with accessories including clothing

- (e) *Beacon lighting*

Full service and range of lighting products, accessories and globes

- (f) *Carpet Call, Carpet Court, Carpet Choice, Carpet Clearance Warehouse*

Full offering of carpet, vinyl, timber floorings, maintenance and accessories

- (g) *Kitchen Warehouse*

Full range of all equipment, utensils and accessories for the kitchen; includes kitchen knockdown or new fit outs

- (h) *BCF, Anaconda*

Full range of outdoor camping products, utensils and accessories (including clothing)

- (i) *Spotlight, Lincraft*

Complete range of materials, patterns, equipment suitable for dress, curtain, upholstery making, artwork, needlework, etc including instructional classes and supporting books, magazines, etc

- (j) *Officeworks, Howard Storage*

Complete range of office supplies, furniture, equipment, computers, photocopying/printing services; home and office storage equipment and accessories including food items eg coffee, tea, biscuits, lollies, etc

- (k) *Curtain Wonderland, Kresta, ABC Blinds*
Full service, measure and quote, supply of ready made and to order curtains, blinds, weather protective curtains and accessories
- (l) *Baby Warehouse, Baby Bunting, Babyco, Babyland*
Complete selection of all baby needs, clothing, furniture, prams, etc
- (m) *Rebel Sports, Golf World, Fishing and Tackle, Goldcross*
Full range of sports equipment and accessories; full range of sports clothing and footwear; full range of exercise equipment and accessories; full range of bicycles, accessories and service
- (n) *Barbecues Galore*
Full range of gas/electric outdoor and indoor barbecue and cooking equipment with accessories; range of outdoor furniture and accessories
- (o) *Toys 'r' Us, Toyworld*
Complete range of all children's toys and equipment including games, party accessories
- (p) *Pets and Garden, City Farmers*
Complete range of pets with all equipment, accessories including food and clothing
- (q) *Tile Warehouse, Tile Wizard, Tile Shed*
Full range of ceramic, slate etc floor and wall tiles with accessories
- (r) *Video Ezy, Blockbuster*
Full range of videos and games for hire or sale
- (s) *Inspirations, Dulux*
Full range of paint, varnishes, finishes for home or other decorative purposes
- (t) *Bunnings, Mitre 10*
Full range of home DIY and trade hardware needs, equipment, tools and accessories; pool equipment and maintenance; lighting; barbecue; kitchen, laundry and outdoor furniture; garden equipment, accessories and plants
- (u) *Autopro, Autobarn, Super Cheap, Repco, Malz*
Complete range of motor spare parts, repair, maintenance and accessories including clothing

SUMMARY OF THE SOUTH AUSTRALIAN LEGISLATIVE SCHEME FOR ALLOWING SALE OF SPECIFIED CATEGORIES OF GOODS ON SUNDAYS.

South Australia's *Shop Trading Hours Act 1977*, section 13(5e), provides that shops located in a "shopping district" that are in the business of retailing four categories of goods may, in addition to trading during the standard hours prescribed by the Act, open between 9:00am and 5:00pm on Sundays.

There are three shopping districts named in the definition of "shopping district" set out in section 4 of the Act, which provides for additional districts to be proclaimed.

The four categories of goods described in section 13(5c) are:

- hardware and building materials;
- furniture;
- floor coverings; and
- motor vehicle parts and accessories.

Section 13(5f) provides that the Sunday trading hours permitted by section 13(5e) "only applies to a shop if, during the immediately preceding seven consecutive trading days of the shop" the shop sells a certain aggregate percentage of goods falling in one or more of the four categories, assessed by reference to price.

In the case of hardware and building materials, this percentage is set by regulation: section 13(5f)(b). The *Shop Trading Hours Regulations 2003 (SA)*, R.5, set the percentage as 20%.

In the case of the other three categories, the percentage is set by the Act at 80%: section 13(5f)(a).

In other words, a shop located in a shopping district that in a period of seven consecutive trading days has sales that are at least 80% of goods, based on dollar value, that are furniture, floor coverings and motor vehicle parts and accessories, or at least 20% that are hardware and building materials, may trade on the following Sunday.

Department of Commerce

Consumer Protection Division

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8.30am - 5.00pm weekdays

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